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Complaint

(January 11, 1956)

(2)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

[SAME TITLE]

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The B. F. Goodrich Company, and The Texas Company, hereinafter referred to as respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act (U. S. C. Title 15, Section 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

PARAGRAPH ONE: Respondent, The B. F. Goodrich Company, hereinafter sometimes referred to as "Goodrich" is a corporation organized, existing and doing business under the laws of the State of New York, with its principal office and place of business located at 500 Main Street, Akron, Ohio.

Respondent, The Texas Company, sometimes hereinafter referred to as "Texas" is a corporation organized, existing and doing business under the laws of the State of Delaware with its principal office and place of business located at 135 East 42nd Street, New York 17, New York.

PARAGRAPH TWO: Goodrich, one of the four leading manufacturers of rubber products in the United States, is engaged in the manufacture and sale of a great variety of rubber and associated products, including tires and inner

tubes. It is also engaged in the purchase, resale and distribution of batteries, automotive parts and accessories and other items referred to as Car and Home Merchandise. (3) Goodrich sells its various products directly to the consuming public through more than 500 company owned and operated retail outlets, and to other retailers and wholesalers having places of business located in the various States of the United States. Its total net sales in 1954 were more than one-half billion dollars.

Certain of Goodrich's said products, namely, tires, inner tubes, batteries, automotive parts and accessories, and certain Car and Home Merchandise items, are known in the trade as "TBA" products (an abbreviation for tires, batteries and accessories) and will hereinafter be so referred to in this complaint.

PARAGRAPH THREE: Texas is a large producer and distributor of petroleum products. Directly or through its wholly owned or controlled subsidiaries Texas is engaged in substantially all branches of the petroleum industry. It produces crude oil from its wells, cracks and refines gasoline, and refines and produces lubricants and a wide range of other petroleum products. Sales of said products are made to many types of customers, including petroleum wholesalers (hereinafter referred to as "distributors") and service stations. In 1954 its net sales totaled more than one and one-half billion dollars. Texas also acts as an agent in promoting the sale of the TBA products of certain companies, including those of respondent Goodrich, in the manner hereinafter described.

PARAGRAPH FOUR: In the course and conduct of their said businesses respondents are now and for many years have been engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that they ship

said products, including said TBA products, or cause them to be shipped from the states in which said products are manufactured or warehoused to purchasers thereof located in other States of the United States and the District of Columbia.

PARAGRAPH FIVE: In the course and conduct of their said business of selling, and promoting the sale of, TBA products in commerce, respondents are now and for many years have been engaged in competition with other corporations, partnerships, individuals and firms.

PARAGRAPH SIX: Goodrich sells said TBA products directly and through wholesalers to many classes of customers, including service stations who purchase for resale to consumers for replacement use in their automobiles. Service stations, by the nature of their business, are particularly well adapted to be outlets for the sale of TBA products to the motorist consumer. They constitute a large and increasingly important market for TBA products.

(4) Texas sells its petroleum products, directly and through distributors, to more than 42,000 service stations. In addition to petroleum products, a substantial number of these stations sell TBA products.

PARAGRAPH SEVEN: In connection with Goodrich's sale of TBA products in commerce, it has entered into a contract with Texas under which Texas agrees to promote the sale of Goodrich's TBA products to the service stations and distributors selling Texas' petroleum products. Texas has also entered into a substantially similar agreement with the Firestone Tire & Rubber Company (hereinafter referred to as Firestone) as to the stations and distributors selling its petroleum products.

Under said contract Goodrich pays Texas an "override" commission, ranging from 5% to 10% on the net sales of TBA products to service stations and distributors selling Texas' petroleum products in return for the influence and aid given by Texas in promoting said sales. Texas has a large number of service stations and distributors affiliated with it which sell only its petroleum products and, pursuant to its agreements with Goodrich and Firestone, in various ways, urges, recommends and persuades the operators of these outlets to purchase the TBA products of Goodrich or Firestone. Said stations and distributors at no time authorized or requested Texas to find for them, or commit them to, a source of supply for TBA products. Said stations and distributors do not receive any part of the override commission.

Said service stations and distributors are operated ostensibly as independently owned business enterprises. However, their relationship with Texas is such that they are subject to its control. Such control is inherent in the power Texas has by virtue of the various types of contracts of employment, leases, purchase contracts, credit card contracts, franchises and other agreements between it and said service stations and distributors with respect to petroleum products and the occupancy, operation, use and tenure of the stations, other premises, facilities and equipment. Said agreements are for short terms and may be terminated or cancelled by Texas without reason at the end of the term or prior thereto for non-performance of certain provisions. Some of said provisions are so broad and general as to be susceptible of arbitrary interpretation and thus afford a basis for termination of the agreement by Texas.

Thus, the economic welfare of said service stations and distributors is largely dependent upon Texas. If Texas chooses, for whatever reason or no reason, to terminate

said (5) franchise or other agreements the operator of the service station or distributor either loses his business entirely or must change to a different brand of petroleum products or change location or both depending upon the type of lease arrangement involved. Such termination would result in great financial loss and irreparable injury to the operator, such as loss of his business, customer goodwill, sales, profits and cost of relocation.

By virtue of these circumstances, Texas can greatly influence and control the purchasing and marketing activities of said service stations and distributors. Such influence and control has been and is being exercised by Texas over its affiliated service stations and distributors by recommending, urging, persuading and causing them to purchase a substantial quantity of TBA products from Goodrich and Firestone, the sellers designated by it.

PARAGRAPH EIGHT: By virtue of said override commission agreement which Texas has entered into with Goodrich, the latter has sold substantial quantities of TBA products in commerce to said service stations and distributors. Goodrich has been increasingly successful in selling TBA products to said service station and distributor market controlled by Texas. For example, Goodrich made such sales, under said agreement, amounting to $8,868,751 in 1951 and approximately $13,000,000 in 1952 on which it paid Texas commissions of $700,000 and $1,100,000, respectively, for those years.

Also, under the agreement between Texas and Firestone, as described hereinbefore, the latter has sold substantial quantities of TBA products to said service stations and distributors. Firestone made such sales amounting to $26,973,539 in its fiscal year 1952 and $31,248,557 in its fiscal year 1953, on which it paid Texas commissions of $2,286,632 and $2,723,890, respectively, for those years.

PARAGRAPH NINE: In addition, Goodrich has entered into the same or a substantially similar override agreement with five other oil companies. Said oil companies exercise control over the service stations and distributors which purchase their petroleum products in the same manner and for the same reasons as hereinabove alleged as to Texas. By virtue of said agreements, Goodrich has been and is increasingly successful in selling TBA products to the service station and distributor market controlled by oil companies. For example, under such agreements Goodrich's sales increased from $5,500,000 in 1946 to more than $16,500,000 in 1952.

(6) PARAGRAPH TEN: Many competitors of Goodrich and Firestone are unable to sell their TBA products to a substantial number of said distributors and service stations because of said override agreements. Many of these competitors do not pay override commissions to any oil company.

PARAGRAPH ELEVEN: Among the effects of the adoption and use by respondents of said override commission agreements, and each of them, under the circumstances and in the manner hereinabove alleged are that they have:

1. Foreclosed a large and substantial amount of business to manufacturers, distributors, wholesalers and other vendors who compete with Goodrich and Firestone in the sale of TBA products.

2. Injured, lessened, prevented and destroyed competition between Goodrich and Firestone and between each of them and other manufacturers, distributors, wholesalers and other vendors of TBA products in the sale of said products.

3. Increased substantially the amount of TBA products business done by Goodrich and Firestone.

4. Deprived a substantial number of petroleum distributors and service station operators of their right to act as independent businessmen by denying them freedom of choice as to the TBA products which they may purchase and stock for resale.

5. Deprived the consuming public of equal access to the TBA products of competitors of Goodrich and Firestone and other advantages which would result from the natural and unobstructed flow of commerce in said products under conditions of free competition.

PARAGRAPH TWELVE: Said agreements between respondents and said agreements between a respondent and others not parties herein, and the acts and practices of respondents thereunder, as hereinabove alleged, are all to the prejudice of the public, have a dangerous tendency to and have unduly frustrated, hindered, suppressed, lessened, restrained, prevented and eliminated competition in the sale of TBA products in commerce within the intent and meaning of the Federal Trade Commission Act; have the capacity and tendency to restrain unreasonably and have restrained unreasonably such commerce in said products; (7) and constitute unfair methods of competition and unfair acts and practices, in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission, on this 11th day of January, A. D., 1956, issues its complaint against said respondents.

Complaint

NOTICE

Notice is hereby given you, The B. F. Goodrich Company and The Texas Company, corporations, respondents herein, that the 21st day of March, A. D., 1956, at 10 o'clock is hereby fixed as the time and Federal Trade Commission Office, Washington, D. C., as the place when and where a hearing will be had before a hearing examiner of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under said Act to appear and show cause why an order should not be enterd requiring you to cease and desist from the violations of law charged in this complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the thirtieth (30th) day after service of it upon you. Such answer shall contain a concise statement of the facts constituting the ground of defense and a specific admission, denial or explanation of each fact alleged in the complaint, or, if respondents are without knowledge thereof, a statement to that effect.

If respondents elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that respondents admit all material allegations to be true. Such an answer shall constitute a waiver of hearing as to facts so alleged, and an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding shall be issued by the hearing examiner. In such answer, respondents may, however, reserve the right to submit proposed findings and conclusions and the right to appeal under Section 3.22 of the Commission's Rules of Practice for Adjudicative Proceedings.

If any respondent elects to negotiate a consent order, it shall be done in accordance with Section 3.25 of the Commission's Rules of Practice.

Failure to file answer within the time above provided and failure to appear at the time and place fixed for (8) hearing shall be deemed to authorize a hearing examiner without further notice to respondents, to find the facts to be as alleged in the complaint, to conduct a hearing to determine the form of order, and, thereafter, to enter an initial decision containing such findings and order.

In Witness Whereof, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary, and its official seal to be hereto affixed, at Washington, D. C., this 11th day of January, 1956.

By the Commission.

Robert M. Parrish,
Secretary.

Order Designating Hearing Examiner

(January 11, 1956)

(9)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

[SAME TITLE]

Pursuant to authority vested in the Federal Trade Commission and delegated to the Director, Hearing Examiners,

IT IS ORDERED that Earl J. Kolb, a hearing examiner of this Commission, be, and he hereby is, designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law.

EVERETT F. HAYCRAFT,
Director, Hearing Examiners.

• • •

Answer of Respondent The Texas Company

(April 16, 1956)

(19)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

[SAME TITLE]

Respondent THE TEXAS COMPANY for its answer to the complaint in the above entitled proceeding states:

I.

The sales commission plan, alleged in the complaint to be an arrangement between respondents, The Texas Company (hereinafter referred to as "Texas") and The B. F. Goodrich Company (hereinafter referred to as "Goodrich"), as carried out by Texas, is an efficient method of stimulating the distribution of TBA products to consumers through many service stations in the United States. Said plan, as so carried out, is a proper competitive method of marketing which benefits suppliers of TBA products, Texas, dealers and distributors of petroleum products, and the consumers. Said sales commission plan, as so carried out, is part of intense and proper competition for the good will and custom of the consumer public.

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II.

1. Answering the allegations of paragraph numbered One of the complaint:

It admits the allegations thereof.

2. Answering the allegations of paragraph numbered Two of the complaint:

It is without knowledge as to the allegations thereof except that it admits that Goodrich is engaged in the manufacture and sale of a number of rubber and associated products including tires and inner tubes and is engaged in the purchase, resale and distribution of batteries, automotive parts and certain accessories and it admits that the term TBA is applied in the trade to products such as tires, inner tubes, batteries and certain other accessories.

3. Answering the allegations of paragraph numbered Three of the complaint:

It admits the allegations of the first sentence thereof. It denies the allegations of the second sentence except that it admits that directly, or through its subsidiaries or affiliated companies, it has engaged in substantially all branches of the petroleum industry. It admits the allegations of the third sentence. It admits the allegations of the fourth sentence except that it is without knowledge as to the allegation that sales are made to many types of customers, the meaning of which phrase is not clear to Texas. It admits the allegations of the fifth sentence. It denies the allegations of the sixth sentence except that it admits that Texas acts as a sales representative in promoting the sale of TBA products of certain companies, and that Goodrich is one of such companies.

4. Answering the allegations of paragraph numbered Four of the complaint:

It admits that it ships some petroleum products from some but not all states in which they are produced or refined or stored to purchasers or (21) dealers located in some other states of the United States and the District of

Columbia. It denies that it ships or causes to be shipped TBA products from the states in which such products are manufactured or warehoused to purchasers thereof located in other states of the United States and the District of Columbia and it is without knowledge as to the allegations of said paragraph in so far as they refer to Goodrich and its method of carrying on its business. Respondent is not required to answer the legal conclusions as to the term "commerce", but it denies that any facts alleged in paragraph numbered Four confer any jurisdiction on the Federal Trade Commission with respect to any conduct by Texas in connection with TBA products.

5. Answering the allegations of paragraph numbered Five of the complaint:

It denies the allegations thereof except that it admits promoting the sale of TBA products which are sold in competition with others. Respondent is not required to answer the legal conclusions in said paragraph numbered Five.

6. Answering the allegations of paragraph numbered Six of the complaint:

It is without knowledge as to the allegations stated in the first sentence thereof except it admits that Goodrich sells TBA products to service stations. It admits the allegations of the second and third sentences thereof except that it is without knowledge as to the allegation that service stations constitute an increasingly important market, the meaning of which phrase is not clear to Texas.

It denies the allegations of the fourth sentence thereof except that it admits that its petroleum products are marketed by approximately 38,000 service station dealers. It admits the allegation of the fifth sentence that in addition to petroleum products a number of service stations sell TBA

products, but it is without knowledge as to the allegation that a substantial (22) number of service stations do so, as the meaning of the phrase "substantial number" is not clear to Texas.

7. Answering the allegations of paragraph numbered Seven of the complaint:

It denies the allegations of the first three sentences thereof (the last of which is in the second subparagraph) except that it admits that it has separate contracts with Goodrich and Firestone whereby each of said companies separately agrees to pay to Texas certain commissions on specified net sales of TBA products of Goodrich and Firestone respectivaly in consideration of the assistance and services to be rendered by the Texas sales organization in connection with promoting the sale respectively of Goodrich and Firestone TBA products. But for the exact terms and conditions of said contracts, Texas seeks leave to refer to the actual written agreements between the parties involved. The allegations of the second and third sentences in so far as they relate to Firestone are irrelevant in this proceeding, to which Firestone is not a party.

It denies the allegations of the fourth sentence thereof except that it admits that there is a large number of service stations and distributors which sell principally its petroleum products, and that it urges and recommends, in proper and lawful ways, the purchase of either or both of Goodrich and Firestone TBA products by service stations and distributors handling Texaco products. The allegations of the fourth sentence in so far as they relate to Firestone are irrelevant in this proceeding, to which Firestone is not a party. It denies the allegations of the fifth sentence thereof and alleges that it never commits stations and distributors to a source of supply for TBA products. It admits the allegations of the sixth sentence thereof.

It denies the allegations of the seventh sentence, except that it admits that the service stations and distributors in question are independently operated business enterprises. It denies the allegations of the eighth, ninth, tenth and eleventh sentences, except that as to the allegation of the tenth sentence, Texas admits that at the end of the term of certain agreements, (23) such agreements terminate and Texas may, prior to the expiration of the term of an agreement, terminate such agreement for certain non-performance by the other party thereto.

It denies the allegations of the twelfth sentence, but states that the economic welfare of service stations and distributors handling Texaco products derives benefit from the high quality and reputation of such products. It alleges that the allegations of sentences thirteen and fourteen are hypothetical, argumentative and improper, and they are denied.

It alleges that the allegations of the fifteenth and sixteenth sentences are based upon the aforesaid hypothetical, argumentative and improper allegations, and they are denied. The allegations of the sixteenth sentence in so far as they relate to Firestone are irrelevant in this proceeding, to which Firestone is not a party.

8. Answering the allegations of paragraph numbered Eight of the complaint:

It denies the allegations of the first sentence thereof except that it admits that Goodrich has sold TBA products to service stations and distributors of Texaco products; it is without knowledge as to the allegation that Goodrich has sold "substantial quantities" of such products, the meaning of which phrase is not clear to Texas. It denies the allegations of the second and third sentences except that it admits that Goodrich has increased its dollar volume of sales

to service stations and distributors of Texas petroleum products and that the sales amounted to approximately the figures stated for 1952 and that the commission paid to Texas under its agreements with Goodrich amounted substantially to the sum alleged in the complaint for that year.

It denies the allegations of the fourth and fifth sentences except that it admits that Firestone has sold quantities of TBA products to service stations and distributors selling Texas petroleum products, and except that it is without knowledge as to the volume of Firestone sales for its fiscal years and the commissions paid to Texas thereon, in view of the fact that the Texas records are kept by calendar years, which do not appear to coincide (24) with the Firestone fiscal years; it is also without knowledge as to the allegations that Firestone sold "substantial quantities" of TBA products, the meaning of which phrase is not clear to Texas. The allegations of the said fourth and fifth sentences are irrelevant in this proceeding, to which Firestone is not a party.

9. Answering the allegations of paragraph numbered Nine of the complaint:

It is without knowledge as to the allegations thereof except that it denies all allegations and inferences that it exercises control over the service stations and distributors which purchase their petroleum products from it.

10. Answering the allegations of paragraph numbered Ten of the complaint:

It denies the allegations of the first sentence thereof. The allegations of the said first sentence in so far as they relate to Firestone are irrelevant in this proceeding, to which Firestone is not a party. It is without knowledge as to the allegations of the second sentence thereof.

11. Answering the allegations of paragraph numbered Eleven of the complaint:

It denies the allegations thereof.

12. Answering the allegations of paragraph numbered Twelve of the complaint:

It denies the allegations thereof.

13. Except as above expressly admitted or qualified, Texas denies each and every allegation of the complaint.

(25)

III

As Additional Defenses:

(A) The bringing and prosecution of the complaint herein is not in the public interest.

(B) The TBA sales commission plan alleged in the complaint, in so far as it relates to the acts and conduct of Texas, is not in violation of Section 5 of the Federal Trade Commission Act. (U. S. C. Title 15, Section 45)

(C) The complaint is insufficient, vague, indefinite and uncertain and does not allege facts sufficient to form a basis for any relief under Section 5 of the Federal Trade Commission Act (U. S. C. Title 15, Section 45) or sufficient to authorize any cease and desist order.

(D) Even if the allegations of the complaint could be established, Section 5 of the Federal Trade Commission Act (U. S. C. Title 15, Section 45) does not prohibit this respondent's acts and practices alleged in the complaint herein and if said Section is construed to prohibit such acts

and practices, it is void and in violation of and contrary to the Fifth and Tenth Amendments of the Constitution of the United States and in violation of and contrary to Articles I, II and III of the Constitution of the United States.

WHEREFORE, respondent THE TEXAS COMPANY prays that an order be entered dismissing the complaint, and for such other relief as may appear to be appropriate.

MARION J. EPLEY, JR.

DWIGHT, ROYALL, HARRIS, KOEGEL & CASKEY

By KENNETH C. ROYALL
FREDERICK W. P. LORENZEN
PAUL KERINS
Attorneys for THE TEXAS COMPANY

• • •

Answer of Respondent The B. F. Goodrich Company

(April 16, 1956)

(27)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

[SAME TITLE]

Respondent, The B. F. Goodrich Company, for its answer to the complaint herein:

1. Admits each allegation of Paragraph ONE.

2. Admits each allegation of Paragraph Two, except denies that it owns and operates more than 500 retail outlets.

3. Admits that Texas is a large producer and distributor of petroleum products and that Texas renders valuable sales assistance in promoting the sale by Goodrich of certain TBA products, but denies that Texas acts for Goodrich in the manner alleged in the complaint; denies knowledge or information sufficient to form a belief as to each other allegation of Paragraph THREE.

4. Admits each allegation of Paragraph FOUR, except denies knowledge or information sufficient to form a belief as to the allegations concerning Texas.

(28) 5. Denies each allegation of Paragraph FIVE, except admits that at present and for years past, Goodrich, in competition with others, sells and promotes the sale of TBA products in commerce, and that Texas renders valuable sales assistance in promoting the sale by Goodrich of certain TBA products.

6. Admits the first two sentences of Paragraph Six; admits that service stations constitute a large and important market for TBA products and that a number of service stations to whom Texas sells its petroleum products also sell TBA products. Denies knowledge or information sufficient to form a belief as to each other allegation of said paragraph.

7. Denies each allegation of Paragraph Seven, except admits that it sells TBA products in commerce and that it has entered into a contract with Texas under which Texas furnishes valuable sales assistance in promoting the sale by Goodrich of certain TBA products to service stations and distributors selling Texas petroleum products, in return for certain commissions on such sales and refers to said agreement for the terms thereof; admits that there are a large number of service stations and distributors which sell mainly Texas petroleum products, and that Texas urges and recommends, in various proper and legal ways, the purchase and resale of Goodrich TBA products, among other similar products of competitors, by said service stations and distributors; admits that said service stations and (29) distributors do not receive any part of the commission paid by Goodrich to Texas; admits that said service stations and distributors are operated as independently owned business enterprises; and except denies knowledge or information sufficient to form a belief as to agreements between Texas and Firestone.

8. Denies each allegation of Paragraph Eight, except admits that it has received valuable assistance from Texas in promoting the sale by Goodrich of certain TBA products, that the figures for the year 1952 regarding Goodrich sales and commissions thereon paid to Texas are substantially accurate and except denies knowledge or information sufficient to form a belief as to the second sub-paragraph.

Answer of Respondent The B. F. Goodrich Company

9. Denies each allegation of Paragraph Nine, except admits that it has entered into substantially similar sales commission agreements with five other oil companies (two of them since 1952), and that it has received valuable sales assistance from said oil companies in promoting the sale of Goodrich TBA products, and that the figures in the last sentence of said paragraph are substantially accurate with respect to three oil companies in 1946 and four oil companies in 1952.

10. Denies each allegation of Paragraph Ten, except denies knowledge or information sufficient to form a belief as to the last sentence thereof.

(30) 11. Denies each allegation of Paragraph Eleven.

12. Denies each allegation of Paragraph Twelve.

For a Separate Defense

(1) Alleges that the Goodrich TBA program, including the sales commission arrangements with oil companies, in purpose and in practice, is a lawful method of competition which benefits consumers, oil station operators and distributors, and others interested in the manufacture and distribution of TBA products.

(2) Alleges that each and every paragraph of the complaint, either taken singly or with other paragraphs as a whole, fails to state a cause of action under Section 5 of the Federal Trade Commission Act.

(3) Denies that it has violated the provisions of Section 5 of the Federal Trade Commission Act; and alleges that if said statute prohibits the acts and practices referred

to in the complaint it violates Articles I, II and III of, and the Fifth and Tenth Amendments to, the Constitution of the United States, and is therefore void.

(4) Denies that this proceeding is in the public interest.

WHEREFORE, respondent, The B. F. Goodrich Company, prays that the complaint herein be dismissed.

Dated: April 16, 1956

WHITE & CASE

By ORISON S. MARDEN
By EDGAR BARTON
14 Wall Street
New York 5, N. Y.
Attorneys for Respondent,
The B. F. Goodrich Company

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Order Sustaining Interlocutory Appeal

(November 28, 1956)

(85)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

John W. Gwynne, Chairman
Robert T. Secrest
Sigurd Anderson
William C. Kern
Edward T. Tait

[SAME TITLE]

This matter having been heard on an interlocutory appeal, filed by counsel in support of the complaint, from rulings of the hearing examiner excluding from the record certain evidence relating to the extent and effect of the commission agreement between the respondent, The Texas Company (hereinafter referred to as Texas), and The Firestone Tire and Rubber Company (hereinafter referred to as Firestone), and other evidence relating to the existence, extent and operation of alleged commission agreements between the respondent, The B. F. Goodrich Company (hereinafter referred to as Goodrich), and five oil companies other than Texas; and

It appearing that the basis for the rulings complained of was that evidence of the relationships between Texas and Firestone and between Goodrich and oil companies other than Texas have no bearing on the issues in this proceeding, which proceeding is concerned only with the con-

tractual relationship between Texas and Goodrich, and the acts and practices engaged in pursuant thereto; and

It further appearing, however, that the allegations of the complaint are not limited to the existence of and activities under the commission contract between respondents Texas and Goodrich, but relate also to a general (86) course of competitive action by each of said respondents, under which respondent Texas is charged with having unlawfully entered into and acted under contracts with both Goodrich and Firestone providing for the receipt by it of commissions on the sales of all tires, batteries and accessories sold by Goodrich and Firestone to service stations controlled by Texas, and respondent Goodrich is alleged to have unlawfully entered into and acted under similar contracts with six oil companies, including Texas, providing for the payment by it to said oil companies of commissions on the sales of all tires, batteries and accessories sold by Goodrich to service stations controlled by said oil companies; and

The Commission being of the opinion that the evidence rejected by the hearing examiner apparently was relevant and material to the direct issues thus raised by the complaint and that, if so, it should have been received in support of said issues:

It Is Ordered that the appeal of counsel in support of the complaint be, and it hereby is, sustained.

It Is Further Ordered that the hearing examiner be, and he hereby is, directed to receive into the record such relevant, material and reliable evidence as has been or may be offered concerning the details, operation and competitive effects of the override commission contract between respondent Texas and Firestone and of the alleged similar commission contracts between respondent Goodrich and

each of the five oil companies other than respondent Texas. Such evidence relating to the contract between Texas and Firestone should be admitted as against respondent Texas unconditionally and as against respondent Goodrich subject to a subsequent motion to strike upon a proper showing; and the evidence relating to the alleged contracts between Goodrich and the five oil companies other than Texas should be admitted as against respondent Goodrich unconditionally and as against respondent Texas subject to the same type of motion.

By the Commission.

ROBERT M. PARRISH,
Secretary.

Issued: November 28, 1956

Exception of Respondent The Texas Company

(December 7, 1956)

(87)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

[SAME TITLE]

TO THE HONORABLE THE COMMISSIONERS OF
THE FEDERAL TRADE COMMISSION:

The respondent, The Texas Company, by its attorneys, respectfully excepts to the Commission's ORDER SUSTAINING INTERLOCUTORY APPEAL, issued November 28, 1956. Said exception is on the ground that the said order is violative both of the spirit and the letter of the Administrative Procedure Act, that it deprives respondent of due process of law in violation of Amendment V of the Constitution of the United States, and is on the legal and constitutional grounds set forth in respondents's ANSWERING BRIEF IN OPPOSITION TO INTERLOCUTORY APPEAL OF COUNSEL SUPPORTING THE COMPLAINT FROM RULINGS OF HEARING EXAMINER REJECTING CERTAIN EVIDENCE filed with the Commission on November 8, (88) 1956 and on all other legal and constitutional grounds that are applicable.

Respectfully submitted,

MARION J. EPLEY, JR.
DWIGHT, ROYALL, HARRIS, KOEGEL & CASKEY

By Kenneth C. Royall
Frederick W. P. Lorenzen
Paul Kerins

This 7th day of December, 1956.

Exception of Respondent The B. F. Goodrich Company (December 12, 1956)

(89)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

[SAME TITLE]

TO THE HONORABLE THE COMMISSIONERS OF THE FEDERAL TRADE COMMISSION:

The attorneys for the respondent, The B. F. Goodrich Company, hereby respectfully advise the Federal Trade Commission that said respondent duly takes exception to the Commission's Order Sustaining Interlocutory Appeal, issued November 28, 1956, ordering the hearing examiner to receive certain evidence herein and requests that this exception be made part of the record in this proceeding.

The grounds for this exception are those stated in the answering briefs of said respondent and the other respondent herein, The Texas Company, filed in opposition to the interlocutory appeal from rulings of the hearing examiner excluding said evidence, and the further grounds (90) that said Order denies to said respondent due process of law in violation of the Fifth Amendment to the Constitution of the United States; that said Order is contrary to the intendment and requirements of the Administrative Procedure Act and the statutes establishing and regulating the Commission, as well as the Commission's own rules; and on the grounds of all other applicable legal and constitutional issues raised by said Order.

Respectfully submitted,

WHITE & CASE
Orison S. Marden
Edgar E. Barton
Macdonald Flinn
14 Wall Street
New York 5, New York

Dated: December 12, 1956

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Motion of Respondent The Texas Company

(December 31, 1956)

(92)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

[SAME TITLE]

To The Honorable Earl J. Kolb, Hearing Examiner:

COMES Now respondent, The Texas Company, by its attorneys, and shows the following:

1. Counsel, in support of the complaint (hereinafter referred to as "Complainant") pursuant to stipulation, has given to this respondent the names of certain witnesses who are to testify in support of the allegations of the complaint, at hearings to be held in Chicago, Illinois; Omaha, Nebraska; Dallas, Texas; and Atlanta, Georgia, beginning the 14th day of January, 1957.

2. Upon information and belief complainant has communicated with persons, other than those disclosed to the respondent, as possible prospective witnesses in this proceeding, including a large number of dealers, companies and distributors handling the products of The Texas Company.

(93) 3. If, as now appears, complainant is endeavoring to support the allegations of the complaint by introducing evidence purporting to show by sample the consequences arising from the alleged unlawful practices of the respondent, then, in order properly to weigh such "sample", it is necessary to know the total number of persons with whom complainant has communicated prior to picking the sample. It is also necessary to know the basis upon

which the witnesses were selected. The communications with all persons contacted and their replies will throw light upon the method employed to choose the witnesses.

WHEREFORE, respondent prays that the complainant be directed to give respondent, prior to January 14, 1957, separately each of the following: the name, address and employer of each person with whom complainant, or his agents, has communicated as possible prospective witnesses in support of the complaint, together with a statement of the substance of such communications to each person and from each person or a copy of such communications if they were in writing.

Respectfully submitted,

MARION J. EPLEY, JR.
DWIGHT, ROYALL, HARRIS, KOEGEL & CASKEY

By Kenneth C. Royall
Frederick W. P. Lorenzen
Paul Kerins

Attorneys for The Texas Company

Dated: December 31, 1956.

• • •

Answer of Counsel Supporting the Complaint in Opposition to the Motion of December 31, 1956, Filed on Behalf of Respondent, The Texas Company

(January 8, 1957)

(170)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

[SAME TITLE]

COME Now counsel supporting the complaint in opposition to the motion of respondent, The Texas Company, and state as follows:

1. Respondent seeks confidential information which only the Commission can reveal. (Secs. 1.133 and 1.134, Rules of Practice.)

2. Respondent has failed to show any good or valid reason why the lack of the information it seeks will hamper it in its defense, nor has respondent made any showing as to how such information that is not introduced in the record will in any way prejudice it or deprive it of due process of law.

WHEREFORE, counsel supporting the complaint pray that respondent's motion be denied.

Respectfully submitted,

PETER J. DIAS
Peter J. Dias,

WILLIAM J. BOYD, JR.
William J. Boyd, Jr.,
Counsel Supporting the Complaint.

January 8, 1957.

• • •

Order Denying Motion by Respondent The Texas Company for Disclosure of Names, Addresses and Employers of Parties Interviewed But Not Called as Witnesses

(January 9, 1957)

(173)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

[SAME TITLE]

This proceeding is before the hearing examiner upon motion of The Texas Company for an order directing the attorneys in support of the complaint to furnish to the respondent the name, address and employer of each person interviewed during the course of the investigation of this matter, together with communications to and from such persons and copies of such communications if in writing. It appears to the examiner that the attorneys in support of the complaint have, in fact, submitted to the attorney for said respondent the names and addresses of the witnesses who were to be called to testify at the proposed series of hearings to be held at Chicago, Illinois, Omaha, Nebraska, Dallas Texas, and Atlanta, Georgia, and that the present request by said respondent in its motion is without merit.

IT IS THEREFORE ORDERED that respondent's motion for disclosure of names, addresses and employers of parties interviewed but not called as witnesses be, and the same is hereby, denied.

EARL J. KOLB
Earl J. Kolb,
Hearing Examiner.

January 9, 1957.

• • •

Motion to Strike of Respondent The Texas Company

(November 8, 1957)

(260)

UNITED STATES OF AMERICA

BEFORE THE FEDERAL TRADE COMMISSION

[SAME TITLE]

TO THE HONORABLE EARL J. KOLB, HEARING EXAMINER:

COMES Now, respondent, The Texas Company, by its attorneys, Marion J. Epley, Jr., and Dwight, Royall, Harris, Koegel & Caskey, and to the end that the record herein, for the purposes of submission and determination, shall not contain evidence which is not material and relevant to the issues or is otherwise inadmissible and evidence which is superfluous and unduly enlarges the record, moves that by appropriate order of the Hearing Examiner, and for the reasons and on the grounds set forth in the Specification attached hereto, the evidence, heretofore received and identified in the Specification attached hereto, be stricken from the record.

Respectfully submitted,

MARION J. EPLEY, JR.
Marion J. Epley

DWIGHT, ROYALL, HARRIS, KOEGEL & CASKEY
By Kenneth Royall
Attorneys for The Texas Company

Dated: November 7, 1957.

(261)

SPECIFICATION OF EVIDENCE TO BE STRICKEN

I.

Hearsay Testimony

The testimony cited in this portion of the Specification should be stricken as hearsay.

For purposes of clarity, we shall consider the hearsay testimony in the following categories:

A. Single hearsay.

B. Single hearsay incorporating a conclusion or opinion.

C. Double hearsay.

D. Double hearsay incorporating a conclusion or opinion.

A. *Single Hearsay*

We shall use the symbol "(N)" to indicate hearsay testimony where there has been no identification either of the declarant or of the time or place of the hearsay statement.

In many instances the "single hearsay" statement contains additional evidentiary defects that require it to be stricken, and we shall expressly note such defects as they occur.

(262) An example of the type of "single hearsay" which, we submit, should be stricken, is that of Jennings, Tr. 959, lines 17-19.

Motion to Strike of Respondent The Texas Company

"Yes, I talked to the operators and they told
(N) me that they couldn't buy from me. They said we have to handle Goodrich. You know how it is.'"*

The following evidence should be stricken:

	Witness	*Transcript*	*Line*
1. (N)	Chanenson	Tr. 832*	Lines 16-18.
		Tr. 833*	"No, you can't * * * flipped." line 26 to line 2. "Yes, but * * * do."
(263)			
2. (N)	Olsen	Tr. 868**	Lines 17, 21-22. "Because he said * * * again."
3. (N)	Olsen	Tr. 871*	Lines 11-15. "Frankly, he just * * * sir."

* We do not know for what purpose the evidence is offered or admitted. If it is merely to show what a dealer had said, the hearsay statement is entirely unrelated to The Texas Company and is, therefore, immaterial, irrelevant and prejudicial. If the statement is offered in an attempt to prove something the respondent is supposed to have done or said to a dealer, then it constitutes double hearsay and for that additional reason should be stricken. In most instances the double hearsay reference does not identify anyone in The Texas Company to whom the action or statement is attributed; so that there is a double lack of identification. We also consider this testimony in terms of double hearsay under our division D, *infra*.

** We do not know for what purpose the evidence is offered or admitted. If it is merely to show what a dealer had said, the hearsay statement is entirely unrelated to The Texas Company and is, therefore, immaterial, irrelevant and prejudicial. If the statement is offered in an attempt to prove something the respondent is supposed to have done or said to a dealer, then it constitutes double hearsay and for that additional reason should be stricken. In most instances the double hearsay reference does not identify anyone in The Texas Company to whom the action or statement is attributed; so that there is a double lack of identification. We also consider this testimony in terms of double hearsay under our division C, *infra*.

Motion to Strike of Respondent The Texas Company

		Witness	*Transcript*	*Line*
4.	(N)	Dwyer	Tr. 924**	Lines 12-15. "The dealer told me • • • months."
5.	(N)	Dwyer	Tr. 924**	Line 23 to Tr. 925, line 4. "And Bob told me • • • Company."
6.	(N)	Dwyer	Tr. 925*	Lines 24-26. "Andy's Texaco • • • Tire."
7.	(N)	Shiff	Tr. 931*	Lines 2-4. "Petersen tells me • • • else."

* We do not know for what purpose the evidence is offered or admitted. If it is merely to show what a dealer had said, the hearsay statement is entirely unrelated to The Texas Company and is, therefore, immaterial, irrelevant and prejudicial. If the statement is offered in an attempt to prove something the respondent is supposed to have done or said to a dealer, then it constitutes double hearsay and for that additional reason should be stricken. In most instances the double hearsay reference does not identify anyone in The Texas Company to whom the action or statement is attributed; so that there is a double lack of identification. We also consider this testimony in terms of double hearsay under our division D, *infra*.

** We do not know for what purpose the evidence is offered or admitted. If it is merely to show what a dealer had said, the hearsay statement is entirely unrelated to The Texas Company and is, therefore, immaterial, irrelevant and prejudicial. If the statement is offered in an attempt to prove something the respondent is supposed to have done or said to a dealer, then it constitutes double hearsay and for that additional reason should be stricken. In most instances the double hearsay reference does not identify anyone in The Texas Company to whom the action or statement is attributed; so that there is a double lack of identification. We also consider this testimony in terms of double hearsay under our division C, *infra*.

Motion to Strike of Respondent The Texas Company

(264)

		Witness	*Transcript*	*Line*
8.		Shiff	Tr. 931*	Lines 12-16. "Al Feller buys * * * Prestone."
9.	(N)	Shiff	Tr. 936*	Lines 7-8. "he told me * * * him."
10.	(N)	Jennings	Tr. 953*	Lines 6-7. "he told me * * * done."
11.	(N)	Jennings	Tr. 956*	Lines 17-19, 26 to Tr. 957, line 1. "He told me * * * in."
12.	(N)	Jennings	Tr. 959*	Lines 17-19. "Yes, I talked * * * is."
13.	(N)	Seidenglanz	Tr. 1196*	Lines 15-17. "He told me * * * down."

(265)

14.	(N)	Renken	Tr. 1243*	Lines 17-19.
			Tr. 1244*	"he kept telling me * * * so." Tr. 1244, line 3. "By Firestone", and Line 7. "By * * * representative."

* We do not know for what purpose the evidence is offered or admitted. If it is merely to show what a dealer had said, the hearsay statement is entirely unrelated to The Texas Company and is, therefore, immaterial, irrelevant and prejudicial. If the statement is offered in an attempt to prove something the respondent is supposed to have done or said to a dealer, then it constitutes double hearsay and for that additional reason should be stricken. In most instances the double hearsay reference does not identify anyone in The Texas Company to whom the action or statement is attributed; so that there is a double lack of identification. We also consider this testimony in terms of double hearsay under our division D, *infra*.

Motion to Strike of Respondent The Texas Company

	Witness	*Transcript*	*Line*
15. (N)	Renken	Tr. 1244*	Lines 23-26. "He said * * * room."
16. (N)	Olsen	Tr. 1323*	Lines 21-22, 26 to Tr. 1324, line 1. "he explained it * * * company."
17. (N)	Taylor	Tr. 1415	Lines 24-25. "He told me * * * them."
18. (N)	Taylor	Tr. 1416*	Lines 7, 13-14. "That he was * * * Firestone."
19. (N)	Zimmerman	Tr. 1642	Line 4. "He said that * * *"
(266)			
20. (N)	Smith	Tr. 1685*	Lines 20-21. "He told me * * * products."
21. (N)	Smith	Tr. 1692*	Line 26. "That he * * *"
22. (N)	Smith	Tr. 1693*	Line 5. "he said * * *"
23. (N)	Smith	Tr. 1693*	Line 10. "That he had * * *"

* We do not know for what purpose the evidence is offered or admitted. If it is merely to show what a dealer had said, the hearsay statement is entirely unrelated to The Texas Company and is, therefore, immaterial, irrelevant and prejudicial. If the statement is offered in an attempt to prove something the respondent is supposed to have done or said to a dealer, then it constitutes double hearsay and for that additional reason should be stricken. In most instances the double hearsay reference does not identify anyone in The Texas Company to whom the action or statement is attributed; so that there is a double lack of identification. We also consider this testimony in terms of double hearsay under our division D, *infra*.

Motion to Strike of Respondent The Texas Company

		Witness	*Transcript*	*Line*
24.		Hulme	Tr. 1928*	Lines 14-16. "he said * * * there."
25.		Hulme	Tr. 1931*	Lines 9-11. "he told me * * * tires."
26.		Hulme	Tr. 1933	Lines 24-25. "he told me * * * me." ***
(267)				
27.		Hulme	Tr. 1936*	Line 22 to Tr. 1937, line 3. "He said * * * you." ***
28.	(N)	Bridges	Tr. 1944*	Lines 7-10. "and he said * * * people."
29.	(N)	Bridges	Tr. 1945*	Lines 12-15. "He said * * *"
30.	(N)	Bridges	Tr. 1946*	Lines 5-6. "and he also said * * * Firestone."

* We do not know for what purpose the evidence is offered or admitted. If it is merely to show what a dealer had said, the hearsay statement is entirely unrelated to The Texas Company and is, therefore, immaterial, irrelevant and prejudicial. If the statement is offered in an attempt to prove something the respondent is supposed to have done or said to a dealer, then it constitutes double hearsay and for that additional reason should be stricken. In most instances the double hearsay reference does not identify anyone in The Texas Company to whom the action or statement is attributed; so that there is a double lack of identification. We also consider this testimony in terms of double hearsay under our division D, *infra*.

*** This hearsay was elicited in cross examination directed to the hearsay evidence admitted in the direct over objection. Since it merely particularized matter admitted over objection, it should be stricken along with the original matter.

Motion to Strike of Respondent The Texas Company

		Witness	*Transcript*	*Line*
31.	(N)	Bridges	Tr. 1957*	Lines 15-16. "The substance is * * * Goodrich."***
32.	(N)	Bridges	Tr. 1957*	Lines 22-24. "That he was * * * business."***
(268)				
33.	(N)	Sinclair	Tr. 2036	Lines 11-12. "He told me * * * Goodrich."
34.	(N)	Sinclair	Tr. 2038*	Line 12. "He said that * * *"
35.	(N)	Chambers	Tr. 2049*	Lines 24-25. "He just said * * * to."
36.	(N)	Price	Tr. 2082	Lines 7-17. "they told me * * * tires."
37.	(N)	Price	Tr. 2086*	Line 25 to Tr. 2087, line 1. "That they would * * * handle."

* We do not know for what purpose the evidence is offered or admitted. If it is merely to show what a dealer had said, the hearsay statement is entirely unrelated to The Texas Company and is, therefore, immaterial, irrelevant and prejudicial. If the statement is offered in an attempt to prove something the respondent is supposed to have done or said to a dealer, then it constitutes double hearsay and for that additional reason should be stricken. In most instances the double hearsay reference does not identify anyone in The Texas Company to whom the action or statement is attributed; so that there is a double lack of identification. We also consider this testimony in terms of double hearsay under our division D, *infra*.

*** This hearsay was elicited in cross examination directed to the hearsay evidence admitted in the direct over objection. Since it merely particularized matter admitted over objection, it should be stricken along with the original matter.

Motion to Strike of Respondent The Texas Company

	Witness	*Transcript*	*Line*
38.	Scott	Tr. 2108*	Lines 6-7. "That he is * * * Goodrich."
39.	Scott	Tr. 2109*	Line 17. "It wouldn't * * *"
40.	Scott	Tr. 2111*	Lines 9-15. "His words * * * station."
41.	Scott	Tr. 2117*	Lines 19-21. "Oftentimes * * * stock."

* We do not know for what purpose the evidence is offered or admitted. If it is merely to show what a dealer had said, the hearsay statement is entirely unrelated to The Texas Company and is, therefore, immaterial, irrelevant and prejudicial. If the statement is offered in an attempt to prove something the respondent is supposed to have done or said to a dealer, then it constitutes double hearsay and for that additional reason should be stricken. In most instances the double hearsay reference does not identify anyone in The Texas Company to whom the action or statement is attributed; so that there is a double lack of identification. We also consider this testimony in terms of double hearsay under our division D, *infra*.

(269)

B. *Single Hearsay Incorporating a Conclusion or Opinion*

In certain instances the testimony of a witness clearly indicates he was stating a conclusion or opinion based upon a hearsay statement made to him by someone not subject to cross-examination, and—in many instances—by someone who was not even identified. With respect to those instances of hearsay statements where either the declarant or the time or place is not identified, we shall note the same by the use of the symbol "(N)".

An example of this type of testimony which should be stricken, is that of Hansen, Tr. 1397, lines 22-24:

> (N) "No specific reason outside of the fact that he felt that he was obligated to buy the bulk of his purchases through Firestone."*

The following evidence should be stricken:

		Witness	*Transcript*	*Line*
1.	(N)	Richmond	Tr. 655*	Lines 20-24. "When you make * * * it."

* We do not know for what purpose the evidence is offered or admitted. If it is merely the conclusion of the witness as to how another person felt, it should be stricken. If it is offered or admitted in an attempt to show—by inference—what the dealer had said, the hearsay statement is entirely unrelated to The Texas Company and is, therefore, immaterial, irrelevant and prejudicial. If the hearsay statement is offered or admitted in an attempt to prove something that the respondent is supposed to have done or said to a dealer, then it constitutes double hearsay and for that additional reason should be stricken. In most instances the double hearsay reference does not identify anyone in The Texas Company to whom the action or statement is attributed; so that there is a double lack of identification. We also consider this testimony in terms of double hearsay under our division D, *infra*.

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	Witness	*Transcript*	*Line*
2.	Arey	Tr. 688*	Lines 13-19. "He said * * * Goodrich."
3. (N)	Arey	Tr. 690*	Lines 12-13. "The gist of * * * tires."
(270)			
4. (N)	Gehrke	Tr. 706	Line 19. "I would say * * *"
5. (N)	Edelson	Tr. 741*	Line 5. "No, we are * * *"
6. (N)	Edelson	Tr. 741	Lines 11-12, 18. "We are able * * * that."
7. (N)	Chanenson	Tr. 835*	Lines 3-6, 19. "it would tend * * * policy."
8. (N)	Chanenson	Tr. 836*	Line 25 to Tr. 837, line 4. "He told me * * * prospect."
9. (N)	Shiff	Tr. 929*	Lines 15-16. "Because they tell me * * * to."

* We do not know for what purpose the evidence is offered or admitted. If it is merely the conclusion of the witness as to how another person felt, it should be stricken. If it is offered or admitted in an attempt to show—by inference—what the dealer had said, the hearsay statement is entirely unrelated to The Texas Company and is, therefore, immaterial, irrelevant and prejudicial. If the hearsay statement is offered or admitted in an attempt to prove something that the respondent is supposed to have done or said to a dealer, then it constitutes double hearsay and for that additional reason should be stricken. In most instances the double hearsay reference does not identify anyone in The Texas Company to whom the action or statement is attributed; so that there is a double lack of identification. We also consider this testimony in terms of double hearsay under our division D, *infra*.

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		Witness	*Transcript*	*Line*
10.	(N)	Hansen	Tr. 1397	Lines 22-24. "No specific reason * * * Firestone."
11.	(N)	Taylor	Tr. 1412*	Lines 18-19. "he couldn't * * * TBA."
12.	(N)	Taylor	Tr. 1413	Lines 12-13. "He told me * * * could."
13.	(N)	McCann	Tr. 1584	Lines 21-23. "But the gist * * * batteries."
(271)				
14.	(N)	Zimmerman	Tr. 1642*	Lines 7-10. "I don't know * * * handles."
15.	(N)	Snapka	Tr. 1655*	Line 25 to Tr. 1656, line 1. "if he bought * * * room."
16.		Bridges	Tr. 1945*	Lines 12-15. "He said * * * them."

* We do not know for what purpose the evidence is offered or admitted. If it is merely the conclusion of the witness as to how another person felt, it should be stricken. If it is offered or admitted in an attempt to show—by inference—what the dealer had said, the hearsay statement is entirely unrelated to The Texas Company and is, therefore, immaterial, irrelevant and prejudicial. If the hearsay statement is offered or admitted in an attempt to prove something that the respondent is supposed to have done or said to a dealer, then it constitutes double hearsay and for that additional reason should be stricken. In most instances the double hearsay reference does not identify anyone in The Texas Company to whom the action or statement is attributed; so that there is a double lack of identification. We also consider this testimony in terms of double hearsay under our division D, *infra*.

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C. Double Hearsay

The testimony cited in this division of the Specification should be stricken as "double hearsay"—that is, testimony by a witness of a hearsay statement which in turn contains hearsay. In short, the double hearsay statement was not made to the witness but was reported to the witness by the declarant the witness purports to quote. Thus it is impossible by cross-examination to test the truth of the double hearsay statement. A statement of this type which should be stricken is the following (Dwyer, Tr. 924, lines 11-14):

> "The dealer told me that Mr. Suffert told him he had to handle either Firestone or Goodrich products or he would cancel his lease, and his lease was cancelled for nine months."*

The witness did not identify the declarant or the place of the hearsay statement nor was there an identification of the time or place of the double hearsay reference.

(273)

D. Double Hearsay Incorporating a Conclusion or Opinion

In certain instances there was offered or admitted a double hearsay statement wherein it is apparent the declarant, referred to by the witness, was stating a conclu-

* We do not know for what purpose the evidence is offered or admitted. If the hearsay statement is offered in an attempt to prove something the respondent has done or said to a dealer, then it constitutes double hearsay and should be stricken. If it is merely to show what a dealer has said, the hearsay statement is entirely unrelated to The Texas Company and, therefore, immaterial, irrelevant and prejudicial. We also consider this testimony in terms of "single hearsay" under our division A, *supra*.

sion or opinion based upon what someone else had told him. The person who had told the declarant the matter in question was not, of course, subject to cross-examination, and in many instances was not even identified. In other instances the declarant, who was also not subject to cross-examination, was not even identified. We shall use the symbol "(N)" to indicate those instances where there has been no identification either of the declarant or of the time or place of the hearsay statement, and the symbol "(DN)" to indicate those instances where the person referred to by the declarant—on which the double hearsay statement is based—has not been identified or there has been no identification of the time or place of such double hearsay statement.

An example of this type of "double hearsay" which should be stricken is that of Price, Tr. 2082, line 8-11:

> "* * * They said The Texas Company told
> (N) them they would invest around $30,000 in build-
> (DN) ing them a master station, but they were expected to handle all Texas products plus Firestone. * * *"

The following evidence should be stricken:

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		Witness	*Transcript*	*Line*
1.	(N) (DN)	Richmond	Tr. 654	Lines 22-23. "it was where a customer • • • us."
(274)				
2.	(N) (DN)	Richmond	Tr. 655**	Lines 22-24; Tr. 656, line 6. "and still are told • • • on."
3.	(DN)	Arey	Tr. 688**	Lines 13-15, lines 18-19. "He said they • • • Goodrich."
4.	(N) (DN)	Arey	Tr. 690**	Lines 12-13. "The gist of his conversation • • • tires."
5.	(N) (DN)	Edelson	Tr. 803	Lines 6-11. "When Texaco opens • • • request."
6.	(N) (DN)	Chanenson	Tr. 831	Lines 1-2. "In connection with • • • carry."
7.	(N) (DN)	Chanenson	Tr. 832*	Lines 16-18. "And he said • • • flipped."
8.	(N) (DN)	Chanenson	Tr. 835**	Lines 3-6. "it would tend • • • buying."

* We do not know for what purpose the evidence is offered or admitted. If the hearsay statement is offered in an attempt to prove something the respondent is supposed to have done or said to a dealer, then it constitutes hearsay and should be stricken. If it is merely to show what a dealer has said, the hearsay statement is entirely unrelated to The Texas Company, and is therefore immaterial, irrelevant and prejudicial. We are also considering this testimony in terms of "single hearsay" under our division A, *supra*.

** We do not know for what purpose the evidence is offered or admitted. If the hearsay statement is offered in an attempt to prove something the respondent is supposed to have done or said to a dealer, then it constitutes hearsay and should be stricken. If it is merely to show what a dealer has said, the hearsay statement is entirely unrelated to The Texas Company, and is therefore immaterial, irrelevant and prejudicial. We are also considering this testimony in terms of "single hearsay" under our division B, *supra*.

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		Witness	*Transcript*	*Line*
9.	(N) (DN)	Chanenson	Tr. 835**	Line 19. "Adherence to * * *"
10.	(N) (DN)	Chanenson	Tr. 836**	Lines 25 to Tr. 837, line 4. "He told me * * * prospect."
(275)				
11.	(N) (DN)	Olsen	Tr. 868*	Lines 17, 21-22. "Because he said * * * again."
12.	(N) (DN)	Olsen	Tr. 871*	Lines 11-12. "Frankly, he just * * * Company."
13.	(N) (DN)	Dwyer	Tr. 924*	Line 25-Tr. 925, line 1. "He said * * * tires."
14.	(N) (DN)	Dwyer	Tr. 925*	Lines 24-26. "Andy's Texaco told me * * * Tire."
15.	(N) (DN)	Shiff	Tr. 929**	Lines 15-16. "Because they tell me * * * to."
16.	(N) (DN)	Shiff	Tr. 931*	Lines 2-4. "Peterson tells me * * * else."

* We do not know for what purpose the evidence is offered or admitted. If the hearsay statement is offered in an attempt to prove something the respondent is supposed to have done or said to a dealer, then it constitutes hearsay and should be stricken. If it is merely to show what a dealer has said, the hearsay statement is entirely unrelated to The Texas Company, and is therefore immaterial, irrelevant and prejudicial. We are also considering this testimony in terms of "single hearsay" under our division A, *supra.*

** We do not know for what purpose the evidence is offered or admitted. If the hearsay statement is offered in an attempt to prove something the respondent is supposed to have done or said to a dealer, then it constitutes hearsay and should be stricken. If it is merely to show what a dealer has said, the hearsay statement is entirely unrelated to The Texas Company, and is therefore immaterial, irrelevant and prejudicial. We are also considering this testimony in terms of "single hearsay" under our division B, *supra.*

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		Witness	*Transcript*	*Line*
17.	(DN)	Shiff	Tr. 931*	Lines 15-16. "and said that * * * Prestone."
18.	(N) (DN)	Shiff	Tr. 936*	Lines 7-8. "and he told me * * * him."
19.	(N) (DN)	Jennings	Tr. 953*	Lines 6-7. "and he told me * * * done."
20.	(N) (DN)	Jennings	Tr. 958*	Lines 17-19. "and they told me * * * is."
21.	(N) (DN)	Seidenglanz	Tr. 1196*	Lines 15-17. "He told me * * * down."
(276)				
22.	(N) (DN)	Renken	Tr. 1243*	Lines 17-19. "he kept telling me * * * so."
23.	(N) (DN)	Renken	Tr. 1244*	Lines 23-26. "He said * * * room."
24.	(N) (DN)	Olsen	Tr. 1323*	Lines 21-22; 26 to Tr. 1324, line 1. "he explained * * * company."
25.	(N) (DN)	Hansen	Tr. 1397**	Lines 23-25. "he felt * * * Firestone."

*We do not know for what purpose the evidence is offered or admitted. If the hearsay statement is offered in an attempt to prove something the respondent is supposed to have done or said to a dealer, then it constitutes hearsay and should be stricken. If it is merely to show what a dealer has said, the hearsay statement is entirely unrelated to The Texas Company, and is therefore immaterial, irrelevant and prejudicial. We are also considering this testimony in terms of "single hearsay" under our division A, *supra*.

** We do not know for what purpose the evidence is offered or admitted. If the hearsay statement is offered in an attempt to prove something the respondent is supposed to have done or said to a dealer, then it constitutes hearsay and should be stricken. If it is merely to show what a dealer has said, the hearsay statement is entirely unrelated to The Texas Company, and is therefore immaterial, irrelevant and prejudicial. We are also considering this testimony in terms of "single hearsay" under our division B, *supra*.

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		Witness	*Transcript*	*Line*
26.	(N) (DN)	Taylor	Tr. 1412**	Lines 18-19. "he couldn't * * * TBA."
27.	(DN)	Taylor	Tr. 1413**	Lines 12-13, 16-17. "He told me * * * invoice."
28.	(N) (DN)	Taylor	Tr. 1415*	Lines 24-25. "He told me * * * them."
29.	(N) (DN)	Taylor	Tr. 1416*	Lines 7, 12-13. "That he was * * * Firestone."
30.	(N) (DN)	Zimmerman	Tr. 1642**	Lines 7-10. "I don't know * * * handles."
31.	(N) (DN)	Snapka	Tr. 1655**	Line 25 to Tr. 1656, line 1. "said that he * * * room."
(277)				
32.	(N) (DN)	Smith	Tr. 1685*	Lines 20-21. "He told me * * * products."

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* We do not know for what purpose the evidence is offered or admitted. If the hearsay statement is offered in an attempt to prove something the respondent is supposed to have done or said to a dealer, then it constitutes hearsay and should be stricken. If it is merely to show what a dealer has said, the hearsay statement is entirely unrelated to The Texas Company, and is therefore immaterial, irrelevant and prejudicial. We are also considering this testimony in terms of "single hearsay" under our division A, *supra*.

** We do not know for what purpose the evidence is offered or admitted. If the hearsay statement is offered in an attempt to prove something the respondent is supposed to have done or said to a dealer, then it constitutes hearsay and should be stricken. If it is merely to show what a dealer has said, the hearsay statement is entirely unrelated to The Texas Company, and is therefore immaterial, irrelevant and prejudicial. We are also considering this testimony in terms of "single hearsay" under our division B, *supra*.

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		Witness	*Transcript*	*Line*
33.	(N) (DN)	Smith	Tr. 1692*	Line 25. "That he had to * * *"
34.	(N) (DN)	Smith	Tr. 1693*	Line 5. "he said he * * * Goodrich."
35.	(N) (DN)	Smith	Tr. 1693*	Line 10. "That he had to * * *"
36.	(DN)	Hulme	Tr. 1928*	Lines 14-16. "he said that * * * there."
37.	(DN)	Hulme	Tr. 1931*	Lines 9-11. "he told me * * * tires."
38.	(DN)	Hulme	Tr. 1936*	Line 22 to Tr. 1937, line 4. "He said * * * you."***
39.	(N) (DN)	Bridges	Tr. 1944*	Line 6-10. "as I understand * * * people."

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* We do not know for what purpose the evidence is offered or admitted. If the hearsay statement is offered in an attempt to prove something the respondent is supposed to have done or said to a dealer, then it constitutes hearsay and should be stricken. If it is merely to show what a dealer has said, the hearsay statement is entirely unrelated to The Texas Company, and is therefore immaterial, irrelevant and prejudicial. We are also considering this testimony in terms of "single hearsay" under our division A, *supra*.

*** The hearsay statement was elicited in cross-examination directed to hearsay evidence admitted over objection and was for the purpose of particularizing such hearsay matter. It should be stricken along with the original hearsay.

		Witness	*Transcript*	*Line*
40.	(N) (DN)	Bridges	Tr. 1945**	Lines 12-15. "He said he * * * them."
41.	(N) (DN)	Bridges	Tr. 1946*	Lines 4-5. "and he also said * * * Firestone."
(278)				
42.	(N) (DN)	Bridges	Tr. 1957*	Lines 15-16. "The substance is * * * Goodrich."***
43.	(N) (DN)	Bridges	Tr. 1957*	Lines 22-24. "That he was * * * business."***
44.	(N) (DN)	Sinclair	Tr. 2036*	Lines 11-12. "he told me * * * Goodrich."
45.	(N) (DN)	Sinclair	Tr. 2038*	Line 12. "He said that * * *"
46.	(N) (DN)	Chambers	Tr. 2049*	Lines 24-25. "He just said * * * to."

* We do not know for what purpose the evidence is offered or admitted. If the hearsay statement is offered in an attempt to prove something the respondent is supposed to have done or said to a dealer, then it constitutes hearsay and should be stricken. If it is merely to show what a dealer has said, the hearsay statement is entirely unrelated to The Texas Company, and is therefore immaterial, irrelevant and prejudicial. We are also considering this testimony in terms of "single hearsay" under our division A, *supra*.

** We do not know for what purpose the evidence is offered or admitted. If the hearsay statement is offered in an attempt to prove something the respondent is supposed to have done or said to a dealer, then it constitutes hearsay and should be stricken. If it is merely to show what a dealer has said, the hearsay statement is entirely unrelated to The Texas Company, and is therefore immaterial, irrelevant and prejudicial. We are also considering this testimony in terms of "single hearsay" under our division B, *supra*.

*** The hearsay statement was elicited in cross-examination directed to hearsay evidence admitted over objection and was for the purpose of particularizing such hearsay matter. It should be stricken along with the original hearsay.

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		Witness	*Transcript*	*Line*
47.	(N) (DN)	Price	Tr. 2082	Lines 8-11. "They said * * * Firestone."
48.	(N) (DN)	Price	Tr. 2086*	Line 25 to Tr. 2087, line 1. "That they would * * * handle."
49.	(N) (DN)	Scott	Tr. 2108*	Lines 6-7. "That he is not * * * Goodrich."
50.	(DN)	Scott	Tr. 2109*	Line 17. "It wouldn't please * * *"
51.	(DN)	Scott	Tr. 2111*	Lines 9-15. "His words * * * station."
52.	(N) (DN)	Scott	Tr. 2117*	Lines 19-21. "Often times * * * stock."

* We do not know for what purpose the evidence is offered or admitted. If the hearsay statement is offered in an attempt to prove something the respondent is supposed to have done or said to a dealer, then it constitutes hearsay and should be stricken. If it is merely to show what a dealer has said, the hearsay statement is entirely unrelated to The Texas Company, and is therefore immaterial, irrelevant and prejudicial. We are also considering this testimony in terms of "single hearsay" under our division A, *supra*.

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II.

Conclusions and Opinions

In many instances the testimony of a witness was no more than a conclusion or opinion and should, therefore, be stricken. An example of this type of testimony is that of Edelson, Tr. 741, line 5:

"No, we are not able to sell tubes only under cover."

The following evidence should be stricken:

	Witness	*Transcript*	*Line*
1.	Richmond	Tr. 653	Lines 8-9. "it was easier • • • time."
2.	Richmond	Tr. 655	Lines 7-11. "In the last • • • nil."
3.	Gehrke	Tr. 706	Lines 19, 26 to Tr. 707, line 2. "I would say • • • you."
4.	Gehrke	Tr. 707	Lines 16-17. "Before my time • • • No."
5.	Gehrke	Tr. 708	Line 9. "I do."
6.	Edelson	Tr. 739	Lines 11-12. "You see • • • station."
7.	Edelson	Tr. 740	Lines 3, 6. "At the present • • • little."
8.	Edelson	Tr. 740	Lines 13, 16, 20-21. "No, • • • lessee."
9.	Edelson	Tr. 740	Line 24. "We are limited • • •"
10.	Edelson	Tr. 741	Line 5. "No, we are not able • • •"

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	Witness	*Transcript*	*Line*
11.	Edelson	Tr. 741	Lines 11-12, 18. "We are able • • • that."
(280)			
12.	Edelson	Tr. 741	Lines 23-24. "We are limited • • • basis."
13.	Edelson	Tr. 746	Lines 10-11. "We are not • • • business."
14.	Edelson	Tr. 747	Line 2. "Very much more • • •"
15.	Edelson	Tr. 756	Line 19. "We could get • • •"
16.	Edelson	Tr. 757	Lines 2-3. "We get • • • Company."
17.	Edelson	Tr. 760	Line 23-24. "but I have not been able • • • there."
18.	Abernethy	Tr. 812	Lines 6, 9. "Well, we were • • • there."
19.	Abernethy	Tr. 813	Lines 3-8. "Well, it has been • • • setups."
20.	Chanenson	Tr. 824	Lines 13-18. "If the policies • • • that."
21.	Chanenson	Tr. 827	Lines 17-20. "and which is • • • prospects."
22.	Chanenson	Tr. 827	Lines 24-25. "Tires and • • • sell."
23.	Chanenson	Tr. 828	Lines 1-5. "in some instances • • • us."
24.	Chanenson	Tr. 828	Lines 7-13. "They might order • • • all."

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	Witness	Transcript	Line
25.	Chanenson	Tr. 830	Lines 1-12. "We have • • • item."
26.	Chanenson	Tr. 831	Lines 1-2. "In connection • • • carry."
27.	O'Keefe	Tr. 895	Line 22. "He owns • • •"
28.	Dwyer	Tr. 906	Lines 19-21. "I found • • • regularly."
(281)			
29.	Dwyer	Tr. 921	Lines 25 to Tr. 922, line 2. "Because he likes • • • judgment."
30.	Dwyer	Tr. 923	Lines 20-24. "and also they • • • go."
31.	Shiff	Tr. 933	Lines 12-16. "No • • • that."
32.	Jennings	Tr. 959	Lines 18, 23. "No, • • • business."
33.	Brusek	Tr. 967	Lines 17-20. "In some instances • • • nature."
34.	Brusek	Tr. 968	Lines 24-26. "because that is • • • repair."
35.	Brusek	Tr. 969	Lines 9-13. "The other • • • stocked."
36.	Brusek	Tr. 970	Lines 7-8. "because in many • • • them."
37.	Backencamp	Tr. 1073	Lines 6-7. "and that is why • • • tires."
38.	Toft	Tr. 1169	Lines 10-12. "I would consider • • • figures."

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	Witness	*Transcript*	*Line*
39.	Toft	Tr. 1179	Lines 25-26. "Yes, we could * * * Conoco."
40.	Nelson	Tr. 1213	Lines 13-15, 23, Tr. 1214, Line 46. "We are not * * * companies."
41.	Nelson	Tr. 1216	Line 5. "Well, we can't * * *"
42.	Renken	Tr. 1237	Lines 13-15. "where there was * * * otherwise."
43.	Kossek	Tr. 1266	Lines 6-7. "in other words * * * basis."
44.	Olsen	Tr. 1321	Line 15. "Because I couldn't * * *"
45.	Zaloudek	Tr. 1472	Line 19. "just to keep * * *"
(282)			
46.	Zaloudek	Tr. 1473	Lines 12-13, 16-20. "I had * * * cooperative."
47.	McCann	Tr. 1522	Lines 23-25. "and he found. * * * it."
48.	McCann	Tr. 1523	Lines 5-6. "We just didn't * * * four."
49.	McCann	Tr. 1525	Lines 12-15. "We tried * * * station."
50.	Sanford	Tr. 1598	Line 18. "I think so."
51.	Sanford	Tr. 1634	Line 18. "I certainly * * *"
52.	Zimmerman	Tr. 1640	Lines 13, 15. "Almost stock * * * Yes."
53.	Melton	Tr. 1860	Lines 16-22. "That would be * * * property."

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	Witness	*Transcript*	*Line*
54.	Melton	Tr. 1861	Lines 14-21. "And, of course, • • • products."
55.	Melton	Tr. 1862	Lines 20-22. "If I might • • • Firestone."
56.	Melton	Tr. 1864	Lines 24 to Tr. 1865, lines 2, 11. "Well, I would • • • batteries."
57.	Melton	Tr. 1883	Lines 12-13. "A good many • • • cancelled."
58.	Riddick	Tr. 1940	Lines 3-5. "But you're larger • • • with."
59.	Koehler	Tr. 2059	Line 16. "I did."
60.	Goldstein	Tr. 2072	Lines 16-20. "It is very • • • controlled."
61.	Goldstein	Tr. 2079	Lines 20-22. "And it has • • • to."
62.	Price	Tr. 2081	Lines 18-19. "They did • • • stationed."

(283)

63.	Price	Tr. 2083	Lines 7-10. "And they couldn't • • • could."
64.	Scott	Tr. 2112	Lines 13-14. "He thought • • • Goodrich."
65.	Scott	Tr. 2114	Line 13. "That is right."
66.	Scott	Tr. 2115	Lines 10-11. "And he • • • line."

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III

Not Responsive and Evasive Answers

In many instances the answer of the witness was not responsive and should, therefore, be stricken. An example of this type of testimony which should be stricken is that of Dwyer, Tr. 926, lines 23-26:

> "Q. What was the name of the dealer you mentioned whose lease was cancelled for nine months?
>
> "A. Mr. Suffert of Texas Company cancelled that lease about two years ago • • •"

In certain instances such testimony is also objectionable in that it contains conclusions or opinions of the witness, and should be stricken from the record for the additional reasons set forth in Section II *supra*. We shall use the symbol "(C)" to indicate instances where the witness has testified as to his conclusions or opinions and "(H)" where the answer involved hearsay:

	Witness	*Transcript*	*Line*
1. (C)	Edelson	Tr. 744	Lines 4-13. "For the simple • • • previously."
2. (C)	Edelson	Tr. 787	Line 1-2. "our business • • • back."
3. (C) (H)	Edelson	Tr. 797	Lines 5-6. "due to the fact • • • gas—"
4. (H)	Dwyer	Tr. 926	Lines 25-26. "Mr. Suffert • • • ago."
5. (C) (H)	Traucht	Tr. 980	Lines 24-25. "To prove something • • • of."

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	Witness	*Transcript*	*Line*
6. (C) (H)	Traucht	Tr. 981	Line 1. "Whether • • • is."
(285)			
7. (C)	McCann	Tr. 1543	Lines 8-9. "I don't know • • • items."
8. (C)	McCann	Tr. 1562	Lines 24-25. "I really don't • • • did."
9.	Sinclair	Tr. 2036	Line 2. "I sold him • • • station."
10. (C) (H)	Avery	Tr. 2091	Lines 4-5. "He does because • • • likes."
11. (C)	Scott	Tr. 2105	Lines 12-13. "I think • • • did."
(286)			

IV

Witness Indicated Lack of Knowledge

In many instances the witness indicated an affirmative lack of knowledge of the subject about which he was testifying, or the testimony of the witness was vague or indefinite. Such testimony should be stricken. An example of this type of testimony which should be stricken is that of Brusek, Tr. 966, Lines 11-12:

> "I would say that. That is strictly a guess on my part. I have nothing to substantiate that."

The following are other instances of such testimony:

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	Witness	*Transcript*	*Line*
1.	Edelson	Tr. 738	Lines 11-13. "I wouldn't be * * * Conoco."
2.	Edelson	Tr. 738	Lines 15-16. "Yes, maybe * * * it."
3.	Edelson	Tr. 762	Lines 9-12. "I think * * * force."
4.	Edelson	Tr. 770	Line 16. "I doubt it."
5.	Edelson	Tr. 770	Lines 18-19. "Positively I don't * * * so."
6.	Jennings	Tr. 950	Line 21. "I could only guess * * *"
7.	Jennings	Tr. 950	Line 23. "Several hundred."
8.	Brusek	Tr. 966	Lines 5-6. "But as a guess * * * volume."
9.	Brusek	Tr. 966	Lines 11-12. "I would say * * * that."
10.	Seidenglanz	Tr. 1208	Lines 9-10. "I believe * * * is Firestone."
(287)			
11.	Renken	Tr. 1245	Lines 18-19. "I don't know * * * anything."
12.	Renken	Tr. 1247	Lines 9-10. "I don't recall * * * so."
13.	Renken	Tr. 1253	Lines 19-20. "It would be a good guess * * * yes."
14.	Olsen	Tr. 1327	Line 7. "I am not sure * * *"
15.	Olsen	Tr. 1327	Lines 17-18. "I don't know * * * sure."

Motion to Strike of Respondent The Texas Company

	Witness	*Transcript*	*Line*
16.	Hansen	Tr. 1398	Line 19. "I believe he • • • station."
17.	Hoffman	Tr. 1513	Lines 6-7. "I wouldn't know • • • leased."
18.	Hoffman	Tr. 1513	Lines 15-16. "I imagine so • • • into."
19.	Hoffman	Tr. 1515	Line 7. "I believe • • • lessee."
20.	Boyd	Tr. 1924	Lines 3-5. "I am sure • • • do."
21.	Hulme	Tr. 1929	Lines 13-14. "I think it is • • • impression."
22.	Hulme	Tr. 1929	Lines 22-24. "I am under the impression • • • property."
23.	Hulme	Tr. 1932	Lines 3-4. "I presume • • • believe."
24.	Bridges	Tr. 1943	Lines 10-11. "I don't know • • • back."
25.	Scott	Tr. 1997	Lines 8-10. "I imagine • • • think."
26.	Chambers	Tr. 2042	Lines 17-18. "No, it would be rough • • • percent."
(288)			
27.	Chambers	Tr. 2043	Line 7. "It was • • • think."
28.	Goldstein	Tr. 2073	Lines 4-10. "I couldn't answer • • • selling."
29.	Avery	Tr. 2089	Line 25. "Must be • • • thousand."
30.	Avery	Tr. 2090	Line 2. "I imagine • • • hundred."

(289)

V.

Events Prior to 1952

In several instances the testimony of a witness related to events occurring prior to 1952 and should, therefore, be stricken. An example of this type of testimony which should be stricken is that of McCann, Tr. 1524, lines 22-23:

> "That started to dry up in the late 1930's. By 1949 it was greatly reduced."

Other instances of testimony involving pre-1952 matter are:

	Witness	*Transcript*	*Line*
1.	Nelson	Tr. 1216	Line 25. "In 1949, $889.67."
2.	Nelson	Tr. 1217	Lines 4-7. "13th and Deer Park • • • $555.60."
3.	Nelson	Tr. 1217	Lines 13-14. "45th and Lake • • • year."
4.	Zaloudek	Tr. 1453 through Tr. 1465	Line 1 through line 18.
5.	McCann	Tr. 1526	Lines 6-7. "I would say • • • them."
6.	McCann	Tr. 1526	Lines 20-22. "Most of the ones • • • them."
7.	McCann	Tr. 1527	Lines 9, 11-12. "I didn't • • • hundred."
8.	McCann	Tr. 1528A	Lines 13-14. "I would say • • • year."

Motion to Strike of Respondent The Texas Company

	Witness	*Transcript*	*Line*
9.	Talley	Tr. 1886 Tr. 1889	Line 22, through Line 19.
10.	Sinclair	2032	Lines 17-18. "I think the . . . deal."
11.	Sinclair	2032	Line 24. "Yes, sir."

(290)

VI.

Testimony re Conoco

In many instances a witness testified about the relationship between The B. F. Goodrich Company and the Continental Oil Company (Conoco). Testimony as to the relationship between Goodrich and Conoco is entirely irrelevant to the issues in this proceeding and should be stricken from the record.

The record reference to the testimony relating to such relationship is as follows:

	Witness	*Transcript*	*Line*
1.	Carlsen	Tr. 615	Line 13.
2.	Carlsen	Tr. 616	Line 13-25.
3.	Carlsen	Tr. 625	Line 8-22.
4.	Reichert	Tr. 636	Line 26.
5.	Reichert	Tr. 637	Line 1 through 12.
6.	Reichert	Tr. 638	Lines 23-26.
7.	Reichert	Tr. 639	Lines 1-26.
8.	Reichert	Tr. 640	Line 1-16.
9.	Richmond	Tr. 645	Line 12.

Motion to Strike of Respondent The Texas Company

	Witness	*Transcript*	*Line*
10.	Richmond	Tr. 645*	Line 23 through
		Tr. 647	Line 25.
11.	Richmond	Tr. 657	Line 15.
12.	Gehrke	Tr. 707	Lines 23-26.
(291)			
13.	Gehrke	Tr. 708	Lines 2-3.
14.	Edelson	Tr. 748	Line 4, through
		Tr. 749	Line 22.
15.	Edelson	Tr. 800	Line 16, through
		Tr. 801	Line 2.
16.	Edelson	Tr. 802	Lines 10-25.
17.	Abernathy	Tr. 809	Lines 17-23.
18.	Chanenson	Tr. 826	Lines 7-8.
19.	Chanenson	Tr. 829	Lines 9-14, 22.
20.	Chanenson	Tr. 837	Lines 9, through
		Tr. 839	Line 3.
21.	Chanenson	Tr. 843	Lines 1-23.
22.	Chanenson	Tr. 856	Lines 2-16.
23.	O'Keefe	Tr. 897	Line 16, through
		Tr. 898	Line 11.
24.	Dwyer	Tr. 911	Line 15.
25.	Trauscht	Tr. 986	Line 3, through
		Tr. 987	Line 7.

* This testimony relates to a summary allegedly by the Goodyear Tire and Rubber Co. setting forth the amount of business the witness did with that Company in the years 1953, 1954 and 1955.

Motion to Strike of Respondent The Texas Company

	Witness	*Transcript*	*Line*
26.	Cramer	Tr. 1048	Line 10.
27.	Cramer	Tr. 1049 Tr. 1050	Line 16, through Line 10.
28.	Cramer	Tr. 1052	Lines 8-16.
29.	Cramer	Tr. 1053 Tr. 1054	Line 18, through Line 4.
30.	Backencamp	Tr. 1065 Tr. 1066	Line 15, through Line 20.
31.	Backencamp	Tr. 1067 Tr. 1068	Line 21, through Line 5.
32.	Backencamp	Tr. 1068 Tr. 1071	Line 19, through Line 14.
(292)			
33.	Backencamp	Tr. 1072	Lines 19-24.
34.	Backencamp	Tr. 1088 Tr. 1089	Lines 17, through Line 20.
35.	O'Mara	Tr. 1096	Line 1-6.
36.	O'Mara	Tr. 1100 Tr. 1101	Line 8, through Line 14.
37.	O'Mara	Tr. 1110 Tr. 1111	Line 6, through Line 3,
38.	O'Mara	Tr. 1116	Lines 1-5.
39.	O'Mara	Tr. 1123	Lines 1-9.
40.	McDaniel	Tr. 1148 Tr. 1162	Line 14, through Line 10.
41.	Toft	Tr. 1171 Tr. 1179	Line 11, through Line 26.

Motion to Strike of Respondent The Texas Company

	Witness	*Transcript*	*Line*
42.	Seidenglanz	Tr. 1191	Line 26.
43.	Seidenglanz	Tr. 1197 Tr. 1198	Line 20, through Line 21.
44.	Seidenglanz	Tr. 1199 Tr. 1201	Line 7, through Line 4.
45.	Seidenglanz	Tr. 1205 Tr. 1207	Line 17, through Line 10.
46.	Renken	Tr. 1236	Lines 14-15.
47.	Kossek	Tr. 1258 Tr. 1259	Lines 26, through Line 9.
48.	Kossek	Tr. 1262 Tr. 1264	Line 11, through Line 24.
49.	Kossek	Tr. 1266 Tr. 1268	Line 13, through Line 13.
50.	Cornell	Tr. 1275 Tr. 1319	Line 20, through Line 24.
51.	Olsen	Tr. 1327 Tr. 1337	Line 19, through Line 8.
(293)			
52.	Olsen	Tr. 1348 Tr. 1349	Line 20, through Line 7.
53.	Olsen	Tr. 1354 Tr. 1355	Line 20, through Line 6.
54.	Scoville	Tr. 1361 Tr. 1367	Line 14, through Line 26.
55.	Kanago	Tr. 1382	Line 23.
56.	Kanago	Tr. 1383	Line 13-15.

Motion to Strike of Respondent The Texas Company

	Witness	*Transcript*	*Line*
57.	Kanago	Tr. 1384	Line 26.
58.	Hansen	Tr. 1403**	Line 4, through
		Tr. 1405	Line 6.
59.	Hansen	Tr. 1405**	Line 23, through
		Tr. 1406	Line 2.
60.	Taylor	Tr. 1416**	Line 23, through
		Tr. 1421	Line 22.
61.	Taylor	Tr. 1448	Line 25, through
		Tr. 1451	Line 14.
62.	Hoffman	Tr. 1511	Lines 1-6.
63.	Hoffman	Tr. 1514	Lines 9-20.
64.	McCann	Tr. 1563	Lines 19, through
		Tr. 1564	Line 2.
65.	Akin	Tr. 1668	Lines 15-19.
66.	Akin	Tr. 1668	Line 26, through
		Tr. 1669	Line 11.
67.	Smith	Tr. 1690	Line 26, through
		Tr. 1691	Line 7.
68.	Smith	Tr. 1692	Line 3-19.
69.	Hussong	Tr. 1711	Line 8-13.
70.	Barton	Tr. 1730	Line 10, through
		Tr. 1732	Line 17.

** The testimony related to relations between Conoco and Firestone, neither of which is a respondent in this proceeding.

Motion to Strike of Respondent The Texas Company

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VI

Exhibits That Should be Stricken

A number of Exhibits relating to oil companies that were not respondents in this proceeding were admitted over objection. The Hearing Examiner stated (Tr. 636) that the proper time for a motion to strike by respondents would be at the end of the case. The following Exhibits, including Exhibits which are immaterial to this proceeding, should be stricken.

	Exhibit No.	*Admission into evidence (transcript)*
1	CX7	17
2	CX104*	348
3	CX105*	350
4	CX106*	350A
5	CX107*	351
6	CX108*	352
7	CX109*	352
8	CX110*	353
9	CX150A, B**	1278
10	CX151A, B**	1278
11	CX152**	1278
12	CX153A, B**	1300

* Relates to matter prior to 1952
** Relates to Conoco

• • •

Supplement to Motion to Strike of The Texas Company

(November 19, 1957)

(317)

UNITED STATES OF AMERICA

BEFORE THE FEDERAL TRADE COMMISSION

[SAME TITLE]

TO THE HONORABLE EARL J. KOLB, HEARING EXAMINER:

Respondent, The Texas Company, by its attorneys filed with the Secretary of the Commission, on November 8, 1957, a "MOTION TO STRIKE". Examination of the record of the hearings held on November 6th, 7th and 8th, 1957, discloses that certain additional exhibits and testimony should be stricken.

WHEREFORE, Respondent hereby supplements its "MOTION" in the following respects:

(318)

1. Section VI of the Specification annexed to the Motion is supplemented by adding thereto the following:

> The following exhibits relate to oil companies that are not respondents in this proceeding and which have no relation to The Texas Company. No employee or officer of The Texas Company has had anything to do with these exhibits and, on almost all of them, the name The Texas Company does not even appear.
>
> The exhibits have no probative value. Their admission, and the basing of any adjudication thereon, would violate the Rules of the Commission as to probative evidence and the Administrative Procedure Act

and would deprive The Texas Company of due process of law (Tr. 2228-29).

All of the exhibits listed below were admitted subject to the foregoing objection. In addition, many were admitted subject to a specific hearsay objection or a specific objection that the documents were *res inter alios acta*—the so-called intra-company objection. This Motion to Strike is based upon all objections made. We have indicated those (319) exhibits to which there is the additional hearsay objection by the use of the symbol "(H)" and those documents to which there is the additional intra-company objection "(I)".

The following exhibits should, therefore, be stricken:

	Exhibit No.	*Admission to Evidence (Transcript)*
13. (H)	CX215(i)	2230
14. (H)	CX216(i)	2232
15. (H)	CX216(i)	2233
16. (H)	CX218(i)	2234
17. (H)	CX219(i)	2235
18. (H)	CX220 A-C(i)	2235
19. (H)	CX221(i)	2236
20. (H)	CX222(i)	2237
21. (H)	CX223(i)	2238
22.	CX224(i)	2239
23. (H)	CX226(i)	2240
24. (H)	CX227 A, B(i)	2241

(i)—Relates to Conoco.

Supplement to Motion to Strike of The Texas Company

	Exhibit No.	*Admission to Evidence (Transcript)*
25.	CX229(i)	2242
26. (I)	CX230 A-D(i)	2243
(320)		
27. (I)	CX231 A–F(i)	2245
28. (I)	CX232 A, B(i)	2245
29. (I)	CX233 A–D(i)	2246
30. (I)	CX234 A–L(i)	2248
31. (H) (I)	CX235 A–F(i)	2250
32. (H) (I)	CX237(i)	2260
33. (H) (I)	CX238 A, B(i)	2260
34. (H) (I)	CX239 A–D(i)	2260
35. (H) (I)	CX240 A–F(i)	2260
36. (H) (I)	CX242 A, B(i)	2263
37. (H) (I)	CX243(i)	2263
38. (H) (I)	CX244(i)	2263
39. (H) (I)	CX245(i)	2263
40. (H) (I)	CX246(i)	2263
41. (H) (I)	CX247(i)	2263
42. (H) (I)	CX248(i)	2263
43. (H) (I)	CX249(i)	2263
44. (H) (I)	CX250(i)	2263
45. (H) (I)	CX251(i)	2263

(i)—Relates to Conoco.

Supplement to Motion to Strike of The Texas Company

(321)

	Exhibit No.	*Admission to Evidence (Transcript)*
46. (H) (I)	CX252 A, B(i)	2263
47. (H) (I)	CX253(i)	2263
48. (H) (I)	CX254(i)	2263
49. (H) (I)	CX255(i)	2263
50. (H) (I)	CX256 A, B(i)	2263
51. (H) (I)	CX257(i)	2263
52. (H) (I)	CX258(i)	2263
53. (H) (I)	CX259(i)	2263
54. (H) (I)	CX260(i)	2263
55. (H) (I)	CX261(i)	2263
56. (H) (I)	CX262(i)	2263
57. (H) (I)	CX263 A–Z(22)(i)	2264
58.	CX264(i)	2265
59.	CX266 A–C(i)	2266
60.	CX267 A–C(i)	2267
61. (I)	CX71(ii)	2268
62. (I)	CX72(ii)	2269
63.	CX73(iii)	2269

(322)

63.	CX73(iii)	2269

(i)—Relates to Conoco.

(ii)—Relates to Jenney Manufacturing Company.

(iii)—Relates to Shell American Petroleum Company.

Supplement to Motion to Strike of The Texas Company

	Exhibit No.	*Admission to Evidence (Transcript)*
64. (I)	CX74(iii)	2270
65.	CX77 A, B(i)	2271
66.	CX78 A, B(i)	2271
67.	CX79 A–D(i)	2272
67. (I)	CX80(i)	2272
68. (H) (I)(iv)	CX81 A–E(i)	2274
69.	CX82 A, B(v)	2274
70. (H) (I)	CX83 A, B(v)	2275
71. (H) (I)	CX84 A, B(v)	2275
72. (I)	CX85 A–E(v)	2276
73. (H)	CX87(v)	2278
74.	CX88(vi)	2279
75.	CX89 A–C(vi)	2280
76.	CX91 A–C(vii)	2281
77.	CX92(viii)	2281
78.	CX93 A–C(vii)	2283

(i)—Relates to Conoco.

(iii)—Relates to Shell American Petroleum Company.

(iv)—Immaterial since it refers to consumption purchases which are not in issue in this proceeding.

(v)—Relates to The Ohio Oil Company.

(vi)—Relates to Emblem Oil Company.

(vii)—Relates to oil companies other than respondent.

(viii)—Relates to other oil companies and to events prior to 1952.

Supplement to Motion to Strike of The Texas Company

(323)

	Exhibit No.	*Admission to Evidence (Transcript)*
79.	CX132(vii)	2284
80.	CX134 A–F(vii)	2284
81.	CX136(vii)	2285
82.	CX75(iii)	2317

2. The Specification attached to the Motion is further supplemented by adding thereto the following section:

VII

Testimony Re Other Oil Companies

The witness Hoban testified, in part, about the relationship between The B. F. Goodrich Company and other oil companies that are not respondents in this proceeding. Testimony as to the relationship between Goodrich and such other companies is entirely irrelevant to the issues in this proceeding, is in no way competent against The Texas Company, and should be stricken from the record as against it.

(iii)—Relates to Shell American Petroleum Company.

(vii)—Relates to oil companies other than respondent.

Supplement to Motion to Strike of The Texas Company

(324)

The testimony sought to be stricken is as follows:

	Transcript	*Line*
1.	Tr. 2287	Lines 11-15
2.	Tr. 2288 Tr. 2291	Line 6 through Line 4
3.	Tr. 2294	Line 16 through Line 20
4.	Tr. 2298 Tr. 2300	Line 2 through Line 20
5.	Tr. 2301 Tr. 2302	Line 14 through Line 8

Respectfully submitted,

MARION J. EPLEY, JR.
DWIGHT, ROYALL, HARRIS, KOEGEL & CASKEY

By Frederick W. P. Lorenzen
Attorneys for The Texas Company

Dated: November 18, 1957.

• • •

Motion to Strike of Respondent The B. F. Goodrich Company

(December 23, 1957)

(367)

UNITED STATES OF AMERICA

BEFORE THE FEDERAL TRADE COMMISSION

[SAME TITLE]

TO THE HONORABLE EARL J. KOLB, HEARING EXAMINER:

COMES NOW, respondent, The B. F. Goodrich Company, by its attorneys, White & Case, and to the end that the record herein, for the purposes of submission and determination, shall not contain evidence which is not material and relevant to the issues or is otherwise inadmissible and evidence which is superfluous and unduly enlarges the record, moves that by appropriate order of the Hearing Examiner, and for the reasons and on the grounds set forth in the Specification attached hereto, the evidence, heretofore received and identified in the Specification (368) attached hereto, be stricken from the record.

Respectfully submitted,

WHITE & CASE

By Edgar Barton
Attorneys for The B. F. Goodrich Company

Dated: December 19, 1957

Motion to Strike of Respondent The B. F. Goodrich Co.

(369)

SPECIFICATION OF EVIDENCE TO BE STRICKEN

I.

Hearsay Testimony

The testimony set forth below should be stricken as hearsay.

While the rules of evidence in a proceeding before a quasi-judicial administrative body can be more elastic by reason of the professional abilities of those concerned, it is submitted that the specified testimony below transgresses the bounds of such elasticity. It presents a peculiar admixture of single hearsay and compound hearsay with declarants often unidentified, time not established, and place unknown. There are many instances of subjective interpretations of conversations after the lapse of impressively long periods of time, and most—if not all—of those testifying were basically prejudiced by a fundamental economic interest in the proceedings. The inability to cross-examine the declarants in all fairness dictates the deletion from the record of this testimony, which at best lies on the outer periphery of credibility.

An example of flagrant abuse of the evidentiary elasticity of an administrative tribunal is the testimony of Richmond (Tr. 655, lines 20-24):

(370)

> "When you make a hundred calls and they show no signs of business, and then maybe continue to make calls another hundred and still are told from time to time that they can't buy your tires, that they have to buy Goodrich, I think it is time to give up on it."

Motion to Strike of Respondent The B. F. Goodrich Co.

The following evidence should be stricken:

	Witness	*Transcript*	*Line*
1.	Richmond	Tr. 654	Lines 22-23. "it was where • • • us."
2.	Richmond	Tr. 655	Lines 20-6. "When you make • • • on."
3.	Arey	Tr. 688	Lines 13-19. "He said • • • Goodrich."
4.	Arey	Tr. 690	Lines 12-13. "The gist of • • • tires."
5.	Chanenson	Tr. 832	Lines 16-18. "No, you can't • • • flipped."
6.	Chanenson	Tr. 832	Lines 25-1. "Yes, but • • • do."
7.	Chanenson	Tr. 836	Lines 25-4. "He told me • • • prospect."
8.	Olsen	Tr. 868	Lines 17, 21-22. "Because he said • • • again."
9.	Olsen	Tr. 871	Lines 11-15. "Frankly, he just • • • sir."
10.	Dwyer	Tr. 924	Lines 12-15. "The dealer • • • months."
11.	Dwyer	Tr. 924	Lines 23-4. "And Bob told • • • Company."
(371)			
12.	Dwyer	Tr. 925	Lines 24-26. "Andy's Texaco • • • Tire."
13.	Shiff	Tr. 929	Lines 15-16. "Because they tell me • • • to."

Motion to Strike of Respondent The B. F. Goodrich Co.

	Witness	*Transcript*	*Line*
14.	Shiff	Tr. 931	Lines 2-4. "Peterson tells me • • • else."
15.	Shiff	Tr. 931	Lines 12-16. "Al Feller • • • Prestone."
16.	Shiff	Tr. 936	Lines 7-8. "he told me • • • him."
17.	Jennings	Tr. 953	Lines 6-7. "he told me • • • done."
18.	Jennings	Tr. 956	Lines 17-19, 26-1. "He told me • • • in."
19.	Jennings	Tr. 958	Lines 17-19. "and they told me • • • is."
20.	Seidenglanz	Tr. 1196	Lines 15-17. "He told me • • • down."
21.	Renken	Tr. 1243	Lines 17-19. "he kept telling • • • so."
22.	Renken	Tr. 1244	Line 3. "By Firestone." Line 7. "By • • • representative."
23.	Renken	Tr. 1244	Lines 23-26. "He said • • • room."
24.	Olsen	Tr. 1323	Lines 21-22; 26-1. "he explained it • • • company."
25.	Hansen	Tr. 1397	Lines 22-24. "No specific reason • • • Firestone."
(372)			
26.	Taylor	Tr. 1413	Lines 12-13; 16-17. "He told me • • • invoice."

Motion to Strike of Respondent The B. F. Goodrich Co.

	Witness	*Transcript*	*Line*
27.	Taylor	Tr. 1415	Lines 24-25. "He told me • • • them."
28.	Taylor	Tr. 1416	Lines 7; 13-14. "That he was • • • Firestone."
29.	McCann	Tr. 1584	Lines 21-23. "But the gist • • • batteries."
30.	Zimmerman	Tr. 1642	Line 4. "He said that • • •"
31.	Zimmerman	Tr. 1642	Lines 7-10. "I don't know • • • handles."
32.	Snapka	Tr. 1655	Lines 25-1. "said that he • • • room."
33.	Smith	Tr. 1685	Lines 20-21. "He told me • • • products."
34.	Smith	Tr. 1692	Line 25. "That he had to • • •"
35.	Smith	Tr. 1693	Line 5. "he said he • • • Goodrich."
36.	Smith	Tr. 1693	Line 10. "That he had to • • •"
37.	Hulme	Tr. 1928	Lines 14-16. "he said that • • • there."
38.	Hulme	Tr. 1931	Lines 9-11. "he told me • • • tires."
(373)			
39.	Hulme	Tr. 1933	Lines 24-25. "he told me • • • me."
40.	Hulme	Tr. 1936	Lines 22-4. "He said • • • you."
41.	Bridges	Tr. 1944	Lines 6-10. "as I understand • • • people."

Motion to Strike of Respondent The B. F. Goodrich Co.

	Witness	*Transcript*	*Line*
42.	Bridges	Tr. 1945	Lines 12-15. "He said • • • them."
43.	Bridges	Tr. 1946	Lines 5-6. "and he also said • • • Firestone."
44.	Bridges	Tr. 1957	Lines 15-16. "The substance is • • • Goodrich."
45.	Bridges	Tr. 1957	Lines 22-24. "That he was • • • business."
46.	Sinclair	Tr. 2036	Lines 11-12. "He told me • • • Goodrich."
47.	Sinclair	Tr. 2038	Line 12. "He said that • • •"
48.	Chambers	Tr. 2049	Lines 24-25. "He just said • • • to."
49.	Price	Tr. 2082	Lines 6-12. "they told me • • • it."
50.	Price	Tr. 2086	Lines 25-1. "That they would • • • handle."
51.	Scott	Tr. 2108	Lines 6-7. "That he is not • • • Goodrich."
(374)			
52.	Scott	Tr. 2109	Line 17. "It wouldn't please • • •"
53.	Scott	Tr. 2111	Lines 9-15. "His words • • • station."
54.	Scott	Tr. 2117	Lines 19-21. "Often times • • • stock."

Motion to Strike of Respondent The B. F. Goodrich Co.

II.

Conclusions and Opinions

There are many instances in the record of testimony that reflected a conclusion or opinion of the witness; such testimony has no probative value and should be deleted from the record. For example, Chanenson testified (Tr. 831, lines 1-2):

> "In connection with batteries, certain specific brands are the only kind that most Texaco stations can carry."

The following evidence should be stricken:

	Witness	*Transcript*	*Line*
1.	Richmond	Tr. 653	Lines 8-9. "it was easier • • • time."
2.	Richmond	Tr. 655	Lines 7-11. "In the last • • • nil."
3.	Richmond	Tr. 655	Lines 20-24. "When you make • • • it."
4.	Gehrke	Tr. 706	Lines 19, 26 to Tr. 707 line 2. "I would say • • • you."
(375)			
5.	Gehrke	Tr. 707	Lines 16-17. "Before my time • • • No."
6.	Gehrke	Tr. 708	Line 9. "I do."
7.	Edelson	Tr. 739	Lines 11-12. "You see • • • station."
8.	Edelson	Tr. 740	Lines 3, 6. "At the present • • • little."

Motion to Strike of Respondent The B. F. Goodrich Co.

	Witness	*Transcript*	*Line*
9.	Edelson	Tr. 740	Lines 13, 16, 20-21. "No, • • • please."
10.	Edelson	Tr. 740	Line 24. "We are limited • • •"
11.	Edelson	Tr. 741	Line 5. "No, we are not able • • •"
12.	Edelson	Tr. 741	Lines 11-12, 18. "We are able • • • that."
13.	Edelson	Tr. 741	Lines 23-24. "We are limited • • • basis."
14.	Edelson	Tr. 746	Lines 10-11. "We are not • • • business."
15.	Edelson	Tr. 747	Line 2. "Very much more • • •"
16.	Edelson	Tr. 756	Line 19. "We could get • • •"
17.	Edelson	Tr. 757	Lines 2-3. "We get • • • Company."
18.	Edelson	Tr. 760	Lines 23-24. "but I have not been able • • • there."
(376)			
19.	Edelson	Tr. 803	Lines 6-11. "When Texaco • • • request."
20.	Abernethy	Tr. 812	Lines 6, 9. "Well, we were • • • there."
21.	Abernethy	Tr. 813	Lines 3-8. "Well, it has been • • • setups."
22.	Chanenson	Tr. 827	Lines 17-20. "and which is • • • prospects."
23.	Chanenson	Tr. 827	Lines 24-25. "Tires and • • • sell."

Motion to Strike of Respondent The B. F. Goodrich Co.

	Witness	*Transcript*	*Line*
24.	Chanenson	Tr. 828	Lines 1-5. "in some instances • • • us."
25.	Chanenson	Tr. 828	Lines 7-13. "They might order • • • all."
26.	Chanenson	Tr. 830	Lines 1-12. "We have • • • item."
27.	Chanenson	Tr. 831	Lines 20-21. "What • • • cases."
28.	Chanenson	Tr. 835	Lines 2-6. And • • • buying."
29.	O'Keefe	Tr. 895	Line 22. "He owns • • •"
30.	Dwyer	Tr. 906	Lines 19-21. "I found • • • regularly."
31.	Dwyer	Tr. 921	Lines 25 to Tr. 922, line 2. "Because he likes • • • judgment."
(377)			
32.	Dwyer	Tr. 923	Lines 20-24. "and also they • • • go."
33.	Shiff	Tr. 929	Lines 15-16. "Because they tell me • • • to."
34.	Shiff	Tr. 933	Lines 12-16. "No • • • that."
35.	Jennings	Tr. 959	Lines 18, 23. "No • • • business."
36.	Brusek	Tr. 967	Lines 17-20. "In some instances • • • nature."
37.	Brusek	Tr. 968	Lines 24-26. "because that is • • • repair."
38.	Brusek	Tr. 969	Lines 9-13. "The other • • • stocked."

Motion to Strike of Respondent The B. F. Goodrich Co.

	Witness	*Transcript*	*Line*
39.	Brusek	Tr. 970	Lines 7-8. "because in many • • • them."
40.	Trauscht	Tr. 980	Lines 24-1. "that I know • • • is."
41.	Backencamp	Tr. 1073	Lines 3-7. "Because most • • • tires."
42.	Toft	Tr. 1169	Lines 10-12. "I would consider • • • figures."
43.	Toft	Tr. 1179	Lines 25-26. "Yes, we could • • • Conoco."
44.	Nelson	Tr. 1213	Lines 13-15, 23, Tr. 1214, Line 6. "We are not • • • companies."
(378)			
45.	Nelson	Tr. 1216	Line 5. "Well, we can't • • •"
46.	Renken	Tr. 1237	Lines 13-15. "where there was • • • otherwise."
47.	Kossek	Tr. 1266	Lines 6-7. "in other words • • • basis."
48.	Olsen	Tr. 1321	Line 15. "Because I couldn't • • •"
49.	Taylor	Tr. 1412	Lines 18-19. "But he couldn't • • • TBA."
50.	Zaloudek	Tr. 1473	Lines 12-13, 16-20. "I had • • • cooperative."
51.	McCann	Tr. 1522	Lines 23-25. "and he found • • • it."
52.	McCann	Tr. 1523	Lines 5-6. "We just didn't • • • four."

Motion to Strike of Respondent The B. F. Goodrich Co.

	Witness	*Transcript*	*Line*
53.	McCann	Tr. 1525	Lines 12-15. "We tried • • • station."
54.	McCann	Tr. 1526	Lines 20-22. "Most of • • • them."
55.	Sanford	Tr. 1598	Line 18. "I think so."
56.	Sanford	Tr. 1634	Line 18. "I certainly • • •"
57.	Melton	Tr. 1860	Lines 16-22. "That would be • • • property."
58.	Melton	Tr. 1861	Lines 14-21. "And of course, • • • products."
(379)			
59.	Melton	Tr. 1862	Lines 20-22. "If I might • • • Firestone."
60.	Melton	Tr. 1864	Lines 24 to Tr. 1865 Lines 2, 11. "Well, I would • • • batteries."
61.	Melton	Tr. 1883	Lines 12-13. "A good many • • • cancelled."
62.	Riddick	Tr. 1940	Lines 3-5. "But you're larger • • • with."
63.	Goldstein	Tr. 2072	Lines 15-19. "It is very • • • controlled."
64.	Goldstein	Tr. 2079	Lines 20-22. "And it has • • • to."
65.	Price	Tr. 2081	Lines 18-19. "They did • • • stationed."
66.	Price	Tr. 2083	Lines 7-10. "and they couldn't • • • could."

Motion to Strike of Respondent The B. F. Goodrich Co.

	Witness	*Transcript*	*Line*
67.	Scott	Tr. 2112	Lines 13-14. "He thought • • • Goodrich."
68.	Scott	Tr. 2115	Lines 10-11. "And he • • • line."
69.	Scott	Tr. 2117	Lines 19-21. "Often times • • • stock."

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III.

Not Responsive and Evasive Answers

In many instances the answer of the witness was not responsive and should, therefore, be stricken. An example of this type of testimony which would be stricken is that of Dwyer, Tr. 926, lines 23-26:

> "Q. What was the name of the dealer you mentioned whose lease was cancelled for nine months?
> "A. Mr. Suffert of Texas Company cancelled that lease about two years ago • • •"

In certain instances such testimony is also objectionable in that it contains conclusions or opinions of the witness, and should be stricken from the record for the additional reasons set forth in Section II *supra*.

The following testimony should be stricken:

	Witness	*Transcript*	*Line*
1.	Edelson	Tr. 744	Lines 4-13. "For the simple • • • previously."
2.	Edelson	Tr. 787	Lines 1-2. "our business • • • back."
3.	Edelson	Tr. 797	Lines 5-6. "due to the fact • • • gas—"

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	Witness	*Transcript*	*Line*
4.	Dwyer	Tr. 926	Lines 25-26. "Mr. Suffert • • • ago."
5.	Traucht	Tr. 980	Lines 24-1. "To prove something • • • is."
(381)			
6.	McCann	Tr. 1543	Lines 8-9. "I don't know • • • items."
7.	McCann	Tr. 1562	Lines 24-25. "I really don't • • • did."
8.	Sinclair	Tr. 2036	Line 2. "I sold him • • • station."
9.	Avery	Tr. 2091	Lines 4-5. "He does because • • • likes."
10.	Scott	Tr. 2105	Lines 12-13. "I think • • • did."

IV.

Witness Indicated Lack of Knowledge

In many instances the witness indicated an affirmative lack of knowledge of the subject about which he was testifying, or the testimony of the witness was vague or indefinite. Such testimony should be stricken. An example of this type of testimony which should be stricken is that of Brusek, Tr. 966, Lines 11-12:

> "I would say that. That is strictly a guess on my part. I have nothing to substantiate that."

The following are other instances of such testimony:

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	Witness	*Transcript*	*Line*
1.	Edelson	Tr. 738	Lines 11-13. "I wouldn't be • • • Conoco."
2.	Edelson	Tr. 738	Lines 15-16. "Yes, maybe • • • it."
3.	Edelson	Tr. 762	Lines 9-12. "I think • • • force."
4.	Edelson	Tr. 770	Line 16. "I doubt it."
5.	Edelson	Tr. 770	Lines 18-19. "Positively I don't • • • so."
6.	Jennings	Tr. 950	Line 21. "I could only guess • • •"
7.	Jennings	Tr. 950	Line 23. "Several hundred."
8.	Brusek	Tr. 966	Lines 5-6. "But as a guess • • • volume."
9.	Brusek	Tr. 966	Lines 11-12. "I would say • • • that."
10.	Seidenglanz	Tr. 1208	Lines 9-10. "I believe • • • is Firestone."
11.	Renken	Tr. 1245	Lines 18-19. "I don't know • • • anything."
12.	Renken	Tr. 1247	Lines 9-10. "But the rest • • • so."
13.	Renken	Tr. 1253	Lines 19-20. "It would be a good guess • • • yes."

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14.	Olsen	Tr. 1327	Line 6. "I am not sure • • •"
15.	Olsen	Tr. 1327	Lines 17-18. "I don't know • • • sure."

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	Witness	*Transcript*	*Line*
16.	Hansen	Tr. 1398	Line 19. "I believe he • • • station."
17.	Hoffman	Tr. 1513	Lines 6-7. "I wouldn't know • • • leased."
18.	Hoffman	Tr. 1513	Lines 15-16. "I imagine so • • • into."
19.	Hoffman	Tr. 1515	Line 6. "I believe • • • lessee."
20.	Boyd	Tr. 1924	Lines 3-5. "I am sure • • • do."
21.	Hulme	Tr. 1929	Lines 13-14. "I think it is • • • impression."
22.	Hulme	Tr. 1929	Lines 22-24. "I am under the impression • • • property."
23.	Hulme	Tr. 1932	Lines 3-4. "I presume • • • believe."
24.	Bridges	Tr. 1943	Lines 10-11. "I don't know • • • back."
25.	Scott	Tr. 1997	Lines 8-10. "I imagine • • • think."
(384)			
26.	Chambers	Tr. 2042	Lines 17-18. "No, it would be rough • • • percent."
27.	Chambers	Tr. 2043	Line 7. "It was • • • think."
28.	Goldstein	Tr. 2073	Lines 4-10. "I couldn't answer • • • selling."
29.	Avery	Tr. 2089	Line 25. "Must be • • • thousand."
30.	Avery	Tr. 2090	Line 2. "I imagine • • • hundred."

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V.

Events Prior to 1952

In several instances the testimony of a witness related to events occurring prior to 1952 and should, therefore, be stricken. An example of this type of testimony which should be stricken is that of McCann, Tr. 1524, lines 22-23:

> "That started to dry up in the late 1930's. By 1949 it was greatly reduced."

Other instances of testimony involving pre-1952 matter are:

	Witness	*Transcript*	*Line*
1.	Nelson	Tr. 1216	Line 25. "In 1949, $889.67."
2.	Nelson	Tr. 1217	Lines 4-7. "13th and Deer Park • • • $555.60."
(385)			
3.	Nelson	Tr. 1217	Lines 13-14. "45th and Lake • • • year."
4.	Zaloudek	Tr. 1453 through Tr. 1465	Line 1 through Line 18.
5.	McCann	Tr. 1526	Lines 6-7. "I would say • • • them."
6.	McCann	Tr. 1526	Lines 20-22. "Most of the ones • • • them."
7.	McCann	Tr. 1527	Lines 9, 11-12. "I didn't • • • hundred.
8.	McCann	Tr. 1528-A	Lines 13-14. "I would say • • • year."

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	Witness	*Transcript*	*Line*
9.	Talley	Tr. 1886 Tr. 1912	Line 22, through Line 7.
10.	Sinclair	Tr. 2032	Lines 17-18. "I think the * * * deal."

VI.

Testimony re Firestone

In many instances a witness testified about the relationship between The Texas Company and The Firestone Tire and Rubber Company. Testimony as to the relationship between Texaco and Firestone is entirely irrelevant to the issues in this proceeding, and admission thereof would represent a deprivation to a respondent of due process of law. The following references should be stricken from the record:

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	Witness	*Transcript*	*Line*
1.	Wolfe	Tr. 81	21-23
2.	Wolfe	Tr. 83	11-22
3.	Wolfe	Tr. 89	1-20
4.	Wolfe	Tr. 90	4-21
5.	Wolfe	Tr. 92	1-51
6.	Wolfe	Tr. 93	1-8
7.	Wolfe	Tr. 94-95	25-17
8.	Doss	Tr. 559	9-10
9.	Doss	Tr. 560	6-10
10.	Doss	Tr. 563-564	23-1

Motion to Strike of Respondent The B. F. Goodrich Co.

	Witness	*Transcript*	*Line*
11.	Doss	Tr. 565	17-24
12.	Doss	Tr. 566-567	24-1
13.	Doss	Tr. 570-571	4-14
14.	Doss	Tr. 572-573	24-23
15.	Doss	Tr. 574	4-7
16.	Doss	Tr. 578	23-25
17.	Doss	Tr. 579-580	11-8
18.	Doss	Tr. 581	8-26
19.	Doss	Tr. 583	5-15
20.	Doss	Tr. 587-588	18-8
21.	Doss	Tr. 588	12-16
22.	Doss	Tr. 589	7-12
(387)			
23.	Chanenson	Tr. 831	21-23
24.	Doss	Tr. 941	20-22
25.	Doss	Tr. 943	1-7; 12-17; 22-23; 25-26
26.	Doss	Tr. 944	1-2
27.	Burgess	Tr. 1004	4-25
28.	Backencamp	Tr. 1060	23-24
29.	Backencamp	Tr. 1062	5-7; 10-22
30.	Backencamp	Tr. 1063	4-7
31.	Backencamp	Tr. 1064	4-5; 11-12; 21-22
32.	Cramer	Tr. 1088	11-15
33.	V. L. O'Mara	Tr. 1099	20-24
34.	V. L. O'Mara	Tr. 1100	4-5

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	Witness	*Transcript*	*Line*
35.	K. L. O'Mara	Tr. 1116	16-17
36.	Seidenglanz	Tr. 1195	10-24
37.	Seidenglanz	Tr. 1200	17-18
38.	Seidenglanz	Tr. 1204	17-24
39.	Seidenglanz	Tr. 1206	9-13
40.	Seidenglanz	Tr. 1207	17-20
41.	Seidenglanz	Tr. 1208	6-9
42.	Renken	Tr. 1241	1-17
43.	Renken	Tr. 1243-1244	8-26
44.	Renken	Tr. 1246-1247	21-3
45.	Renken	Tr. 1247	11-19
(388)			
46.	Olson	Tr. 1325	1-4; 22-23
47.	Olson	Tr. 1326	12-13
48.	Olson	Tr. 1327	5-6
49.	Olson	Tr. 1329	16-18
50.	Scoville	Tr. 1358	3-4; 13-14; 22-23
51.	Hansen	Tr. 1392	5-8; 18-21
52.	Hansen	Tr. 1393-1394	18-4
53.	Hansen	Tr. 1395	7-9
54.	Hansen	Tr. 1396-1397	25-1; 17-24
55.	Hansen	Tr. 1401	6-11
56.	Hansen	Tr. 1405	10-13
57.	Taylor	Tr. 1409-1410	23-5; 15-18
58.	Taylor	Tr. 1411	7-10

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	Witness	*Transcript*	*Line*
59.	Taylor	Tr. 1413	3-4
60.	Taylor	Tr. 1415	21-25
61.	Taylor	Tr. 1416	4-21
62.	Taylor	Tr. 1420-1421	22-12
63.	Zaloudek	Tr. 1457	20-25
64.	Zaloudek	Tr. 1458-1459	19-24
65.	Zaloudek	Tr. 1462	17-20
66.	Zaloudek	Tr. 1463-1464	20-13
67.	Zaloudek	Tr. 1464-1465	23-7
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68.	Zaloudek	Tr. 1471	20-24
69.	Zaloudek	Tr. 1472	10-17
70.	Zaloudek	Tr. 1472-1473	25-5
71.	Zaloudek	Tr. 1478-1479	9-12
72.	Hoffman	Tr. 1514	13-15
73.	Hoffman	Tr. 1515	3-4
74.	Sanford	Tr. 1592-1594	4-19
75.	Sanford	Tr. 1596	4-15
76.	Sanford	Tr. 1597-1601	16-4
77.	Sanford	Tr. 1602-1603	9-13
78.	Sanford	Tr. 1606	21-25
79.	Sanford	Tr. 1607	11-12
80.	Sanford	Tr. 1610	4-25
81.	Sanford	Tr. 1624-1625	7-4
82.	Sanford	Tr. 1626-1627	19-9
83.	Sanford	Tr. 1630-1631	21-23

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	Witness	*Transcript*	*Line*
84.	W. E. Smith	Tr. 1685	5-8
85.	W. E. Smith	Tr. 1687	6-10
86.	W. E. Smith	Tr. 1692	23-25
87.	W. E. Smith	Tr. 1693	9-10
88.	Barton	Tr. 1725	19-25
89.	Barton	Tr. 1727	8-15
90.	Barton	Tr. 1729	5-11; 17-20
91.	Roberts	Tr. 1759	5-7
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92.	Roberts	Tr. 1760	25
93.	Roberts	Tr. 1762	13-15; 18-22
94.	Roberts	Tr. 1763	21-22
95.	Roberts	Tr. 1765	3-4
96.	Roberts	Tr. 1766	17-20
97.	Roberts	Tr. 1767-1770	6-10
98.	Talley	Tr. 1888	16-17
99.	Talley	Tr. 1889	12-24
100.	Talley	Tr. 1890	13-22
101.	Talley	Tr. 1892	4-9; 21-25
102.	Talley	Tr. 1894-1895	14-7
103.	Boyd	Tr. 1923-1924	23-4
104.	Hulme	Tr. 1928	20-21
105.	Hulme	Tr. 1929	8-10
106.	Hulme	Tr. 1931	8-11
107.	Hulme	Tr. 1933	20-25
108.	Hulme	Tr. 1934	15-18

Motion to Strike of Respondent The B. F. Goodrich Co.

	Witness	*Transcript*	*Line*
109.	Hulme	Tr. 1936-1937	16-6
110.	Hulme	Tr. 1937	15-21
111.	Bridges	Tr. 1945	7-15
112.	Bridges	Tr. 1946	3-5
113.	Bridges	Tr. 1947	18-24
114.	Bridges	Tr. 1957	18-24
115.	Bridges	Tr. 1958	5-7
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116.	Gause	Tr. 1962-1965	17-14
117.	Tidwell	Tr. 1972-1973	19-21
118.	Tidwell	Tr. 1975	14-26
119.	Tidwell	Tr. 1981	13-14
120.	Tidwell	Tr. 1982-1983	18-17
121.	Gilbert	Tr. 2023	2-19
122.	Gilbert	Tr. 2029	3-5
123.	Sinclair	Tr. 2034	11-15
124.	Price	Tr. 2082	8-12
125.	Price	Tr. 2083	21-23
126.	Price	Tr. 2086	7-9; 18-19
127.	Avery	Tr. 2090	22-23
128.	Avery	Tr. 2092	23-24
129.	Avery	Tr. 2094	10-15
130.	Avery	Tr. 2095	5-8
131.	Scott	Tr. 2106	18-22
132.	Glenn	Tr. 2137-2138	22-5
133.	Bartlett	Tr. 2182-2187	15-22

Motion to Strike of Respondent The B. F. Goodrich Co.

	Witness	*Transcript*	*Line*
134.	Bartlett	Tr. 2187-2188	10-15
135.	Halsell	Tr. 2195-2196	8-9
136.	Halsell	Tr. 2196-2204	21-4
137.	Wolfe	Tr. 2207-2210	19-9
138.	Wolfe	Tr. 2210-2211	18-23
139.	Wolfe	Tr. 2213	4-19
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140.	Wolfe	Tr. 2214-2215	18-25

VII.

Exhibits re Firestone

The following exhibits relate to The Firestone Tire and Rubber Company, which is not a respondent in this proceeding and which has no relation to The B. F. Goodrich Company. No employee or officer of The B. F. Goodrich Company has had anything to do with these exhibits and, on almost all of them, the name The B. F. Goodrich Company does not even appear.

The exhibits have no probative value; their admission, and the basing of any decision thereon, would violate the Rules of the Commission as to probative evidence and the Administrative Procedure Act and would deprive The B. F. Goodrich Company of due process of law (Tr. 2228-29).

All of the exhibits listed below were admitted subject to the foregoing objection. In addition, many were admitted subject to a specific hearsay objection or a specific objection that the documents were *res inter alias acta*—the so-called intra-company objection. This Motion to Strike is based upon all objections made.

The following exhibits should be stricken:

Motion to Strike of Respondent The B. F. Goodrich Co.

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	Exhibit Number	*Admission to Evidence (Transcript)*
1.	CX 113 A-Z-52	2141
2.	CX 115 A-D	2143
3.	CX 117	2144
4.	CX 119	2147
5.	CX 121	2149
6.	CX 123	2150
7.	CX 202	2157
8.	CX 203	2157
9.	CX 204 A-F	2160
10.	CX 205 A-F	2160
11.	CX 206 A-F	2160
12.	CX 207 A-F	2160
13.	CX 208 A-F	2160
14.	CX 213-B	2180
15.	CX 46 E-J	2195
16.	CX 51	2196
17.	CX 43	2210
18.	CX 41	2216
19.	CX 234 K-L	2248

• • •

Order Disposing of Motions to Strike Certain Testimony and Exhibits Filed by the Respondents

(January 2, 1958)

(413)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

DOCKET NO. 6485

[SAME TITLE]

This proceeding is before the hearing examiner on Motion to Strike, Supplement to Motion to Strike, and Memorandum in Support of Motion to Strike, filed by the respondent The Texas Company; answer thereto, filed by counsel supporting the complaint; and Reply Memorandum in Support of Motion to Strike filed by The Texas Company; and also upon Motion to Strike and Memorandum in Support of Motion to Strike filed by the respondent The B. F. Goodrich Company.

The specifications contained in the motions to strike may be divided into the following categories:

1. Hearsay testimony.
2. Testimony purporting to give conclusions and opinions.
3. Non-responsive and evasive answers.
4. Testimony where a witness indicated limited knowledge.
5. Testimony relative to events prior to 1952.

Order Disposing of Motions to Strike Certain Testimony and Exhibits Filed by the Respondents

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6. Testimony relating to other oil companies which had been received subject to motion to strike by The Texas Company.

7. Testimony relating to The Goodyear Tire & Rubber Company and The Firestone Tire & Rubber Company which has been received subject to motion to strike by The B. F. Goodrich Company.

1. *Hearsay testimony*: The hearsay testimony contained in the specifications in the motions to strike involve testimony by competitor suppliers, who testified as to the reasons given by station operators for not purchasing such suppliers' merchandise. At the time this testimony was offered, the hearing examiner overruled the objections based upon hearsay on the basis that such testimony came within the exceptions to the hearsay rule, and that such testimony could properly be received not as proof of the matters contained in said reasons, but only to show the state of mind or motives of the gas station operators.

The record shows that the respondent The B. F. Goodrich Company entered into agreements with the respondent The Texas Company and other oil companies by the terms of which contracts The B. F. Goodrich Company agreed to pay The Texas Company and other oil companies an override commission on all merchandise sold to stations under contract with The Texas Company and other oil companies on consideration that said oil companies promote the sale of Goodrich TBA products to said stations. This evidence, coupled with further evidence as to the control which The Texas Company and other oil companies maintained over their stations by reason of their contracts with such stations, made material to the issues in this proceed-

ing the attitude or state of mind of the station operators with reference to purchasing TBA products competitive to those sold by respondent The B. F. Goodrich Company. In view of this, the hearing examiner received this testimony solely as proof of the attitude or the state of mind of the station operators, and repeatedly stated on the record that the evidence was not received as proof of the statements testified to.

As a legal basis for these rulings upon evidence, reference is made to the case of *Lawler* v. *Loewe,* 235 U. S. 522, 536. In this case, salesmen testified as to the reasons given them by dealers for not purchasing Loewe hats. Justice Holmes in writing the decision stated:

> (415) "The reason given by customers for ceasing to deal with sellers of the Loewe Hats, including letters from dealers to Loewe & Co., were admissible."

Justice Holmes further clarified this holding of the Court in his opinion in *Buckeye Powder Company* vs. *E. I. DuPont de Nemours Powder Company, et al.* 248 U. S. 55, 65, December 9, 1918, in which he stated:

> "Several exceptions were taken to the exclusion of statements by third persons of their reasons for refusing or ceasing to do business with the plaintiff. We should be slow to overthrow a judgment on the ground of either the exclusion or admission of such statements except in a very strong case. But the exclusion in this instance was proper. The statement was wanted not as evidence of the motives of the speakers but as evidence of the facts recited as furnishing the motives. *Lawler* vs. *Loewe,* 235 U. S. 522, 536; *Elmer* vs. *Fessenden,* 151 Massachusetts, 359, 362."

Order Disposing of Motions to Strike Certain Testimony and Exhibits Filed by the Respondents

Subsequent thereto the Circuit Court of Appeals in the Second Circuit in the matter of *Greater New York Live Poultry Chamber of Commerce* vs. *United States*, 47 F. (2d) 156, C. C. A. 2, January 12, 1931, in referring to a similar situation stated as follows:

> "A number of the assignments of error relate to the admission over objection of the testimony of witnesses for the prosecution as to reasons given by receivers for their refusal to sell to recalcitrant marketmen. Such statements of reasons, though hearsay, are admissible to prove the state of mind of the declarant if that be in issue. * * * They are not admissible, however, to prove the truth of the facts recited as explanation of the state of mind of the declarant. * * * In the case at bar the reasons for the refusals to sell were a material issue, since the government sought to show them related to the conspiracy and the defendants claimed that the true reasons were entirely different. The appellants would have been entitled to an instruction limiting the probative force of the evidence to that issue—more specifically, warning the jury not to consider these statements as evidence of the truth of the matters asserted therein. But, since the appellants did not ask for such an (416) instruction, but attempted rather to exclude the evidence entirely, they cannot now claim error in its admission."

In view of the above, the hearing examiner is of the opinion that there is a legally sound basis for his rulings upon the so-called hearsay testimony, and that no basis has been presented in said motions for disturbing or reversing such rulings.

Order Disposing of Motions to Strike Certain Testimony and Exhibits Filed by the Respondents

2. *Conclusions and Opinions*: The specifications under this section of the motions refer to witnesses who were testifying concerning difficulties encountered in selling various gasoline stations. The objections to the answers as being conclusions were considered by the hearing examiner at the time such testimony was given, and where such answers were considered to be factual statements, these objections were overruled. The examiner has reviewed the testimony specified in the motions to strike and sees no reason for disturbing his rulings on evidence heretofore made during the course of the trial and while the witness was on the stand.

3. *Non-Responsive and Evasive Answers*: The hearing examiner has reviewed the special instances cited in the motions to strike under this heading and sees no reason for disturbing the rulings made by him at the time the objections were made and while the witness was testifying.

4. *Witness Indicated Limited Knowledge*: The specifications listed under this section of the motions to strike go to the weight of the testimony and not to its admissibility. In many instances no objection was made at the time the witness testified, and in other instances objections were made on other grounds. The record is clear that the witnesses, when testifying, stated the limitations on their knowledge and this will be considered in the weight to be given. There is no occasion to disturb the rulings made at the time of trial.

5. *Objections as to Events Prior to 1952*: These objections were taken up and thoroughly argued during the course of the hearings, and there is nothing in the present

motions which requires any change in the rulings of the hearing examiner.

6. *Testimony and Exhibits with Reference to Oil Companies other than Texas*: The testimony and exhibits (417) relating to oil companies other than Texas were received in evidence subject to a motion to strike by respondent The Texas Company in compliance with a previous order of the Commission relative to such evidence. After reviewing the record, the hearing examiner is of the opinion that no connection has been established between The Texas Company and The B. F. Goodrich Company contracts with other oil companies and the testimony and exhibits introduced with reference to the other oil companies, should be stricken as to The Texas Company.

7. *Testimony and Exhibits Pertaining to The Goodyear Tire & Rubber Company and The Firestone Tire & Rubber Company*: The testimony and exhibits relative to TBA transactions between The Texas Company and The Goodyear Tire & Rubber Company and The Firestone Tire & Rubber Company were received in evidence, subject to motion to strike by respondent The B. F. Goodrich Company in compliance with a previous order of the Commission relative to such evidence. After reviewing the record, the hearing examiner is of the opinion that no connection has been established between The B. F. Goodrich Company, and The Texas Company contracts with The Firestone Tire & Rubber Company and The Goodyear Tire & Rubber Company, and the testimony and exhibits introduced with reference to the relationship between The Texas Company and The Goodyear Tire & Rubber Company and The Firestone Tire & Rubber Company should be stricken as to respondent The B. F. Goodrich Company. The motion

of The Texas Company incorporates eight exhibits which do not apply to other oil companies, but refer to periods of time prior to 1952. For the reasons heretofore stated, these exhibits should remain in the record.

It Is Therefore Ordered that the motions of respondents The B. F. Goodrich Company and The Texas Company to strike certain testimony as being hearsay, conclusions and opinions, not responsive and evasive, based upon limited knowledge, and as to events prior to 1952 be, and the same are hereby, denied.

It Is Further Ordered that the motion of The Texas Company to strike testimony pertaining to oil companies other than Texas be sustained as to The Texas Company, and said testimony is hereby stricken as to The Texas Company, but remain in the record as to respondent The B. F. Goodrich Company.

(418) It Is Further Ordered that motion of the respondent The Texas Company to strike certain exhibits pertaining to oil companies other than The Texas Company be sustained, and that said exhibits insofar as they pertain to oil companies other than The Texas Company be stricken as to The Texas Company, but remain in the record as to respondent The B. F. Goodrich Company.

It Is Further Ordered that motion of The B. F. Goodrich Company to strike certain testimony pertaining to transactions between The Texas Company and The Goodyear Tire & Rubber Company and The Firestone Tire & Rubber Company be sustained, and said testimony be stricken as to The B. F. Goodrich Company, but remain in the record as to respondent The Texas Company.

Order Disposing of Motions to Strike Certain Testimony and Exhibits Filed by the Respondents

It Is Further Ordered that motion of the respondent The B. F. Goodrich Company to strike certain exhibits pertaining to transactions between The Texas Company and The Goodyear Tire & Rubber Company and The Firestone Tire & Rubber Company be sustained as to respondent The B. F. Goodrich Company, and that said exhibits, insofar as they pertain to The Goodyear Tire & Rubber Company and The Firestone Tire & Rubber Company be stricken as to The B. F. Goodrich Company, but remain in the record as to respondent The Texas Company.

Earl J. Kolb,
Hearing Examiner.

January 2, 1958.

Motion of the Texas Company to Withdraw Issues and to Strike Evidence

(February 7, 1958)

(419)

UNITED STATES OF AMERICA

BEFORE THE FEDERAL TRADE COMMISSION

[SAME TITLE]

TO THE HONORABLE EARL J. KOLB, HEARING EXAMINER:

The Texas Company, by its attorneys, moves, pursuant to Rule 3.8 of the Commission Rules of Practice and Procedure, for an order granting the following relief:

A. Withdrawing from this proceeding all issues, legal or factual, involving or relating to dealings, practices, contracts, agreements or arrangements between The Texas Company and The Firestone Tire & Rubber Company and the operations of the parties to such agreements thereunder.

B. Striking from the record in this proceeding all evidence heretofore received in this case with respect to any of the issues or matters set out in sub-division A hereof.

(420)

The reasons for the Motion are as follows:

1. There is also pending before the same Hearing Examiner who is hearing the instant proceeding, another proceeding entitled *In the Matter of The Firestone Tire & Rubber Company and Shell Oil Company,* Docket No. 6487, in which there are now involved, *inter alia,* the identical issues and matters stated in sub-division A of this Motion.

2. In the instant proceeding, when evidence as to the issues and matters stated in sub-division A of this Motion was first tendered by counsel supporting the complaint,

detailed objection to all of such evidence was made (Tr. 64-66). Upon such objection, the Hearing Examiner excluded most of the type of evidence now sought to be stricken.

3. Thereupon counsel supporting the complaint, on October 25, 1956, filed an interlocutory appeal from the ruling of the Hearing Examiner.

4. On November 8, 1956, attorneys for The Texas Company filed a brief in opposition to the interlocutory appeal, in which attention was called among other things to the proceedings in Docket No. 6487 against The Firestone Tire & Rubber Company and Shell Oil Company and the fact that the instant proceeding and the Firestone case were both before the same Hearing Examiner, and it was stated (at p. 15):

(421)

> "To compel that Examiner to hear in the present case evidence against Firestone without an opportunity by Firestone to defend itself and similarly to compel him to hear in the case against Firestone evidence against The Texas Company without an opportunity by The Texas Company to defend itself would, as a practical matter, be grossly unfair to both companies. Indeed, it would result in depriving both of these respondents in their respective cases of the basic requirements of due process of law."

5. The appeal of counsel supporting the complaint was sustained. Thereafter, in this proceeding there was admitted, over objection, both testimonial evidence and much documentary evidence relating to the issues and matters set out in sub-division A of this Motion.

Motion of the Texas Company to Withdraw Issues and to Strike Evidence

6. On November 13, 1957, counsel supporting the complaint in the instant proceeding rested. Theretofore, and particularly thereafter, the Hearing Examiner in the present proceeding, sitting as Hearing Examiner in the said proceeding against The Firestone Tire & Rubber Company and Shell Oil Company, received in evidence testimony and a large number of documents relating to the issues and matters set out in sub-division A of the present motion. The Texas Company is informed and believes that additional evidence relating to the same issues and matters will or may be introduced in the future in the said proceeding against The Firestone Tire & Rubber Company and Shell Oil Company. So (422) far two witnesses who had previously testified in the instant proceeding have been called to testify in the said proceeding against Firestone and Shell. The testimony of one such witness, William B. Price, purported in the latter case to cover among other things the same general fact situation purportedly covered in the instant case.

7. The Texas Company had and has no opportunity to object to any evidence offered in the proceeding against Firestone, or to cross-examine witnesses called in that proceeding, or to explain evidence introduced in that proceeding, or to reply to such evidence or to brief or argue such issues as may be created by such evidence.

The present situation places the Hearing Examiner in the unfortunate position of having to decide at the same time the same factual issues in two different cases upon similar but not identical evidence and without the safeguards attendant upon representation of all the parties affected in each case. While we are convinced that the Hearing Examiner will use his very best efforts to keep

the cases separate and apart, it would appear to be an impossible task to confine to each case the intangible factors leading to a decision of factual issues so that the evidence in the one case will have absolutely no effect (523) upon a decision in the other. This inherent difficulty would create a definite and unanswerable doubt as to what exact evidence contributed to the decision and hence as to the legal propriety of any decision rendered. Neither the Hearing Examiner nor the respondent should be placed in such a dubious position.

8. This situation, foreseen at the time when The Texas Company originally objected to the introduction of the evidence to which this motion is addressed and when The Texas Company filed its brief opposing the appeal from the Hearing Examiner's ruling excluding the evidence in question, has now materialized. Identical issues involving identical parties are being tried by the same Hearing Examiner without, however, the Examiner being able to afford to the parties affected the opportunities which the rules of this Commission, the Administrative Procedure Act, the Due Process Clause of the Constitution and the decisions thereunder, specifically afford a party to proceedings of the type here involved. In spite of the recognized fairness, impartiality and ability of the Hearing Examiner, the more or less simultaneous trials of the same issues, without affording the parties affected the usual safeguards, confront (424) the Hearing Examiner with a task beyond the best of human ability and make impossible any effort to apply to this proceeding the required judicial process.

In making its decision mentioned in paragraph numbered 5 above, the Commission doubtless assumed that the

situation presented by respondent would not arise. Unfortunately this assumption has proven to be incorrect. Therefore, we submit that a re-examination is now required. The Commission's previous ruling should not preclude the Hearing Examiner's consideration of a factual situation which did not actually exist—and which was, therefore, not known to the Commission—at the time of the Commission's decision.

9. Unless the present motion is granted, The Texas Company has not been and will not be afforded a fair trial and its rights and properties will be jeopardized thereby without due process of law. It is submitted that the Commission, when now apprised of the actual turn of events to which attention is here called, should view this existing situation in a different light from a situation merely expected, and should change its previous ruling as to (425) the admissibility of the evidence in question and should, therefore, grant this motion.

Dated: February 7, 1958.

MARION J. EPLEY, JR.
MARION J. EPLEY, JR.

ROYALL, KOEGEL, HARRIS & CASKEY
By Frederick W. P. Lorenzen
Attorneys for The Texas Company

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Order Denying Motion of the Texas Company to Withdraw Issues and to Strike Evidence

(February 24, 1958)

(430)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

[SAME TITLE]

This matter is before the hearing examiner upon motion of The Texas Company to withdraw from this proceeding any issue legal or factual relating to dealings, practices, contracts, agreements or arrangements between The Texas Company and The Firestone Tire & Rubber Company. It is respondent's contention that because of the reception of evidence by the same hearing examiner concerning contracts and dealings between The Texas Company and The Firestone Tire & Rubber Company in Docket No. 6487 in which The Texas Company was not a party, deprives the respondent of a right to a fair hearing.

The hearing examiner in making his initial decision must issue a finding of fact which must be based upon the record consisting of the testimony and other evidence in the proceeding in which such finding is made. It would be unlawful and in violation of the Administrative Procedure Act for the hearing examiner to give consideration to any matters not appearing in such record.

The motion of the respondent is based upon the premise that the hearing examiner cannot or will not proceed lawfully in the issuance of an initial decision in this proceeding. It is the opinion of the hearing examiner that there is no merit to respondent's contention.

IT IS THEREFORE ORDERED that the motion of The Texas Company to withdraw from this proceeding all issues,

Order Denying Motion of the Texas Company to Withdraw Issues and to Strike Evidence.

(431) legal or factual, involving or relating to dealings, practices, contracts, agreements or arrangements between The Texas Company and The Firestone Tire & Rubber Company and the operations of the parties to such agreements thereunder, and to strike from the record in this proceeding all evidence heretofore received in this case with respect to any of the issues or matters pertaining to The Texas Company and The Firestone Tire & Rubber Company be, and the same is hereby, denied.

EARL J. KOLB,
EARL J. KOLB,
Hearing Examiner

February 24, 1958.

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Interlocutory Appeal by Respondent The Texas Company from Order of the Hearing Examiner Denying Its Motion to Withdraw Issues and to Strike Evidence

(March 6, 1958)

(434)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

[SAME TITLE]

COMES NOW respondent, The Texas Company, by its attorneys, and, pursuant to the provisions of Section 3.20 of the Commission Rules of Practice and Procedure, respectfully appeals from the ruling by the Hearing Examiner, dated February 24, 1958, and received by respondent on February 26, 1958, denying respondent's motion to withdraw issues and to strike evidence.

Motion for Extension of Time to Hear Appeal and File Further Briefs

Respondent moves, for the reasons hereinafter set forth, that the time to hear its appeal be extended until the Commission has determined the appeals *In the Matter of The Goodyear Tire & Rubber Company and The Atlantic Refining Company,* Docket 6486 (hereinafter sometimes referred to as *"Goodyear Atlantic"*) and *In the Matter of The Firestone Tire & Rubber Company and Shell Oil Company,* Docket 6487 (hereinafter sometimes referred to as *"Firestone-Shell"*).

(435) Respondent further moves that it be permitted to file, after the appeals in *Goodyear-Atlantic* and *Firestone-Shell* have been decided, further data and briefs in support of this appeal.

Interlocutory Appeal by Respondent The Texas Company from Order of the Hearing Examiner Denying Its Motion to Withdraw Issues and to Strike Evidence

Preliminary Statement

On February 7, 1958, respondent moved, before the Hearing Examiner, for an order (a) withdrawing from this proceeding all issues legal or factual involving or relating to dealings, practices, contracts, agreements or arrangements between respondent and The Firestone Tire & Rubber Company (hereinafter sometimes referred to as "*Firestone*") and the operations of the parties to such agreements thereunder, and (b) striking from the record in this proceeding all evidence theretofore received with respect to any of the issues or matters set out in (a).

The purpose of the motion was to assure respondent a fair trial and to prevent its rights and properties being jeopardized without due process of law.

The violation of these fundamental rights was occasioned by the fact that the Hearing Examiner in a separate proceeding,* in which this respondent is not represented, received evidence, documentary and oral, on one of the fact issues of this very proceeding.

The complaint herein challenges the trade practice known as the sales commission plan—a method of (436) marketing tires, batteries and accessories (collectively known as "TBA") by tire companies through oil company outlets. The tire company pays the oil company a commission for the sales assistance by the oil company in promoting the sale of TBA products to dealers selling the oil company's petroleum products.

The Commission brought three identical complaints attacking this practice, each naming as respondent a tire company and an oil company as parties to a sales commission arrangement (Dockets Nos. 6485, 6486 and 6487).

* The *Firestone-Shell* case, Docket No. 6487

Interlocutory Appeal by Respondent The Texas Company from Order of the Hearing Examiner Denying Its Motion to Withdraw Issues and to Strike Evidence

Each complaint alleged that the particular arrangement was an unlawful method of competition (Paragraph 12 of the Complaint). The complaints did not, however, confine their charges of illegality to the sales commission arrangement between the named respondents therein. Each complaint alleged that the named oil company respondent had another sales commission arrangement with another tire company (Paragraph 7 of the Complaint), and that the named tire company respondent had entered into other sales commission arrangements with other oil companies whose relations with their dealers were allegedly similar to those of the named oil company respondent (Paragraph 9 of the Complaint).

Since each complaint alleged sales commission arrangements involving persons who were not respondents, and the same Hearing Examiner was assigned to the three cases, there arose the novel situation of evidence which related to this respondent being introduced in a proceeding in which respondent was not a party before the very (437) Hearing Examiner who must determine the legality of respondent's acts. More particularly, the legality of the sales commission arrangement between Firestone and respondent is called into question both here and in the *Firestone-Shell* case in which this respondent is not represented.

The Hearing Examiner, sitting as Hearing Examiner in the *Firestone-Shell* case, received in evidence in that case testimony and many documents relating to the arrangement between respondent and Firestone. Two witnesses who testified in the instant proceeding were called to testify in the *Firestone-Shell* case, one of whom, William B. Price, purported in that case to cover, among other things, the same general fact situation purportedly covered in the instant case.

Interlocutory Appeal by Respondent The Texas Company from Order of the Hearing Examiner Denying Its Motion to Withdraw Issues and to Strike Evidence

At no time has this respondent had an opportunity to object to any evidence offered in the *Firestone-Shell* case, or to cross examine witnesses called in that proceeding, or to explain evidence introduced in that proceeding, or to reply to such evidence, or to brief or argue such issues as might be created by such evidence.

The introduction of evidence and testimony with respect to the Firestone-Texas relationship in the *Firestone-Shell* proceeding deprives respondent of due process, violates the Administrative Procedure Act and the rules of this Commission, and affords the basis of this interlocutory appeal.

(438) Respondent is presently preparing for the defense case and if the relief requested is granted, the scope of its defense will be reduced and the proceedings expedited. One of the reasons for prosecuting this interlocutory appeal is respondent's belief that the continuance of the violation of respondent's rights of due process is so fundamental that respondent cannot under these circumstances obtain the fair trial and due process of law to which it is constitutionally entitled.

The Former Interlocutory Appeal

When evidence as to the issues and matters relating to the arrangement between respondent and Firestone was first tendered in the instant proceeding by counsel supporting the complaint, respondent took detailed objection to all such evidence (Tr. 64-66). The Hearing Examiner thereupon excluded most of the type of evidence which is the subject of the present appeal and counsel in support of the complaint, on October 25, 1956, filed an interlocutory appeal from these rulings.

Interlocutory Appeal by Respondent The Texas Company from Order of the Hearing Examiner Denying Its Motion to Withdraw Issues and to Strike Evidence

Counsel in support of the complaint contended that the Examiner by his rulings excluding evidence relating to the agreement between respondent and Firestone had "precluded the development of the full effect on competition which has been occasioned by Texas' participation in the challenged method of competition" (Int. App. 10-11).*

(439) Counsel in support of the complaint further stated (Int. App. 11):

> "It is clear, therefore, that the effects created by both agreements have a direct bearing in the establishment and proof of the charges against Texas."

and stated (Int. App. 17):

> "No one can gain a proper perspective of the actual and potential effects of the questioned method of doing business unless all ramifications of the relationship existing between Texas and both rubber companies under the TBA commission arrangements are fully presented."

In its brief, filed November 8, 1956, in opposition to complainant's interlocutory appeal, respondent directed attention to, among other things, the *Firestone-Shell* case and expressly noted that that case and the instant one were both before the same Hearing Examiner.

Respondent stated in this brief (at p. 15):

> "To compel that Examiner to hear in the present case evidence against Firestone without an opportunity by Firestone to defend itself and similarly to compel him to hear in the case against Firestone evidence against

* "Int. App." refers to the Interlocutory Appeal Brief of counsel in support of the complaint, filed on October 25, 1956.

Interlocutory Appeal by Respondent The Texas Company from Order of the Hearing Examiner Denying Its Motion to Withdraw Issues and to Strike Evidence

> The Texas Company without an opportunity by The Texas Company to defend itself would, as a practical matter, be grossly unfair to both companies. Indeed, it would result in depriving both of these respondents in their respective cases of the basic requirements of due process of law."

The Commission, however, on November 28, 1956 sustained the appeal of counsel supporting the complaint and thereafter, over objection, there was admitted in evidence in this proceeding testimonial and documentary evidence relating to the arrangement between respondent and Firestone.

At the time the Commission made its decision, (440) November 28, 1956, the situation now presented had not arisen. The introduction of evidence, documentary and testimonial, relating to the arrangement between respondent and Firestone before the Hearing Examiner of this complaint in a proceeding in which respondent was not represented had not occurred.

Motion to Extend Time to Hear Appeal

The issues raised by this motion are similar, in many respects, to those raised by the interlocutory appeal of *Firestone,* Docket No. 6487, and the interlocutory appeal of *Goodyear,* Docket No. 6486, each of which is presently pending before the Commission. Since the issues in those proceedings are in many respects similar to those presented by this interlocutory appeal, respondent moves that the time to hear its appeal be extended until the Commission has determined the interlocutory appeals in Docket numbers 6486 and 6487.

Interlocutory Appeal by Respondent The Texas Company from Order of the Hearing Examiner Denying Its Motion to Withdraw Issues and to Strike Evidence

Respondent further requests an opportunity to file, after those appeals have been determined, further data and briefs in support of this interlocutory appeal.

Request for Oral Argument

The issues raised on the motion and on this appeal are of such importance that we respectfully request the privilege of oral argument before the Commission.
(441)

Statement of Issue

Is respondent deprived of due process of law—and is the Admnistrative Procedure Act violated—by the Hearing Examiner in the instant proceeding hearing evidence—documentary and testimonial—relating to the arrangement between respondent and Firestone in a proceeding to which respondent is not a party?
(442)

POINT I

Respondent's rights under the Constitution and the Administrative Procedure Act are violated by the Hearing Examiner considering, in a separate proceeding, evidence bearing on the issues in this case.

Respondent is not a party to the *Firestone-Shell* case; it cannot meet and refute evidence relating to its arrangement with Firestone that has been introduced in that proceeding. A considerable number of documents relating to the arrangement between respondent and Firestone were admitted into evidence, before the same Hearing Examiner who is sitting in the instant case, in a proceeding in which

respondent has no standing either to object or to refute evidence that relates to the very matter here in issue.

We know of no authority that lends support to such an extraordinary procedure. Indeed, such a unique method of procedure is clearly inconsistent with at least the spirit of the provisions of the Administrative Procedure Act, falling within the express condemnations of Section 5(c) of that Act which provides in part:

> "Save to the extent required for the disposition of ex parte matters as authorized by law, no such officer [hearing officer] shall consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate."

The Hearing Examiner by considering evidence and hearing argument of counsel in another case on matters relating (443) to the arrangement between respondent and Firestone is considering facts relevant to the issues in this proceeding without the opportunity for respondent to participate. This is certainly more injurious to the respondent than a mere consultation by the Examiner would be.

The vice of the Hearing Examiner considering the evidence relating to the arrangement between respondent and Firestone in a proceeding in which respondent is not a party is high-lighted by the fact that such evidence is deemed by counsel supporting the complaint to be essential in a determination of the present proceeding. Counsel, in support of the complaint, stated that the effects created by that agreement has "a direct bearing in the establishment and proof of the charges against Texas" (Int. App. 11) and that no one could gain a proper perspective of the actual and potential effects of the sales commission pro-

gram "unless all ramifications of the relationship existing between Texas and both rubber companies under the TBA commission arrangements are fully presented" (Int. App. 17).

However, certain of these ramifications are being developed before the present Hearing Examiner in a proceeding in which respondent is not a party and, we submit, that under the Administrative Procedure Act the Hearing Examiner may not properly hear such evidence ex parte to this proceeding.

In order to prevent the respondent's rights being jeopardized by such ex parte receipt of evidence, it is (444) necessary to withdraw from the present proceeding the issues relating to respondent's arrangement with Firestone and all evidence with respect thereto.

If the Commission had intended that evidence relating to this respondent should be introduced in a proceeding in which respondent was not a party it undoubtedly would have assigned such proceeding to a Hearing Examiner other than the one assigned to the instant proceeding. It is wholly undesirable for the same person at the same time to hear evidence relating to the same issues in different proceedings.

It is familiar law that the hearing officer is not to consider evidence introduced outside the confines of the case before him. Thus, the Supreme Court in *Carter* v. *Kubler,* 320 U. S. 243 (1943) in discussing the action of a conciliation commissioner fixing a valuation which was partly on the basis of his personal investigation stated (at p. 247):

> "The basic elements of such a hearing include the right of each party to be apprized of all the evidence upon which a factual adjudication rests, plus the right

> to examine, explain or rebut all such evidence. * * * It was apparently made without petitioner's knowledge or consent and no opportunity was accorded petitioner to examine or rebut the evidence obtained in the course of such investigation. The use of this evidence was therefore inconsistent with the right to a fair and full hearing."

It is no answer to say that the Hearing Examiner will do his best not to be influenced by such evidence he has heard under oath in a proceeding in which respondent is (445) not represented. Thus the Court in *Mozer* v. *Mortgage Guarantee Co.*, 9 Cir., 123 F. 2d 423 (1941) cogently stated the danger of this (p. 425):

> "What influence the evidence taken outside the hearing, proper or improper, may have had upon the conclusion reached by the commissioner, or what counter effect cross-examination or rebuttal testimony would have had upon such conclusion, can never be known."

See also *United States* v. *Dillman*, 5 Cir., 146 F. 2d 572, 574, 575 (1945), *cert. den.* 325 U. S. 870 (1945).

Once it is conceded that a Hearing Examiner in such a situation cannot avoid importing knowledge received from the one proceeding into his decision with respect to the other, it is clear that the unrepresented party is denied the right to appear by counsel, the right to conduct cross examination, and the right that the proceeding against him be decided only on the record of that proceeding (Administrative Procedure Act, §§6(a), 7(c) and 7(d); §3.16(b) Commission Rules of Practice and Procedure).

(446)

POINT II

The Hearing Examiner's ruling is based on an erroneous premise.

The present situation places the Hearing Examiner in the unfortunate position of having to decide at the same time the same factual issues in two different cases upon similar but not identical evidence and without the safeguards attendant upon representation of all the parties affected in each case. While we are convinced that the Hearing Examiner will use his very best efforts to keep the cases separate and apart, it would appear to be an impossible task to confine to each case the intangible factors leading to a decision of actual issues so that the evidence in the one case will have absolutely no effect upon a decision in the other. This inherent difficulty would create a definite and unanswerable doubt as to what exact evidence contributed to the decision and hence as to the legal propriety of any decision rendered. Neither the Hearing Examiner nor the respondent should be placed in such a dubious position. In spite of the recognized fairness, impartiality and ability of the Hearing Examiner, the more or less simultaneous trials of the same issues, without affording the parties affected the usual safeguards, confront the Hearing Examiner with a task beyond the best of human ability and make impossible any effort to apply to this proceeding the required judicial process.

(447)

The fact that the Hearing Examiner is supposed to confine his determination to the record does not assure

that this can, in fact, be done in the present situation. It expects too much to assume that a person can isolate the impressions, information and subjective responses derived from the evidence in one case from another case being tried at the same time involving the same issues.

CONCLUSION

Unless the motion by respondent is granted, The Texas Company cannot be afforded a fair trial and its rights and properties will be jeopardized without due process of law.

It is submitted that the Commission when now apprized of the actual turn of events, to which attention is here called, should view the existing situation in a different light from the situation presented to it upon the Interlocutory Appeal of October 1956 and should order that all issues relating to the arrangements between respondent and Firestone be withdrawn from this proceeding and strike from the record all evidence to any of such issues or matters.

Dated: March 6, 1958.

Respectfully submitted,

MARION J. EPLEY, JR.
MARION J. EPLEY, JR.

ROYALL, KOEGEL, HARRIS & CASKEY
By Frederick W. P. Lorenzen
Attorneys for The Texas Company

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Order Denying Interlocutory Appeal

(March 26, 1958)

(464)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

Commissioners:

John W. Gwynne, Chairman
Robert T. Secrest
Sigurd Anderson
William C. Kern
Edward T. Tait

[SAME TITLE]

Respondent, The Texas Company, having filed with the Commission an interlocutory appeal from the hearing examiner's ruling of February 24, 1958, denying its motion to withdraw from this proceeding any issue as to dealings, practices, contracts, agreements or arrangements between The Texas Company and The Firestone Tire & Rubber Company, and to strike all evidence heretofore received in this case with respect to any such issue; and

It appearing that it is the respondent's contention that because of the reception of evidence by the same hearing examiner, concerning contracts and dealings between The Texas Company and The Firestone Tire & Rubber Company in both this proceeding and Docket No. 6487 in which The Texas Company is not a party, this respondent is deprived of a fair hearing; and

It further appearing that the question thus presented was considered and in effect determined adversely to the

Order Denying Interlocutory Appeal

respondent in the Commission's disposition on November 28, 1956, of an interlocutory appeal theretofore filed by counsel in support of the complaint from rulings of the (465) hearing examiner excluding from the record evidence of the type here involved; and

The Commission being of the opinion that the aforesaid determination of the question renders unnecessary its further consideration at this time:

It Is Ordered that the respondent's appeal, together with its motion for deferment of decision thereof and for permission to file additional briefs and its request for oral argument, be, and they hereby are, denied.

By the Commission.

Robert M. Parrish,
Robert M. Parrish,
Secretary.

Issued: March 26, 1958

Proposed Findings of Fact and Conclusions Filed by Respondent, The Texas Company

(April 1, 1959)

(651)

39.

Respondent Texas called to testify 54 Texaco dealers[1] and 5 ex-Texaco dealers;[2] these witnesses came from 13 of

1. [Set out in footnotes (1) and (2) of this Finding 39 are the transcript pages and the names of those dealer witnesses who testified; for the sake of brevity, all subsequent citations in this Finding 39, will be to the transcript page only—the dealer who testified can be determined by reference to footnotes (1) and (2)].

2345-77 (Livingston)
2378-2404 (Midden)
2407-50 (Smiley)
2472-84 (Baird)
2485-2500 (O'Brien)
2501-19 (Bonacci)
2571-99 (Jacobson)
2600-15 (Rittenhouse)
2616-29 (Allen)
2629-47 (Swank)
2647-61 (Bolte)
2662-77 (Novak)
2778-95 (Nemec)
2796-2815 (McGuire)
2817-38 (Delle Grazie)
2839-61 (Roessner)
2927-38 (Spradling)
2938-55 (Pryor)
3020-22
2955-69 (Rogers)
2970-84 (Mayers)
2985-3003 (Bates)
3004-19 (Retke)
3022-39 (Patterson)
3040-53 (Tubbs)
3054-68 (Holm)
3069-85 (Burnett)
3088-3105 (Hummel)

2.

2451-71 (Brooks)
3416-27 (Barker)
3448-76 (Moss)
3120-38 (Hendrickson)
3139-62 (Whiting)
3162-82 (Toothman)
3182-99 (Capolupo)
3200-8 (McCue)
3211-32 (Sizemore)
3233-50 (Llewellyn)
3254-76 (Bailey)
3278-96 (Lane)
3297-3306 (Leonard)
3308-25 (Crawford)
3325-47 (Neufeld)
3347-60 (Mandell)
3361-84 (De Ambra)
3385-99 (Johnston)
3400-15 (Linton)
3428-34 (Ellington)
3435-46 (Franklin)
3495-3506 (Conner)
3592-3604 (Chiles)
3606-20 (Worsham)
3621-41 (Heth)
3657-70 (Jernigan)
3670-91 (McGahey)
3722-35 (Eubanks)
3736-51 (McAnally)
3753-66 (Helcamp)

3477-94 (Embry)
3642-56 (Moore)

the 15 sales divisions of Texas, the two divisions not so represented were the Pacific Coast Divisions to which there was no reference in the hearings. These witnesses (652) came from cities,[3] towns[4] and villages;[5] some operated small stations,[6] some medium-sized stations,[7] and some large stations;[8] some were successful and did large volumes of business,[9] and some operated small businesses;[10] some were leaders in their communities,[11] others were influential in dealer organzations;[12] some had been dealers for many years;[13] others had become dealers relatively recently.[14]

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3. 2346; 2378; 2407; 2451; 2472; 2485; 2501; 2571; 2648; 2662; 2817; 2839; 2970; 3004; 3023; 3183; 3254; 3278; 3325; 3347; 3361; 3385; 3401; 3416; 3435; 3621; 3642; 3657.

4. 2600; 2616; 2630; 2796; 2956; 2985; 3040; 3054; 3069; 3088; 3134; 3163; 3200; 3211; 3297; 3308; 3448; 3477; 3495; 3592; 3606; 3670; 3736; 3753.

5. 2927; 2938; 3429.

6. 3142; 3164; 3297; 3462.

7. 2472; 2486; 2502; 2617; 2648; 2818; 2956; 2970; 3004; 3021; 3041; 3089; 3308; 3402; 3429; 3495-6; 3593; 3606; 3649; 3722.

8. 2346; 2381; 2408; 2471; 2571-2; 2631; 2664; 2779; 2796; 2840; 2928; 2986; 3023; 3070; 3120; 3183-4; 3200; 3234; 3265; 3279; 3326; 3348; 3362; 3388; 3417; 3436; 3479; 3621; 3657; 3682; 3746; 3755.

9. 2367; 2439; 2484; 2778; 2840; 2930-1; 2995; 2999; 3200; 3293; 3302; 3364; 3445-6; 3736-7; 3755.

10. 2837-8; 2944; 3047; 3142; 3182; 3613-4; 3732-3.

11. 2839; 3429; [and see offer of proof 3417].

12. 2402; 3192; 3221-2; 3757.

13. 2379; 2408; 2501; 2617; 2840; 2939; 2970; 3070; 3142; 3164; 3183-4; 3200; 3211; 3233; 3254; 3297; 3308; 3326; 3348; 3385; 3592-3; 3753.

14. 2571; 2630; 2648; 2779; 2808; 2818; 3014; 3120; 3278; 3401; 3477-8.

Proposed Findings of Fact and Conclusions Filed by Respondent, The Texas Company

Their purchases of TBA products showed a like diversity (Appendix A annexed hereto). With a single exception referred to below, all openly handled some TBA not in the Goodrich or Firestone lines (fn. 24, 25, *infra*). Fifteen of these dealers carried no sponsored tires,[15] thirty-four carried no sponsored batteries,[16] twenty-nine carried no sponsored (653) accessories,[17] fifteen carried no sponsored tires and batteries,[18] and twenty-three carried no sponsored batteries and accessories.[19] All testified:

(a) That they fully understood their right as dealers of Texaco petroleum products and as lessees to handle any brands of TBA which they thought best for their own operation.[20]

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15. 2347; 2618; 2665, 2670; 2942, 2943, 2944, 2947; 3057; 3092, 3093, 3094; 3134; 3143; 3213; 3256; 3298; 3496; 3607, 3611; 3738-40; 3754-5.

16. 2347; 2384, 2391; 2413, 2414, 2426; 2618; 2635, 2645; 2665, 2670; 2843; 2929; 2942, 2943, 2947; 3026; 3045; 3061; 3071, 3072; 3092, 3093, 3094, 3096; 3123-4; 3143; 3165-6; 3186; 3213, 3216; 3256; 3281; 3298; 3330; 3349, 3359-60; 3364-5; 3387; 3401, 3404, 3405-6; 3430; 3496; 3594; 3607; 3725, 3726, 3727; 3740; 3754-5.

17. 2489, 2494; 2506-7; 2618-9; 2651; 2665, 2670; 2932; 2943, 2944, 2947; 2992; 3046; 3063; 3092, 3093, 3094; 3132-3; 3143; 3166-7, 3180; 3190; 3207; 3239; 3215; 3256-7, 3265; 3298; 3310; 3349; 3388, 3390-1; 3404-5; 3430; 3607; 3726, 3727; 3741-2; 3754-5.

18. 2347; 2618; 2665, 2670; 2942, 2943, 2944, 2947; 3057, 3061; 3092, 3093, 3094; 3134; 3143; 3213, 3216; 3256-7; 3298; 3496; 3067, 3611; 3738-40; 3754-5.

19. 2618-9; 2665, 2670; 2929, 2932; 2942, 2943, 2944, 2947; 3045, 3046; 3061; 3092, 3093, 3094, 3096; 3132-3, 3143; 3165, 3166-7, 3180; 3186, 3190; 3213, 3215, 3216; 3256-7, 3265; 3298; 3349, 3359-60; 3388, 3390-1; 3401, 3404, 3405-6; 3430; 3594; 3607; 3725, 3726, 3727; 3740, 3741-2; 3754-5.

20. 2358; 2382; 2412; 2457; 2458; 2487; 2502-3; 2572-3; 2574; 2601-2; 2618; 2631-2; 2649; 2665; 2797; 2819-20; 2841; 2929; 2941; 2956-7; 2972; 2986; 3005; 3024; 3041; 3055; 3071; 3092; 3127; 3146; 3169; 3185; 3202; 3215; 3241; 3264; 3286-7; 3298-9; 3315; 3327; 3350; 3363; 3386; 3402; 3418; 3429; 3436; 3450; 3480; 3499; 3599-3600; 3610; 3622; 3643-4; 3658; 3675; 3723; 3738; 3755.

(b) That they had experienced no effort to compel them to purchase Goodrich or Firestone TBA[21] and had never heard of a dealer in Texaco products who had experienced any such pressure,[22] nor had they heard of anyone complain that any such compulsion had been used or threatened although they attended meetings at (654) which great numbers of other dealers in Texaco products were present.[23]

(c) That they handle TBA products other than those in the Goodrich and Firestone lines[24] (except one,

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21. 2348; 2383; 2385; 2420, 2448; 2459, 2461, 2462; 2478; 2487, 2488, 2495; 2503; 2574; 2603; 2618; 2632; 2636; 2649; 2665-6; 2781, 2793; 2798; 2819-20; 2842; 2932; 2947; 2957; 2972; 2979; 2987, 2990; 3005, 3013; 3024; 3042; 3056; 3071, 3078-9; 3091, 3097; 3127; 3146, 3147; 3168, 3175-6; 3188, 3204; 3219, 3241; 3263; 3288; 3298; 3314; 3327; 3350; 3363, 3372; 3391, 3402, 3408-9; 3431; 3453-4; 3482-3; 3499; 3597; 3624; 3646; 3675; 3726, 3727-8; 3740; 3756.

22. 2625; 2831-2; 2848; 2936; 2950; 2964; 2979; 3013; 3033; 3050; 3066; 3082; 3099; 3131; 3152-3; 3171, 3193; 3205; 3222; 3268, 3290; 3299-3300; 3340; 3357; 3374; 3393; 3411; 3424; 3440; 3457; 3502; 3599; 3613; 3632; 3651; 3667; 3682; 3730, 3745.

23. 2624, 2625; 2831, 2832; 2848, 2849; 2936; 2950; 2964; 2979; 3013; 3033, 3049, 3050; 3065; 3081, 3082; 3098, 3099; 3130, 3131; 3152, 3153-4; 3170, 3171; 3191, 3192, 3193; 3205; 3222, 3267, 3268; 3289, 3290; 3299-3300; 3320-1; 3339-40; 3356-7; 3374; 3392-3; 3410-1; 3424, 3440; 3456-7; 3501-2; 3599; 3611, 3612-3; 3631-2; 3650-1; 3667; 3681-2; 3729-30; 3743, 3744-5.

24. 2346, 2347; 2380, 2384, 2385, 2390, 2393; 2414, 2426, 2427, 2429, 2430-1, 2435; 2460-1, 2462; 2474, 2475, 2476, 2477; 2489, 2494, 2495; 2503, 2504, 2505, 2506, 2507, 2508, 2511; 2512; 2575, 2576, 2577, 2578, 2579, 2586, 2587, 2588; 2603, 2604; 2618, 2619; 2633, 2634-5, 2642, 2645, 2646; 2649-50, 2654, 2659; 2665, 2666, 2667; 2781, 2782, 2783, 2794, 2795; 2798, 2799, 2807, 2813; 2821-2, 2823-4, 2826, 2830, 2831; 2842, 2843; 2930, 2932; 2942, 2943; 2957; 2972-3, 2974, 2978; 2987, 2988, 3005, 3006, 3007; 3025, 3026; 3045, 3046; 3056, 3057, 3062, 3063; 3071, 3072; 3093, 3094; 3143, 3144, 3145; 3165, 3166, 3167; 3187; 3202, 3203, 3207; 3215, 3216; 3239,

an ex-dealer, who was so sold on the Firestone quality and the desirability of confining his TBA purchases to one line,[25] that he did so; he was a person of substance and standing in the community who fully understood his freedom of choice; he subsequently bought his own garage and still sells Firestone TBA).[26]

(d) That they openly display all TBA products, irrespective of the brand which they handle.[27]

(655)

(e) That their TBA purchasing and displaying practices did not affect their relationship with Texas and did not result in any discrimination or threat of

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3240, 3242-3, 3256-7, 3265, 3276; 3285, 3292; 3298, 3303; 3310, 3311; 3328, 3329, 3330, 3331, 3340, 3341; 3349, 3355, 3356, 3364, 3365; 3388, 3389, 3394, 3395, 3396, 3397, 3398; 3404, 3405-6, 3408; 3430; 3437; 3450, 3452, 3455-6; 3480, 3483, 3484; 3496, 3497; 3593, 3594, 3598; 3607; 3624, 3625, 3627-8, 3634-5; 3646-7, 3648, 3655; 3664, 3665; 3672, 3674, 3676, 3677; 3725-6, 3727; 3738, 3739, 3741, 3742; 3754-5, 3756, 3765. Certain of the dealers even acted as wholesalers for competing lines (3135; 3167; 3261; 3303; 3364; RX 68 A-C).

25. 3420, 3421.

26. 3425.

27. 2350; 2385, 2391; 2416; 2460-1, 2462; 2473-4, 2477; 2489, 2492, 2495, 2506, 2507, 2510; 2578, 2579; 2604, 2605; 2624; 2636, 2641; 2651; 2667, 2669; 2784, 2791, 2792; 2799, 2800; 2822-3, 2825; 2844; 2930, 2931, 2934; 2949; 2960; 2975, 2988, 2990; 3006, 3008, 3009; 3026, 3028, 3030; 3046; 3057, 3059; 3074, 3077; 3096, 3125-6; 3145; 3167, 3171; 3188-9, 3194; 3204; 3216-17; 3257, 3258; 3283-4, 3285, 3290-1; 3316, 3317; 3333, 3334; 3351; 3356, 3374-5; 3389; 3403, 3408; 3431-2, 3433; 3452, 3453, 3457; 3493; 3500; 3595, 3596; 3608, 3609; 3626; 3646-7; 3674, 3676, 3677, 3679; 3727; 3742; RX 11, 18, 19, 20, 37A-G, 38A-G, 40, 41, 42A-D, 43A-D, 44, 45A-B, 46A-C, 47A-B, 48A-C, 49A-B, 50, 51, 52, 57A-B, 58, 59, 60, 61, 62, 63A-C, 64A-C, 65A-B, 66A-C, 67, 69A-B, 70A-B, 71, 72A-B, 73A-D, 74.

discrimination by Texas.[28] Indeed, dealers received leases for new or improved stations or had their stations remodelled at a time when they were actively handling, promoting and displaying substantial quantities of TBA lines which were neither Goodrich nor Firestone and they continued to handle such lines in their new or improved stations.[29]

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28. 2348, 2349, 2358; 2380-1, 2383, 2385, 2391, 2393; 2415, 2416, 2419, 2420, 2448; 2461, 2462, 2464; 2473, 2477, 2478; 2487, 2488, 2495; 2503, 2510, 2511; 2575-6, 2579; 2603; 2618, 2624; 2632, 2636, 2641-2; 2649, 2653, 2654; 2665, 2666, 2669; 2781, 2784, 2789; 2798, 2800, 2802; 2820, 2825-6, 2831; 2842, 2844, 2847; 2929, 2932, 2934; 2941, 2947; 2957; 2972, 2975, 2976, 2979; 2987, 2990, 2992; 3005, 3010, 3013; 3024, 3027, 3030, 3032; 3042, 3046; 3055, 3056, 3063, 3064, 3065; 3071, 3078-9; 3097; 3124, 3125-6, 3127, 3129; 3145, 3146, 3147, 3151; 3168, 3169-71; 3188, 3189; 3204; 3214-5, 3219, 3220; 3241; 3263, 3264; 3286-7, 3288; 3298-3300; 3315, 3320; 3326, 3327, 3331-2, 3333-4, 3337; 3338; 3350, 3353, 3363, 3371, 3372; 3386, 3388, 3391, 3393; 3401-2, 3408-10; 3418, 3420; 3429, 3431, 3433; 3436-7; 3450, 3453-4, 3480, 3482-3; 3499; 3597, 3598, 3599-600; 3610; 3622, 3624, 3630; 3646, 3647; 3657-8, 3665; 3674, 3675-6, 3679; 3723, 3727-8; 3742-3; 3756.

29. 2379-80; 2433; 2652, 2928-9; 2939-40; 3092; 3147-8, 3175-6; 3186; 3722, 3725, 3726, 3727; 3740. See also 3372.

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40.

(656) Many lessee dealers of Texas who testified handled no Firestone or Goodrich TBA at all under the sales commission contracts but actively promoted other lines which, in their respective locations, appeared to them best for their business.[1] The extent to which Texaco dealers generally promoted other TBA lines is reflected in the evidence showing that Texaco dealers referred to in this proceeding handled 51 different brands of batteries[2] and 27 different brands of tires, including Goodrich and Firestone.[3]

1. Allen 2618; Novak 2665; Pryor 2943, 2947; Holm 3062, 3063; Hummel 3093; Whiting 3143; Sizemore 3213, 3215, 3219-20; Bailey 3256, 3257; Eubanks 3726-7; McAnally 3741, 3742; Helcamp 3754-5. For all practical purposes, there are other lessee dealers in this same category. Livingston 2346, 2347; Spradling 2930-1; Tubbs 3044; Toothman 3165, 3180; Conner 3496, 3498; Chiles 3594. Another example of the extent to which competing TBA succeeds in leased stations may be found in District Manager West's testimony that in his central Alabama district only nine or ten out of the twenty-three leased stations handled Firestone or Goodrich TBA (West 3697, 3981). When West was Zone Manager in Southern Alabama only nine or ten of his thirty lessee dealers handled Firestone or Goodrich TBA (West 3967, 3980). In both those areas the leased stations that did handle Firestone or Goodrich also handled other TBA as well (West 3981).

2. Brand of Battery

ALLIED	Hancock RX 74, p. 1; Howerton RX 74, p. 5; Waggoner RX 74, p. 18; Gann RX 74, p. 18.
AM PLUS	Nemec 2782, 2785, 2790-1, RX 51.
AUTO-LITE	Smiley 2427, RX 40; Bonacci 2504; Jacobson 2575, 2583, 2598, RX 42B; Allen 2618-9, 2622, RX 43C, D; Swank 2645; McGuire 2799, 2813; Delle Grazie 2821-2; Rogers 2958; Tubbs 3045; Sizemore 3217, RX 66B, C; Lane 3280, 3283-5, RX 69A; Leonard 3298; Crawford 3310-11, RX 70B; Mandell 3349, 3359-60, RX 72B; Morgan RX 74, p. 2; Hopkins RX 74, p. 9; Terrell RX

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	74, p. 17; Buckholtz RX 74, p. 22; McKinney RX 74, p. 26; Thomas RX 74, p. 39.
BOWER	Rittenhouse 2603; McCue 3202; Linton 3404; Moss 3450, 3453.
CHAMPION	Jernigan 3659; Heard RX 74, p. 1; Johnston RX 74, p. 3; Smith RX 74, p. 3; Hale RX 74, p. 4; Lawing RX 74, p. 4; Nabors RX 74, p. 4; Brown RX 74, p. 7; Vincent RX 74, p. 8; Montgomery RX 74, p. 10; McCollum RX 74, p. 14; Johnston RX 74, p. 17; Ihnfeldt RX 74, p. 30; McKamey, I. L., RX 74, p. 32; Kitchens RX 74, p. 32; McKamey, Ira RX 74, p. 32; Smith RX 74, p. 36.
CHIEFTAN	McGlasson RX 74, p. 9.
CONTINENTAL	McMillen RX 74, p. 10; Fowler RX 74, p. 11; Brookfield RX 74, p. 12; Wilcoxen RX 74, p. 16; Waters RX 74, p. 16; Lewis RX 74, p. 16; Winfrey RX 74, p. 16; Yarbrough RX 74, p. 16; Jolly RX 74, p. 27; Toon RX 74, p. 30; Braley RX 74, p. 34; Tosch RX 74, p. 36.
DELCO	O'Brien 2488-9; Bonaeci 2504-5; Jacobson 2575; Bolte 2649-50; 2651; Novak 2666, 2667, 2668, RX 45A, B; Delle Grazie 2821-2; Pryor 2940, 2942, 2943, RX 58; Mayers 2973; Bates 2989, 2999; Retke 3007; Holm 3062; Burnett 3071-2; 3074-5, 3077, RX 63B; Hummel 3091; Toothman 3164-6; McCue 3202; Sizemore 3216; Llewellyn 3242-3; Lane 3280; Mandell 3349, 3359-60, RX 72B; Johnston 3387; Linton 3401, 3404-6, 3411; Ellington 3430-2; Conner 3496-7; Heth 3624, 3626, 3628; Swatsell RX 74, p. 2; Felts RX 74, p. 2; Kennedy RX 74, p. 2; Hale RX 74, p. 4; Langford RX 74, p. 5; Crutchfield RX 74, p. 5; Weaver RX 74, p. 5; Kendall RX 74, p. 6; Eudy RX 74, p. 6; McNabb RX 74, p. 6; Tate RX 74, p. 8; Houston RX 74, p. 8; Smith RX 74, p. 9; Massey RX 74, p. 12; Clinton RX 74, p. 14; Krahl RX 74, p. 14; Lytle RX 74, p. 15; Oliver RX 74, p. 17; Moughan RX 74, p. 18; McDaniel RX 74, p. 19; Ruess RX 74, p. 20; Pritchett RX 74, p. 20; Stine RX 74, p. 20; Maples RX 74, p. 20; Franklin RX 74, p. 20; Stephens RX 74, p. 21; Meek RX 74, p. 21; Graves RX 74, p. 21; Jones RX 74, p. 22; Clancy & Arnold RX 74, p.

	22; Moses RX 74, p. 23; Nesom RX 74, p. 23; Herrington RX 74, p. 23; Barger RX 74, p. 24; Kalil RX 74, p. 24; Rey RX 74, p. 24; Hendrix RX 74, p. 24; Gleason & Shields RX 74, p. 25; Vervach Bros. RX 74, p. 25; Fisher RX 74, p. 25; Baver RX 74, p. 25; Hill RX 74, p. 26; Reynolds RX 74, p. 26; Baker RX 74, p. 26; Tacker RX 74, p. 27; Fowler RX 74, p. 27; Greer RX 74, p. 28; Harris RX 74, p. 29; Gatlin & Turbyfill RX 74, p. 30; Flatt RX 74, p. 30; Roberts RX 74, p. 31; Dickerson RX 74, p. 32; Brown RX 74, p. 32; Braley RX 74, p. 33; Bunn RX 74, p. 33; Sheppard & Cooke RX 74, p. 34; Taylor RX 74, p. 34; Hobson RX 74, p. 35; Ross RX 74, p. 35; Lawrence & Phillips RX 74, p. 35; Reynolds RX 74, p. 35; Sandmire RX 74, p. 35; Vaughn RX 74, p. 36; Prater RX 74, p. 36; Aman RX 74, p. 39; Matherly RX 74, p. 40; Macaluso RX 74, p. 40; Dunn & Evans RX 74, p. 40; Hood RX 74, p. 41; Bell RX 74, p. 41; Sloan RX 74, p. 42.
DIXIE	Hill RX 74, p. 28.
DOUGLAS	Sizemore 3216.
DUNLOP	Warwick RX 74, p. 34.
EXCELL	McGahey 3671, 3672, 3676-7.
EXCELLO	Conner 3496-7.
EXIDE	Bonacci 2504; Tubbs 3045, 3121; Hendrickson 3123; Neufeld 3330, 3334, RX 71; Mandell 3359-60; McGahey 3677; McNabb RX 74, p. 6; Clough RX 74, p. 7; Colville RX 74, p. 7; Brown RX 74, p. 7; Cunningham RX 74, p. 8; Towner RX 74, p. 8; Cheely RX 74, p. 9; Kimmel RX 74, p. 9; Pearson RX 74, p. 9; Goldston RX 74, p. 10; Fletcher RX 74, p. 10; Boen RX 74, p. 11; Davis RX 74, p. 10; Hinkel RX 74, p. 10; Cooper RX 74, p. 17; Pope RX 74, p. 30; Porterfield RX 74, p. 39; Hardin RX 74, p. 40; Sparks RX 74, p. 42; Hughes RX 74, p. 42.
FLEET	McDonald RX 74, p. 6; Janes RX 74, p. 6; Zimmerman RX 74, p. 21.

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FORD	Gibson RX 74, p. 1.
GATES	Toothman 3164-6, 3175, 3168, RX 65A, B; Bailey 3256, 3261; Moss 3454-5; Long RX 74, p. 6; Lee RX 74, p. 28.
GOODYEAR	Moody RX 74, p. 1; Mize RX 74, p. 12; Miller RX 74, p. 15; Fox RX 74, p. 19; Mosier RX 74, p. 26; Lawson RX 74, p. 41.
GOULD	Johnson RX 74, p. 17; Renegar RX 74, p. 19; Porter RX 74, p. 19; Meador RX 74, p. 20; Miller RX 74, p. 23.
GRANT	Patterson 3026, 3030-1; Tubbs 3045; Holm 3061; Hummel 3092-3, 3096; Wells RX 74, p. 26.
HESTER	Chiles 3594-6; Ward RX 74, p. 25.
MERCURY	McClure RX 74, p. 11.
MOTREX	Bell RX 74, p. 41.
MULE	De Ambra 3364-5.
NATIONAL	Bonacci 2504; Swank 2635, 2645, RX 44; Johnston 3387, 3389, 3393, 3396; Moss, L. R. 3458; Ross RX 74, p. 5; Moss, H. M. RX 74, p. 11; Brookfield RX 74, p. 12; Place RX 74, p. 27; Newman RX 74, p. 40; Hughes RX 74, p. 42.
NIC-L-LYTE	Tune RX 74, p. 7; Norris RX 74, p. 10.
NIC-L-SILVER	McNabb RX 74, p. 12; Pierce RX 74, p. 12; Boans RX 74, p. 39; Porterfield RX 74, p. 39; Lewis RX 74, p. 39; Drake RX 74, p. 40; Sims RX 74, p. 41; Rey RX 74, p. 41; Hood RX 74, p. 41; Ellis RX 74, p. 41.
PARKS	Fly RX 74, p. 13; Elmore RX 74, p. 13; Glass RX 74, p. 13; Nicols RX 74, p. 13; Clinton, D. M. RX 74, p. 13; Clinton J. C. RX 74, p. 14; Honea RX 74, p. 14.
PENNSYLVANIA	Collier RX 74, p. 33; Taylor RX 74, p. 33.
PHILLIPS	Stegall, RX 74, p. 7.
POWERLIFE	Lamb RX 74, p. 24.

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PRESTOLITE	Corrotto RX 74, p. 25.
RED BALL	Tate RX 74, p. 8.
RED DIAMOND	Livingston 2347, 2356, RX 37A, B; Roessner 2843.
RELIABLE	McAnally 3740-1; Burch RX 74, p. 4; McKinzey RX 74, p. 17; Kelly & Billings RX 74, p. 22; Cribbs RX 74, p. 31; Craig RX 74, p. 31; Statham RX 74, p. 32.
REPUBLIC	Houston RX 74, p. 8.
SOUTHERN	Embry 3480, 3484, 3491, 3493; Chiles 3594; Worsham 3607-9; Maughan RX 74, p. 18.
SOUTHLAND	McGahey 3684; Fannin RX 74, p. 1; Whitehurst RX 74, p. 1; Hancock RX 74, p. 1; Wells RX 74, p. 2; Oney RX 74, p. 2; Watson RX 74, p. 3; Talley RX 74, p. 3; White RX 74, p. 7; Stegall RX 74, p. 7; Hopkins RX 74, p. 9; Parker RX 74, p. 10; Davis RX 74, p. 11; McClure RX 74, p. 11; Barnett RX 74, p. 13; White RX 74, p. 14; Callon RX 74, p. 15; Bishop RX 74, p. 15; Bachman RX 74, p. 15; Machen RX 74, p. 16; Cooper RX 74, p. 17; Beck RX 74, p. 18; Chambers RX 74, p. 19; Fitzpatrick & Staggs RX 74, p. 19; Tolsdorf RX 74, p. 21; Maxon RX 74, p. 21; Longino RX 74, p. 22; Carlan & Johnson RX 74, p. 28; Hobbs RX 74, p. 28; Eastman RX 74, p. 28; Harris RX 74, p. 29; Gorman RX 74, p. 29; Woodson & Elam RX 74, p. 29; Peterman RX 74, p. 30; Hill RX 74, p. 31; Anderson RX 74, p. 31; Wells RX 74, p. 33; Purtle RX 74, p. 33; Roberson RX 74, p. 34; Taylor RX 74, p. 34.
STAAB	Midden 2384, RX 38D, E.
TEXAN	Vincent RX 74, p. 8; Adkins RX 74, p. 12; Dickerson RX 74, p. 29.
THOR	Copalupo 3186-7, 3194.
TIGER	Hackney RX 74, p. 29.

U. S.	Spradling 2930; Bates 2989-90; Toothman 3164-6; Ellington 3430; McNally 3739; Dickerson RX 74, p. 32.
VITALIC	Corbell RX 74, p. 8; Floyd RX 74, p. 23; Musick RX 74, p. 23.
X-SEL	McGahey RX 74, p. 3; Bables RX 74, p. 4; Oliver RX 74, p. 18; Norseworthy RX 74, p. 27; Byers RX 74, p. 34.
WATERLESS	Wolfe RX 74, p. 18; Hire RX 74, p. 35.
WILLARD	Midden 2389, RX 38D, E; Roessner 2843; Whiting 3143, 3147, 3151; Toothman 3164-5; Crawford 3310-11, 3316-7, RX 70B; De Ambra 3364-5, 3366-7, 3368, RX 73B-D; Heth 3624; McGahey 3674; Eubanks 3724-5, 3727; Swatsell RX 74, p. 2; Cornell RX 74, p. 5; Phillips & McDonald RX 74, p. 15; Miller RX 74, p. 15; Barnett RX 74, p. 17; Hendrix RX 74, p. 24; Hill RX 74, p. 28; Mathis RX 74, p. 31; Kitchens RX 74, p. 32; Swinney RX 74, p. 36; Stinson RX 74, p. 39.
WINTER KING	Rudd RX 74, p. 36.
WINTERS	Chiles 3594.

3. Brand of Tire

ARMSTRONG	Rittenhouse 2601-3; Holm 3057-61; Hummel 3092-4, 3096-8, Neufeld 3331.
CENTURY	Roessner 2842; McCue 3202.
COOPER	Rittenhouse 2601-3; Llewellyn 3235-6; Linton 3402-3, 3408.
DAYTON	Conner 3496-98, 3500.
DUNLOP	Allen 2618-19, 2622, RX 43A, B; Bolte 2654; McGuire 2799; Capolupo 3185-87; Sizemore 3213, 3224; Llewellyn 3234-5; Ellington 3430-32; Chiles 3593, 3595-96, 3603.
GATES	Vaughn RX 74, p. 36; Rogers 2958, 2960, RX 59; Mayers 2972-73; Retke 3007-8, RX

	60; Patterson 3025, 3028, RX 61; Tubbs 3043-44; Hendrickson 3121-22; 3135; Toothman 3164-68, 3173, RX 65A, B; Bailey 3256-58, 3261, RX 67; Moss 3454-55; Heth 3625.
GENERAL	Llewellyn 3236; Neufeld 3331; Worsham 3607-9, 3614, 3619; Moore 3646.
GILLETTE	Lawrence & Phillips RX 74, p. 35; Sizemore 3213, 3216-17, 3223, RX 66A-C.
GOODYEAR	Midden 2383; Smiley 2445; Bonacci 2505; Jacobson 2578-79; Swank 2633-34; Fox RX 74, p. 19; Roessner 2842-43; Mayers 2974, 2984; Retke 3009; Tubbs 3043-44, 3047, RX 62; Burnett 3071-72, 3074-76, RX 63A; Hendrickson 3121-22; Capolupo 3185-86; Sizemore 3213; Lane 3280, 3282, 3285, RX 69B; Mandel 3349, 3350-51, RX 72A; De Ambra 3365-66, 3368, RX 73B; Johnston 3389; Embry 3480; Chiles 3603; Heth 3625; Eubanks 3724-27; McAnally 3740-41, 3749; Helcamp 3754-55, 3761.
GREER	Chiles 3593, 3596.
HOOD	Moss 3450-53.
IMPERIAL	Bolte 2654.
INLAND	O'Brien 2488-89.
KELLY-SPRINGFIELD	Holm 3057-59; Hendrickson 3121-22.
LEE	Pryor 2942.
MANSFIELD	Pryor 2944.
MCCREERY	Whiting 3143.
MILLER	McGuire 2799.
MOHAWK	Whiting 3143-44, 3151, 3158; Capolupo 3185-86; Llewellyn 3234-35.
NATIONAL	Chiles 3593.
PENNSYLVANIA	Rittenhouse 2601-3; Roessner 2842; Conner 3496-97.

Proposed Findings of Fact and Conclusions Filed by Respondent, The Texas Company

REMINGTON	Holm 3068.
SEIBERLING	Eastman RX 74, p. 28; Whiting 3143-44, 3148-51, RX 64A-C; Leonard 3297-99.
U. S.	Livingston 2347, RX 37D; Midden 2383; Jacobson 2578; Nemec 2782, 2784, 2794; Spradling 2929, 2933-34, RX 57A, B; Mayers 2974, 2978, 2984; Bates 2989, 2998; Holm 3057; Capolupo 3185-86, 3194, 3198; McCue 3202; Sizemore 3213, 3224; Neufeld 3331; Johnston 3387; Embry 3480, 3483, 3492-93; McAnally 3738.
VANDERBILT	Burnett 3074.

Proposed Findings of Fact and Conclusions Filed by Respondent, The Texas Company

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41.

The Texaco dealers in purchasing Goodrich or Firestone TBA products, to the extent that they do, are governed by the usual economic factors which, in a competitive society, determine a purchaser's decision to buy or not to buy. Such motivating factors are: customer's demand,[1] individual preference,[2] quality of product,[3] national advertising[4] and distribution,[5] the profit to be made from

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1. Midden 2391-2; Smiley 2420, 2421; Brooks 2463; O'Brien 2493, 2495-6, 2497; Bonacci 2505, 2508, 2509; Jacobson 2599; Rittenhouse 2601-2, 2603; Delle Grazie 2827; Roessner 2846, 2847, 2859; Spradling 2931; Mayers 2976; Bates 2993; Retke 3011, 3012; Patterson 3031, 3032; Tubbs 3044; Burnett 3073-4; Capolupo 3198; McCue 3201, 3202; Sizemore 3231, 3232; Crawford 3312, 3313; Neufeld 3332; Johnston 3390; Linton 3409, 3410, 3412, 3413; Barker 3422; Franklin 3437, 3438; Embry 3491; Worsham 3610; Heth 3630; McGahey 3673.

2. Midden 2391, 2392; Smiley 2420; Brooks 2459, 2462-3; Baird 2479; O'Brien 2493, 2495-6; Novak 2667; McGuire 2802, 2803; Delle Grazie 2819-2821; Mayers 2976; Bates 3002-3; Capolupo 3198; Crawford 3312, 3313; Neufeld 3331; Johnston 3386-8; Franklin 3438; Heth 3625, 3638; Moore 3644, 3645; McGahey 3671.

3. Midden 2392; Smiley 2420, 2422; Brooks 2664; O'Brien 2497; Delle Grazie 2821; Bates 2993; Retke 3011; Capolupo 3191; Lane 3286, 3296; Crawford 3312, 3313; Barker 3422; Franklin 3438; Embry 3494; Heth 3625, 3638; Jernigan 3663; McGahey 3673.

4. Smiley 2420, 2421; Brooks 2463; O'Brien 2497; Jacobson 2599; Roessner 2847; Mayers 2976; Retke 3012; Patterson 3031; Crawford 3312, 3313; Johnston 3390; Linton 3412, 3413; Barker 3421-2; Heth 3625, 3638.

5. Smiley 2420, 2422; O'Brien 2493; McGuire 2803; Mayers 2976; Lane 3296; Crawford 3312, 3313; Johnston 3390; Barker 3420; Franklin 3438; Heth 3625, 3638; Moore 3649-50; Jernigan 3663; McGahey 3673.

the handling of a particular line,[6] reciprocal purchasing arrangements,[7] obtaining of products on

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(671)

46.

On a national basis likewise, the evidence shows that sales of Goodrich and Firestone TBA under the sales commission contracts, have in no way foreclosed the Texaco service station market to competition.[1] Counsel supporting the complaint has directed his evidence almost exclusively at "leased stations", that is, service stations leased by their respective operators from The Texas Company. As to such leased stations, in 1955 (the last year before the complaint herein was filed) the sale of Goodrich or Fire-

6. Smiley 2420; O'Brien 2492, 2493, 2495; Jacobson 2599; Rittenhouse 2601, 2602, 2603; Roessner 2847; Mayers 2976; Bates 2992, 3003; Retke 3012; Burnett 3073; Capolupo 3191; McCue 3202; Hendrickson 3214-5; Sizemore 3227, 3228, 3231, 3232; Llewellyn 3235-36, 3243, 3244; Lane 3296; Neufeld 3332; Linton 3412, 3413; Barker 3421; Ellington 3429; Johnston 3388; Moore 3650; Jernigan 3659, 3663; McGahey 3673.

7. Novak 2667; Retke 3012.

1. The General Sales Manager of Purolator sent to Texas a list of 44 Texaco dealers who were winners in a Purolator sales program. Each winning dealer got a $25 War Bond for his "efforts in helping to sell more filters" (RX 101A, B). The winners were from 13 of the 15 sales divisions of Texas; 27 of the winners were lessee dealers (Halsell 4402). Purolator is a TBA product competing directly with the filters in the Goodrich and Firestone lines. Not only do Texaco dealers openly handle this line, competing for prizes offered by it, but the sales manager of Purolator called the attention of Texas to such dealers. Under these circumstances how can there be the slightest suggestion of market foreclosure or any misunderstanding by either dealers or competing suppliers as to the Texas TBA policy of independence.

stone TBA under the sales commission contracts amounted to $14.12 per 1,000 gallons of gasoline sold.[2] There is uncontradicted expert testimony, (a) that, based upon Department of Commerce and Census Bureau statistics, all service stations included in the census in 1955 averaged a TBA throughput of $38 per 1,000 gallons,[3] (b) that this average figure is an irreducible minimum for the total TBA of Texaco leased stations which in view of their exceptionally good facilities would have a higher figure of TBA per 1,000 gallons,[4] and (c) that the actual figure for the leased Texaco station could be somewhere in the neighborhood of $60 per 1,000 gallons of gasoline.[5] This expert testimony is supported by all of the evidence on this subject in the record. There is uncontradicted testimony that Texaco leased stations with TBA facilities have a TBA ratio between $50 and (672) $65 per 1,000 gallons of gasoline.[6] Counsel supporting the complaint offered in evidence certain throughput reports covering service stations leased from The Texas Company for the Lincoln and Omaha areas and these reflect a TBA ratio for 1956 averaging approximately $59 per 1,000 gallons for Omaha and $71 per 1,000 gallons for Lincoln.[7] In addition, twenty-two dealers testified either on direct or cross examination to their average monthly gasoline gallonage and also their

2. CX120, CX121, CX211 (barrels of gasoline multiplied by 42 to give gallons) see RX84D for computation.

3. Beckman 4234, 4341, 4343, RX86M.

4. Beckman 4348-49.

5. Beckman 4350.

6. Killips 3912; Underhill 3957.

7. CX209 A to Z(10). The averages are computed by simply adding all of the gasoline gallonage figures, dividing by 1,000, and adding all of the TBA throughput figures, and dividing the dollars by the gallonage.

TBA throughput. Averaging all of the statistics thus obtained, it appears that these twenty-two dealers' TBA throughput was $63 per 1,000 gallons of gasoline.[8]

8. The foregoing figure is computed by reference to the following testimony:

Name	*Transcript No.*	*Gallonage per month*	*TBA*
Livingston	2346	30,000	
	2367		$ 800/$ 1,000 per month
Smiley	2408	25,000	
	2439		$35,000 p. a.
Baird	2472	18,000	
	2484		$ 1,500 per month
Bonacci	2502	12/14,000	
	2515		$ 9,000 p. a.
Swank	2631	45,000	
	2637		$ 1,500 per month
Mayers	2970	15,000	
	2984		$ 1,000 per month
Bates	2986	25,000	
	2997–8		BFG $ 1,308 per month
			U. S. Royal
			$ 300/$ 400 per month
Patterson	3023	50,000	
	3038		$ 2,200/$ 2,300 per month
Burnett	3070	29,000	
	3084		$11,000/$12,000 p. a.
Hendrickson	3120	22,000	
	3124		$ 800 per month
Whiting	3142	6,000	
	3150		$ 2,000 per month
(673)			
Toothman	3164	8,000	
	3182		$ 400/$ 600 per month
Capolupo	3183–4	18,000	
	3196		$ 400/$ 600 per month
McCue	3200	24,000	
	3200		$ 3,500 per month

Proposed Findings of Fact and Conclusions Filed by Respondent, The Texas Company

Name	*Transcript No.*	*Gallonage per month*	*TBA*
Llewellyn	3234	20/25,000	
	3249		fluctuated from $ 600/$ 2,000 per month
Lane	3279	40,000	
	3293		$ 2,500 per month
Crawford	3308	18,000	
	3309		$ 600/$ 800 per month
Neufeld	3326	33,000	
	3332–3		$ 600/$ 700 per month
DeAmbra	3362	45/50,000	
	3372		$ 2,100/$ 2,200 per month
Johnston	3388	30,000	
	3390		$ 3,000 per month
Heth	3621	25,000	
	3633–4		$ 1,200/$ 1,800 per month
Helcamp	3755	25/30,000	
	3755		$40,000 p. a.
Total		571,500	$35,991

[Helcamp gave the dollar amount of his TBA from Goodyear only although he testified he bought from other sources as well, 3755.]

In determining the totals we have taken the average where a range is given for the gallonage or TBA of any particular dealer.

The foregoing computation is arrived at by averaging the gallonage per month and the TBA in each instance where a range of gallons or TBA dollars was stated in the testimony. In addition, where the TBA figure was given in terms of sales per year, that figure was divided by 12 in order to arrive at monthly TBA sales comparable to the gallonage per month.

As most of the foregoing testimony was brought out on cross-examination, it is not entirely clear whether the sales were in terms of selling price or cost. The record shows, however, that the dealers thought of sales in terms of cost and not selling price. See, for example, Helcamp 3755. Even giving these figures a construction most unfavorable to respondent and reducing the witnesses' TBA "sales" figures by a reasonable amount of markup, the TBA purchases would be greatly in excess of the $14.12 per thousand gallons average of sponsored sales by lessee dealers and would come closer to the $60 per thousand average than to any other figure in the record.

Proposed Findings of Fact and Conclusions Filed by Respondent, The Texas Company

(674)

47.

Although the TBA sales commission contracts here under attack have been in effect since 1940, by 1955, the last year prior to filing the complaint in January 1956, sales under those contracts to the leased stations of The Texas Company constituted only a small percentage of the total TBA throughput of such service stations and did not foreclose competitors or show any tendency toward such foreclosure.[1]

(675)

48.

Counsel supporting the complaint has placed in evidence as Commission's Exhibits 116, 117, 118, and 119, tables showing the total number of dealers who purchased as much as a dollar's worth of tires, tubes, batteries and accessories under the sales commission contracts from Goodrich or Firestone during any one month in 1955 and during any three-month period for 1952, 1953, and 1954. As some Texaco dealers purchased both Goodrich and Firestone TBA, an addition of the total number of dealers shown on these exhibits represents some duplication and thus increases the number of Texaco dealers purchasing under the sales commission contract above the actual number of such dealers. Consequently, the totals shown as purchasing under the sales commission contracts is presented in the following tables in a light most favorable to the complainant. While the figures represent only the number of dealers purchasing any TBA under the sales commission contracts during any three-month period for 1952, 1953, and

1. Citations and computations in preceding finding.

1954, and any one-month period during 1955, it is a fair inference that the numbers thus stated represent substantially all dealers making such purchases for it is unlikely that a customer of any substance under the sales commission contracts would let a month or a three-month period go by without purchasing at least one dollar's worth under such contract. This conclusion is verified by the fact that when the method of bookkeeping was changed in 1955 from a three-month to a one-month accounting period, there was no decrease in the number of dealers recorded as purchasing. This would indicate that all regular customers under the sales commission contracts purchase at least some TBA under those contracts each month. On this basis the statistics show the following with respect to purchases made under the sales commission contracts (CX 116, 117, 118, 119):

Proposed Findings of Fact and Conclusions Filed by Respondent, The Texas Company

(676)

(a) tires and tubes:

	1952	1953	1954	1955
Total number of dealers	39,045	37,385	38,014	38,420
Number of dealers purchasing Goodrich tires and tubes	2,555	3,003	3,111	3,669
Number of dealers purchasing Firestone tire and tubes	6,298	6,335	6,567	6,518
Total[1]	8,853	9,337	9,878	10,187
Percent of dealers purchasing Goodrich and/or Firestone	23%	25%	26%	27%

(b) batteries and accessories:

				1955	
	1952	1953	1954	B[2]	A[2]
Total number of dealers	39,045	37,385	38,014		
Number of dealers purchasing Goodrich batteries and accessories	1,880	2,304	2,559	2,155	2,349
Number of dealers purchasing Firestone batteries and accessories	4,850	5,045	5,031	2,611	3,920
Total[1]	6,730	7,349	7,590	4,766	6,269
Percent of dealers purchasing Goodrich and/or Firestone	17%	20%	20%	13%	16%

1. The statistics set out in these tables are further weighted in favor of Complainant because we have selected the highest number reported as purchasing sponsored TBA products for any one month or three months in each of the years shown.

2. During 1955 for the first time there was a separate breakout of dealers purchasing batteries and dealers purchasing accessories. For that reason the 1955 statistics are listed in 2 columns.

Proposed Findings of Fact and Conclusions Filed by Respondent, The Texas Company

The foregoing figures demonstrate that more than 70% of Texaco dealers do not regularly purchase any Goodrich or Firestone tires and (677) tubes under the sales commission contracts and more than 80% do not regularly purchase Goodrich or Firestone batteries or accessories. Perhaps, if all sporadic purchases of Goodrich and Firestone are considered, the percentage of Texaco dealers who do not purchase any Goodrich or Firestone TBA may be somewhat smaller than the percentages just referred to. But it is certain that complainant's statistical evidence supports rather than challenges respondent's showing that a very large portion of the TBA in Texaco stations does not come from Goodrich or Firestone and that the sales commission contracts have created no foreclosure and no semblance of a foreclosure of the Texaco service station market.

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Proposed Findings of Fact, Conclusions of Law, and Order—Counsel Supporting the Complaint

(April 1, 1959)

(913)

VI

Conclusions of Fact

189. The evidence of record, as shown above, supports the following general conclusions of fact:

1. Texaco is engaged in interstate commerce in connection with its promotion of the sale of Goodrich and Firestone TBA products;

2. Texaco, by virtue of the relationship, contractual or otherwise, existing between it and station operators, consignees and distributors, handling its petroleum products, exercises control or influence over such outlets, thereby depriving them of freedom of choice as to their source of supply of TBA products and causing them to buy the TBA products of the respective rubber companies;

3. Competing manufacturers, and/or distributors, wholesalers or other vendors of TBA products are foreclosed from a substantial portion of the TBA business of the Texaco petroleum outlet market as a result of the override agreements between Texaco and the rubber companies;

4. The sales commission plan of selling and promoting the sale of TBA products, between respondents or between a respondent and others not parties herein, and the acts and practices engaged in thereunder, have a tendency to lessen, restrain, prevent or eliminate competition in the sale of said products, and thereby constitute an unfair method of competition and unfair acts and practices, in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act.

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Initial Decision

(October 23, 1959)

(1181)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

DOCKET No. 6485

[SAME TITLE]

By Earl J. Kolb, Hearing Examiner.

Peter J. Dias and James S. Kelaher, for the Commission.

White & Case, New York, New York, by Edgar E. Barton, for respondent The B. F. Goodrich Company;

Marion J. Epley, Jr., New York, New York, and Royall, Koegel, Harris & Caskey, New York, New York, by Kenneth C. Royall and Frederick W. P. Lorenzen, for respondent The Texas Company.

This proceeding is based upon a complaint brought under Section 5 of the Federal Trade Commission Act, charging as unlawful certain contracts entered into by the respondents, The B. F. Goodrich Company and The Texas Company, whereby The B. F. Goodrich Company agreed to pay The Texas Company a sales commission on all tires, batteries and accessories sold by said The B. F. Goodrich Company to service stations and other outlets of The Texas Company. The complaint further charged that respondent, The B. F. Goodrich Company, had entered into (1182) similar contracts with certain oil com-

panies other than The Texas Company, and that The Texas Company had entered into a similar contract with The Firestone Tire & Rubber Company.

This proceeding is now before the hearing examiner for final consideration upon the complaint, answers thereto, testimony and other evidence, proposed findings of fact and conclusions filed by all parties, and briefs in support thereof, and reply briefs. The hearing examiner has given consideration to the proposed findings of fact and conclusions submitted by the parties and their briefs in support thereof, and all findings of fact and conclusions of law proposed by the parties respectively, not hereinafter specifically found or concluded, are herewith rejected, and the hearing examiner having considered the record herein, and being now duly advised in the premises, makes the following findings as to the facts, conclusions drawn therefrom and order:

1. Respondent, The B. F. Goodrich Company (hereinafter sometimes referred to as "Goodrich"), is a corporation organized, existing and doing business under the laws of the State of New York with its principal office and place of business located at 500 Main Street, Akron, Ohio. Said respondent, among other things, is engaged in the sale and distribution in interstate commerce of tires, batteries, accessories and supplies (hereinafter referred to as "TBA").

2. Respondent, The Texas Company (hereinafter sometimes referred to as "Texas" or "Texaco"), is a corporation organized, existing and doing business under the laws of the State of Delaware with its principal office and place of business located at 135 East 42nd Street, New York 17, New York. Said respondent is engaged in the production and in the sale and distribution in interstate commerce of petroleum products, including gasoline and lubricants sold to petroleum wholesalers and service stations.

3. There are a large number of service stations and distributors which sell principally the petroleum products of The Texas Company. These service stations which purchase Texaco products for resale at retail to the consuming public are classified as "C" stations and "D" stations. A "C" station is one that is either owned or leased by The Texas Company, and in turn leased by it to the dealer. A "D" station, which is sometimes called a (1183) contract station, is either owned by the operator or leased by him from someone other than The Texas Company.

4. Sales to service stations are made by The Texas Company either direct with delivery from company-operated bulk plants or through consignees, who are designated as "B" accounts. A consignee is one who operates a bulk plant owned by The Texas Company or, in some instances, by the consignee. The Texas Company stocks the plant with its petroleum products, and the consignee delivers the products and is compensated by commissions. He is a wholesaler performing the same function that a Texas salary-operated plant would perform. The Texas Company also sells its petroleum products to distributors designated as "E" accounts, who operate bulk storage plants, purchase Texaco products, and sell such products to service station dealers and consumers.

5. The number of Texaco accounts in the various classifications during the past few years were as follows:

(a) Texaco Lease ("C") stations—

1951—11,570
1952—11,858
1953—12,070
1954—12,674
1955—13,366
1956—13,764 (as of June 1956)

(b) Texaco contract ("D") stations—
1952—17,708
1953—16,913
1954—16,853
1955—16,806
1956—(June) Not available.

(c) Texaco consignee ("B") accounts—
1951—1,225
1952—1,172
1953—1,128
1954—1,124
1955—1,150
1956—(June) Not available.

(1184)

(d) Texaco distributors ("E") accounts—
1951—687
1952—664
1953—652
1954—697
1955—711
1956—(June) Not available.

6. The usual form of lease entered into by the respondent Texas with its lessee dealers or "C" stations was for a term of one year, and thereafter from year to year, subject to termination by either party at the end of the first or any subsequent year on ten days' prior written notice. Rental provided by the lease was usually a flat rental, plus a cents-per-gallon charge, dependent upon the location of the station, financial condition of the lessee and potential income. Such lease contained so-called "housekeeping" provisions relating to the use, maintenance and

general appearance of the station. Breach of any of the terms, conditions or covenants of the lease by the lessee constituted grounds for immediate termination by The Texas Company without notice to the lessee.

7. In addition to the lease, The Texas Company entered into an "Agreement of Sale" with its dealers. These agreements provided for the purchase of an annual minimum and maximum quantity of Texaco gasoline, oils and greases at the current posted price at the time delivery was made. These agreements were usually for a period of one year, and from year to year thereafter, and could be terminated at the end of the initial term, or any anniversary thereof, by giving thirty days' written notice, with automatic termination upon termination of lease of property. These agreements also provided for a quantity discount or rebate, payable at the end of the year.

8. Tires, batteries and accessories have become a necessary and integral part of the business operation of the Texaco dealer. He cannot progress in his business unless he has the revenue from that portion of his business and also be in a position to serve his customers completely. It is to the interest of The Texas Company to have its dealers engaged in the sale of TBA as this builds a stronger dealer organization and increases the sale of gasoline.

(1185) 9. On March 1, 1940, The Texas Company entered into a sales commission agreement with The B. F. Goodrich Company which provided for the payment of commissions to Texas on the sales by Goodrich of its tires, tubes, batteries and auto and home supplies to Texaco outlets, including service stations, distributors and consignees, in consideration of the services to be rendered by

the Texas sales organization in promoting the sale of these products. This agreement was modified from time to time and was later superceded by contract dated November 23, 1943, which provided, among other things, for the payment of a commission of 10 percent on sales to "C" and "D" stations, and 7½ percent on sales to "B" and "E" stations by Goodrich. The Texas Company also entered into a similar sales commission agreement with The Firestone Tire & Rubber Company.

10. The services which were performed by The Texas Company pursuant to its contract with Goodrich and Firestone in promoting the sale of TBA products consisted principally of the following:

(a) Texas personnel, when interviewing prospective dealers for new or established service stations, advised them of the importance of TBA and recommended the TBA products of Goodrich and Firestone, and when dealer was selected would at times notify Goodrich or Firestone of such selection and introduce the new dealer to sales representatives of Goodrich or Firestone and assist the new dealer in setting up an adequate TBA inventory.

(b) Texas salesmen were encouraged by Texas management to write up orders for sponsored TBA without waiting for a formal request from a dealer.

(c) Texas frequently conducted dealer meetings and provided training courses for dealers, both of which included suggestions for the displaying and merchandising of TBA, in some instances with the active participation of Goodrich and Firestone.

(d) Texas incorporated suggestions on merchandising TBA in its dealer magazines and arranged for advertising and promotions, which included TBA products of Goodrich and Firestone, and participated in promotions instituted by Goodrich and Firestone.

(e) Texas made TBA products available to credit card holders, including merchandise sold on deferred payments without carrying charge.

(1186) 11. Both Goodrich and Firestone have sold substantial quantities of their TBA products to Texaco outlets. Sales by both Goodrich and Firestone during the years 1952 to 1956 to the various classes of accounts were as follows:

CLASSES OF ACCOUNTS

Year	Rubber Co.	"C"	"D"	"E"	"B"	Total
1952	G	$ 5,803,896	$ 1,911,638	$ 1,605,665	$ 3,425,084	$ 12,746,283
	F	13,838,565	6,210,771	3,030,989	6,509,406	29,589,731
1953	G	6,832,705	1,807,688	1,804,391	3,480,551	13,925,335
	F	15,843,023	5,634,766	3,210,938	6,310,907	30,999,634
1954	G	7,698,833	1,826,738	1,726,499	3,571,274	14,823,344
	F	16,441,762	5,326,669	3,070,478	5,905,508	30,744,417
1955	G	9,444,122	2,151,778	2,003,965	4,334,376	17,934,244
	F	19,464,784	6,036,009	3,731,307	6,330,072	35,562,172
1956	G	10,515,043	2,159,457	1,947,333	4,310,815	18,932,648
	F	23,547,120	6,569,198	3,386,318	6,376,622	39,879,258
TOTALS:		$129,429,853	$39,634,712	$25,517,883	$50,554,615	$245,137,066

(1188) 12. Based upon the foregoing sales, Goodrich and Firestone paid Texas the following annual sales commissions:

Year	*Rubber Company*	*Commission*
1952	G	$ 1,090,583
	F	2,557,991
1953	G	1,215,084
	F	2,704,976
1954	G	1,310,738
	F	2,678,005
1955	G	1,597,800
	F	3,197,654
1956	G	1,736,811
	F	3,743,852
Total:		$21,833,494

13. It is the contention of counsel supporting the complaint that because of the relationship, contractual and otherwise, between Texas and its station operators, consignees and distributors, the adoption of the Sales Commission Plan of selling and promoting the sale of TBA entered into by Texas with Goodrich and Firestone has a tendency to lessen, restrain, prevent or eliminate competition in the sale of TBA, and has foreclosed other suppliers of TBA from a substantial portion of the TBA business of the Texaco petroleum outlets.

14. In support of the charges of the complaint, eight former Texaco dealers were called to testify in this proceeding. Five of these dealers testified to pressure being placed upon them relative to the purchase and display of

non-sponsored TBA, and two claimed that TBA was involved in the cancellation of their leases. Except for these two dealers, three of the dealers voluntarily left their station, and the leases of the remaining three were cancelled for reasons not involving the sale of TBA. The testimony relative to pressure and cancellation is summarized as follows:

(a) James S. Zaloudek, a Texas lessee from 1948 to 1954, testified on direct examination that he expected his lease to be cancelled for handling non-sponsored TBA. On cross-examination he admitted that (1189) cancellation might have resulted from difficulties arising from the sale of tires to a customer on credit card without mounting the tires, as required. He eventually had to make good on this sale as the customer resold the tires and defaulted in making payment. This witness further testified to controversies and arguments with Texas representatives relative to the carrying and display of non-sponsored TBA items. He testified that he had been told to get rid of a certain non-sponsored anti-freeze; that he had been required to take certain non-sponsored filters off display and put them in the back room; that he had been told to remove Armstrong tires from the display rack and certain accessories from the shelves, which he refused to do; and that he was forced by Texas representatives to take out some Auto-Lite batteries he had purchased. With reference to the items of TBA which he continued to purchase, he was told by Texas representatives that he should not have them in his station, and finally in 1953 he dealt exclusively with Firestone with the exception of some non-sponsored waxes, polishes and filters; and in 1954 carried 92 percent Firestone and Texaco, the other 8 percent consisting of chains, anti-freeze, filters, oil, polishes and waxes. The Texas salesman denied that he told Zaloudek that he could not handle, and should remove, the various TBA items.

(b) C. F. Sanford, Jr., a Texas lessee from 1953 to 1955, who purchased gasoline from an independent consignee of The Texas Company, testified that shortly after taking over the station he put in a stock of Continental batteries and was informed by a Texas representative that he would either handle Firestone or expect not to renew his lease; that he continued to handle these batteries and was subsequently notified of the cancellation of his lease. It further appears from the testimony in this proceeding that Sanford's operation of the station was generally poor; that he was in financial difficulties and gave bad checks to the consignee for the payment of gasoline. It also appears from the record that due to a highway change about 30 or 40 percent of the business of the station would be lost, and that because of Sanford's financial condition the Texas representative was of the opinion that Sanford would not be able to survive, and that this was the primary factor in recommending the cancellation of the lease and that TBA was not involved.

(c) Harvey G. Talley, a Texas lessee from 1938 to 1951, testified that in 1945 the Texas representative asked him not to display Dayton tires but to place (1190) them in the back room. He later disposed of the Dayton tires and carried only Firestone until the end of his lease. He displayed Southern batteries and a few Willard batteries, but no objection was made to these batteries. Lease was cancelled because he could not stay open twenty-four hours a day, which was required at that particular location.

(d) Richard E. Tidwell, a Texas lessee from October 1953 to March 1955, testified that he consulted with a Texas salesman about handling a cheaper tire, but was told that the company would be more lenient and would look with favor upon dealers who were loyal. He did not take on the cheaper tire on a stocking basis, and when he found

out that Texas Company desired him to carry only one line he endeavored to work along with them. He did carry a cheaper battery, but did not display it. Tidwell voluntarily gave up the station because of a desire to go back into flying.

(e) John D. Scott, a Texas lessee three years, bought only Goodrich TBA, except odds and ends from competitors. Carried Goodrich tires only and Goodrich recapping until about a year before testifying, when he changed recapping to another concern, owned by a friend of his, without any objection from Texas. He also carried Goodrich batteries, only, until about eight months prior to hearing, when he put in a line of cheaper batteries, but did not display them. Lease was concelled for reasons other than TBA, including controversies over the clock and coca cola machine and excessive drinking on the premises.

(f) Herntan Gilbert, Earl M. Gause and H. Arpin Koehler carried Goodrich or Firestone exclusively except for some minor items purchased to meet competition. Their leases were cancelled for reasons not involving TBA.

15. Certain representatives of suppliers of TBA, who were selling in competition with respondent Goodrich, were called as witnesses in this proceeding. These parties testified generally that they had difficulty in selling TBA to Texaco stations and testified specifically as to reasons given by certain Texaco dealers for not buying or selling their TBA items. This testimony as to reasons given by Texaco dealers for not purchasing competitive TBA was allowed under the authority of *Lawlor* vs. *Loewe*, 235 U. S. 522. This latter testimony was received not as proof of the truth of the facts recited, but for the purpose of showing the state of mind of the dealer. This testimony, however, is competent to show that dealers did (1191) not

purchase a substantial amount of competitive non-sponsored TBA because of their feeling that they were required to purchase Goodrich or Firestone TBA.

16. In the course of its defense to this proceeding, The Texas Company introduced the testimony of 54 Texaco dealers and 5 ex-Texaco dealers who came from thirteen of the fifteen sales divisions of Texas in the United States. With the exception of 1 ex-dealer witness, who had handled Firestone prior to becoming a Texas dealer and who was completely sold on the Firestone line, all of these witnesses testified to displaying and selling non-sponsored TBA without objection or complaint by Texas.

17. The hearing examiner recognizes that present dealers appearing to testify were under considerable pressure because they were naturally interested in not jeopardizing the renewal of their leases. The record, as a whole, shows that there were no exclusive dealers in the sense that they confined themselves entirely to sponsored TBA, as all dealers carry some non-sponsored TBA to satisfy demands of their customers either in varying amounts or on a pick-up basis. Many of the stations do not have the space or finances to stock a complete line of tires and batteries, but instead purchase non-sponsored as well as sponsored items on a pick-up basis to satisfy customer demand. In some instances there was some confusion as to the definition of accessories among the dealers, as some included as accessories items generally known as repair parts, as distinguished from accessories, and some dealers testified to carrying non-sponsored items which were, in fact, not supplied by Firestone or Goodrich. Many of the dealers called maintained a high sales volume in gasoline gallonage, and also oil, and Texas would not jeopardize this gallonage by pressure tactics sufficient to irritate or alienate such deal-

ers. This is also true as to those dealers in outlying locations where station operators are not readily available, but where it is important to Texas to maintain service.

18. As a result of an antitrust suit filed against Standard Oil Company of California, Walter Hochuli, General Sales Manager of The Texas Company, on June 1, 1948, issued a so-called policy letter to the territorial managers, which was subsequently disseminated down the chain of command to salesmen. This letter advised the personnel that they were to consider a Texaco dealer as an independent businessman; that he should be encouraged to expand his business by purchasing TBA; that the personnel have a (1192) right to recommend certain lines, but that Texas has neither the right nor the desire to dictate to the dealer or influence him in any way as to the type of merchandise he should handle, or the source from which he should purchase it; that the Texaco dealer must be permitted to operate as an independent businessman and anyone who violates this policy would be subject to immediate dismissal.

19. The Texas policy was restated to its personnel in 1952 and 1953, and in 1955 it was incorporated in the portfolios of each salesman so that the salesman would have the statement of policy for ready reference, although by this time it did not carry with it the threat of immediate dismissal. This policy was not transmitted to the Texas dealers except on occasion, and then orally, by salesmen or other personnel, and it was only after the dealer sold a sufficient amount of lubricating oil to warrant the payment of a discount or rebate that he was informed by letter that he was free to select any brand of TBA merchandise which he might elect and that the only interest Texas had was to help him market that merchandise at a profit so that his business would be more successful in every way.

20. The dealer witnesses called by Texas all testified that they were familiar with, and knew, the Texas policy with reference to the sale of TBA and considered themselves independent businessmen, free to purchase TBA as they might see fit. Many testified that when they were interviewed as prospective dealers they were told that they could purchase TBA wherever they might wish. The ex-dealers called in support of the charges of the complaint testified that when they were interviewed as prospective dealers they were told that they could purchase either Goodrich or Firestone with no indication that they might purchase from other suppliers. It would be unusual to expect that Texas salesmen would vigorously insist to a dealer that he had a right to buy wherever he might wish when the salesman's compensation was based, in part, upon commission on sales of sponsored TBA.

21. After giving consideration to the testimony of the various witnesses appearing in this proceeding and giving consideration to their demeanor and credibility, it is the opinion of the hearing examiner that the record in this proceeding as a whole indicates that coercion and pressure was, in fact, brought on a substantial number of dealers to induce them to purchase sponsored TBA and to discontinue the purchase or display of non-sponsored items.

(1193) 22. The use of credit cards in connection with the sale of Goodrich TBA was instituted by The Texas Company in March 1940. This was discontinued as of May 6, 1942, due to credit regulations issued by the Federal Reserve Board. The use of credit cards was again resumed on January 1, 1948. From that date until January 1, 1955, there were no restrictions with regard to brands of TBA that might be purchased on credit, but commencing January 1, 1955, Texas specifically restricted the use of

its credit card in connection with TBA purchases to Goodrich and Firestone products. It was on this date that Texas instituted the practices of selling TBA products on credit cards on a deferred payment basis, allowing three months for payment of purchases of $30.00 or more, and six months for purchases of $50.00 or more, with no service or carrying charge being made. The record shows that Texas dealers have from time to time continued to charge non-sponsored TBA items on the regular monthly settlement basis. It is logical for Texas to limit sales of TBA on deferred payment, without interest or carrying charge, to those products on which Texas receives a commission, as this would, in part; indemnify it for the expense in connection with the deferred payment plan.

CONCLUSIONS

1. The complaint does not charge, nor does the evidence introduced in this proceeding prove, the existence of a conspiracy between Goodrich and Texas to restrict and restrain competition in the sale and distribution of TBA products.

2. There is no evidence that The B. F. Goodrich Company engaged in, or participated in, any acts or practices designed to force dealers and distributors of The Texas Company to purchase Goodrich TBA products.

3. Neither the sales commission contract between Texas and Goodrich, nor the contracts between Texas and its dealers and distributors, contain any clause or provision requiring such dealers or distributors to purchase only Goodrich TBA.

4. In making a determination as to whether the leases made by Texas with its dealers are used to suppress com-

petition, the extent to which they are in conformity (1194) with reasonable requirements in the field of commerce in which they are used will have a direct bearing on their legality. The housekeeping provisions of the leases are not unreasonable or oppressive. The renewal and cancellation provisions of the lease are in conformity with those which ordinarily appear in many leases of property.

5. The consideration for the payment of a commission to Texas under the sales commission contract is based upon substantial services rendered by Texas in promoting the sale of Goodrich TBA to Texaco dealers and distributors.

6. No inference or implication can be drawn, simply from the contractial relationship between Texas and its dealers, that the degree of control by Texas over its dealers is sufficient to force its dealers to purchase only sponsored TBA.

7. It is further concluded that for the purpose of inducing the purchase of sponsored TBA by Texaco dealers, Texas representatives have, in fact, attempted to, and did, coerce and force Texaco dealers to purchase substantial quantities of Goodrich and Firestone TBA, and the respondent, The Texas Company, accepted the benefits of such acts and practices. These acts of coercion consisted of demands that dealers discontinue the purchase or display of non-sponsored TBA under threat of lease cancellation or other corrective action. Such coercion need not be 100 percent effective in order to constitute an unfair method of competition or an unfair act or practice in violation of the Federal Trade Commission Act.

8. The charges of the complaint are sufficiently broad to sustain an order prohibiting overt acts of coercion even

though it be found that the contracts entered into between the parties are not illegal.

9. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein.

10. The acts and practices of The Texas Company, as herein found, which involve coercion of its dealers, are all to the prejudice of the public and have a tendency and capacity to restrict, restrain or lessen competition in the sale of TBA products, and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.
(1195)

ORDER

It is Ordered that respondent, The Texas Company, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the promotion, offering for sale, sale and distribution of tires, inner tubes, batteries and other automotive parts, accessories and supplies (hereinafter referred to as "TBA products"), in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

1. Inducing, or attempting to induce, the purchase of TBA products of a particular supplier by Texaco dealers by threatening to cancel or to not renew lease of dealer or to take other retaliatory action if said products are not purchased.

2. Threatening the cancellation or non-renewal of any contract or lease if the dealer purchases or con-

tinues to purchase TBA products not sponsored, recommended or approved by the respondent, or the sale of which is not promoted by the respondent.

3. Threatening the cancellation or non-renewal of any contract or lease if the dealer (1196) displays or continues to display TBA products not sponsored, recommended or approved by the respondent, or the sale of which is not promoted by the respondent.

4. The performance of any acts of intimidation or coercion, either through statements, oral or written, made directly to dealers or by representatives of respondents, which are designed to, or have, the purpose or effect of intimidating or coercing respondent's dealers or other customers to purchase TBA products sold by any designated supplier sponsored, recommended or approved by respondent.

5. Compelling, or attempting to compel, dealers by any means or method to sell and distribute only products supplied by a designated supplier sponsored, recommended or approved by respondent.

6. Preventing, or attempting to prevent, its dealers by means of threats, intimidation or coercion, from handling or displaying TBA or other similar products which the respondent does not sponsor, recommend or approve, or the sale of which is not promoted by the respondent.

(1197) It is Further Ordered that the complaint be, and it is hereby, dismissed as to respondent The B. F. Goodrich Company.

Earl J. Kolb,
Hearing Examiner.

October 23, 1959.

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Appeal Brief of Counsel Supporting the Complaint
(Page 23)

(February 12, 1960)

(1234)

* * *

"Finally the witness agreed that they referred 'to that policy of independence.' (Tr. 3128)

"The same witness was again asked about the oil discount letter on cross-examination with the following results:

Q. Do you recall the exact language in this bonus letter you say you received on oil?

A. Not the exact language, but it brings out the point that the amount of money you can make by selling more oil.

Q. Is that about the extent of it?

A. Well, it brings out the facts about you being a Texaco dealer and the advantages of it.

Q. And is that about the extent of it?

A. As far as I know. (Hendrickson—Tr. 3138)

"As has been previously demonstrated, dealers are not shown Texaco's policy letters and in view of the foregoing it must also be found that dealers, as a whole, are not specifically informed in any other way that they have freedom of choice in selecting TBA. (PF 89 (CSC) 41-2)."

The examiner's summary of the testimony of ex-dealers used in support of the complaint together with his conclusion regarding coercion leads to the assumption that only that part of the testimony was given weight which involved TBA. (ID 8-10, par. 14a-f and p. 14, par. 7) Thus the examiner failed to draw necessary and proper inferences from their testimony which demonstrated control, stemming from contractual relationship existing between the dealer and Texaco.[12] For example, he makes no

12. For proper summary and significance of ex-dealer testimony see Appendix "F."

mention of the obvious inherent control relied upon by Texaco, to enable it to seek reimbursement for goods sold on cancelled credit cards, when Texaco was negligent in its failure to notify dealers of such cancellation.[13]

The examiner associates no control with the insistence, by Texaco, that dealers maintain the hours of operation which Texaco determined, despite the fact that such hours were not shown to be justified in studies made by the dealers.[14] Although he found that dealers felt they were *required* to purchase sponsored TBA and despite the fact that he found that respondent's dealer witnesses were "under considerable pressure because they were naturally interested in not jeopardizing the renewal of their leases" the examiner still failed to make a finding regarding the inherent control which unquestionably formed the basis of his findings. (ID 10-11, pars. 15; 17)

The examiner's failure to make a specific finding as to control and influence and failure to recognize that latent control and influence formed the basis for some of his findings has inevitably led to his improper conclusions that—

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13. Zaloudek, ID 8-9; see A4 *supra* and Appendix "F," pp. 45-50; see also testimony by respondent witness Bailey—Tr. 3271-3 and PF(CSC) 52 No. 121 (Appendix "E").

14. Talley; Gilbert and Koehler—See Appendix "F," par. 41(a); (e) and (f) pp. 50; 55-6.

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Order Remanding Proceeding to Hearing Examiner

(March 9, 1961)

(1730)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Earl W. Kintner, Chairman
Robert T. Secrest
Sigurd Anderson
William C. Kern

[SAME TITLE]

Counsel supporting the complaint and respondent, The Texas Company, having filed cross-appeals from the hearing examiner's initial decision; and

The Commission having determined that the record as presently constituted does not provide an adequate basis for an informed determination of the competitive effects of the sales commission method of distributing tires, batteries and accessories employed by the respondents, and being of the opinion that the record should be supplemented in this respect to the end that all of the issues involved in the case may be finally and conclusively disposed of on their merits:

IT IS ORDERED that this proceeding be, and it hereby is, remanded to the hearing examiner for the reception of such further evidence concerning the competitive effects of the respondents' practices as may be offered in conformity with the views expressed in the accompanying opinion of the Commission.

IT IS FURTHER ORDERED that after the receipt of such additional evidence the hearing examiner indicate any changes he may wish to make in his initial decision in the light thereof.

By the Commission.

ROBERT M. PARRISH,
Secretary.

Issued: March 9, 1961

Opinion of the Commission

(March 9, 1961)

(1731)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Earl W. Kintner, Chairman
Robert T. Secrest
Sigurd Anderson
William C. Kern

[SAME TITLE]

By Kintner, Chairman:

This proceeding commenced with the issuance of a complaint on January 11, 1956, charging The B. F. Goodrich Company and The Texas Company with acts, practices and agreements constituting a violation of Section 5 of the Federal Trade Commission Act. 15 U. S. C. §45 (1958). Respondents answered in due course, admitting in part the allegations of the complaint but denying that Section 5 has been contravened.

The principal issue framed by the pleadings is the legality of a contract between these respondents calling for the payment by Goodrich of a sales commission to The Texas Company (hereinafter referred to as Texaco) in return for sales assistance in promoting automotive tires, batteries and accessories (hereinafter referred to as "TBA" or "TBA products") of Goodrich to retail and wholesale petroleum outlets of Texaco. In addition, Texaco is charged with having entered into a substantially identical agreement with The Firestone Tire & Rubber Company, and

Goodrich is charged with having entered into such agreements with five (1732) other oil companies in addition to Texaco.[1] Although Goodrich and Texaco are the only respondents in this proceeding, Firestone and Shell Oil Company are joined as respondents in a companion case, Docket 6487, and in another companion case, Docket 6486, The Goodyear Tire & Rubber Company and The Atlantic Refining Company are paired as respondents.

The complaint charges, in substance, that the success enjoyed by Goodrich and Firestone in selling to Texaco outlets has been purchased at the expense of competing TBA suppliers at the manufacturing and wholesale levels. Counsel supporting the complaint allege that the Texaco-Goodrich and Texaco-Firestone sales commission contracts are unlawful because, *in conjunction with Texaco's economic power over its ostensibly independent wholesale and retail petroleum outlets,* these contracts operate to stifle the free choice of Texaco's retail and wholesale dealers insofar as their TBA purchases are concerned. Among the unlawful competitive effects stemming from Texaco's sales commission contracts charged by the complaint are these: 1) That suppliers of TBA competing with Goodrich and Firestone at the wholesale level have been foreclosed from access to Texaco's retail outlets on the same competitive terms as have been made available to Goodrich and Firestone; 2) That competing manufacturers of tires and other TBA items have been foreclosed from access to Texaco's wholesale distributors on the same competitive terms as have been made available to Goodrich and Firestone; 3) That competition between Goodrich and Firestone in selling to wholesale and retail outlets of Texaco has been de-

1. Other oil companies having sales commission agreements with Goodrich are Continental Oil Company, Jenney Manufacturing Company, Shell American Petroleum Company, The Ohio Oil Company and Emblem Oil Company.

stroyed; 4) That a substantial number of Texaco's petroleum distributors and service station operators have been denied their right to act as independent businessmen in exercising freedom of choice as to the TBA products which they may purchase and stock for resale; and 5) That the consuming public has been deprived of the benefits of free competition at the wholesale and retail levels insofar as TBA distribution through service station outlets under the sales commission plan is concerned.

(1733) Respondents deny these allegations and assert that their sales commission contract has strengthened competition in the distribution of TBA. Texaco, moreover, denies that it has power to control the TBA buying habits of its wholesale and retail outlets and denies that its sales efforts on behalf of Goodrich and Firestone are in any respect improper or coercive.

After hearings extending from September 1956, into December 1958, the hearing examiner filed his initial decision on October 23, 1959, dismissing the complaint as to Goodrich but holding that Texaco, by forcing a substantial number of its dealers to purchase sponsored TBA through use of threats of lease cancellation or other retaliatory action, has engaged in unfair methods of competition and unfair acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act. He further held that the charges of the complaint are sufficiently broad to sustain an order prohibiting overt acts of coercion on the part of Texaco even though he concluded the sales commission contracts themselves are not illegal. The initial decision contained an order against Texaco prohibiting future acts of coercion or intimidation designed to force Texaco dealers to purchase TBA products sponsored by Texaco.

Both sides have appealed from the initial decision. Counsel supporting the complaint contend that, while the

order entered by the hearing examiner is well supported by the evidence of record, it will not be an effective means of remedying the unlawful effects on competition caused by the sales commission plan. They seek an order restraining respondents from continuing with their present sales commission agreements and enjoining them from entering into similar agreements in the future. They also contend that Texaco should be enjoined from purchasing TBA products from any manufacturer or other vendor of such products for resale to any wholesalers or retailers of Texaco petroleum products, "* * * or for distribution in any other manner, directly or indirectly, to any of the aforesaid wholesalers or retailers of Texaco petroleum products."

Texaco appeals claiming, among other things, that the hearing examiner erred as a matter of fact in finding that Texaco has coerced its dealers to purchase substantial amounts of sponsored TBA and as a matter of law in concluding that such action by Texaco constitutes an unfair method of competition and an unfair act or practice in commerce within the meaning of Section 5 of the Federal Trade Commission Act.

(1734) Reply briefs were filed by Texaco and Goodrich to the appeal brief of counsel supporting the complaint and by counsel supporting the complaint to the appeal brief of Texaco. Oral argument was heard by the Commission on June 20, 1960, and the matter is now before the Commission for decision. Although there is evidence in the record tending to show that Texaco has in fact coerced its dealers to purchase sponsored TBA through use of threats of lease cancellation or other retaliatory action, we find that Texaco has sufficient economic power over its wholesale and retail petroleum distributors to cause them to purchase substantial amounts of sponsored TBA even without the use of overt coercive tactics. The determination of whether Texaco's exercise of such economic power in favor of Firestone

and Goodyear under the oil company's sales commission contracts with these rubber companies constitutes an unfair method of competition depends, therefore, upon *the competitive effects* of these sales commission contracts; not upon whether Texaco has exercised its power to implement such contracts through the use of overt coercive tactics, or by more subtle, but equally effective, means.

At issue in this litigation, then, is the legality of a particular method of distributing TBA used by respondents. A key fact in evaluating the competitive effects of respondents' use of the sales commission method of distributing TBA is the fact that Texaco has sufficient economic power with respect to its retail and wholesale petroleum distributors to cause them to purchase substantial quantities of the brand of TBA sponsored or sold by Texaco. But such economic power is a fact existing independently of any particular method of distributing TBA which Texaco may use. Whether the sales commission agreements between Firestone and Texaco and Goodrich and Texaco are unlawful, must depend, therefore, upon the characteristics and the competitive effects of these sales commission agreements. For reasons set forth hereinafter, we conclude that this case must be remanded in order that market data may be introduced to show the competitive effects of Texaco's sales commission agreements with Goodrich and Firestone upon competing suppliers of tires, batteries and accessories at the manufacturing, wholesale and retail levels.

Characteristics of the Sales Commission Plan

Motorists may purchase replacement TBA items from several major classes of distributors. Manufacturers of these items, for example Goodrich, maintain either company-owned or (1735) franchised wholesale and retail distribution outlets in all of the marketing areas for TBA

products considered in the course of the hearings in this case. Gasoline service stations constitute a second major class of outlets for TBA products.

The complaint alleges that "Service stations, by the nature of their business, are particularly well adapted to be outlets for the sale of TBA products to the motorist consumer. They constitute a large and increasingly important market for TBA products." Goodrich admits the truth of this allegation in its answer and Texaco, in the course of the proceedings, introduced evidence tending to show that service stations accounted for almost 43 percent of all new replacement tires and tubes sold to motorists in the United States in 1956. Total TBA sales by gasoline service stations amounted to approximately $800,000,000 in 1956, according to Texaco.

The sales commission method of distributing TBA is a complex marketing technique affecting competitive relationships among manufacturers, wholesalers and retailers of various products linked together by but one common factor: the motor vehicle. Although Goodrich is one of the largest rubber companies in the United States and a leading manufacturer of tires, inner tubes and certain related products such as fan belts and radiator hose, the company does not manufacture automotive batteries at all, but instead purchases for resale batteries marked with the "B. F. Goodrich" label from The Gould National Battery Company and Globe-Union Battery Company. Among the automotive accessories purchased for resale by Goodrich under the original manufacturers' own brand names are the following:

Product	*Brand Name*
Oil Filters	Fram
Spark Plugs	Champion
Wiper Blades	Trico; Anco
Waxes	DuPont; Simoniz; Mac's; Johnson
Battery Cables	Auto-Lite

Goodrich operates 5 tire manufacturing plants across the country, located in Ohio, Pennsylvania, Alabama, Oklahoma and California. Tires are shipped from these plants (1736) to 15 company-operated merchandising warehouses (also called master warehouses) situated in principal metropolitan areas of the nation. These plants and master warehouses in turn ship to 31 district warehouses of Goodrich located in various parts of the country. Batteries and accessories are shipped directly from the original manufacturers' own plants to master and district warehouses of Goodrich.

There are some 489 wholesale and retail stores operated by Goodrich throughout the United States, and these stores sell not only TBA products, but also many different household and home supply items, including toys, bicycles, power tools, lawn and garden equipment and furniture. In addition to these company-owned stores, Goodrich markets its products through various types of independent wholesale and retail distributors and dealers throughout the United States, including specialized tire dealers, new car dealers, garages, and service stations. Total net sales of the rubber company exceeded one-half billion dollars in 1954.

Texaco is a large producer and distributor of petroleum products. The company's products are sold at wholesale and retail in every state of the United States. Total net sales by the oil company exceeded one and one-half billion dollars in 1954.

Texaco sells its refinery products directly to some 31,000 retail outlets in the United States. These directly-supplied accounts are of two principal classes: 1) lessee-operated stations, and 2) contract dealers. Lessee-dealers lease service station properties from Texaco and these properties have facilities enabling the lessees to stock and sell TBA products. Contract stations are owned by the station operators themselves or are leased from someone other

than Texaco. An undetermined number of Texaco's contract stations apparently do not have facilities to stock and sell TBA, or to do maintenance work on motor vehicles. Contract dealers of this description may be garages or restaurants and taverns with outside gasoline pumps.

Texaco sells its petroleum products indirectly to about 7,500 additional service stations through approximately 711 wholesale distributors. Wholesale distributors either own bulk storage facilities or lease them from Texaco. Many wholesale distributors also distribute TBA products along with petroleum products.

(1737) Goodrich maintains either company-owned or franchised independent wholesale and retail dealers in most principal cities of the United States and in many smaller communities as well. In cities and towns where Texaco retail stations are located, such stations are assigned to either the local Goodrich or the local Firestone dealer, or sometimes to both. The assigned TBA distributor is intended to be the supply point from which the Texaco dealer will purchase a substantial percentage of his requirements of TBA.

Texaco dealers who operate service station, as distinguished from non-service station establishments, such as restaurants and garages which also sell gasoline, not only buy and sell Texaco petroleum products but also offer TBA at their stations and in addition perform various automotive services and repairs. Texaco maintains sales offices throughout its marketing area and employs salesmen whose duty it is to solicit orders for Texaco petroleum products from Texaco dealers.

When orders for petroleum products are obtained, the salesmen cause such products to be delivered to the Texaco service station dealers who pay for them at time of delivery or at other specified times. The same Texaco salesmen *also* act as agents for Goodrich and Firestone, solici-

ting TBA orders from Texaco dealers, frequently accompanied on their rounds by salesmen employed by the local Goodrich or Firestone distributors. If TBA orders are obtained, they are turned in to the appropriate TBA suppliers— the local distributors of either Goodrich or Firestone—who deliver the merchandise and are paid by the Texaco dealers. The TBA suppliers, in turn, make reports of such sales to the District Sales Offices of their respective companies.

Under the terms of the sales commission contracts between Goodrich and Texaco and Firestone and Texaco, Texaco is entitled to a commission amounting to 10 percent of the net sales value of all sponsored (i.e., Goodrich or Firestone) merchandise sold to Texaco retail dealers, as consideration for the assistance given by the Texaco sales organization in obtaining TBA orders from Texaco dealers.[2]

(1738) Goodrich's TBA sales to Texaco accounts increased from $12.7 million in 1952 to $18.9 million in 1956, while Firestone's sales volume advanced from $29.6 million in the former year to $39.9 million in the latter. By 1956, Goodrich and Firestone were selling a combined total of almost $60 million in TBA to Texaco accounts each year, and were paying Texaco approximately $5.4 million in sales commissions annually. During the five year period 1952 through 1956, total sales to Texaco accounts by Goodrich and Firestone amounted to $245.1 million, and the two rubber companies paid over $21.8 million in sales commissions to Texaco.

Sales by Goodrich under its sales commission agreements with other oil companies have also increased over

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2. On purchases of sponsored TBA by its wholesale distributors, Texaco is entitled to a commission of 7½ percent. A 5 percent commission is payable in a few instances not significant for present purposes.

the years. In 1952 there were three oil companies other than Texaco having such agreements with Goodrich: Continental Oil Company, Jenney Manufacturing Company and Shell American Petroleum Company. Total sales by Goodrich to outlets of these three oil companies rose from $3.5 million in 1952 to $7.8 million in 1955, chiefly due to increases in sales to Continental Oil Company accounts. Then, in 1953, Goodrich undertook sales commission arrangements with Ohio Oil Company and Emblem Oil Company, and by 1955 was selling about $2.6 million in TBA to outlets of these two oil companies.

Goodrich has attempted to supply service station accounts from local independent Goodrich wholesalers wherever possible, as shown by Table I, below:

TABLE I

NUMBER OF OIL COMPANY OUTLETS
SUPPLIED BY INDEPENDENT GOODRICH DISTRIBUTORS
1952 THROUGH 1955

Date	*Total Oil Company Outlets*	*Supplied by Independent Distributors*	*Percentage by Independent Distributors*
12/31/50	2040	442	22%
12/31/51	2469	820	33%
12/31/52	4075	1876	46%
12/31/53	5065	2486	49%
12/31/54	6065	3127	52%
12/31/55	7042	3908	55%

(1739) The same trend is discernible for Texaco outlets, as shown by Table II:

TABLE II

NUMBER OF TEXACO OUTLETS SUPPLIED BY INDEPENDENT GOODRICH DISTRIBUTORS 1952 THROUGH 1955

Date	*Total Texaco Accounts*	*Supplied by Independent Distributors*	*Percentage by Independent Distributors*
12/31/50	1874	438	22%
12/31/51	2245	743	33%
12/31/52	2763	1228	44%
12/31/53	3189	1664	52%
12/31/54	3864	2172	56%
12/31/55	4444	2636	59%

Table II indicates that the number of Texaco accounts assigned to Goodrich increased from 1874 in 1950 to 4444 in 1955, and that during these years the number of such accounts supplied by independent local distributors of Goodrich TBA items increased from 22 percent to 59 percent. Table I shows that the number of accounts assigned to Goodrich by all six oil companies having sales commission agreements with Goodrich increased from 2040 in 1950 to 7040 in 1955, and that the percentage of such accounts supplied by independent local Goodrich distributors increased from 22 percent to 62 percent during the same years.

Taken together, the facts set forth above indicate the possibility of serious potential threats to competition resulting from Goodrich's sales commission agreements with Texaco and other oil companies. Service station outlets of Texaco blanket the entire United States, as do Goodrich's TBA distribution facilities. The total volume of sponsored TBA sold to Texaco outlets increased from barely over $40 million in 1952 to approximately $60 million in 1956, and during the same years Goodrich entered

into sales commission agreements with several other oil companies as well.

(1740) However, the record in this case does not contain sufficient market data to enable the Commission to assess the competitive effects of the sales commission method of distributing TBA employed by these respondents. The case will be remanded to the hearing examiner for the taking of evidence indicating the competitive effects of the sales commission contracts at the manufacturing, wholesale and retail levels of TBA distribution.

March 9, 1961

Order Setting Hearing Pursuant to Remand by the Commission

(June 20, 1961)

(1741)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

DOCKET No. 6485

[SAME TITLE]

Upon consideration of this matter on appeal from the initial decision of the hearing examiner, the Commission determined that the record as presently constituted does not provide an adequate basis for an informed determination of the competitive effects of the sales commission method of distributing tires, batteries and accessories employed by respondents, and issued its order remanding this proceeding to the hearing examiner for the reception of such further evidence concerning the competitive effects of the respondents' practice as may be offered, in conformity with the views expressed in the opinion of the Commission issued in this proceeding.

IT IS THEREFORE ORDERED that in conformity with the order of remand of the Commission, this proceeding is hereby set for hearing as follows:

Monday, July 17, 1961—10:00 A.M.—3 days, Room 332 Federal Trade Commission Building, Washington, D. C.,

to receive testimony and other evidence which may be offered on the competitive effects of the sales commission method of distributing tires, batteries and accessories employed by respondents.

Earl J. Kolb,
Hearing Examiner.

June 20, 1961.

Order Cancelling Hearings

(July 10, 1961)

(1742)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

DOCKET No. 6485

[SAME TITLE]

The Hearing Examiner has been served with a summons and complaint praying that the Hearing Examiner, among others, be enjoined by a temporary and permanent injunction from holding further hearings in this proceeding.

It is the opinion of the Hearing Examiner, in view of the proceedings filed, that there is no occasion to hold the hearings set to begin on July 17, 1961, until such time as the Court has disposed of the motion for preliminary injunction.

IT IS THEREFORE ORDERED that the hearings now set for July 17, 1961, three days, in Washington, D. C., be cancelled subject to being reset on ten days' notice after disposition by the District Court of respondents' motion for preliminary injunction to restrain the Hearing Examiner from proceeding with further hearings in this case.

Earl J. Kolb,
Hearing Examiner.

July 10, 1961.

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Order Directing Proceedings on Remand to be Conducted Expeditiously and Setting Date for Filing Initial Decision

(June 19, 1962)

(1744)

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

Commissioners:

Paul Rand Dixon, Chairman
Sigurd Anderson
William C. Kern
Philip Elman
Everette MacIntyre

[SAME TITLE]

The Commission, by its order of March 9, 1961, remanded this proceeding to the hearing examiner for the reception of further evidence. Hearings were subsequently scheduled by the hearing examiner to commence July 17, 1961. These hearings were cancelled by the examiner after respondents brought an action in the United States District Court for the District of Columbia to enjoin the Commission from holding further hearings in this matter.

The Commission has determined that any further delay in this proceeding, not required by court order, would be inconsistent with its established policy, as set forth in Section 4.1 of the Rules of Practice for Adjudicative Proceedings, that "to the extent practicable and consistent with requirements of law, such proceedings shall be conducted expeditiously." Accordingly,

Order Directing Proceedings on Remand to be Conducted Expeditiously and Setting Date for Filing Initial Decision

It is Ordered that further hearings pursuant to the Commission's remand of this proceeding to the hearing examiner be held and concluded at the earliest practicable time, that (1745) the hearing examiner shall file his initial decision on or before October 1, 1962, and that counsel shall make every effort to terminate this proceeding expeditiously and to enable the initial decision to be filed on or before such date.

By the Commission.

Joseph W. Shea,
Joseph W. Shea,
Secretary.

ISSUED: June 19, 1962.

Order Setting Hearings

(June 27, 1962)

(1746)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

[SAME TITLE]

On March 9, 1961, the Federal Trade Commission issued its order remanding this proceeding to the hearing examiner for the reception of such further evidence concerning the competitive effect of respondents' practices as may be offered.

On June 20, 1961, the hearing examiner issued his order setting hearing for July 17, 1961, in conformity with said order of remand, issued by the Commission.

Thereafter, on July 7, 1961, respondents filed a complaint in the District Court of the District of Columbia, praying that the hearing examiner, among others, be enjoined by a temporary and permanent injunction from holding further hearings in this proceeding. After being served with this complaint, the hearing examiner on July 10, 1961, cancelled the hearing set for July 17, 1961, pending disposition of the injunction proceeding.

The court denied respondents' motion for temporary injunction, and on June 10, 1962, entered its order on complainants' motion for summary judgment, which in effect, requires the hearing examiner to complete the taking of testimony and other evidence and issue his initial decision by October 2, 1962. In addition, the court certified this matter under 28 U. S. C. 1292(b), and provided that such certification shall not *ipso facto* stay proceedings before the Commission.

Order Setting Hearings

(1747) On June 22, 1962, the U. S. Court of Appeals for the District of Columbia Circuit denied appellants petition for injunction on the basis that it did not appear that lengthy and costly hearings are contemplated, duplicating prior proceedings.

It is the opinion of the hearing examiner that the order of remand is limited in scope, and that no protracted or lengthy hearings will be necessary. However, in order to comply with the time limitation set by the District Court for completion of testimony and issuance of an initial decision by the hearing examiner, it will be necessary to proceed promptly with hearings.

It is the further opinion of the hearing examiner, that the parties have had ample time to prepare for trial since the issuance of order of remand and during the pendency of the injunctive proceeding, since July 7, 1961.

IT IS THEREFORE ORDERED, that this proceeding be set for hearing to begin Monday, July 16, 1962, in Room 532, Federal Trade Commission Building, Washington, D. C., and to proceed by consecutive hearings until completion of testimony in support of and in opposition to the charges of the complaint.

EARL J. KOLB,
EARL J. KOLB,
Hearing Examiner.

June 27, 1962.

Motion of Respondents

(July 2, 1962)

(1748)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

[SAME TITLE]

To HONORABLE EARL J. KOLB, Hearing Examiner

Respondents, without prejudice to their contention, heretofore and now asserted that the remand order of the Commission dated March 9, 1961, was improperly, invalidly and unlawfully made; that the Commission and the Examiner have no jurisdiction, power or authority under said order to hold hearings, to retry the issues already disposed of, to readjudicate said issues or undertake any other action under said order of March 9, 1961, and without prejudice to the contention that any action taken under said order, including action proposed to be taken under the order of June 27, 1962, made by Honorable Earl J. Kolb, Hearing Examiner, will deprive respondents of property without due process of law in violation of the provisions of the Constitution of the United States, and likewise in violation of the provisions of the Administrative Procedure Act, and respondents having no other alternative before this Commission, hereby move that said order of (1749) June 27, 1962 be vacated, or in the alternative but only if the said order is not vacated, that it be modified as follows:

1. By providing for disclosure of the names, addresses, business connections and substance of the testimony of each witness whom counsel supporting the complaint proposes to call in connection with any hearing which may be held under the order of March 9, 1961; and likewise

providing that counsel supporting the complaint furnish to respondents for inspection or copying, all documents, papers, books or physical exhibits, computations or other paper writings of any kind and description which said counsel supporting the complaint intends, expects or may offer in evidence in the course of any hearings which may be held under said order of March 9, 1961; by providing that the disclosures above requested be made sufficiently far in advance of any hearing which may be scheduled under said order, so that respondents may have opportunity to prepare for the cross-examination of witnesses and for taking whatever action may be required respecting documentary matter to be offered in evidence.

2. By providing adequate time after the disclosures required by item numbered 1, above may have been made to prepare for trial prior to the holding of any trial hearings herein.

3. By providing that no evidence, whether by way of testimony or documentary not timely disclosed pursuant to (1750) the terms of paragraph numbered 1, above shall be admitted into evidence.

4. By providing a sufficient interval of time between the closing of the case by counsel supporting the complaint and the opening of respondents' evidence to give respondents adequate time and opportunity, at least equal to such time and opportunity as has been afforded to counsel supporting the complaint, to prepare their own evidence to meet whatever evidence may be adduced by counsel supporting the complaint.

As grounds for the foregoing motion, respondents respectfully show as follows:

Motion of Respondents

I.

The District Court action for injunction (Texaco Inc. et al. v. Federal Trade Commission, et al), contrary to the inference contained in the order dated June 27, 1962, has not been disposed of by the courts. The matter is pending on appeal in the Court of Appeals. In addition, respondents, on June 28, 1962, petitioned the Supreme Court of the United States for injunctive relief. This petition likewise is pending.

As the injunction action has not been finally disposed of, it is submitted that the Examiner's order of July 10, 1961 cancelling hearings herein "pending disposition of the injunction proceeding" should remain in force and effect.*

(1751)

II.

The order of the Commission of March 9, 1961, is a broad order of remand instructing its counsel to adduce and its Examiner to receive any evidence relating to the competitive effects of the practices challenged by the complaint on the manufacturing, wholesale and retail levels.

* Respondents have been willing and are now willing to accept Judge Hart's suggestion, stated by him at the hearing on June 20th in the District Court action as follows (S.M. June 20, 1962, pp. 11-12):

"[11] The Court: Well, I don't quite see how we can work this out pursuant to my suggestion. Now, my suggestion was that we have a stipulation approved by the Court, that the Government would not go ahead with the hearing until the Court [12] of Appeals had acted on your appeal either by granting it or denying it, or whatever. If your special appeal is denied, then the time for the execution of the order signed yesterday would be automatically extended beyond October 2nd by the number of days expiring between yesterday and the time the Court of Appeals handed its decision down here."

Motion of Respondents

This order of remand has left respondents entirely without a guide as to the type and nature of evidence to be adduced. This is particularly true as the complaint deals in general terms with sales of tires, batteries and accessories by or through outlets handling the Texaco products scattered throughout the country and numbering in the neighborhood of 40,000. As the issue of competitive effect has already been fully tried, respondents are entirely mystified as to the nature of the evidence which the Commission wishes to have adduced.

While the order of the Examiner recites that there (1752) has been ample time to prepare for new trial, this has not been the case as no one, even the Commission's counsel, has had any conception of what evidence or even what type of evidence is to be adduced at the presently scheduled hearings. Attention is called to the fact that as late as June 5, 1962, an attorney representing the Commission, when asked by the Court with respect to the hearings now scheduled under the remand what evidence the Commission was going to put in, indicated that this was unknown. The following colloquy took place in the United States District Court before Judge George L. Hart on June 5, 1962, in the course of the action referred to in said order of June 27, 1962:

"The Court: All right, now what evidence are you going to put in?

Mr. Nebeker: Pardon?

The Court: What witnesses are you going to call?

Mr. Nebeker: This is unknown."

If on June 5th the Commission's counsel did not know what evidence was going to be put in under the order of March 9, 1961, it is clear that respondents had no idea as to the nature of the evidence required to answer whatever Commission's counsel may adduce, and they have none now.

Under the circumstances here stated, to expect respondents to be in position to cross-examine wholly unidentified witnesses, to be able to deal with statistical evidence which (1753) they have never seen, and what is more, to adduce on consecutive days evidence in answer to the evidence so adduced, for all practical purposes deprives the respondents of any real opportunity to defend themselves, to conduct any meaningful examination or cross-examination of witnesses, or to adduce evidence in answer to whatever counsel supporting the complaint may place into the record. The type of proceeding presently contemplated by the order of June 27, 1962, would violate the Administrative Procedure Act requiring adequate notice and adequate opportunity to cross-examine and defend and will by the same token deprive respondents of their rights and property without due process of law in violation of the constitutional requirements.

III.

The Hearing Examiner's order requiring continuous hearings is a direct violation of Judge Hart's order of July 19, 1962 in the District Court action. That order provides:

> "FURTHER ORDERED that any steps in said Proceeding, pursuant to said remand, shall be conducted in such a manner that the plaintiffs shall have equal time and opportunity with Commission's Counsel in connection with preparing and adducing further evidence, if any, as well as preparing any required briefs or suggested findings of fact and conclusions of law."

It is obvious that the Hearing Examiner's order does not give equal time and opportunity to respondents here to prepare for the production of further evidence.

Motion of Respondents

Counsel supporting the complaint has had since March (1754) 9, 1961 to prepare for the rehearing. In any event, such counsel has had since June 5, 1962, when Judge Hart stated from the Bench the substance of his order of June 19th. As respondents have not been advised in any way of the nature of the testimony which counsel supporting the complaint has been preparing, it has been entirely impossible for them to prepare to adduce evidence to meet whatever counsel supporting the complaint may place into evidence on the rehearings. Respondents suggested the portion of Judge Hart's order above quoted in order to avoid the precise situation which would be forced upon them if the Hearing Examiner's present order is allowed to stand. It is essential that respondents be given equal time to prepare to meet the case of counsel supporting the complaint after that case has been fully disclosed to respondents.

WHEREFORE it is respectfully submitted that the relief prayed for in this motion be granted.

Dated: July 2, 1962.

Amzy B. Steed
James O. Sullivan

ROYALL, KOEGEL, HARRIS & CASKEY
by Kenneth C. Royall
FREDERICK W. P. LORENZEN
Frederick W. P. Lorenzen
Attorneys for Plaintiff
Texaco Inc.

White & Case
by Edgar E. Barton
Attorneys for Plaintiff
The B. F. Goodrich Company

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Order Denying Respondents' Motion to Cancel Hearings and Requiring Certain Disclosures

(July 11, 1962)

(1771)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

[SAME TITLE]

This proceeding is before the hearing examiner on motion of respondents and answer thereto filed by counsel supporting complaint. By said motion the respondents move that the hearing examiner vacate his order of June 27, 1962, setting this case for hearing, or in the alternative, that the order be modified by providing for disclosure of names of witnesses and documents to be used in advance of hearings.

The hearing examiner is of the opinion that the disclosures requested by the respondents are such as could be obtained by conference with the attorney supporting complaint, with or without the participation of the hearing examiner.

The hearing examiner having considered said motion of respondents, the answer thereto and the record herein and being of the opinion that the scope of the remand in this proceeding is so limited that the procedure requested by respondents is neither required or warranted.

IT IS THEREFORE ORDERED that the respondents' motion to vacate the order of the hearing examiner, issued June 27, 1962, or in the alternative requiring certain disclosures, be, and the same is, hereby denied.

July 11, 1962.

EARL J. KOLB,
Earl J. Kolb,
Hearing Examiner.

Initial Decision

(September 24, 1962)

(1863)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

DOCKET No. 6485

[SAME TITLE]

EARL J. KOLB, Hearing Examiner.
PETER J. DIAS, for the Commission.

WHITE & CASE, New York, New York,
by EDGAR E. BARTON, for respondent
The B. G. Goodrich Company;

ROYALL, KORGEL, HARRIS & CASKEY,
New York, New York,
by KENNETH C. ROYALL, for respondent
The Texas Company.

This proceeding is based upon a complaint brought under Section 5 of the Federal Trade Commission Act, charging as unlawful, certain contracts entered into by the respondents, The B. F. Goodrich Company and The Texas Company, whereby The B. F. Goodrich Company agreed to pay The Texas Company a sales commission on all tires, batteries and accessories sold by The B. F. Goodrich Company to service stations and other outlets of The Texas Company. The complaint further charged that respondent, The B. F. Goodrich Company, had entered into similar contracts with certain oil companies other than The Texas

Company, and that The Texas Company had entered into a similar contract with The Firestone Tire & Rubber Company.

(1864) The B. F. Goodrich Company and The Texas Company are engaged in business in practically the entire United States. Counsel supporting the complaint selected five trading areas as being typical of the general operations of respondents under the sales commission contract. Pursuant to this selection, testimony was taken in the Chicago, Omaha, Lincoln, Dallas and Atlanta areas.

After the completion of the taking of testimony, the hearing examiner filed his initial decision on October 23, 1959, dismissing the complaint as to The B. F. Goodrich Company, but holding that The Texas Company, by acts of coercion and intimidation had forced a substantial number of its dealers to purchase sponsored TBA, in violation of Section 5 of the Federal Trade Commission Act. Both sides appealed from the initial decision, and on March 9, 1961, the Commission issued its order remanding this proceeding to the hearing examiner "for the reception of such further evidence concerning the competitive effects of the respondents' practices as may be offered in conformity with the views expressed in the accompanying opinion of the Commission."

In its opinion accompanying said order of remand, the Commission stated:

> "Although there is evidence in the record tending to show that Texaco has in fact coerced its dealers to purchase sponsored TBA through use of threats of lease cancellation or other retaliatory action, we find that Texaco has sufficient economic power over its wholesale and retail petroleum distributors to cause them to purchase substantial amounts of sponsored TBA even without the use of overt coercive tactics. The determination of whether Texaco's exercise of

such economic power in favor of Firestone and Goodyear [sic] under the oil company's sales commission contracts with these rubber companies constitutes an unfair method of competition depends, therefore, upon the competitive effects of these sales commission contracts; not upon whether Texaco has exercised its power to implement such contracts through the use of overt coercive tactics, or by more subtle, but equally effective, means."

(1865) In its opinion, the Commission reversed the conclusions of the hearing examiner that respondent, The B. F. Goodrich Company, should be dismissed because of the absence of evidence that The B. F. Goodrich Company engaged in, or participated in, any acts or practices designed to force dealers and distributors of The Texas Company to purchase Goodrich TBA products. The opinion further pointed out that the issue in this proceeding was the legality of the particular method of distribution of TBA used by The Texas Company and The B. F. Goodrich Company, known as the sales commission plan. The decision of the Commission and the matters contained in its opinion remanding this case, are binding upon this hearing examiner.

Pursuant to said order of remand, the hearing examiner set hearings to begin July 17, 1961, which hearings were cancelled, to be reset after disposition of a petition for an injunction to restrain the hearing examiner from proceeding with further hearings in this case, which was filed by respondents in the District Court for the District of Columbia.

Thereafter, on June 19, 1962, the Court denied respondents' petition for injunction and entered its order for summary judgment which, in effect, requires the hearing examiner to complete the taking of testimony and other

evidence, and issue his initial decision by October 1, 1962. Respondents immediately filed an appeal with the U. S. Court of Appeals for the District of Columbia, and in addition, filed a petition for preliminary injunction which was denied by said Court on June 22, 1962.

Upon disposition of the various motions before the U. S. District Court and Court of Appeals, the hearing examiner set this case down on July 16, 1962, to proceed with consecutive hearings until final completion of this case. Hearings were held and case closed July 19, 1962.

This proceeding is now before the hearing examiner for final consideration in accordance with the remand of the Commission, upon the complaint, answer thereto, testimony and other evidence, proposed findings of fact and conclusions submitted by the parties and briefs in reply thereto. The hearing examiner has given consideration to the proposed findings of fact, conclusions and briefs in support thereof, submitted by the parties, and all findings of fact and conclusions of law proposed by the parties respectively not herein specifically found or concluded are herewith rejected.

(1866) In its order of remand, the Commission did not vacate or set aside the initial decision, nor does the order or opinion take issue with the factual findings made, but disagreed with certain conclusions reached by the hearing examiner. For the purpose of clarity, the hearing examiner hereby adopts and incorporates into this initial decision, the findings of fact set out in the previous decision. The hearing examiner herby strikes the conclusions and order contained in said original initial decision and makes additional findings of fact based upon the record herein and the evidence adduced, subsequent to the remand.

Initial Decision

FINDINGS OF FACT ADOPTED FROM INITIAL DECISION ISSUED PRIOR TO REMAND

1. Respondent, The B. F. Goodrich Company (hereinafter sometimes referred to as "Goodrich"), is a corporation organized, existing and doing business under the laws of the State of New York with its principal office and place of business located at 500 Main Street, Akron, Ohio. Said respondent, among other things, is engaged in the sale and distribution in interstate commerce of tires, batteries, accessories and supplies (hereinafter referred to as "TBA").

2. Respondent, The Texas Company (hereinafter sometimes referred to as "Texas" or "Texaco"), is a corporation organized, existing and doing business under the laws of the State of Delaware with its principal office and place of business located at 135 East 42nd Street, New York 17, New York. Said respondent is engaged in the production and in the sale and distribution in interstate commerce of petroleum products, including gasoline and lubricants sold to petroleum wholesalers and service stations.

3. There are a large number of service stations and distributors which sell principally the petroleum products of The Texas Company. These service stations which purchase Texaco products for resale at retail to the consuming public are classified as "C" stations and "D" stations. A "C" station is one that is either owned or leased by The Texas Company, and in turn leased by it to the dealer. A "D" station, which is sometimes called a (1867) contract station, is either owned by the operator or leased by him from someone other than The Texas Company.

4. Sales to service stations are made by The Texas Company either direct with delivery from company-operated bulk plants or through consignees, who are designated as "B" accounts. A consignee is one who operates a bulk plant owned by The Texas Company or, in some instances, by the consignee. The Texas Company stocks the plant with its petroleum products, and the consignee delivers the products and is compensated by commissions. He is a wholesaler performing the same function that a Texas salary-operated plant would perform. The Texas Company also sells its petroleum products to distributors designated as "E" accounts, who operate bulk storage plants, purchase Texaco products, and sell such products to service station dealers and consumers.

5. The number of Texaco accounts in the various classifications during the past few years were as follows:

(a) Texaco Lease ("C") stations—

1951—11,570
1952—11,858
1953—12,070
1954—12,674
1955—13,366
1956—13,764 (as of June 1956)

(b) Texaco contract ("D") stations—

1952—17,708
1953—16,913
1954—16,853
1955—16,806
1956—(June) Not available.

(c) Texaco consignee ("B") accounts—

1951—1,225
1952—1,172
1953—1,128
1954—1,124
1955—1,150
1956—(June) Not available.

(1868)

(d) Texaco distributors ("E") accounts—

1951—687
1952—664
1953—652
1954—697
1955—711
1956—(June) Not available.

6. The usual form of lease entered into by the respondent Texas with its lessee dealers or "C" stations was for a term of one year, and thereafter from year to year, subject to termination by either party at the end of the first or any subsequent year on ten days' prior written notice. Rental provided by the lease was usually a flat rental, plus a cents-per-gallon charge, dependent upon the location of the station, financial condition of the lessee, and potential income. Such lease contained so-called "house-keeping" provisions relating to the use, maintenance and general appearance of the station. Breach of any of the terms, conditions or covenants of the lease by the lessee constituted grounds for immediate termination by The Texas Company without notice to the lessee.

7. In addition to the lease, The Texas Company entered into an "Agreement of Sale" with its dealers. These agreements provided for the purchase of an annual minimum and maximum quantity of Texaco gasoline, oils and

greases at the current posted price at the time delivery was made. These agreements were usually for a period of one year, and from year to year thereafter, and could be terminated at the end of the initial term, or any anniversary thereof, by giving thirty days' written notice, with automatic termination upon termination of lease of property. These agreements also provided for a quantity discount or rebate, payable at the end of the year.

8. Tires, batteries and accessories have become a necessary and integral part of the business operation of the Texaco dealer. He cannot progress in his business unless he has the revenue from that portion of his business and also be in a position to serve his customers completely. It is to the interest of The Texas Company to have its dealers engaged in the sale of TBA as this builds a stronger dealer organization and increases the sale of gasoline.

(1869) 9. On March 1, 1940, The Texas Company entered into a sales commission agreement with The B. F. Goodrich Company which provided for the payment of commissions to Texas on the sales by Goodrich of its tires, tubes, batteries and auto and home supplies to Texaco outlets, including service stations, distributors and consignees, in consideration of the services to be rendered by the Texas sales organization in promoting the sale of these products. This agreement was modified from time to time and was later superceded by contract dated November 23, 1943, which provided, among other things, for the payment of a commission of 10 percent on sales to "C" and "D" stations, and 7½ percent on sales to "B" and "E" stations by Goodrich. The Texas Company also entered into a similar sales commission agreement with The Firestone Tire & Rubber Company.

10. The services which were performed by The Texas Company pursuant to its contract with Goodrich and Firestone in promoting the sale of TBA products consisted principally of the following:

(a) Texas personnel, when interviewing prospective dealers for new or established service stations, advised them of the importance of TBA and recommended the TBA products of Goodrich and Firestone, and when dealer was selected would at times notify Goodrich or Firestone of such selection and introduce the new dealer to sales representatives of Goodrich or Firestone and assist the new dealer in setting up an adequate TBA inventory.

(b) Texas salesmen were encouraged by Texas management to write up orders for sponsored TBA without waiting for a formal request from a dealer.

(c) Texas frequently conducted dealer meetings and provided training courses for dealers, both of which included suggestions for the displaying and merchandising of TBA, in some instances with the active participation of Goodrich and Firestone.

(d) Texas incorporated suggestions on merchandising TBA in its dealer magazines and arranged for advertising and promotions, which included TBA products of Goodrich and Firestone, and participated in promotions instituted by Goodrich and Firestone.

(e) Texas made TBA products available to credit card holders, including merchandise sold on deferred payments without carrying charge.

(1870) 11. Both Goodrich and Firestone have sold substantial quantities of their TBA products to Texaco outlets. Sales by both Goodrich and Firestone during the years 1952 to 1956 to the various classes of accounts were as follows:

CLASSES OF ACCOUNTS

Year	Rubber Co.	"C"	"D"	"E"	"B"	Total
1952	G	$ 5,803,896	$ 1,911,638	$ 1,605,665	$ 3,425,084	$ 12,746,283
	F	13,838,565	6,210,771	3,030,989	6,509,406	29,589,731
1953	G	6,832,705	1,807,688	1,804,391	3,480,551	13,925,335
	F	15,843,023	5,634,766	3,210,938	6,310,907	30,999,634
1954	G	7,698,833	1,826,738	1,726,499	3,571,274	14,823,344
	F	16,441,762	5,326,669	3,070,478	5,905,508	30,744,417
1955	G	9,444,122	2,151,778	2,003,965	4,334,376	17,934,244
	F	19,464,784	6,036,009	3,731,307	6,330,072	35,562,172
1956	G	10,515,043	2,159,457	1,947,333	4,310,815	18,932,648
	F	23,547,120	6,569,198	3,386,318	6,376,622	39,879,258
TOTALS:		$129,429,853	$39,634,712	$25,517,883	$50,554,615	$245,137,066

JA 209
Initial Decision

(1872) 12. Based upon the foregoing sales, Goodrich and Firestone paid Texas the following annual sales commissions:

Year	*Rubber Company*	*Commission*
1952	G	$ 1,090,583
	F	2,557,991
1953	G	1,215,084
	F	2,704,976
1954	G	1,310,738
	F	2,678,005
1955	G	1,597,800
	F	3,197,654
1956	G	1,736,811
	F	3,743,852
	TOTAL:	$21,833,494

13. It is the contention of counsel supporting the complaint that because of the relationship, contractual and otherwise, between Texas and its station operators, consignees and distributors, the adoption of the Sales Commission Plan of selling and promoting the sale of TBA entered into by Texas with Goodrich and Firestone has a tendency to lessen, restrain, prevent or eliminate competition in the sale of TBA, and has foreclosed other suppliers of TBA from a substantial portion of the TBA business of the Texaco petroleum outlets.

14. In support of the charges of the complaint, eight former Texaco dealers were called to testify in this proceeding. Five of these dealers testified to pressure being placed upon them relative to the purchase and display of non-sponsored TBA, and two claimed that TBA was in-

volved in the cancellation of their leases. Except for these two dealers, three of the dealers voluntarily left their stations, and the leases of the remaining three were cancelled for reasons not involving the sale of TBA. The testimony relative to pressure and cancellation is summarized as follows:

(a) James S. Zaloudek, a Texas lessee from 1948 to 1954, testified on direct examination that he expected his lease to be cancelled for handling non-sponsored TBA. On cross-examination he admitted that (1873) cancellation might have resulted from difficulties arising from the sale of tires to a customer on credit card without mounting the tires, as required. He eventually had to make good on this sale as the customer resold the tires and defaulted in making payment. This witness further testified to controversies and arguments with Texas representatives relative to the carrying and display of non-sponsored TBA items. He testified that he had been told to get rid of a certain non-sponsored anti-freeze; that he had been required to take certain non-sponsored filters off display and put them in the back room; that he had been told to remove Armstrong tires from the display rack and certain accessories from the shelves, which he refused to do; and that he was forced by Texas representatives to take out some Auto-Lite batteries he had purchased. With reference to the items of TBA which he continued to purchase, he was told by Texas representatives that he should not have them in his station, and finally in 1953 he dealt exclusively with Firestone with the exception of some non-sponsored waxes, polishes and filters; and in 1954 carried 92 percent Firestone and Texaco, the other 8 percent consisting of chains, anti-freeze, filters, oil, polishes and waxes. The Texas salesman denied that he told Zaloudek that he could not handle, and should remove, the various TBA items.

(b) C. F. Sanford, Jr., a Texas lessee from 1953 to 1955, who purchased gasoline from an independent consignee of The Texas Company, testified that shortly after taking over the station he put in a stock of Continental batteries and was informed by a Texas representative that he would either handle Firestone or expect not to renew his lease; that he continued to handle these batteries and was subsequently notified of the cancellation of his lease. It further appears from the testimony in this proceeding that Sanford's operation of the station was generally poor; that he was in financial difficulties and gave bad checks to the consignee for the payment of gasoline. It also appears from the record that due to a highway change about 30 or 40 percent of the business of the station would be lost, and that because of Sanford's financial condition the Texas representative was of the opinion that Sanford would not be able to survive, and that this was the primary factor in recommending the cancellation of the lease and that TBA was not involved.

(c) Harvey G. Talley, a Texas lessee from 1938 to 1951, testified that in 1945 the Texas representative asked him not to display Dayton tires but to place (1874) them in the back room. He later disposed of the Dayton tires and carried only Firestone until the end of his lease. He displayed Southern batteries and a few Willard batteries, but no objection was made to these batteries. Lease was cancelled because he could not stay open twenty-four hours a day, which was required at that particular location.

(d) Richard E. Tidwell, a Texas lessee from October 1953 to March 1955, testified that he consulted with a Texas salesman about handling a cheaper tire, but was told that the company would be more lenient and would look with favor upon dealers who were loyal. He did not take on the cheaper tire on a stocking basis, and when he found out

that Texas Company desired him to carry only one line he endeavored to work along with them. He did carry a cheaper battery, but did not display it. Tidwell voluntarily gave up the station because of a desire to go back into flying.

(e) John D. Scott, a Texas lessee three years, bought only Goodrich TBA, except odds and ends from competitors. Carried Goodrich tires only and Goodrich recapping until about a year before testifying, when he changed recapping to another concern, owned by a friend of his, without any objection from Texas. He also carried Goodrich batteries, only, until about eight months prior to hearing, when he put in a line of cheaper batteries, but did not display them. Lease was cancelled for reasons other than TBA, including controversies over the clock and coca cola machine and excessive drinking on the premises.

(f) Herman Gilbert, Earl M. Gause and H. Arpin Koehler carried Goodrich or Firestone exclusively except for some minor items purchased to meet competition. Their leases were cancelled for reasons not involving TBA.

15. Certain representatives of suppliers of TBA, who were selling in competition with respondent Goodrich, were called as witnesses in this proceeding. These parties testified generally that they had difficulty in selling TBA to Texaco stations and testified specifically as to reasons given by certain Texaco dealers for not buying or selling their TBA items. This testimony as to reasons given by Texaco dealers for not purchasing competitive TBA was allowed under the authority of *Lawlor* vs. *Loewe,* 235 U. S. 522. This latter testimony was received not as proof of the truth of the facts recited, but for the purpose of showing the state of mind of the dealer. This testimony, however, is competent to show that dealers did (1875) not pur-

chase a substantial amount of competitive non-sponsored TBA because of their feeling that they were required to purchase Goodrich or Firestone TBA.

16. In the course of its defense to this proceeding, The Texas Company introduced the testimony of 54 Texaco dealers and 5 ex-Texaco dealers who came from thirteen of the fifteen sales divisions of Texas in the United States. With the exception of 1 ex-dealer witness, who had handled Firestone prior to becoming a Texas dealer and who was completely sold on the Firestone line, all of these witnesses testified to displaying and selling non-sponsored TBA without objection or complaint by Texas.

17. The hearing examiner recognizes that present dealers appearing to testify were under considerable pressure because they were naturally interested in not jeopardizing the renewal of their leases. The record, as a whole, shows that there were no exclusive dealers in the sense that they confined themselves entirely to sponsored TBA, as all dealers carry some non-sponsored TBA to satisfy demands of their customers either in varying amounts or on a pick-up basis. Many of the stations do not have the space or finances to stock a complete line of tires and batteries, but instead purchase non-sponsored as well as sponsored items on a pick-up basis to satisfy customer demand. In some instances there was some confusion as to the definition of accessories among the dealers, as some included as accessories items generally known as repair parts, as distinguished from accessories, and some dealers testified to carrying non-sponsored items which were, in fact, not supplied by Firestone or Goodrich. Many of the dealers called maintained a high sales volume in gasoline gallonage, and also oil, and Texas would not jeopardize this gallonage by pressure tactics sufficient to irritate or alienate such deal-

ers. This is also true as to those dealers in outlying locations where station operators are not readily available, but where it is important to Texas to maintain service.

18. As a result of an antitrust suit filed against Standard Oil Company of California, Walter Hochuli, General Sales Manager of The Texas Company, on June 1, 1948, issued a so-called policy letter to the territorial managers, which was subsequently disseminated down the chain of command to salesmen. This letter advised the personnel that they were to consider a Texaco dealer as an independent businessman; that he should be encouraged to expand his business by purchasing TBA; that the personnel have a (1876) right to recommend certain lines, but that Texas has neither the right nor the desire to dictate to the dealer or influence him in any way as to the type of merchandise he should handle, or the source from which he should purchase it; that the Texaco dealer must be permitted to operate as an independent businessman and anyone who violates this policy would be subject to immediate dismissal.

19. The Texas policy was restated to its personnel in 1952 and 1953, and in 1955 it was incorporated in the portfolios of each salesman so that the salesman would have the statement of policy for ready reference, although by this time it did not carry with it the threat of immediate dismissal. This policy was not transmitted to the Texas dealers except on occasion, and then orally, by salesmen or other personnel, and it was only after the dealer sold a sufficient amount of lubricating oil to warrant the payment of a discount or rebate that he was informed by letter that he was free to select any brand of TBA merchandise which he might elect and that the only interest Texas had was to help him market that merchandise at a profit so that his business would be more successful in every way.

20. The dealer witnesses called by Texas all testified that they were familiar with, and knew, the Texas policy with reference to the sale of TBA and considered themselves independent businessmen, free to purchase TBA as they might see fit. Many testified that when they were interviewed as prospective dealers they were told that they could purchase TBA wherever they might wish. The ex-dealers called in support of the charges of the complaint testified that when they were interviewed as prospective dealers they were told that they could purchase either Goodrich or Firestone with no indication that they might purchase from other suppliers. It would be unusual to expect that Texas salesmen would vigorously insist to a dealer that he had a right to buy wherever he might wish when the salesman's compensation was based, in part, upon commission on sales of sponsored TBA.

21. After giving consideration to the testimony of the various witnesses appearing in this proceeding and giving consideration to their demeanor and credibility, it is the opinion of the hearing examiner that the record in this proceeding as a whole indicates that coercion and pressure was, in fact, brought on a substantial number of dealers to induce them to purchase sponsored TBA and to discontinue the purchase or display of non-sponsored items.

(1877) 22. The use of credit cards in connection with the sale of Goodrich TBA was instituted by The Texas Company in March 1940. This was discontinued as of May 6, 1942, due to credit regulations issued by the Federal Reserve Board. The use of credit cards was again resumed on January 1, 1948. From that date until January 1, 1955, there were no restrictions with regard to brands of TBA that might be purchased on credit, but commencing January 1, 1955, Texas specifically restricted the use of its credit

card in connection with TBA purchases, to Goodrich and Firestone products. It was on this date that Texas instituted the practices of selling TBA products on credit cards on a deferred payment basis, allowing three months for payment of purchases of $30.00 or more, and six months for purchases of $50.00 or more, with no service or carrying charge being made. The record shows that Texas dealers have from time to time continued to charge non-sponsored TBA items on the regular monthly settlement basis. It is logical for Texas to limit sales of TBA on deferred payment, without interest or carrying charge, to those products on which Texas receives a commission, as this would, in part, indemnify it for the expense in connection with the deferred payment plan.

SUPPLEMENTAL FINDINGS

23. Goodrich manufactures tires and tubes of all kinds, sizes, varieties and price. It buys and resells batteries, which carry the "B. F. Goodrich" brand and which similarly comprise a variety of lines of differing prices, sizes and quality. B. F. Goodrich sells a full line of automotive accessories, including fan belts, radiator hose and other rubber products of its own manufacture and non-rubber accessories which it buys and resells under the nationally advertised brand names of the manufacturers of those products.

24. Goodrich operates five tire manufacturing plants across the country located in Ohio, Pennsylvania, Alabama, Oklahoma and California. Its tires are shipped from these plants to fifteen company-operated merchandising warehouses (also known as master warehouses) in major metropolitan centers over the nation. These plants and master warehouses in turn ship tires to thirty-one Goodrich dis-

trict office-warehouses all around the country. The manufacturers from which B. F. Goodrich purchases its batteries have plants strategically located over the country from which they ship (1878) to the same master and district warehouses. The accessories B. F. Goodrich purchases from other national brand manufacturers also go to the master and district warehouses.

25. Goodrich sells tires, batteries, accessories and supplies to specialized tire dealers, new car dealers, garages, service stations and in every channel of trade where tires are sold. In addition to these independent distributors and dealers, it also sells through its own company-operated B. F. Goodrich Stores. Some of these independent distributors and The B. F. Goodrich Stores, located in the various states of the United States, are supplied primarily from the master warehouses and district office-warehouses or occasionally from the manufacturing plants of Goodrich or the other concerns from which it purchases the batteries and accessories which it does not manufacture itself.

26. Goodrich has sales commission arrangements with Texas, Continental Oil Company (hereinafter "Conoco"), The Ohio Oil Company (hereinafter "Ohio-Marathon"), Shell-American Petroleum Company (hereinafter "Shell-American"), Jenney Manufacturing Company (hereinafter "Jenney") and Emblem Oil Company (hereinafter "Emblem"). There are written contracts with Texas, Conoco, and Ohio-Marathon but there are no formal contracts with the other three oil companies, which are smaller, local concerns generally with only service station customers selling at the retail level but without wholesale outlets such as consignees, jobbers or distributors. With those exceptions, the terms and conditions of the arrangements with Shell-American, Jenney and Emblem, and their responsibilities

thereunder, are the same as those of the oil companies which are parties to formal contracts, and their outlets are similarly served by Goodrich.

27. The typical service station requires unique services not required by the large-volume tire dealers directly served by Goodrich and others. Because of the comparatively small volume of its TBA business, limited capital, and restricted storage space in relation to the multiplicity of types, sizes, qualities and prices of tires and batteries now in demand, the service station generally stocks few if any of these items in the TBA line and consequently requires a fully-stocked source of supply close at hand and prepared to make quick, small deliveries of items already ordered by a customer of the station.

(1879) 28. Goodrich satisfies the need of service stations for quick delivery through numerous supply points located across the country. Generally these supply points are independent distributors, but in a few instances where independent distributors with the necessary facilities are not available, B. F. Goodrich Stores handle supply point distribution. Whenever Goodrich enters into a sales agreement or starts selling to an outlet of an oil company with which it has a sales commission arrangement, Goodrich usually designates a supply point nearest to the service station. The service station operator is not limited to the designated supply point, but is free to deal with any Goodrich supply point he may prefer.

29. These independent distributors have played an increasingly important role in the operation of B. F. Goodrich's sales commission programs with the various contracting oil companies. Of the total number of outlets of all the contracting oil companies on which Goodrich paid

commissions, the percentage supplied by independent distributors from 1950 through mid-1956 was as follows:

As Of	*Total Outlets On Which Commission Was Paid*	*Supplied By Independent Distributors*	*Percentage By Independent Distributors*
12/31/50	2040	442	22%
12/31/51	2469	820	33%
12/31/52	4075	1876	46%
12/31/53	5065	2486	49%
12/31/54	6065	3127	52%
12/31/55	7042	3908	55%

The same trend is even more pronounced for Texas outlets, for which figures are available for two additional years:

As Of	*Total Outlets On Which Commission Was Paid*	*Supplied By Independent Distributors*	*Percentage By Independent Distributors*
12/31/50	1974	438	22%
12/31/51	2245	743	33%
12/31/52	2763	1228	44%
12/31/53	3189	1664	52%
12/31/54	3864	2172	56%
12/31/55	4444	2636	59%
12/31/56	4935	2954	60%
12/31/57	5059	3156	62%

(1880) 30. In addition to Texaco, Goodrich also entered into a sales commission contract with Continental Oil Company (Conoco) in 1952. From 1952 to the end of 1955, the number of Conoco leased stations increased from 1,138 to 1,745.[1] Sales by Goodrich to Continental were sub-

1. CX 215

stantial as is indicated by the following tabulation of total tire and tube sales for the years 1954-1957:

1954	$5,328,882
1955	6,413,852
1956	5,911,274
1957	5,613,348 (RX 83)

31. In the year 1955, there was a total of 182,097 service stations in the United States.[2] In the same year, Texaco had 13,366 (C) stations and 16,806 (D) stations, for a total of 30,172 stations which would be subject to the sales commission contract. Taking the (C) and (D) stations only of Texaco, this would amount to 16.5% of the service stations in the United States. The service stations controlled by the additional oil companies having sales commission contracts with Goodrich during the years 1953-1955 were as follows:

	12-31-53	*12-31-54*	*12-31-55*
Conoco	1061	1272	1508
Shell	53	66	804
Jenney Mfg.	138	188	201
Ohio Oil	594	666	60
Emblem	30	9	25
	1876	2201	2598[3]

32. A second method of distributing TBA to oil companies was the purchase resale plan. This was generally limited to tires and tubes and usually involved the supplying of private brand tires. The following oil companies market private brand tires under this plan:

2. RX 86F

3. CX 136

Oil Company	*Tire Supplier*	*Tire Brand*
American Oil Company	Mansfield Tire & Rubber Co.	Amoco
Cities Service Oil Co. (Del.)	U. S. Rubber Co.	Cities Service
Cities Service Oil Co. (Pa.) (1881)	Dayton Tire Co.	Cities Service
Billups Petroleum Co.	U. S. Rubber Co.	Billups
Esso Standard Oil Co.	U. S. Rubber Co.	Atlas
Humble Oil & Refining Co.	General Tire Co.	Atlas
Standard Oil Co. of Calif.	Mansfield Tire & Rubber Co. U. S. Rubber Co.	Atlas
Standard Oil Co. (Ind.)	U. S. Rubber Co.	Atlas
Standard Oil Co. (Ky.)	U. S. Rubber Co.	Atlas
Standard Oil Co. (Ohio)	Cooper Tire & Rubber Co. Seiberling Tire Co.	Atlas
General Petroleum Corp.	Goodyear	Mobil
Magnolia Petroleum Corp.	Goodyear	Mobil
Socony-Mobil Oil Co.	Goodyear	Mobil
Phillips Petroleum Co.	Lee Rubber & Tire Corp.	Phillips
Pure Oil Co.	Mansfield Tire & Rubber Co.	Pure
Tidewater Oil Co.	U. S. Rubber Co.	Flying "A"
Blakely Oil Co.	Mansfield Tire & Rubber Co. The B. F. Goodrich Co.	Pharis Brunswick
Century Oil Co.	U. S. Rubber Co.	Fisk

33. During the course of the hearings upon remand, the respondent, The B. F. Goodrich Company offered in evidence copies of Crowell-Collier Automotive Survey for the years 1946 through 1955, which said respondent relied upon and utilized in the course of its business. This survey shows the percentage of replacement tire purchases by automobile owners from the companies listed during the period of time set out as follows:

REPLACEMENT TIRE PURCHASES BY AUTOMOBILE OWNERS

	1946	1947	1948	1949	1950	1951	1952	1953	1954	1955
Goodyear	21.3%	20%	18.2%	20%	21%	21%	19.5%	18.3%	21.4%	20.4%
Firestone	19.5%	20%	17.6%	18%	18%	16%	16.9%	16.8%	15.3%	17.6%
U. S.	9.4%	9%	8.7%	9%	8%	10%	8.9%	8.0%	7.4%	8.2%
Goodrich	10.7%	10%	8.9%	8%	10%	9%	10.2%	7.2%	8.9%	7.0%
Sears	5.8%	6%	6.6%	8%	9%	8%	10.8%	11.7%	10.7%	12.1%
Atlas	5.0%	7%	7.5%	7%	6%	6%	6.1%	6.3%	6.0%	5.6%
General	3.7%	3%	2.3%	2%	2%	2%	2.9%	3.0%	2.4%	2.6%
Riverside	2.9%	3%	4.5%	4%	5%	4%	3.8%	4.5%	4.2%	3.9%
Lee	2.4%	2%	3.2%	2%	2%	3%	2.0%	2.7%	2.7%	1.9%
Springfield	2.1%	1%	1.8%	2%	2%	2%	2.0%	1.6%	1.2%	1.0%
Ford	4.4%									
Others	16.6%	12%	14.1%	16%	9%	10%	10.4%	11.0%	9.6%	10.1%
Davis		3%	2.5%	2%	2%	2%	2.2%	3.1%	2.2%	2.2%
Fisk		2%	1.7%	2%	2%	1%	0.5%	0.5%	1.0%	0.9%
Seiberling		1%	1.4%		2%	2%	1.0%	1.6%	1.5%	1.2%
Dunlop		1%	1.0%		1%	2%	1.4%	0.7%	1.6%	0.8%
Mobil					1%	2%	1.4%	0.9%	1.6%	1.1%
Armstrong								1.2%	1.0%	2.0%
Gulf								0.9%	1.3%	1.4%

(1883) 34. There are at least 18 manufacturers of automotive tires in the United States, ten of which also offer lines of batteries and accessories. Those selling batteries and accessories in addition to producing and selling tires are:

(1) The Goodyear Tire & Rubber Company

(2) The Firestone Tire & Rubber Company

(3) United States Rubber Company

(4) The B. F. Goodrich Company

(5) Cooper Tire & Rubber Co.

(6) Dunlop Rubber Co.

(7) Gates Rubber Co.

(8) General Tire & Rubber Co.

(9) Lee Rubber & Tire Corp.

(10) Seiberling Rubber Co.

Those companies which produce and sell only tires are:

(11) Armstrong Rubber Co.

(12) Corduroy Rubber Co.

(13) Dayton Rubber Co.

(14) Denman Rubber Manufacturing Co.

(15) Mansfield Tire & Rubber Co.

(16) McCreary Tire & Rubber Co.

(17) Mohawk Rubber Co.

(18) Schenuit Rubber Co.

CONCLUSIONS

1. Texaco has sufficient economic power over its wholesale and retail petroleum distributors to cause them to purchase substantial amounts of sponsored TBA, even without the use of coercive tactics. Such economic power exists independent of any particular method of distributing TBA which Texaco might use.

2. For the purpose of inducing the purchase of sponsored TBA by Texaco dealers, Texas representatives have, in fact, attempted to and did coerce and force Texaco dealers to purchase substantial quantities of Goodrich and Firestone TBA and respondent, Goodrich, had the benefits of such practices. These acts of coercion consisted of demands that dealers discontinue the purchase or display of non-sponsored TBA under the threats of lease cancellation or other coercive acts. Such coercion need not be 100% effective in order to constitute an unfair method of competition or an unfair act or practice in violation of the Federal Trade Commission Act.

(1884) 3. The hearing examiner is bound by the decision of the Commission and the only issue left for consideration of the hearing examiner under the terms of the Commission's opinion and order of remand, is the competitive effects of the sales commission plan used by Goodrich with The Texas Company, and whether Texaco's exercise of such economic power in favor of Goodrich and Firestone under their sales commission contracts have sufficient competitive effect to constitute an unfair method of competition or an unfair act or practice.

4. The use of the sales commission method of distribution by Goodrich was designed to take advantage of the

economic control which Texaco had over its dealers, and by such use, Goodrich was able to obtain an unfair advantage over its competitors in selling to Texaco stations and in addition, aided and abetted Texaco in removing from the open market a substantial number of new and established Texaco dealers by causing them to purchase Goodrich TBA exclusively or in substantial quantities, and thereby excluding competitors of Goodrich who might otherwise have been able to sell their TBA to a substantial number of such Texaco dealers.

5. Representatives of practically all of the competitors of Goodrich in the selected trade areas in which testimony was taken, testified generally that they had difficulty in selling TBA to Texaco stations and testified specifically as to the reasons given by certain Texaco dealers for not buying or selling their TBA items. This testimony shows that Texaco dealers did not purchase a substantial amount of competing non-sponsored TBA because of their feeling or understanding, that they were required to purchase Goodrich or Firestone TBA.

6. Informing new dealers of the commission arrangement with Goodrich and Firestone as to TBA and the recommendation of these companies by Texaco, carried with it an implication that Texaco dealers were required to purchase their TBA from either Goodrich or Firestone and resulted in the exclusion of TBA of the competitors of these companies.

7. Analysis of the tabulation of replacement tire purchases set out in supplemental findings, show that the market share of Goodrich in the sale of replacement tires during the years 1946 to 1955 has varied from year to year (1885) with a high of 10.7% in 1946 and a low of 7.0% in

1955, and averaging approximately 9% for the entire period. Respondent maintains that those percentages indicate no injury to competition. In considering this contention, it must be considered that the basis upon which these percentages were figured has increased considerably from 1946 to 1955. For example, during approximately the same period 1948 to 1955, passenger car registration increased 56.3%,[4] which indicates a much larger market for replacement tires in 1955, and also indicates a possible doubling of gross income during that period by Goodrich. The hearing examiner is of the opinion that the percentages shown in said tabulation fully complies with the requirement of substantiality. The effect upon competition of the Goodrich sales commission contracts is greatly augmented by the cumulative effects of the sales commission contracts of Firestone, Goodyear and U. S. Rubber who use the sales commission plan of distribution extensively. These three rubber companies together with Goodrich are known as the "big four" and account for more than 50% of the tire sales in the replacement market.

8. The above share of the market percentages are not controlling on the question of injury to competition, but of more importance, is the fact that the sales of Goodrich to all classes of accounts of Texaco increased from $12,746,283 in 1952 to $18,923,649 in 1956, and the payments of commission by Goodrich to The Texas Company on the sales commission contract, increased from $1,090,583 in 1952 to $1,736,811 in 1956.

9. Subsequent to the issuance of the initial decision in this proceeding, the U. S. Court of Appeals on July 11, 1960, issued its opinion in *S. Kriete Osborn* v. *Sinclair Re-*

4. RX 55(b)

fining Company, 286 F(2d) 832. The facts in this case were substantially the same as in the present case. Goodyear had executed a sales commission agreement with Sinclair similar in all respects to the Goodrich agreement with Texaco. The contract of Sinclair with its dealers was similar to the Texaco dealers agreement, and the general method of doing business was substantially the same. Based upon these similar facts, the Court held that the agreement betwen Sinclair and its dealers constituted a tying arrangement which affected a substantial part of commerce, solely for Sinclair's economic benefit and was unjustified by the nature of the products. Referring to this situation, the Court in its opinion said:

> (1886) "The perniciousness of the imposed tie-in is aggravated by the fact that the defendant is not even in the business of selling the tied products, but is employing its economic power in the gasoline industry to force his dealers to do business with a supplier in another industry under an arrangement that yields the defendant an extraneous revenue. The defendant in this case goes a step further than the supplier in the usual tie-in case, for here the tied product is not even handled or sold by the defendant, but it farms out to another, for a price, its coercive economic power."

Even if it be considered that the facts in this case are not sufficient to constitute a tying contract under the terms of the Clayton Act, it must nevertheless be concluded that the facts in this case are contrary to the spirit of the Clayton Act and as such, constitute a violation of the Federal Trade Commission Act. A tying agreement is not required to be 100% effective to constitute a violation of the Clayton Act and the Federal Trade Commission Act. The participation of Goodrich in these practices by means of the sales

commission contract, gives Goodrich an unfair competitive advantage over its smaller competitors in the sale of TBA products to Texaco outlets and other oil company outlets.

10. The use of the sales commission plan of distribution of TBA by the respondents, The Texas Company and The B. F. Goodrich Company as herein found, has a tendency and capacity to restrict, restrain or lessen competition in the sale of TBA products and constitutes an unfair method of competition and an unfair act and practice in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

(1887)

ORDER

IT IS ORDERED that respondent, The Texas Company, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device in connection with the promotion, offering for sale, or sale and distribution of tires, inner tubes, batteries, and automotive accessories and supplies (hereinafter referred to as "TBA products") in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

1. Entering into or continuing in operation or effect any contract, agreement or combination, express or implied, with The B. F. Goodrich Company, or with any other rubber company or tire manufacturer, or any other supplier of tires, batteries, or accessories, whereby The Texas Company receives anything of value in connection with the sale of TBA products to any wholesaler or retailer of Texas petroleum products by any marketer or distributor of TBA products other than The Texas Company;

2. Accepting or receiving anything of value from any manufacturer, distributor, wholesaler, or other vendor of TBA products, for acting as (1888) sales agent or for otherwise sponsoring, recommending, urging, inducing, or promoting the sale of TBA products, directly or indirectly, by any such vendor to any wholesaler or retailer of The Texas Company petroleum products;

3. Using or attempting to use any contractual or other device, such as, but not limited to, agreements, leases, training programs, promotions, dealer meetings, dealer discussions, service station identification, credit cards, and financial loans, to sponsor, recommend, urge, induce, or otherwise promote the sale of TBA products by any distributor or marketer of such products other than The Texas Company to or through any wholesaler or retailer of The Texas Company petroleum products;

4. Employing any method of inspecting, reporting, or surveillance or using or attempting to use, in any manner, its relationship with Texas outlets to sponsor, recommend, urge, induce, or otherwise promote the sale of any specified brand or brands of TBA products by any distributor or marketer of such products other than (1889) The Texas Company to any wholesaler or retailer of Texas petroleum products;

5. Intimidating or coercing or attempting to intimidate or coerce any wholesaler or retailer of The Texas Company petroleum products to purchase any brand or brands of TBA products;

6. Preventing or attempting to prevent any wholesaler or retailer of The Texas Company petroleum

products from purchasing and reselling, merchandising, or displaying TBA products of his own independent choice.

IT IS FURTHER ORDERED that respondent, The B. F. Goodrich Company, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the promotion, offering for sale or sale and distribution of tires, inner tubes, batteries and automotive accessories and supplies (hereinafter referred to as "TBA products") in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

1. Entering into or continuing in operation or effect any contract, agreement or combination, express or implied, with The Texas Company or with any other marketing oil company whereby (1890) The B. F. Goodrich Company, directly or indirectly, pays or contributes anything of value to any such marketing oil company in connection with the sale of TBA products by The B. F. Goodrich Company or any distributor of Goodrich products to any wholesaler or retailer of petroleum products of such marketing oil company;

2. Paying, granting or allowing, or offering to pay, grant or allow, anything of value to The Texas Company or to any other marketing oil company for acting as sales agent or for otherwise sponsoring, recommending, urging, inducing or promoting the sale of TBA products, directly or indirectly, by The B. F. Goodrich Company or any distributor of Goodrich products to any wholesaler or retailer

of petroleum products of such marketing oil company;

3. Reporting or participating in the reporting to The Texas Company or to any other marketing oil company concerning sales of TBA products to (1891) wholesalers or retailers of petroleum products, individually or by groups, of any such marketing oil company.

EARL J. KOLB,
Hearing Examiner.

September 24, 1962.

Petition of The B. F. Goodrich Company for Review

(October 12, 1962)

(1892)

UNITED STATES OF AMERICA

BEFORE THE FEDERAL TRADE COMMISSION

[SAME TITLE]

The B. F. Goodrich Company, a co-respondent in the above-entitled proceeding, pursuant to Rule §4.20 of the Commission's Rules of Practice, hereby petitions for review of the second Initial Decision of Hearing Examiner Earl J. Kolb, filed on September 24, 1962 and served upon respondent on September 27, 1962. In support of its petition respondent respectfully shows the following:

• • •

The proceeding was commenced in 1956 by issuance of a complaint charging that certain sales commission contracts of long standing between Goodrich and The Texas Company (now Texaco) constitute an unfair method of competition. These challenged contracts provide for the payment by Goodrich to Texaco (1893) of sales commissions of varying amounts upon the sales of Goodrich tires, batteries and accessories ("TBA") to Texaco outlets, in return for a variety of valuable services rendered by Texaco in connection with such sales.

After an interlocutory appeal held prior to the hearings in this case, the Commission directed that evidence be taken concerning the "competitive effect" of the challenged contracts. At the hearings the bulk of the extensive evidence admitted dealt with the competitive effect of these contracts. On October 23, 1959, after hearing this evidence, the Examiner rendered his first Initial Decision, holding that the challenged contracts did not violate Section 5 of

the Federal Trade Commission Act and dismissing the case against respondent Goodrich.[1]

On appeal the Commission concluded once again that the crucial question was the competitive effect of the Goodrich/Texaco sales commission contracts. It further concluded that the record before it did not contain sufficient evidence to determine whether the effects of the contracts were adverse or not. The case was remanded to the Examiner "for the reception of such further (1894) evidence concerning the competitive effects of the respondents' practices as may be offered * * *". After receipt of such evidence, the Examiner was directed to "indicate any changes he may wish to make in his initial decision *in the light thereof*" [emphasis supplied]. Implicit in this decision was a determination that the evidence then before the Commission would not support a finding of violation; substantial additional evidence tending to show an adverse effect on competition would have to be brought forward before the sales commission contracts could be stricken down as illegal.

At the remand hearings, counsel in support of the complaint was unable to come forward with any competent evidence demonstrating adverse competitive effects.[2] The

1. The Examiner did enter an Order directing respondent Texaco to cease and desist from alleged coercive practices. This Order did not, however, affect the sales commission contracts themselves.

2. Without relating the history of the lengthy judicial proceedings which preceded the remand hearings, it should be pointed out that both respondents vigorously contended, and still contend, that the Commission's remand order itself was unlawful. It was made without any request by any party, without any showing or claim by anyone that there were changed conditions of fact or law, any newly discovered evidence or, indeed, any additional evidence whatsoever. The strength of respondent's argument is demonstrated by the fact that the only material added to the record at the remand hearings was material from the record in another case which the Examiner officially noticed. Assuming *arguendo* that such material is probative at all, or subject to official notice, the Commission could have just as easily noticed it when it rendered its first decision.

* * *

only material added to the record at the remand hearings were three tabulations set forth in paragraphs 32 through 34 of the second Initial (1895) Decision (pp. 18-21). The first tabulation (pp. 18-19) is simply a list of the oil companies which market private brand *tires* under a *purchase and resale plan.* Such a list obviously casts no light on the competitive effects of a *sales commission* arrangement between respondents relating to *tires, batteries and accessories.*

The second tabulation (p. 20) represents estimates of replacement tire purchases by automobile owners for the years 1946 through 1955. This tabulation, if it indicates anything at all, demonstrates that the Goodrich/Texaco contracts have not enhanced Goodrich's market position. Goodrich's share of the market has fallen from 10.7% in 1946 to 7.0% in 1955. Moreover, the market shares of each of the tire manufacturers who are larger than Goodrich, and who also have sales commission plans, have similarly declined during this period of time. Obviously, no finding of adverse competitive effect can be based on such a tabulation.

The third tabulation (p. 21) is simply a list of ten companies who are stated to be sellers of tires, batteries and accessories, and a further list of eight companies who are said to sell tires alone. It is difficult to see what bearing these lists have on the competitive effects of the Goodrich/Texaco sales commission plans. It is, perhaps, of some interest to note that the Examiner found (p. 20) that seven of the ten companies said to offer a full line of TBA (Goodyear, Firestone, U.S., Goodrich, Dunlop, General and Lee) declined in market position (1896) between 1946 and 1955, while only one (Seiberling) moved up; Cooper and Gates are apparently too small to be separately listed. The only company in the group selling tires alone which is large enough to be separately listed (Armstrong) apparently is improving its market position.

• • •

In the light of these facts, and without prejudice to its contention that the case should have been dismissed rather than remanded in the first place, respondent submits that the question raised on this appeal is as follows:

> *Was the additional material placed in the record on remand sufficient to justify a finding of adverse competitive effect, and the entry of a sweeping Order, in view of the Commission's previous determination that the rest of the record would not support such a finding?*

Respondent further submits that the answer to this question obviously is "No."

It is equally clear under the language of the Remand Order that this appeal should not constitute a reargument on evidence which this Commission has already reviewed once and found insufficient to support an Order. Respondents did not reargue the original record before the Examiner. Counsel in support of the complaint did so reargue, however, and the bulk of the "Supplemental Findings" in the second Initial Decision are culled from the original record, not the record on remand. Therefore, (1897) by stating the question on appeal in the manner clearly contemplated by the Commission's Remand Order, respondent does not mean to waive its right to refer to the original record in its briefs and argument on appeal.

* * *

Review of the Hearing Examiner's second Initial Decision is compelled by the public interest. The Examiner has entered a sweeping Order which would prohibit Goodrich from entering into sales commission arrangements with Texaco or any other marketing oil company. Yet, as the Examiner recognized, valuable services are rendered to service station dealers under such sales commission

contracts (pp. 7, 16). Moreover, as the Examiner recognized, and explicitly found, independent distributors are playing an increasingly important role in the operation of such sales commission contracts (p. 17). The outcome of this proceeding is of critical importance, not only to respondents Goodrich and Texaco, but also to thousands of independent dealers and distributors who would be adversely affected by the decision of the Examiner.

October 10, 1962

Respectfully submitted,

WHITE & CASE
By Edgar E. Barton
Macdonald Flinn
Thomas B. Leary
Attorneys for respondent
The B. F. Goodrich Company

Petition of Texaco Inc. for Review

(October 12, 1962)

(1898)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

[SAME TITLE]

Petitioner Texaco Inc. (formerly known as The Texas Company), without prejudice to its contentions regarding the illegality of the remand order dated March 9, 1961, heretofore and now asserted,[1] and without prejudice to its contention in Question 1, *infra*, that the Commission lacks the power to enter any order except an order of dismissal,[2] nevertheless in accordance with Rule 4.20 of the Commission's Rules of Practice, hereby petitions the Commission for a review of the Initial Decision of the Hearing Examiner filed on September 24, 1962 and served on September 27, 1962.

(1899a)

1. Petitioner Texaco Inc. contends that the remand order of the Commission dated March 9, 1961, was improperly, invalidly and unlawfully made; that the Commission does not have and the Hearing Examiner did not have jurisdiction, power or authority under said order to retry issues already disposed of, readjudicate said issues or undertake any other action under said remand order and that such action violates the Administrative Procedure Act and deprives petitioner of property without due process of law in violation of the Constitution of the United States.

2. Question 1, *infra*, relates to statements contained in a Commission press release entitled "Remarks Before National Congress of Petroleum Retailers, Inc., Cosmopolitan Hotel, Denver, Colorado, July 25, 1961, by Hon. Paul Rand Dixon, Chairman of the Federal Trade Commission" in which the Chairman stated that the practices of the type challenged in this proceeding violated the law. The press release reads, in part, as follows: "We at the Commission are well aware of the practices * * *. You know the practices * * * overriding commissions on TBA. You know the companies * * * Texas * * * Goodrich, and Firestone."

The Facts

Investigation by the Commission leading to the issuance of the complaint in the instant proceeding was commenced in 1952. In January, 1956, a complaint was brought under Section 5 of the Federal Trade Commission Act alleging that certain sales commission contracts between Texaco and Goodrich were unlawful. The challenged contracts call for the payment of a sales commission by Goodrich to Texaco on the sale of Goodrich tires, batteries and accessories ("TBA") to wholesale and retail outlets which sell Texaco's brand of petroleum products. In the course of the pretrial proceedings, an interlocutory appeal to the Commission resulted in a directive that evidence be taken concerning the "competitive effects" of the challenged contracts.

Commencing in 1956, extensive hearings took place before a duly designated Hearing Examiner. The most substantial part of the voluminous evidence admitted dealt with the general issue of competitive effects of the challenged contractual arrangements. During the hearings, counsel in support of the complaint was given the opportunity to adduce all evidence available to him and to the Commission relating to the issue of competitive effect.[3] The hearings terminated in December, 1958.

(1899b) On October 23, 1959, the Hearing Examiner, without having reopened the case or having been requested to do so by any party, rendered his initial decison. The Hearing Examiner found that there was some evidence in the record indicating that Texaco had coerced some of its dealers with respect to the purchase of TBA items and embodied in his decision an order compelling Texaco to cease and desist from alleged coercive practices. The

3. Counsel for the Commission so stipulated. See the Stipulation of Facts dated April 27, 1962, Civil Action No. 2219-61, United States District Court for the District of Columbia.

Hearing Examiner further found that the challenged contracts did not violate Section 5 of the Federal Trade Commission Act and that the method of marketing TBA envisaged by said contracts did not violate the Act. Accordingly, he did not order petitioners to cease and desist from engaging in the TBA business under the sales commission type of arrangement. Also, he dismissed the complaint against The B. F. Goodrich Company.

Petitioner Texaco and counsel in support of the complaint appealed and the Commission heard full arguments on both appeals on June 20, 1960. After the oral arguments, without any request by any party to this proceeding and without any claim by any party that there were changed conditions of fact or law or that there was any newly discovered evidence or, indeed, any additional evidence whatsoever, the Commission on March 9, 1961, issued an order remanding the case to the Hearing Examiner for the reception of "further evidence" (1900) concerning the "competitive effects" of the challenged contracts.

As soon as attempts were made to implement the remand order of March 9, 1961, Texaco and Goodrich commenced an action in the District Court for the District of Columbia, seeking a declaratory judgment that the remand was illegal and an injunction against implementation of the order of remand. The District Court refused to grant immediate injunctive relief. However, the District Court ordered that the proceedings on remand were to be conducted "in such a manner that [petitioner] shall have equal time and opportunity with Commission's Counsel in connection with preparing and adducing further evidence, if any * * *." Texaco and Goodrich thereupon attempted to obtain immediate injunctive relief from the United States Court of Appeals for the District of Columbia and from the United States Supreme Court. On June 22, 1962, the Court of Appeals, after counsel for the Commission had

informed the Court that the Hearing Examiner had limited the Commission to three days within which to present additional evidence, denied the petition for an injunction. Mr. Justice Black denied injunctive relief on July 10, 1962.

On June 27, 1962, before the Supreme Court had ruled on the petition for injunctive relief, the Hearing Examiner ordered that hearings on the remand were to commence July 16, 1962 "and to proceed by consecutive hearings until completion (1901) of testimony." On July 2, 1962, petitioners filed a motion asking the Hearing Examiner to allow petitioners pretrial discovery regarding the nature of the evidence which counsel in support of the complaint proposed to introduce. In the same motion, petitioners requested the Hearing Examiner to allow "a sufficient interval of time between the closing of the case by counsel supporting the complaint and the opening of respondents' evidence giving respondents adequate time and opportunity * * * to prepare their own evidence to meet whatever evidence may be adduced by counsel supporting the complaint." The Hearing Examiner denied this motion on July 11, 1962. On July 12, 1962, petitioners received a copy of a motion by counsel in support of the complaint asking the Hearing Examiner to take official notice of certain matters from another case (the *Shell-Firestone* case, Docket 6487).

The remand hearings commenced on July 1962. No admissible evidence was adduced by counsel in support of the complaint at these hearings. Instead, counsel asked the Hearing Examiner to officially notice certain matters from the *Shell-Firestone* case (Docket 6487) and the Examiner, over the objection of petitioner, announced that he would do so. On July 19, 1962, counsel in support of the complaint having rested, petitioner Texaco Inc. moved the Hearing Examiner for the issuance (1902) of subpoenas duces tecum directed to seventeen named companies requir-

ing them to produce records relating to matters which had been officially noticed by the Hearing Examiner. Petitioner Texaco Inc. also requested the Hearing Examiner to issue twenty subpoenas ad testificandum in blank with the representation that the names of the witnesses would be filled in the next day. Issuance of these subpoenas was sought to enable petitioner to disprove and rebut the matters which had been officially noticed over its objection. The Hearing Examiner refused to issue any subpoenas and petitioner, having thereby been deprived of an opportunity to disprove and to rebut the matters which had been officially noticed, rested.

On September 24, 1962, following the close of the remand proceedings, the Hearing Examiner filed his initial decision in which he reaffirmed his earlier findings regarding coercion of dealers, reversed his earlier findings by holding that the use of the challenged contracts violated Section 5 of the Federal Trade Commission Act, and issued a sweeping cease and desist order.

Questions Presented for Review

1. In view of the public utterance made by the Chairman of the Commission on July 25, 1961, would it be error for the Commission to participate further in the review of this (1903) proceeding, including the instant petition, other than to dismiss the complaint?

2. Does an agency such as the Federal Trade Commission, after full trial and a finding by it that the evidence does not show a violation of law, have the power *sua sponte* to reopen and remand the case for the taking of further evidence without any claim or showing that there is any such evidence whatsoever, to say nothing of evidence newly discovered or inadvertently omitted?

3. Did the remand order and/or its implementation in this case violate the Administrative Procedure Act and/or deprive petitioner of property without due process of law?

4. Was it erroneous for the Hearing Examiner to take official notice of matters from the opinion of the Commission in *Firestone Tire and Rubber Company and Shell Oil Company* (Docket 6487), a proceeding to which petitioner was not a party?

5. Was it an error to receive the material offered by Goodrich (see finding No. 33), without any foundation testimony and over the objection of petitioner, on the theory that it could be officially noticed?

6. Will the officially noticed matters from the opinion of the Commission in Docket 6487 support findings and conclusions adverse to petitioner, particularly where such matters were (1904) before the Commission and were included in its decision in Docket 6487 on the very day that it ordered the remand in this proceeding?

7. Does the record of the remand hearings, taken as a whole contain the requisite evidence of competitive effects lacking from the record of the prior hearings so that the record of the remand hearings provides the missing substantial evidence which earlier barred the Commission from finding the challenged arrangement unlawful?[4]

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4. Findings 23 through 34 in the Initial Decision dated September 24, 1962 are labeled "Supplemental Findings." This is misleading for only findings 32, 33 and 34 relate to the proceedings on the remand. All of the other findings are a rehash of the prior record which, the Commission found, was insufficient to establish a violation of law.

Petition of Texaco Inc. for Review

8. Did the Hearing Examiner err in refusing to issue the subpoenas sought by petitioner to enable it to disprove and rebut the matters which had been officially noticed?

9. Was it erroneous for the Hearing Examiner to deny petitioner adequate time to prepare and present its evidence at the remand hearings?

10. Was it erroneous for the Hearing Examiner to make findings and conclusions adverse to the petitioner which were not based on substantial evidence or which were contrary to the evidence?

11. Is the Hearing Examiner's order too broad?

(1905)

Reasons Why Review
Is in the Public Interest

Administrative adjudicative proceedings must be conducted to afford respondents therein a fair hearing. Petitioner contends that this fundamental precept has been ignored and violated in all of the proceedings which have been undertaken by the Commission in this matter from and after the date on which it ordered the remand. The public interest demands an impartial review of the many substantial questions presented herein.

Respectfully submitted,

Amzy B. Steed
James O. Sullivan
Royall, Koegel, Harris & Caskey
By Frederick W. P. Lorenzen
Attorneys for Petitioner
Texaco Inc.

Dated: October 12, 1962

Order Granting Petitions For Review

(November 13, 1962)

(1907)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

Commissioners:

Paul Rand Dixon, Chairman
Sigurd Anderson
Philip Elman
Everette MacIntyre
A. Leon Higginbotham, Jr.

[SAME TITLE]

Respondents having filed on October 12, 1962, petitions for review of the initial decision of the hearing examiner in this proceeding pursuant to §4.20 of the Commission's Rules of Practice, and counsel supporting the complaint having filed an answer in which he does not oppose the granting of said petitions; and

The Commission having determined that said petitions should be granted:

IT IS ORDERED that respondents' petitions for review of the hearing examiner's initial decision be, and they hereby are, granted.

By the Commission.

Joseph W. Shea,
Secretary.

Issued: November 13, 1962

(1985)

UNITED STATES OF AMERICA

BEFORE

FEDERAL TRADE COMMISSION

IN THE MATTER *of* THE B. F. GOODRICH COMPANY *and* THE TEXAS COMPANY, Corporations.	Docket No. 6485

EXCEPTIONS FILED PURSUANT TO RULE 4.21 ON BEHALF OF TEXACO INC. (FORMERLY THE TEXAS COMPANY)

(January 8, 1963)

Texaco Inc. (hereinafter referred to as "Texaco") respectfully submits the following as its exceptions to the revised Initial Decision of the Hearing Examiner filed September 24, 1962, and to the rulings made in this proceeding.

I

EXCEPTIONS TO RULINGS

1. Texaco excepts

(a) to the failure of the Commission to dismiss the complaint upon the first appeal herein and to its issuance, instead, of the Order of March 9, 1961 (hereinafter "Remand Order") remanding this proceeding to the Hearing Examiner,

Exceptions Filed Pursuant to Rule 4.21

(b) to all proceedings had herein pursuant to such Order,

(c) to the Order of the Hearing Examiner dated June 27, 1962 (implementing such Remand Order) setting hearings on the remand to commence July 16, 1962, and

(d) to the failure of the Hearing Examiner to grant Texaco's motion made on July 16, 1962 (Tr. 4439-40)[1] to dismiss this proceeding.

(1986) The grounds are that the Federal Trade Commission did not have the power or authority to order the remand and could not do so consonant with the Administrative Procedure Act and the requirements of due process of law. Moreover, its action was arbitrary and capricious and reflected a prejudgment of the issues in this proceeding. Thus, the Hearing Examiner likewise lacked the power or authority to order, or conduct, hearings pursuant to the Remand Order, and his implementation of the Remand Order deprived Texaco of due process and its rights under the Administrative Procedure Act.

The Remand Order and the proceedings held pursuant thereto were:

(i) In contravention of Section 5(b) of the Federal Trade Commission Act, 15 U. S. C. §45(b), and of the Commission's published Rules of Practice which do not provide for any such remand, but require dismissal of the complaint when there is insufficient evidence in the record to support it and, more specifically, in contravention of Rules 3.24,

1. "Tr." is used herein as the abbreviation for the Official Transcript of the hearings. "CX" or "RX" followed by a number refers to Commission's or Respondents' exhibits, respectively. A name, such as Glenn, followed by a number, refers to the name of a witness and to the page of the transcript of the hearings on which the pertinent testimony is found.

3.27(a) and (b) and 3.21(d),[2] none of which provides for the remand procedure here utilized;

(ii) In contravention of Section 3 of the Administrative Procedure Act, 5 U. S. C. §1002, which states that "no person shall in any manner be required to resort to * * * procedure not so published" in the Federal Register;

(iii) In contravention of Sections 5(a) and (b) of the Administrative Procedure Act, 5 U. S. C. §§1004(a), (b), which require an agency to act upon notice and hearing, which was not done with respect to the Remand Order;

(iv) In contravention of Section 6(a) of the Administrative Procedure Act, 5 U. S. C. §1005(a), which requires that "every agency shall proceed with reasonable dispatch to conclude any matter presented to it," in that they unreasonably and arbitrarily delayed the disposition of this proceeding;

(v) In contravention of Texaco's rights under the Fifth Amendment of the Constitution of the United States. The Remand Order was entered without any application or showing by any party of the necessity or justification for taking any further evidence, or the existence of any further competent and material evidence, and, therefore, the (1987) Remand Order and the proceedings held pursuant thereto operated to deprive respondent of property without due process of law.

The authorities which are relied on in support of this exception are, in addition to the statutes and rules cited above, *Wong Yang Sung* v. *McGrath*, 339 U. S. 33 (1950); *Deering Milliken, Inc.* v. *Johnston*, 295 F. 2d 856 (4th Cir. 1961); *National Labor Relations Bd.* v. *National Paper Co.*, 216 F. 2d 859 (5th Cir. 1954); *National Labor Relations Bd.*

2. These citations are to the former Rules of the Commission in effect at the time of the Remand Order (16 Code of Federal Regulations).

v. *Phelps*, 136 F. 2d 562 (5th Cir. 1943); *Pinkus* v. *Reilly*, 157 F. Supp. 548 (D. N. J. 1957); *Pinkett* v. *United States*, 105 F. Supp. 67 (D. Md. 1952). See also grounds and authorities referred to in Exception 3, *infra*.

2. Texaco excepts

(a) to that particular portion of the Hearing Examiner's Order dated June 27, 1962, which set July 16, 1962 as the date for commencement of remand hearings and required consecutive hearings until completion of testimony, and

(b) to the denial by the Hearing Examiner's Order, dated July 11, 1962, of Texaco's motion, filed July 2, 1962, in which it sought pretrial disclosure of the evidence to be offered by counsel supporting the complaint and an opportunity after disclosure and after the case-in-chief, to prepare to meet evidence, if any, adduced by counsel supporting the complaint.

The grounds are that the Hearing Examiner's Orders denied Texaco a fair hearing and a fair opportunity to meet the case-in-chief, and were in violation of:

(i) Sections 7(c) and 5(a) of the Administrative Procedure Act, 5 U. S. C. §§1006(c), 1004(a);

(ii) Rules 4.14(b) and (e) of the present Rules of Practice of the Federal Trade Commission (Rules 3.16(b) and (e) of the former Rules); and

(iii) The Fifth Amendment to the Constitution of the United States.

The authorities in support of this exception are, in addition to the Constitution, statutes and rules cited above, *Morgan* v. *United States*, 304 U. S. 1 (1938); *Ohio Bell Telephone Co.* v. *Public Utilities Comm'n*, 301 U. S. 292 (1937);

Brotherhood of R. R. Trainmen v. *Swan*, 214 F. 2d 56 (7th Cir. 1954); *Radic* v. *Fullilove*, 198 F. Supp. 162 (N. D. Calif. 1961).

(1988) The action of the Examiner, furthermore, was in violation of the order of the United States District Court, made on the 19th day of June, 1962, in a proceeding brought by Texaco and Goodrich against the Federal Trade Commission, its Commissioners and the Hearing Examiner (Civil Action No. 2219-61, United States District Court for the District of Columbia), which said order provided, referring to this proceeding and remand hearing:

> "FURTHER ORDERED that any steps in said Proceeding, pursuant to said remand, shall be conducted in such a manner that the plaintiffs shall have equal time and opportunity with Commission's Counsel in connection with preparing and adducing further evidence, if any, as well as preparing any required briefs or suggested findings of fact and conclusions of law."

3. Texaco excepts

(a) to the denial by the Hearing Examiner of its motion made on July 16, 1962 to dismiss this proceeding on the ground that a public statement made by the Chairman of the Commission on or about July 25, 1961 before the National Congress of Petroleum Retailers, Inc. reflects such bias, prejudice and partiality as to oust the Commission from any further jurisdiction over this matter (Tr. 4437-40; 4498-99);

(b) to the further participation by the Commission in the review of this proceeding other than to dismiss the complaint; and

(c) to the further participation in this proceeding by Chairman Dixon and such other Commissioners as may have approved of or been affected by his remarks, and to any orders, decisions or rulings with reference to this proceeding in which he or they have participated.

The statement in question is set forth in a press release issued by the Federal Trade Commission entitled "Remarks Before National Congress of Petroleum Retailers, Inc., Cosmopolitan Hotel, Denver, Colorado, July 25, 1961, by Hon. Paul Rand Dixon, Chairman of the Federal Trade Commission." The Chairman stated that the practices of the type challenged in this proceeding violated the law. The press release reads, in part, as follows: "We at the Commission are well aware of the practices. * * * You know the practices * * * overriding commissions on TBA. You know the companies * * * Texas * * * Goodrich, and Firestone."

The grounds are that, in view of the bias and prejudice reflected in this statement, it is a denial of due process of law and a violation of the Constitution of the United States for the Commission, its (1989) Chairman and any Commissioner approving of or affected by the said statement to continue to sit in an adjudicative capacity in this proceeding. Moreover, it prejudices the public interest by undermining confidence in the administrative process to have such agency members act in a judicial capacity in matters where they are not impartial or which they have prejudged.

Due process requires that persons engaged in the decisional process be free of personal bias. An adjudicative tribunal renders its decision after—not before—hearing; and then only on the basis of the public record, after objective consideration of the facts and the law.

The authorities which support this exception, in addition to the Constitution, are Section 5 of the Administra-

tive Procedure Act, 5 U. S. C. §1004; *Neisloss* v. *Bush*, 293 F. 2d 873 (D. C. Cir. 1961); *N. Sims Organ & Co.* v. *Securities & Exchange Comm'n*, 293 F. 2d 78 (2d Cir. 1961), *cert. denied*, 368 U. S. 968 (1962); *Gilligan, Will & Co.* v. *Securities & Exchange Comm'n*, 267 F. 2d 461, 468-69 (2d Cir. 1959), *cert. denied*, 361 U. S. 896 (1959); *Trans World Airlines, Inc.* v. *Civil Aeronautics Bd.*, 254 F. 2d 90 (D. C. Cir. 1958); *Berkshire Employees Ass'n* v. *National Labor Relations Bd.*, 121 F. 2d 235, 238 (3d Cir. 1941); *National Labor Relations Bd.* v. *National Paper Co.*, 216 F. 2d 859 (5th Cir. 1954); *National Labor Relations Bd.* v. *Phelps*, 136 F. 2d 562 (5th Cir. 1943); *Sewell* v. *Federal Trade Comm'n*, 240 F. 2d 228, 233 (9th Cir. 1956), *rev'd on other grounds*, 353 U. S. 969 (1957); *Modern Methods, Inc.*, F. T. C. Dkt. 7568 (Feb. 19, 1962).

4. Texaco excepts to the ruling of the Hearing Examiner that under the doctrine of official notice he could treat findings in the Commission's opinion in *Firestone Tire & Rubber Co. and Shell Oil Co.*, Dkt. 6487, as *prima facie* proof, in this proceeding against different parties, of the truth of the matters there stated (Tr. 4485).

The grounds, including the citation of authorities in support thereof, are fully set forth in Texaco's brief filed herewith. Summarily stated, they are: Like a court taking judicial notice, an administrative agency may notice obvious and notorious facts and thereby dispense with their proof. This power, however, is a limited one and does not extend to matters not within any "rational concept of notoriety." *Ohio Bell Telephone Co.* v. *Public Utilities Comm'n*, 301 U. S. 292, 302 (1937). It cannot be pressed to the point where it nullifies the right to a hearing. *Interstate Commerce Comm'n* v. *Louisville & N. R. R.*, 227 U. S. 88 (1913); *Ohio Bell Telephone Co.* v. *Public Utilities Comm'n*, *supra*.

Exceptions Filed Pursuant to Rule 4.21

Moreover, even where resort to notice is proper a fair opportunity for rebuttal has to be accorded the party (1990) affected. *United States* v. *Abilene & So. Ry.*, 265 U. S. 274, 288-89 (1924). See also *Republic Aviation Corp.* v. *National Labor Relations Bd.*, 324 U. S. 793 (1945); *Morgan* v. *United States*, 298 U. S. 468, 480 (1936); *Crowell* v. *Benson*, 285 U. S. 22, 48 (1932); *Erie R. R.* v. *United States*, 59 F. Supp. 748 (S. D. Ohio 1944); 64 F. Supp. 162 (S. D. Ohio 1945); *Kline* v. *United States*, 41 F. Supp. 577 (D. Neb. 1941); *West Ohio Gas Co.* v. *Public Utilities Comm'n*, 42 F. 2d 899 (N. D. Ohio 1928).

No change was made in these principles by the Administrative Procedure Act. Congress did not enlarge the area appropriate for official notice beyond what the courts were willing to recognize. It made clear that in its view such notice could be taken "only of generally recognized and ordinarily indisputable facts." H. R. Rep. No. 1980, 79th Cong., 2d Sess. 38 (1946). See also Sen. Doc. No. 8, 77th Cong., 1st Sess. 71-73 (1941); Sen. Rep. No. 752, 79th Cong., 1st Sess. 32 (1945); 92 Cong. Rec. 5653 (1946). Its chief concern was to ensure that where notice was properly taken, parties to administrative proceedings be protected. Accordingly, in Section 7(d) of the Act, 5 U. S. C. §1006(d), it gave statutory sanction to the right of rebuttal so as to reinforce the case law on this point.

The findings in *Firestone* which the Examiner noticed consist entirely of matters not appropriate for official notice since they are neither obvious nor notorious. The most egregious example is the percentage figures set forth in the *Firestone* opinion as to each tire brand's share of the 1954 replacement tire market which finding rests in that proceeding upon the "Crowell-Collier Automotive Survey —1955" admitted into evidence in *Firestone* without objection. Crowell-Collier's market share percentages are not based upon actual sales figures, which all tire com-

panies guard as trade secrets, but are estimates derived by unknown pollsters of an unknown segment of the millions upon millions of car owners in the United States. None of the data underlying these estimates was made available in either the *Firestone* or this proceeding, nor was any evidence adduced in either proceeding as to how such data was collected and how the percentage estimates were derived. That resort was had by Crowell-Collier to this roundabout and inexact method to estimate market share percentages itself demonstrates that true market share figures are unknown and that what was noticed was the exact opposite of obvious and notorious fact. Accordingly, it was clearly improper to take official notice of these market share figures since they were not "generally recognized and ordinarily indisputable facts." H. R. Rep. No. 1980, 79th Cong., 2d Sess. 38 (1946).

(1991) Because these market share percentages and other data had been included as findings in the *Firestone* opinion did not establish them as fact in this proceeding against totally different parties. It is a deprivation of due process for an adjudicative tribunal to decide one case on the basis of facts found against strangers in another case. *Kirby* v. *United States*, 174 U. S. 47 (1899); *Tappan* v. *Beardsley*, 77 U. S. (10 Wall.) 427 (1871); *McLaughlin* v. *Swann*, 59 U. S. (18 How.) 217 (1856); *National Marine Engineers Beneficial Ass'n* v. *National Labor Relations Bd.*, 274 F. 2d 167 (2d Cir. 1960); *Spector* v. *United States*, 193 F. 2d 1002 (9th Cir. 1952); *White* v. *Central Dispensary & Emergency Hospital*, 99 F. 2d 355, 358-59 (D. C. Cir. 1938); *Woodward* v. *United States*, 106 F. Supp. 14 (N. D. Iowa 1952), *aff'd*, 208 F. 2d 893 (8th Cir. 1953); *Wilson Chemical Co.*, F. T. C. Dkt. 8474 (Order, Oct. 29, 1962); *William Adams, Inc.*, 53 F. T. C. 1164 (1957).

By his erroneous official notice rulings, the Hearing Examiner prejudiced Texaco in that he shifted the burden

of proof from complaint counsel to Texaco and foreclosed cross-examination contrary to the requirements of due process, the Administrative Procedure Act and the Rules of the Commission. What was the obligation of complaint counsel to establish by reliable, probative and substantial evidence—with the appropriate testimonial foundation—became the obligation of Texaco to disprove in violation of Section 7(c) of the Administrative Procedure Act and §4.12(c) of the Rules of the Commission. Without the proffer of a witness by complaint counsel, Texaco likewise was denied the right of cross-examination. Since Texaco had not been a participant in the *Firestone* proceeding, it has never been afforded the opportunity to test by cross-examination the reliability and admissibility of any of the *Firestone* items officially noticed, nor incidentally had they been so tested by the parties to *Firestone*. *Cf. American Luggage Works, Inc.* v. *United States Trunk Co.*, 158 F. Supp. 50 (D. Mass. 1957), *aff'd sub nom. Hawley Products Co.* v. *United States Trunk Co.*, 259 F. 2d 69 (1st Cir. 1958); *Standard Oil Co.* v. *Standard Oil Co.*, 252 F. 2d 65, 75 (10th Cir. 1958); *Sears, Roebuck & Co.* v. *All States Life Insurance Co.*, 246 F. 2d 161 (5th Cir. 1957), *cert. denied*, 355 U. S. 894 (1957); *Bristol-Myers Co.* v. *Federal Trade Comm'n*, 185 F. 2d 58 (4th Cir. 1950); *Crown Zellerbach Corp.*, 51 F. T. C. 1105, 1111-13 (1955). An adjudicative proceeding which denies the right of cross-examination cannot stand. *Reilly* v. *Pinkus*, 338 U. S. 269 (1949); *Greene* v. *McElroy*, 360 U. S. 474 (1959); *Kline* v. *United States*, 41 F. Supp. 577 (D. Neb. 1941); Section 7(c) of the Administrative Procedure Act, 5 U. S. C. §1006(c); and §4.14(b) of the Rules of the Commission.

(1992) Further, by officially noticing items from *Firestone* the Examiner patently ignored the holding in that very case that each TBA proceeding must be decided on its own separate record.

Exceptions Filed Pursuant to Rule 4.21

5. Texaco excepts to the ruling of the Hearing Examiner that under the doctrine of official notice he could accept the figures appearing in the Crowell-Collier Automotive Surveys for the years 1946 through 1955, inclusive, and the accompanying affidavits, as *prima facie* proof of the truth of the matters stated (Tr. 4532-33).

The grounds are that none of this material was the proper subject of official notice and that the right of cross-examination was flagrantly denied. Over Texaco's objection, it was clearly error to admit the affidavits, prepared for the litigation, of Goodrich's employee Bartley, whose availability was not in question. See *Poller* v. *Columbia Broadcasting Co.*, 368 U. S. 464, 473 (1962). Moreover, because a table in the *Firestone* opinion was predicated upon similar material put in evidence in that proceeding without objection from the parties thereto did not make such material admissible in this proceeding without any testimonial foundation and over the objection of Texaco. The accompanying affidavits—themselves inadmissible—did not provide a foundation subject to the test of cross-examination.

See also the reasons set forth in respect to Exception 4, *supra*, and the grounds and authorities set out more fully in Point I of Texaco's brief filed herewith.

6. Texaco excepts to the failure of the Hearing Examiner to issue the subpoenas requested by Texaco (Tr. 4530; RX 109), which were required for the purpose of disproving and rebutting the materials improperly noticed (Tr. 4523-25; 4530).

The grounds are that such failure was:

(i) In contravention of Section 6(c) of the Administrative Procedure Act, 5 U. S. C. §1005(c), governing parties' rights to agency subpoenas;

Exceptions Filed Pursuant to Rule 4.21

(ii) In contravention of §4.15 of the present Rules of Practice of the Federal Trade Commission implementing the said Section 6(c) of the Administrative Procedure Act;

(iii) In contravention of Section 7(d) of the Administrative Procedure Act, 5 U. S. C. §1006(d), guarantying to parties a fair opportunity to show the contrary of matter officially noticed; and

(iv) In contravention of §4.12(c) of the present Rules of Practice of the Commission implementing said Section 7(d) of the Administrative Procedure Act.

(1993) To disprove the noticed data and to prove the true facts, Texaco made written application for subpoenas *duces tecum* to compel the disclosure of the sales figures (1951-1956) of 17 named companies and the sales commission agreements of 8 named companies (Tr. 4523; RX 109). In addition, Texaco asked for 20 subpoenas *ad testificandum* in blank to be filled in by the following day (RX 109).

It is uncontroverted that without compulsory process Texaco could not obtain the information required to rebut the material which the Examiner improperly noticed (Tr. 4520; RX 109). In anticipation of just such a situation, Congress in the Administrative Procedure Act guaranteed private parties the right to agency subpoenas. Sen. Doc. 248, 79th Cong. 2d Sess. 27 (1946). The relevant grounds and authorities are more fully stated in Texaco's brief filed herewith (Point III).

The denial of the compulsory process needed to secure the evidence without which Texaco could not disprove the officially noticed material was, in effect, a denial of an opportunity to rebut and be fairly heard.

Exceptions Filed Pursuant to Rule 4.21

7. Texaco excepts to the failure of the Hearing Examiner otherwise to grant it a fair opportunity to disprove the facts of which he erroneously took official notice and to afford it a reasonable time to prepare for and meet the case-in-chief (Tr. 4513-14; 4520; 4523-24; 4531; RX 109).

The grounds are that the Hearing Examiner violated Sections 5(a) and 7(d) of the Administrative Procedure Act and §§4.12(c) and 4.14(e) of the Rules of Practice of the Commission in not permitting Texaco to disprove the material which he improperly noticed and in setting and terminating the hearings without regard to Texaco's necessities respecting rebuttal. In view of the unprecedented official notice rulings, Texaco was plainly justified in its request for an adjournment of three business days in which to prepare to show the contrary of the matters noticed. Denial of this request patently foreclosed Texaco from a fair opportunity to rebut.

The grounds for this exception are developed in further detail in Texaco's brief filed herewith (Point III).

8. Texaco excepts to the failure of the Hearing Examiner to grant Texaco's motion to dismiss the complaint at the conclusion of the case-in-chief on the remand (Tr. 4499-501).

The grounds are that no evidence had been adduced by complaint counsel, that what had been officially noticed by the Examiner had been noticed in error, and that even assuming, *arguendo*, that the officially noticed materials properly are part of the record, it remained insufficient to support the complaint. Accordingly, in view of the (1994) Commission's opinion of March 9, 1961 holding that the record did not prove anticompetitive effects, which is the decisive issue, the Hearing Examiner had no choice but to

dismiss the complaint since nothing had been adduced to cure the deficiency.

The grounds and authorities in support of the foregoing are stated more completely in Exceptions 4, 5, 9, 33-35 and 38-47 hereof, and in Points I and II of Texaco's brief filed herewith.

9. Texaco excepts to the filing by the Hearing Examiner on September 24, 1962 of a revised Initial Decision and to the findings, conclusions and order contained therein insofar as the first Initial Decision has been changed and the complaint has not been dismissed.

The grounds are that the Remand Order conferred no authority upon the Hearing Examiner to change his first Initial Decision except "in the light" of evidence, if any, of competitive effects received during the remand hearings. Since no such evidence was received, and the officially noticed materials were without probative significance, the Hearing Examiner had no authority to revise his first Initial Decision which the Commission had rejected.

This exception applies as well to each of the specific Exceptions to the revised Initial Decision in Part II hereof and, for the sake of brevity, is not each time repeated.

10. Texaco excepts to the trial of the issues here involved in other proceedings, to which Texaco was not a party, by the same Hearing Examiner.

The grounds are that this violated the requirements of due process of law. The authorities in support thereof are fully set forth at pages 55-57 of the document entitled "Appeal from Initial Decision of Examiner and Brief in Support of Appeal" dated February 1, 1960. In the interests of brevity and conciseness and to avoid repetition reference is made thereto as though fully set forth herein. Fur-

ther, by taking official notice of items in the *Firestone* opinion at the remand hearings in this case and of other materials resembling them, the Examiner again manifestly intermingled these separate proceedings in deprivation of due process. For additional examples of prejudice which result from such commingling of evidence, see the discussion in Exceptions 26 and 44, *infra*.
(1995)

II

EXCEPTIONS TO THE REVISED INITIAL DECISION

These exceptions are made without prejudice to Texaco's basic contentions that the remand proceeding was unlawful; that the Examiner was without authority to change his first Initial Decision except "in the light" of new evidence of competitive effects none of which was received; and that in view of the Commission's opinion of March 9, 1961 holding that anticompetitive effects had not been proved the Examiner should have dismissed the complaint. However, as the Hearing Examiner in his revised Initial Decision purported to deal with the pre-remand record, Texaco in order to avoid any claim of waiver must do the same. But since Texaco in the briefs and other papers previously filed with the Commission has fully covered its objections to so much of the revised Initial Decision as repeats the first Initial Decision, reference will be made for the sake of conciseness and brevity to those briefs and papers. In such case, the grounds for each exception and the authorities relied on in support thereof will be found at the specific pages cited. The documents to which reference will be made are as follows:

Exceptions Filed Pursuant to Rule 4.21

A. Document in white cover entitled "APPEAL FROM INITIAL DECISION OF EXAMINER AND BRIEF IN SUPPORT OF APPEAL," dated February 1, 1960 (hereinafter referred to as "App. Br."; the numerical citation following this abbreviation refers to the pages of said Appeal Brief).

B. Gray covered volume consisting of 167 printed pages, entitled "APPENDIX OF RESPONDENT TEXACO INC. CONTAINING REPRODUCTIONS OF RESPONDENT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS AND OTHER MATTERS OF RECORD" (hereinafter referred to as "App."; the numerical citation following this abbreviation refers to the pages of said Appendix).

C. Light green covered document entitled "ANSWERING BRIEF OF RESPONDENT TEXACO INC.," dated April 1, 1960 (hereinafter referred to as "Ans. Br."; the numerical citation following this abbreviation refers to the pages of said Answering Brief).

11. Texaco excepts to the statement on Page 2[3] of the Initial Decision that the five trading areas were "typical of the general operations of respondents under the sales commission contract."

The record is devoid of any evidence that the five areas in question were typical of anything. In fact, the Hearing Examiner himself (1996) inferentially recognized (p. 2) that there was no evidentiary basis for the finding when he noted that the five areas merely had been described by complaint counsel as being typical.

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3. These page references are to pages of the Examiner's revised Initial Decision filed September 24, 1962.

Exceptions Filed Pursuant to Rule 4.31

12. Texaco excepts to the statement on page 3 of the Initial Decision that "This proceeding is now before the Hearing Examiner for final consideration in accordance with the remand of the Commission, upon the complaint, answer thereto, testimony and other evidence . . ."

The grounds are that the Remand Order instructed the Hearing Examiner to reexamine the matter only "in the light" of "additional evidence," if any, adduced at the remand hearings. The Hearing Examiner was mistaken in his belief that he had the authority to reevaluate the old record (which the Commission itself had found insufficient to support any type of order) in the absence of new evidence shedding light thereon adduced at the remand.

13. Texaco excepts to the statement on page 4 of the Initial Decision that the Commission did not vacate or set aside the first Initial Decision and that the Commission's order and opinion did not take issue with factual findings made.

Inasmuch as the Commission did not adopt or modify the first Initial Decision, it in effect vacated it. The Commission's remand opinion makes clear that the record was insufficient to support the complaint and that it was insufficient to sustain any order predicated upon a violation of Section 5 of the Federal Trade Commission Act. To the extent that the Examiner's first Initial Decision was to the contrary, the Commssion vacated it and took issue with the pertinent findings.

Exceptions Filed Pursuant to Rule 4.21

14. Texaco excepts to the action of the Hearing Examiner, reflected on page 4 of the Initial Decision, purporting to strike conclusions he had previously made in his first Initial Decision in favor of Texaco upon the identical evidence upon which in his revised Initial Decision he makes conclusions adverse to Texaco.

In more detailed exceptions below we refer specifically to the changed conclusions to which exception is taken.

15. Texaco excepts to Finding of Fact 2, on page 4, that it "is engaged in the production and in the sale and distribution in interstate commerce of petroleum products."

This finding is immaterial, does not relate to tires, batteries and accessories which are the subject matter of the complaint herein, and is insufficient to give this Commission jurisdiction with respect to the (1997) subject matter of the complaint. In place of this finding, Texaco's Proposed Finding 3 (App. 4) should be made. For the grounds of this exception and supporting authorities, reference is made to Point III, App. Br. 50-52, and to Exception 47, *infra*.

16. Texaco excepts to Finding of Fact 3, pages 4-5.

This finding is incomplete in that it ignores the many thousands of service stations to which Texaco sells its products but with which Texaco has no contractual relations (see App. 153; CX 116, 118; Glenn 367, 373). Texaco's Proposed Additional Findings 1 and 2 (App. 153) should be made in place of this Finding 3.

Exceptions Filed Pursuant to Rule 4.21

17. Texaco excepts to Finding of Fact 5, pages 5-6.

This finding is incomplete in that it omits the non-contract service stations referred to in the preceding exception. Texaco's Proposed Additional Finding 1 (App. 153) should be made in place of Finding 5.

18. Texaco excepts to Finding of Fact 10(b), page 7.

This finding is a complete distortion of the evidence of the actual suggestion to Texaco salesmen contained in the letter from the home office (CX 50). It advised that, in the interest of continually assisting the Texaco dealer at the time of each regular call at the service station, field personnel should be sufficiently alert, without waiting for a formal request from the dealer, to call the dealer's attention to their willingness to write up an order for the Goodrich or Firestone merchandise needed. But, since this was no suggestion that orders be written up without dealer request, it is very different from what the Examiner found. After all, when a salesman in any line of business calls on a customer he usually indicates a willingness to take an order. If he did not, he would not be a salesman for long.

19. Texaco excepts to Findings of Fact 11 and 12, pages 8-10.

These findings are misleading and incomplete because they include no correction for the effects of inflation and the increase in passenger car registration and passenger car miles traveled during the years used for comparative purposes. If the undisputed facts in the record were included in these findings, they would indicate that the actual increase in TBA sales under the sales commission contracts amounted in eight years to 16.6% while during

the same period the market demand increased more than 50% (RX 84A-D; Madison 4083-148). See Texaco's Proposed Findings 49, 50, 51 and 52, which summarize the apposite evidence (App. 69-72).

(1998) Also, the uncontradicted evidence demonstrates that more than 70% of all Texaco dealers (approximately 28,000) do not regularly purchase any tires and tubes under the sales commission contracts, and more than 80% of such dealers (about 32,000) do not regularly purchase sponsored batteries or accessories (App. 65-68). When this is measured against the fact that not a single Texaco dealer purchased sponsored TBA exclusively, it is axiomatic that there has been no market foreclosure—substantial or otherwise.

20. Texaco excepts to Finding of Fact 13, page 10.

This is not a finding based upon evidence but purports on its face to state a *contention* made by counsel supporting the complaint. The Examiner, in his first Intial Decision (and the Commission itself in its opinion remanding this proceeding), concluded from the *evidence* that the contention of counsel supporting the complaint was erroneous.

21. Texaco excepts to Findings of Fact 14(a), (b), (c), (d), (e) and (f), pages 10-12.

These findings are incomplete and misleading. The entire undisputed evidence of, and respecting, the six witnesses which the Examiner purports to summarize in these findings is accurately set forth in Texaco's Proposed Findings 63, 64 and 65 (App. 83-86). The latter findings should be made in place of Findings 14(a), (b), (c), (d), (e) and (f). For further grounds of this exception reference is made to App. Br. 15-19.

Exceptions Filed Pursuant to Rule 4.21

22. Texaco excepts to Finding of Fact 15, pages 12-13.

This finding is not factually accurate and misinterprets the law dealing with hearsay evidence. The accurate and undisputed facts with respect to the "representatives of suppliers of TBA" are summarized in Texaco's Proposed Finding 66 (App. 87-90). That finding should be made in place of the first two sentences of this Finding 15. Further support for Texaco's Proposed Finding 66 is set out at App. Br. 19-27.

The Examiner, furthermore, has misapplied *Lawlor* v. *Loewe,* 235 U. S. 522 (1915). He has erroneously utilized hearsay as proof of the alleged "feeling" of witnesses who were not called to testify in spite of the fact that there was no evidence whatever that these unsworn declarants had been in any way "required to purchase" TBA on which a sales commission was payable and in spite of the fact that there was no evidence that the declarants did not in fact buy TBA entirely outside (1999) of the sales commission contracts. Amplification of this argument is to be found at App. Br. 19-20.

23. Texaco excepts to Finding of Fact 17, page 13.

There is no evidence whatever in the record to support the Examiner's gratuitous assumption that the 54 honest, reputable and unimpeached dealers who testified on behalf of Texaco "were under considerable pressure because they were naturally interested in not jeopardizing the renewal of their leases." Furthermore, this unfounded assumption in the first sentence of Finding 17 is contradicted by the last two sentences of the same finding. The substance of the evidence of dealers testifying for Texaco is to be found in Texaco's Proposed Findings 39, 40, 41 and 42 (App. 42-55) and Proposed Finding 68 (App. 92-96), which findings should be made in place of Finding 17.

Exceptions Filed Pursuant to Rule 4.21

In addition, Texaco's Proposed Finding 31 should be made. There is no credible evidence in the record that Texaco ever terminated its business relationship with a dealer because of such dealer's failure to purchase TBA covered by the sales commission contracts (App. 34).

24. Texaco excepts to Finding of Fact 18, pages 13-14.

The objection is to the implication that the policy of Texaco forbidding any type of dealer coercion was motivated by an antitrust case filed against Standard Oil Company of California. There is no evidence to support this implication. The first policy letter in the record, namely the one of June 1, 1948, did not create the policy but merely "restated" the existing policy which forbade coercion of any type (RX 2, 6). The voluminous and uncontradicted testimony in this record establishes that Texaco has recognized that any type of dealer coercion is poor salesmanship which would create dealer dissatisfaction contrary to Texaco's best interests (Texaco's Proposed Findings 28, 29 and 30 (App. 31-33)). Finding 18 should be amended by striking the portion of it preceding the word "Walter" in line 2, and the word "so-called" should be eliminated in line 4. Texaco's Proposed Finding 30 (App. 33) should be made.

25. Texaco excepts to the second sentence of Finding of Fact 19, page 14.

This sentence is confusing, self-contradictory and seeks to leave the erroneous impression that the policy of Texaco against any coercion whatever was not freely disseminated to all of its dealers. The uncontradicted evidence establishes that Texaco's policy of non-coercion was freely disseminated and thoroughly understood by dealers handling (2000) its products (App. 38-52). Accordingly, in place of the second sentence of Finding 19, Texaco's Proposed Findings 35, 36, 37 and 38 (App. 38-41) should be made.

Exceptions Filed Pursuant to Rule 4.21

26. Texaco excepts to the third and fourth sentences of Finding of Fact 20, page 14.

With respect to the third sentence, each of the six ex-dealers called in support of the complaint in fact testified that they handled TBA other than that purchased from Goodrich or Firestone (Texaco's Proposed Findings 63, 64 and 65 (App. 83-86)). The fourth sentence of Finding 20 is based upon a very significant mistake made by the Examiner. There is no evidence which in any way supports the finding that a Texaco salesman's compensation was based "in part, upon commission on sales of sponsored TBA." The evidence is expressly to the contrary (Halsell 196; Knight 596; Burgess 1016). The Examiner once again became confused by reason of handling three separate TBA cases simultaneously (over Texaco's objection). He has reference in the present case to evidence found in the *Atlantic Refining Company* case, F. T. C. Dkt. 6486. This prejudicial vice is discussed at App. Br. 55-57.

27. Texaco excepts to Finding of Fact 21, page 14.

The Examiner's purported finding of coercion and pressure upon dealers is contrary to the overwhelming weight of the evidence in this record and is unsupported by any reliable, substantial and probative evidence. The foregoing propbsition has been fully argued by Texaco (App. Br. 9-37, 39-47).

In finding coercion on the evidence in this record, the Examiner falls into preeisely the same error as did the Commission in *Timken Roller Bearing Co.*, F. T. C. Dkt. 6504, *reversed, Timken Roller Bearing Co.* v. *Federal Trade Comm'n*, 299 F. 2d 839 (6th Cir. 1962), *cert. denied*, 371 U. S. 861 (1962).

The finding of coercion is likewise contrary to the law as established in *United States* v. *J. I. Case Co.*, 101 F.

Supp. 856 (D. Minn. 1951); *Pittsburgh S. S. Co.* v. *National Labor Relations Bd.*, 180 F. 2d 731 (6th Cir. 1950), *aff'd*, 340 U. S. 498 (1951). Other supporting authorities are set out in App. Br. 45-47.

28. Texaco excepts to so much of Finding of Fact 26, page 16, as refers to arrangements between The B. F. Goodrich Company and oil companies other than Texaco.

Texaco is not a party to any of these other arrangements, is not bound thereby and is not responsible for the arrangements between (2001) Goodrich and other oil companies or the consequences thereof. The evidence concerning the relations between Goodrich and other oil companies was all received over Texaco's vigorous objection (Tr. 2228; 2230-31; and see reiteration of objection Tr. 2232-59; 2264-85; 2287-88).

29. Texaco excepts to so much of Finding of Fact 27, page 16, as states that the typical service station "requires" a fully stocked source of supply close at hand.

While it is perhaps convenient to have a TBA source of supply close at hand, this is by no means required. Numerous instances in the record show service station dealers regularly patronizing TBA supply points at a great distance from the service station. An outstanding example of this was dealer Spradling, of Buhl, Idaho, who obtained his tires and batteries from a United States Rubber Company supplier 255 miles away in Salt Lake City, although a sponsored Firestone dealer was close at hand and that dealer's delivery truck went past Spradling's station once a day (Spradling 2929-30; App. 96). The table of suppliers of non-sponsored TBA to Texaco dealers (Appendix R-2 (App. 157-67)) in some instances indicates the location of the supplier. There are numerous cases in which such sup-

plier is located in a different town from a dealer and at a considerable distance from him. (See, *e.g.*, McGuire[4]—25 miles (App. 159); Roessner—200 miles (App. 160); Rogers—75 miles (App. 160); Burnett—100 miles (App. 162); Whiting—33 miles, 150 miles and 160 miles (App. 162); Toothman—65 miles (App. 162); Sizemore—80 miles (App. 163); Linton—20 miles (App. 165); Conner—40 miles, 20 miles and 35 miles (App. 166); Eubanks—170 miles (App. 167); McAnally—100 miles, 155 miles and 40 miles (App. 167).)

30. Texaco excepts to so much of Finding of Fact 28, page 17, as implies that a service station operator is free *only* to deal with "any Goodrich supply point he may prefer."

The fact is—as the entire record shows—that a service station operator is free to deal with any TBA supplier chosen by him. Appendix B-2 (App. 157-67) lists some 250 suppliers of non-sponsored TBA for some 54 service station operators. See also citations in support of Texaco's Proposed Finding of Fact 39(c) (App. 45); Proposed Finding 40 (App. 47-52); Proposed Finding 45 (App. 58-61); and Appendix A (App. 113-48).
(2002)

31. Texaco excepts to Finding of Fact 30, page 18.

In support thereof Texaco urges the same grounds set forth in its Exception 28 to Finding 26, *supra*.

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4. In each instance in this listing the first word is the name of the service station operator. The distance in miles is the approximate straight line distance between the service station and one or more of his TBA suppliers.

Exceptions Filed Pursuant to Rule 4.21

32. Texaco excepts to Finding of Fact 31, page 18, insofar as it relates to arrangements between Goodrich and oil companies other than Texaco.

In support thereof Texaco reasserts the grounds stated in its Exception 28 to Finding 26, *supra*.

Texaco further excepts to so much of Finding of Fact 31 as states that Texaco had a certain number of C and D stations "which would be subject to the sales commission contract."[5]

This finding is unsupported by any evidence. Indeed, the undisputed facts in the record show that only a very small per cent of all Texaco dealers purchased *any* TBA under the sales commission contracts (Proposed Finding 48 (App. 66-67)). Accordingly, the implication in Finding 31 that 16.5% of service stations in the United States purchased under the sales commission plan is entirely unsupported by the record, completely erroneous and relates to an incorrect market "universe."

33. Texaco excepts to Finding of Fact 32, pages 18-19.

This finding is totally without evidentiary support. It rests entirely upon material from the *Firestone* opinion of which the Hearing Examiner erroneously took official notice. The grounds for this exception and the supporting authorities are the same as those for Exception 4, *supra*, and are set forth in greater detail in Point I of Texaco's brief filed herewith. Likewise, the finding is meaningless (Point II of said brief) and an opportunity to disprove it was denied (Point III of said brief).

5. The designations "C" and "D" stations is nomenclature used in this proceeding. Texaco, in the course of its daily business, does not use such designations.

Exceptions Filed Pursuant to Rule 4.21

34. Texaco excepts to Finding of Fact 33, pages 19-20.

This finding is totally without evidentiary support. It rests entirely upon materials of which the Hearing Examiner erroneously took official notice. The grounds for this exception and the supporting authorities are the same as those set forth for Exceptions 4 and 5, *supra*, and are set forth in greater detail in Point I of Texaco's brief filed herewith. Likewise, the finding is meaningless (Point II of said brief) and an opportunity to disprove it was denied (Point III of said brief).
(2003)

35. Texaco excepts to Finding of Fact 34, page 21.

This finding is totally without evidentiary support. It rests entirely upon material from the *Firestone* opinion of which the Hearing Examiner erroneously took official notice. The grounds for this exception and the supporting authorities are the same as those for Exception 4, *supra*, and are set forth in greater detail in Point I of Texaco's brief filed herewith. Likewise, the finding is meaningless (Point II of said brief) and an opportunity to disprove it was denied (Point III of said brief).

36. Texaco excepts to the Examiner's failure to make findings incorporating in substance Texaco's Proposed Findings 3 through 82 and Additional Findings 1 through 11.

These findings are fully supported by the evidence and applicable law. The grounds for this exception and the supporting authorities with respect to each of the Proposed Findings 3 through 68 are to be found at App. 4-96, and with respect to Additional Findings 1 through 11 at App.

153-56. The Conclusory Findings 69 through 82 follow from the other findings just cited and are discussed at App. 97-110.

37. Texaco excepts to the Examiner's failure to make findings incorporating in substance its Proposed Findings of Fact and Conclusions of Law on Remand dated August 20, 1962.

The grounds for this exception and the citation of authorities in support thereof are fully set forth in Exceptions 4-9, 33-35, 44-47 herein and in Texaco's brief filed herewith.

38. Texaco excepts to Conclusion 1, page 21.

This conclusion, made on the basis of the identical evidence before the Examiner at the time of his first Initial Decision, is unsupported by any specific findings; is not supported by any reliable, probative and substantial evidence; and is diametrically opposed to the Examiner's Conclusions 3, 4 and 6 contained in his first Initial Decision which have been deleted from the revised Initial Decision and replaced with Conclusions to which exception is taken. Texaco in fact does not have, nor does the record show the existence of, any "economic power" by Texaco over its distributors sufficient to cause them to purchase sponsored TBA or, indeed, anything else. Absolutely nothing in this connection was adduced at the remand hearings. For the portions of the record relied upon, reference is made to the following proposed findings and their supporting citations: Texaco Proposed (2004) Finding 27 (App. 30); Proposed Additional Finding 5 (App. 154). The grounds for these exceptions are more fully set forth, together with supporting authorities, in App. Br. 4-5; Ans.

Br. 6-14. The proposed findings above cited should be made and the Examiner's Conclusions in his first Initial Decision numbered 3, 4 and 6, should be reinstated in place of Conclusion 1.

39. Texaco excepts to Conclusion 2, page 21.

This conclusion dealing with alleged coercion and coercive conduct is erroneous. It is not supported by the findings of fact, it is contrary to the record as a whole, and it is not supported by reliable, probative and substantial evidence. The exceptions above taken with respect to Findings 14, 15, 17, 18, 19, 20 and 21 apply to this conclusion. The Examiner's conclusion cannot stand in the face of the overwhelming evidence to the contrary. See Texaco's Proposed Findings 27-44, 53-68 (App. 30-57, 73-96); App. Br. 9-37, 39-47; and Ans. Br. 14-27, where the portions of the record relied upon are fully set forth and discussed.

Attention is particularly called to the fact that counsel supporting the complaint in the course of the hearings advised the Examiner that there was no contention in the proceeding that Texaco had coerced its dealers in connection with the sale of TBA products (Tr. 4377).

The authorities cited in support of the exception taken to Finding 21 show that the conclusion of coercive conduct is entirely improper and unfounded.

40. Texaco excepts to Conclusion 3, page 22, in that it incorrectly interprets and applies the Commission's opinion and Remand Order of March 9, 1961.

Conclusion 3 recites that the issue for the Hearing Examiner's consideration under the terms of the Commission's "opinion and order of remand" is:

"* * * the competitive effects of the sales commission plan used by Goodrich with The Texas Company, *and*

> *whether Texaco's exercise of such economic power in favor of Goodrich and Firestone under their sales commission contracts have* [*sic*] *sufficient competitive effect to constitute an unfair method of competition or an unfair act or practice''* (emphasis added).

The Commission's remand opinion, however, directed only that the Hearing Examiner receive additional evidence, specifically market data, (2005) "indicating the competitive effects of *the sales commission contracts* at the manufacturing, wholesale and retail levels of TBA distribution" (Opinion, p. 10, March 9, 1961; emphasis added). Consequently, the Examiner misstated the issue open on the remand in saying that it was "whether Texaco's *exercise of such economic power* • • • have [*sic*] sufficient competitive effect to constitute an unfair method of competition or an unfair act or practice" (emphasis added). Absent actual evidence of substantial anticompetitive effects at the manufacturing, wholesale and retail levels of TBA distribution flowing from the sales commission contracts themselves, the existence of Texaco's economic power, if any, over customers and the manner in which it was implemented and the extent to which it was exercised, if at all, were declared by the Commission to be insufficient to support the charge in the complaint.

Furthermore, it was only in the light of new evidence of competitive effects of the contracts that the Examiner was authorized to indicate what changes, if any, he wished to make in his first Initial Decision. Since no such evidence was introduced on the remand, and none of the officially noticed data sheds light on competitive effects, and nothing adduced at the remand related to economic power, the Examiner had no evidence upon which and no authority to revise his first Initial Decision (see Exceptions 8 and 9, *supra*). Accordingly, the Examiner should not have substituted this inconsistent and contrary Conclusion for his

original Conclusions 3, 4, 5 and 6 negating that Texaco had sufficient economic power over its dealers to cause them to purchase sponsored TBA.

41. Texaco excepts to Conclusion 4, page 22.

This conclusion, based on the identical evidence considered by the Examiner in his first Initial Decision, is not supported by any specific findings, is not supported by reliable, probative and substantial evidence, and is directly contrary to the Examiner's Conclusion 5 in his first Initial Decision. There the Examiner concluded that the "consideration for the payment of commissions under the sales commission contract with Goodrich was based upon substantial services rendered by Texaco in promoting the sale of Goodrich TBA to Texaco dealers and distributors." The Examiner's said original Conclusion 5 in turn is related to his original Conclusions 3, 4 and 6 in his first Initial Decision which deny the existence of any economic control by Texaco over its dealers.
(2006)

The record is entirely devoid of any finding that Texaco at any time removed from the open market any number of new or established Texaco dealers or caused them to purchase Goodrich TBA either exclusively or in substantial quantities. It is significant that on the identical evidence in the first Initial Decision the Examiner reached no such conclusion. As he then recognized, the evidence permits of no such conclusion. The portions of the record relied on are:

> As to the operation of the sales commission contracts and the undoubted propriety of such operation —Texaco's Proposed Findings 18-26 and evidence cited in support thereof (App. 20-29);

With respect to the performance of its contracts by Texaco and the entire lack of coercive conduct—Texaco's Proposed Findings 27-44 and evidence cited in support thereof (App. 30-57);

As to the nonexistence of any market foreclosure —Texaco's Proposed Findings 45-52 and evidence cited in support thereof (App. 58-72);

That the recommendation of Firestone or Goodrich TBA to new dealers in no way foreclosed competition, but, if anything, merely encouraged dealers to purchase some kind of TBA, including competing lines—the testimony of 11 witnesses summarized at Ans. Br. 42-43; also see Texaco's Proposed Findings 54-68 and evidence cited in support thereof (App. 74-96).

42. Texaco excepts to Conclusion 5, page 22.

This exception is based primarily on the statement that "practically all of the competitors of Goodrich in the selected trade areas in which testimony was taken, testified" to alleged difficulty in selling TBA to Texaco stations. The conclusion is entirely without support in the record as a whole, and is not supported by reliable, probative and substantial evidence. For example, it is undisputed that in the city of Chicago alone there were more than 500 TBA distributors (Gehrke 715; Chanenson 856-57) competing with the 7 distributors whose employees testified on behalf of the complaint. In the Omaha area there were 19 competitors (Toft 1181-83) and representatives of only 3 TBA distributors testified. In Dallas, where the principal witnesses in support of the complaint came from one supplier, there were 100 competing distributors of batteries alone (McCann 1533). Reference is made to additional citations to the record in support of Texaco's Proposed Finding 54 (App. 74).

(2007)

The remainder of Conclusion 5 either is based upon a misconstruction of the law with respect to hearsay evidence covered in Exception 22 taken to Finding 15, *supra*, or is entirely without foundation in the record. The record shows that very substantial amounts of competing non-sponsored TBA were purchased by the dealers who testified or to whom reference was made in the testimony. For the portions of the record relied upon, reference is made to the tables in Appendix A (App. 113-48); Appendix R-2 (App. 157-167); Texaco's Proposed Findings 39 and 40 (App. 42-52) and 66 (App. 87-90). See also Texaco's Proposed Finding 45 showing most substantial purchases by Texaco stations from dealers selling competing non-sponsored TBA (App. 58-61). For supporting authorities and further elaboration of the grounds for this exception see discussion App. Br. 19-37 and Ans. Br. 36-47.

43. Texaco excepts to Conclusion 6, page 22.

The record is devoid of any support whatever for this conclusion. This proposition has been specifically briefed with citations to the record (Ans. Br. 41-43) and reference is made to this document for the portions of the record relied upon.

44. Texaco excepts to Conclusion 7, pages 22-23.

The grounds are:

(i) Insofar as this conclusion is in any way related to the findings, it rests upon findings which are meaningless and from which no reasonable inferences could be drawn and which findings in turn are based upon inadmissible materials of which official notice was erroneously taken and

respecting which no opportunity to disprove was provided (see Exceptions 4, 5, 6, 7 and 34, *supra*).

(ii) The conclusion has no support whatsoever in reliable, probative and substantial evidence.

(iii) The statement respecting "a possible doubling of gross income during that period by Goodrich" is both without basis and patently illogical. For a further discussion of this point, see Exception 19, *supra*, and page 37 of Texaco's brief filed herewith.

(iv) The statement that "the percentages shown in said tabulation fully complies [*sic*] with the requirement of substantiality" is meaningless (see page 38 of Texaco's brief filed herewith).
(2008)

(v) The last two sentences, unsupported by any finding, represent a further prejudicial intermingling of the records in the several TBA proceedings in violation of due process (see Exception 10, *supra*), are irrelevant, are an improper manifestation of "collective guilt" attributing to Texaco the acts of others beyond its control, take no account of the pending cease and desist orders against Firestone (Dkt. 6487) and Goodyear (Dkt. 6486), and even ignore the declining market shares of the named tire companies as shown by the figures to which the Examiner has reference; and

(vi) With respect to the decisive issue of competitive effects, the insignificance and meaningless character of this entire conclusion is further manifested by its rejection in the succeeding Conclusion 8 wherein the Examiner states: "The above share of the market percentages are [*sic*] not controlling on the question of injury to competition * * *" (see pages 37-38 of Texaco's brief filed herewith).

Exceptions Filed Pursuant to Rule 4.21

45. Texaco excepts to Conclusion 8, page 23.

In support thereof Texaco asserts that the quoted dollar figures do not show the proper relative picture and are based upon findings which in turn are misleading and incomplete (see Exception 19 to Findings 11 and 12, *supra*). Moreover, the record does not show, nor did the Examiner find, how the sales of Goodrich to Texaco accounts, or the number of those accounts, compared to the overall nationwide TBA sales and the overall number of TBA accounts. Obviously, Texaco accounts and their sales of sponsored TBA represent only a minuscule fraction of the relevant market, to say nothing of the fact that not a single Texaco account dealt in sponsored TBA exclusively. The failure of complaint counsel to adduce evidence from which the appropriate comparison could be made, either before the remand or after, bearing in mind that complaint counsel had the burden of proof, raises the compelling inference that any such evidence would have been adverse to the complaint.

46. Texaco excepts to Conclusion 9, pages 23-24.

The grounds are:

(i) This conclusion is not supported by the findings of fact.

(ii) This conclusion is not supported by the record as a whole and by reliable, probative and substantial evidence.

(2009)

(iii) The reliance upon *Osborn* v. *Sinclair Refining Co.*, 286 F. 2d 832 (4th Cir. 1960), is entirely misplaced. The facts in that case are not substantially the same as in the present case and the issue was a totally different one.

Moreover, that case did *not* condemn the sales commission arrangement between the oil company and tire company there involved. What it held to be illegal was the oil company's imposition of a tie-in which is absent here. The Commission in its opinion of March 9, 1961 made it abundantly clear that the *Osborn* decision did not read on the governing issue in this proceeding and was no substitute for evidence of anticompetitive effects. The Commission is referred to pages 38-39 of Texaco's brief filed herewith for a further discussion of the differences between the two cases.

(iv) The facts in this case are not "contrary to the spirit of the Clayton Act" nor, if they were, would they constitute a violation of the Federal Trade Commission Act. See Handler, *Recent Antitrust Developments,* 71 Yale L. J. 75, 90-98 (1961), and reasons and authorities cited therein. Indeed, the Examiner applied an improper legal standard in determining what constitutes a violation of either the Clayton Act or the Federal Trade Commission Act. The record will not support a conclusion of violation of any applicable statute under any appropriate standard.

(v) The last sentence of this conclusion is unsupported by the findings and is contrary to the record in this proceeding and to applicable law.

47. Texaco excepts to Conclusion 10, page 24.

The grounds are:

(i) Since no finding has been made that the challenged practices took place in interstate commerce this conclusion must fall because of the absence of an essential, jurisdictional finding (see App. Br. 50-52).

(ii) This conclusion is not supported by the findings of fact.

(iii) This conclusion is not supported by the record as a whole and by reliable, probative and substantial evidence.

(iv) This conclusion is entirely contrary to the Examiner's conclusions in his first Initial Decision, specifically his Conclusions 2, 3, 4, 5 and 6, which should be reinstated.

(v) This conclusion is not supported by the findings of fact proposed by Texaco which for the reasons stated elsewhere herein should be substituted in place of the findings made by the Hearing Examiner.
(2010)

(vi) This conclusion is contrary to applicable law (App. Br. 53-54; Ans. Br. 47-56).

The grounds for this exception, including the citation of authorities in support thereof, are further set forth in the foregoing Exceptions and in the brief filed by Texaco herewith and in its papers filed in connection with the earlier appeal herein.

48. Texaco excepts to the order entered by the Hearing Examiner, pages 25-27.

The grounds are:

(i) The order is arbitrary and unreasonable; it prohibits Texaco from using any sales commission method of distributing TBA with any company although such method is not inherently illegal and only the particular plan involved in this proceeding has been erroneously adjudicated to be illegal; it purports to enjoin lawful business practices; and it seeks to enjoin practices and methods of competition not involved in this proceeding.

(ii) The order is vague, inconsistent and ambiguous insofar as it applies to Texaco's activities with respect to the marketing of TBA by resellers of Texaco's petroleum products.

Exceptions Filed Pursuant to Rule 4.21

(iii) The order is without support in the findings and conclusions or in the reliable, probative and substantial evidence of record.

(iv) The order is contrary to law and judicial precedent, contrary to constitutional right and power, in excess of statutory jurisdiction and authority under the Federal Trade Commission Act and the Administrative Procedure Act, and constitutes a deprivation of Texaco's rights and guarantees to due process of law under the Constitution of the United States.

The relevant and competent evidence in this record shows that the TBA sales commission contracts to which Texaco is a party embody a lawful method of competition adopted by Texaco to achieve legitimate business ends (see Examiner's Finding 8). The order purports to enjoin activities by Texaco which under the existing court decisions have been held to be entirely lawful. See *United States* v. *Standard Oil Co.*, 78 F. Supp. 850, 889-92 (S. D. Calif. 1948), *aff'd*, 337 U. S. 293 (1949); *United States* v. *Sun Oil Co.*, 176 F. Supp. 715 (E. D. Pa. 1959). See also *Ford Motor Co.* v. *United States*, 335 U. S. 303 (1948); *Miller Motors, Inc.* v. *Ford Motor Co.*, 149 F. Supp. 790 (M. D. N. C. 1957), *aff'd*, 252 F. 2d 441 (4th Cir. 1958); *Nelligan* v. *Ford Motor Co.*, 161 F. Supp. 738 (W. D. S. C. 1958), *aff'd*, 262 F. 2d 556 (4th Cir. 1959); (2011) *McElhenny Co.* v. *Western Auto Supply Co.*, 167 F. Supp. 949 (W. D. S. C. 1958), *aff'd*, 269 F. 2d 332 (4th Cir. 1959).

In any event, the order is much too broad. It may lend itself to a construction: (a) abridging freedom of speech and requiring Texaco to refrain from any and all connections with or participation in sales of TBA by others to Texaco service stations even to the point of precluding the recommendation by Texaco of TBA products to the dealers selling Texaco gasoline—and though Texaco would not receive any commission on such purchase and (b) requiring

Texaco, if it is to protect its legitimate and vital interest in having Texaco service stations carry TBA of good quality,[6] to enter into the TBA business directly. Thus the order is legislative in character and arbitrary insofar as it may be construed to bar Texaco from following one accepted and lawful business practice and requiring it to adopt another. It is in excess of the Commission's power. See, *e.g.*, *Federal Trade Comm'n* v. *Sinclair Refining Co.*, 261 U. S. 463 (1923); *Federal Trade Comm'n* v. *Curtis Publishing Co.*, 260 U. S. 568 (1923); *Federal Trade Comm'n* v. *Royal Milling Co.*, 288 U. S. 212 (1933); *Frank G. Shattuck Co.*, F. T. C. Dkt. 7743 (Initial Decision, Sept. 20, 1962).

The order fails to recognize Texaco's legitimate interest in the good will attached to its name and trademarks. Where the TBA products of the dealers' own independent choice are potentially dangerous, shoddy and of inferior quality or otherwise deleterious to Texaco's good will, Texaco should not be required to stand mute while its good will is lost and its name tarnished (see RX 93 A, C, G, H; App. 17).

(v) The order is unfair and potentially injurious to competition in that competitors of Texaco are not similarly restrained.

(vi) Insofar as the order against Goodrich affects Texaco it is likewise inappropriate and unlawful upon the applicable grounds stated in this Exception 48.

Further, the order is vague and ambiguous in raising the following possible questions of interpretation:

(i) Since "automotive * * * supplies" means nothing more than "automotive accessories," why are both terms needed?

6. See Texaco's Proposed Finding 15 (App. 17).

Exceptions Filed Pursuant to Rule 4.21

(ii) What, other than sales commissions, is embraced by "anything of value"?
(2012)

(iii) Since reference to Texaco in the expression "other than The Texas Company" must surely include its subsidiaries and affiliates, why isn't this expressed?

(iv) In paragraph 2, what is the purport of the word "indirectly" and what does it modify?

(v) What is the significance, if any, of the omission in paragraph 3 of the phrase "of any specified brand or brands" found in paragraph 4?

(vi) In view of the fact that it is customary and, indeed, often essential to use wholesalers and other middlemen in the course of distributing TBA to retailers, should the order not be clearer that distribution through such intermediate channels is embraced within the exception carved out of the order for promotion and sale by Texaco of TBA products which it may distribute or market?

Respectfully submitted,

AMZY B. STEED

Amzy B. Steed

JAMES O. SULLIVAN

James O. Sullivan

AND

ROYALL, KOEGEL & ROGERS

By FREDERICK W. P. LORENZEN

Frederick W. P. Lorenzen
Attorneys for Texaco Inc.

Dated: New York, New York
January 7, 1963.

Texaco's Motion to Disqualify Chairman Dixon

(February 18, 1963)

(2028)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

[SAME TITLE]

To: CHAIRMAN PAUL RAND DIXON and the
FEDERAL TRADE COMMISSION

COMES Now respondent Texaco Inc. (formerly known as The Texas Company), without prejudice to exception numbered 3 of the "Exceptions Filed Pursuant to Rule 4.21 on Behalf of Texaco, Inc." in this proceeding, and, for the reasons stated below, hereby is constrained respectfully to move that Chairman Paul Rand Dixon withdraw from participation in this proceeding, including the hearing and determination of the pending Review herein; and, in the alternative, that the Federal Trade Commission determine that Chairman Dixon be disqualified from such participation.

(2029) On July 25, 1961, Chairman Dixon made a speech, reported in a press release of this Commission, before the National Congress of Petroleum Retailers, Inc., in Denver, Colorado, which speech reflects personal bias and a pre-judgment in favor of the allegations of the instant complaint. The portion of the speech to which reference is hereby made is as follows:

> "Your problems are many, and many of them are the problems of the Federal Trade Commission, too; for the Commission is concerned with promoting fair competition. More particularly, many of your prob-

lems are ours because they arise from *practices prohibited* by two of the most important statutes administered by the Commission—discriminatory pricing, prohibited by the Robinson-Patman Act, and *other unfair acts, practices, and methods of competition, prohibited by the Federal Trade Commission Act.*

* * *

"*We at the Commission* are well aware of *the practices* which plague you and we have challenged their legality in many important cases.

"You know *the practices*—price fixing, price discrimination, and *overriding commissions on TBA.*

"You know the companies—Atlantic, *Texas,* Pure, Shell, Sun, Standard of Indiana, American, Goodyear, *Goodrich,* and *Firestone.*"* See Tr. 4437-40, 4497-99.

(2030) Participation in the present proceeding by Chairman Dixon in a quasi-judicial capacity, after an expression of the views just above quoted, constitutes a violation of the requirements of due process of law and of Section 5 of the Administrative Procedure Act, 5 U. S. C. §1004. The impropriety of such participation is demonstrated by the many cases cited in Texaco's Exceptions herein (p. 5). Indeed, such participation is directly contrary to the recent decision by the Court of Appeals for the District of Columbia Circuit in *Amos Treat & Co.* v. *Securities and Exchange Commission,* 306 F. 2d 260, in which the Court found a commissioner disqualified on a technical ground even though there was no charge of personal bias or prejudice. In reaching this result, the Court of Appeals made the following apposite statement (p. 267):

"Enough has been said to demonstrate the basis for our conclusion that an administrative hearing of such importance and vast potential consequences must

* Emphasis in quotation supplied.

be attended, not only with every element of fairness but with the very appearance of complete fairness. Only thus can the tribunal conducting a (2031) quasi-adjudicatory proceeding meet the basic requirement of due process."**

As an additional factual reason in support of this motion, Texaco Inc. shows that Chairman Dixon, before occupying his present position, served as Counsel and Staff Director of the Senate Anti-trust and Monopoly Sub-Committee which, during his tenure, held hearings involving testimony as to the relationship between gasoline service stations and their suppliers—a relationship which has been made an issue herein by findings below to which exceptions have been taken.

WHEREFORE respondent prays that its (2032) motion be granted.

Respectfully submitted,

Amzy B. Steed
James O. Sullivan
and

Royall, Koegel & Rogers
By: Frederick W. P. Lorenzen
Attorneys for Respondent
Texaco Inc.

Dated: New York, New York, February 18, 1963

** This Commission just one year ago expressed very similar views in *Modern Methods, Inc.* and *Harold Brooks,* Dkt. 7568, Feb. 19, 1962, CCH Trade Reg. Rep. ¶15,741. The complaint there was dismissed for lack of impartiality of the hearing examiner. In the course of the opinion, the Commission concluded that the examiner "irrespective of his actual state of mind * * * did not preserve that appearance of impartiality requisite to a fair hearing". "Indulgence in gratuitous and unguarded comment in the course of hearings and in the initial decision" were among the factors which the Commission concluded "reflected on his [examiner's] impartiality."

Order Denying Motion to Disqualify

(February 26, 1963)

(2033)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

Commissioners:

Paul Rand Dixon, Chairman
Sigurd Anderson
Philip Elman
Everette MacIntyre
A. Leon Higginbotham, Jr.

[SAME TITLE]

Respondent Texaco, Inc., by motion filed February 18, 1963, having requested that Commissioner Dixon withdraw from participation in this proceeding, or, in the alternative, that the Commission determine that Commissioner Dixon be disqualified from such participation; and

The Commission having determined that respondent has failed to show justification for departure from the Commission's practice of treating disqualification as a matter primarily for determination by the individual concerned; and

Commissioner Dixon having filed with the Commission a memorandum denying the existence of any grounds for his disqualification from participation in this proceeding:

IT IS ORDERED that the motion directed to the Commission requesting that it disqualify Commissioner Dixon from participating in this proceeding, be, and it hereby is, denied.

By the Commission, Commissioner Dixon and Commissioner MacIntyre not participating.

Joseph W. Shea,
Secretary.

Issued: February 26, 1963

Memorandum of Chairman Dixon in Response to the Motion of Respondent Texaco, Inc., That He Withdraw From This Proceeding

(2034)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

Commissioners:

Paul Rand Dixon, Chairman
Sigurd Anderson
Philip Elman
Everette MacIntyre
A. Leon Higginbotham, Jr.

[SAME TITLE]

The respondent Texaco, Inc., by motion filed February 18, 1963, has asked me to withdraw from further participation in this proceeding. The motion is alternatively directed to the Federal Trade Commission and asks that it "determine" that I be disqualified from such participation.

It is Texaco's contention that my speech of July 25, 1961, before the National Congress of Petroleum Retailers, Inc., "reflects personal bias and a pre-judgment in favor of the allegations of the instant complaint." The allegedly objectionable parts of the speech are quoted in the motion. As I read it and recall it, the only thought conveyed by the speech was that the Commission had challenged the legality of "overriding commissions" and certain other practices engaged in by the various oil and rubber companies, including respondent Texaco, Inc., and the B. F. Goodrich Company. By using the word "challenged," I indicated

only that the Commission had determined there was reason to believe that the practices were in violation (2035) of law. This determination is an absolute, statutory prerequisite to any complaint, is in fact declared in the first paragraph of the instant complaint, and I fail to see how my repetition of it in a speech indicates bias or prejudgment of the ultimate issue.

The complaint in this matter was issued long before I assumed my present position as a member of the Commission and my direct knowledge of the proceeding is limited to that obtained from a cursory reading of the initial pleadings. I am not possessed of sufficient knowledge to have formed any opinion, pro or con, with respect to the legality of the practices engaged in by these respondents. When the matter is ultimately presented to the Commission for decision, I will then apprize myself of the facts contained in the record and cast my vote in accordance therewith.

As I view it, bias or prejudgment are conditions of the mind, whose existence is known only to the person accused of harboring them. As the accused here, I can flatly say that I have not prejudged the issue in this matter and that I do not have any bias with respect thereto. Therefore, it is my decision not to withdraw from participation in this proceeding.

In view of the circumstances, I shall not participate in the Commission's deliberation and decision upon the respondent's motion to the Commission for a determination that I be disqualified from participation in this matter.

Paul Rand Dixon,
Commissioner.

• • •

Motion of Texaco Inc. for Leave to File Memorandum Amplifying Answers to Certain Questions Asked by Commissioners During Oral Argument

(April 11, 1963)

(2113)

UNITED STATES OF AMERICA

BEFORE

FEDERAL TRADE COMMISSION

[SAME TITLE]

Texaco Inc., one of the respondents herein, respectfully moves the Commission for leave to file the annexed memorandum amplifying answers made by Texaco's counsel to certain questions posed by various Commissioners during the course of oral argument.

As stated in detail in the annexed memorandum, the amplification serves to afford the Commission a more complete answer to certain important questions relating to the scope of the issues on review.

Dated: April 11, 1963.

AMZY B. STEED
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and

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100 Broadway
New York 5, New York
Attorneys for Texaco Inc.

By Amzy B. Steed

Memorandum of Texaco Inc. Amplifying Answers to Certain Questions Asked by Commissioners During Oral Argument

(April 11, 1963)

(2114)

UNITED STATES OF AMERICA

BEFORE

FEDERAL TRADE COMMISSION

DOCKET No. 6485

IN THE MATTER

of

THE B. F. GOODRICH COMPANY

and

THE TEXAS COMPANY,

CORPORATIONS

AMZY B. STEED
JAMES O. SULLIVAN
135 East 42nd Street
New York 17, New York

and

ROYALL, KOEGEL & ROGERS
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New York 5, New York
Attorneys for Texaco Inc.

Memorandum of Texaco Inc.
Amplifying Answers to Certain Questions
Asked by Commissioners During Oral Argument

(2115)

In the light of Texaco's contention that the remand proceedings were a nullity, some members of the Commission inquired during oral argument about the propriety of reaching a new decision based solely upon the pre-remand record.

Texaco did not anticipate that the Commission would ever consider this possibility not only because it had not been urged in Complaint Counsel's brief, but more importantly, it would undermine confidence in the authority of the Commission's own decisions were it so lightly to regard its own prior work in connection with the very same record without a single intervening change of fact or law. Equally, it would involve a repudiation of the Commission's solemn position regarding this proceeding before the federal courts—a position upon which the courts relied in disposing of respondents' efforts to prevent the remand. In short and without prejudice to its position that nothing in the pre-remand record is now properly before the Commission, Texaco is convinced that a brief review of the unique history of this litigation will show that due process and fair play cannot be satisfied if the standards and principles heretofore consistently followed in this case are suddenly changed and abrogated. The public interest in maintenance of the traditional notions of justice—and in preserving the integrity of the administrative agencies in their dealings with the courts and the public—is paramount if we are to have a government of laws and not of men. Because of the overriding significance of the foregoing, Texaco believes that it would be remiss in its duty to the Commission if it did not amplify the answers given by its counsel on oral argument, which, though embracing

these propositions, were limited both by time and by the conviction, for the reasons detailed below, that under the circumstances the Commission could not properly consider reviewing again the pre-remand record.[1]

1. Texaco's insistence that it would be improper for the Commission to base a new decision upon the old record does not mean that Texaco believes that the old record would support a finding adverse to Texaco. On the contrary, it has consistently maintained (as, indeed, the Commission found) that the evidence was insufficient. For example, the record would not support a finding of anti-competitive effects based upon a theory of so-called economic "paper" coercion resulting from Texaco's mere lease relationship with its lessee dealers (which was the alleged "coercion" alluded to and said to exist by Complaint Counsel in response to one of the Commission's questions at the argument). If this were so, every landlord-tenant relationship of whatever nature is legally suspect. Or, put another way, and even assuming, *arguendo*, that such relationship creates a setting of potential abuse (which Texaco emphatically disclaims), this would not be unlawful. The mere possibility of abuse cannot make the possession of economic power unlawful. Otherwise, every disparity of economic strength would be vulnerable. Fortunately, in our system of jurisprudence, findings of illegality cannot rest on mere supposition without regard to actual behavior. So also, the speciousness of the "paper" coercion argument is even more nakedly exposed when it is realized that only ⅓ of the more than 38,000 Texaco dealers lease their stations from Texaco (CX 118). We mention this because one could erroneously assume from Complaint Counsel's argument that all Texaco dealers are lessee dealers. Furthermore, after the sales commission plan had been in operation for more than 15 years, it is uncontradicted that the average sales of sponsored TBA to lessee stations represented only a small portion of the total TBA throughput of such stations (CX 120, 121, 211, RX 84D, App. pp. 58-64). Also, the uncontradicted evidence demonstrates that more than 70% of all Texaco dealers do not regularly purchase any tires and tubes under the sales commission contracts, and more than 80% of such dealers do not regularly purchase batteries or accessories (App. 65-68). Furthermore, not a single Texaco dealer purchased sponsored TBA exclusively. We reiterate that findings cannot be made upon mere supposition but can only be made upon proven facts. Likewise, Texaco eschews any notion that the TBA plan could be *per se* illegal

Memorandum of Texaco Inc.
Amplifying Answers to Certain Questions
Asked by Commissioners During Oral Argument

(2116) . During the oral argument, Complaint Counsel advanced the novel and untenable theory—contrary, as shown below, to that which Commission Counsel previously and strenuously argued before the federal courts—that the Commission, in its unanimous March 9, 1961 opinion and accompanying remand order, did not find the evidence on competitive effects insufficient. This is an incredible reading of the Commission's opinion wherein the Commission held (p. 4) that the issue in the case is the legality of the sales commission plan used by respondents and that resolution of this issue depended upon the competitive effects of the plan. Having defined the problem, the Commission concluded that the record contained insufficient evidence of competitive effects (Opinion, p. 10). Therefore, it remanded the case for the specific purpose of receiving evidence "concerning the competitive effects of the respondents' practices" and the Hearing Examiner was directed to indicate any changes he wished to make in his initial decision "in the light thereof" (Remand Order, March 9, 1961).

On July 7, 1961, Texaco and Goodrich brought an action in the United States District Court for the District of Columbia to bar the Commission from pursuing such remand as unwarranted in law or fact. (Civ. Action No. 2219-61). In defense of that action, Commission (2117) Counsel "protested too much" for the opposite to have been asserted at the April 4th (and last) oral argument in this proceeding.

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simply because Texaco leases service stations to some dealers who may or may not purchase sponsored TBA which theory of *per se* illegality has, indeed, already been disavowed by the Commission both in this case and in the other two T. B. A. cases (Docket Nos. 6486 and 6487).

Memorandum of Texaco Inc.
Amplifying Answers to Certain Questions
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Counsel for the Commission in the federal action stated that the Commission "needed additional evidence in order to decide the issues presented."[2] They contended that the Commission should not be foreclosed from taking further evidence on which to base an "'informed determination.'"[3]

Likewise, counsel for the Commission plainly advised the Court that the remand was not to be a retrial of what had gone before, stating:

> "On its face, the Commission's opinion shows that its remand is not seeking a retrial of matters already tried but rather envisions supplementary evidence on what it considered to be significant facts in any assessment of the competitive effects of the sales commission agreements, namely, the effects upon competing TBA suppliers stemming solely from this method of distribution."[4]

They told the courts, in addition, that the issue to be heard on the remand not only was "highly complex and complicated," but that it was "crucial" and "dispositive":

> "Here, the remand involves developing additional evidence on the crucial issue, one that will be dispositive of the proceeding; * * *

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2. Memorandum of Points and Authorities in Support of Defendants' Motion to Dismiss and in Opposition to Plaintiffs' Motion for Preliminary Injunction, p. 26, served August 28, 1961.

3. *Id.* at 28. See also Memorandum of Points and Authorities in Support of Defendants' Motion for Summary Judgment, p. 30, filed April 30, 1962.

4. Memorandum of Points and Authorities in Support of Defendants' Motion for Summary Judgment, p. 21, filed April 30, 1962.

Memorandum of Texaco Inc.
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"Here the remand involves a highly complex and complicated question in which it is sought to determine the probable competitive effects of the sales commission method of distributing TBA; * * *"[5]

The Commission, in order to persuade the courts that it was entitled to conduct the remand, represented that the evidence to be (2118) adduced thereat was vital to the appropriate disposition of the proceeding. Had counsel for the Commission represented otherwise, the Court undoubtedly would have enjoined the remand because there would have been no basis for pursuing it and no reason for not having disposed of the proceeding without a remand.

The position of the Commission is reflected in the findings of the District Court in support of its Order of June 19, 1962. The Court ruled that Texaco and Goodrich would be entitled to relief unless the contemplated remand were completed by October 2, 1962. The Court expressly found that, on March 9, 1961, "*the Commission, having found the evidence before it inadequate to show a violation of Section 5 of the Federal Trade Commission Act, issued an order remanding the Proceeding to the Hearing Examiner,* * * *." (Emphasis supplied.) Thus, in permitting the remand proceeding to go forward, the Court relied on the government's representations that the Commission did not have before it sufficient evidence to support the charge.

It would violate every fundamental and constitutional concept of fair play if the Commission were now to say that the prior unanimous Commission did not properly evaluate the record, that the evidence was sufficient all along, that the issue remanded was uncomplicated and not dispositive and that the remand was entirely unnecessary

5. *Id.* at 17.

and just a two-year time-waster. Needless to say, such a position would also collide head-on with Section 6(a) of the Administrative Procedure Act which requires that "Every agency shall proceed with reasonable dispatch to conclude any matter presented to it."

There can be no question but that, in the two years that have elapsed since the remand order, all the parties involved—the Commission, its representatives and the federal courts—have treated the pre-remand record as insufficient to sustain the complaint. This was the reason for the remand; and it was the premise upon which the courts acted in permitting the remand hearings to go forward under a deadline aimed at requiring the case "to proceed with reasonable dispatch."[6]

We respectfully submit that the Commission, having kept this case alive for more than two years since its remand order by persuading (2119) the federal courts that it should not have to decide the matter on an insufficient record, cannot now repudiate that position. In those two years, not once did the Commission suggest to respondents or the courts that its "second bite at the apple" would involve a reappraisal of the prior record either by it or by the Hearing Examiner in the absence of any "further evidence" on the issue which it told the courts was "complex," "complicated," "crucial" and "dispositive." Respondents were not given notice that they should come to the remand prepared to meet the contention that the pre-remand record was sufficient—indeed, they were told just the opposite.

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6. If this were not so, and if the remand hearing was unnecessary, why did the Commission so vigorously contest Texaco's efforts—indeed, to the United States Supreme Court—to stop the remand proceeding.

Memorandum of Texaco Inc.
Amplifying Answers to Certain Questions
Asked by Commissioners During Oral Argument

We do not believe that it is an acceptable premise that the Commission in this case can simply ignore and disavow its representation to the courts and respondents. Nor can we agree that under the guise of "public interest" any action may be taken however lacking in fair play and due process. In short, we contend that a true and faithful adherence to the public interest—giving to it the real significance it deserves—requires the Commission to confine its review to the sole issue of whether the remand added competent and substantial evidence which was lacking before. Such a review will compel the answer that the remand added nothing and, this being so, an order of dismissal should be entered with "reasonable dispatch" as required by Section 6(a) of the Administrative Procedure Act.

Respectfully submitted,

AMZY B. STEED
Amzy B. Steed

JAMES O. SULLIVAN
James O. Sullivan

and

ROYALL, KOEGEL & ROGERS

By FREDERICK W. P. LORENZEN
Frederick W. P. Lorenzen
Attorneys for Texaco Inc.

Dated: New York, New York
April 11, 1963

Decision and Order

(April 15, 1963)

(2120)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

Commissioners:

Paul Rand Dixon, Chairman
Sigurd Anderson
Philip Elman
Everette MacIntyre
A. Leon Higginbotham, Jr.

[SAME TITLE]

This matter is again before the Commission on respondents' appeal from the revised initial decision of the hearing examiner issued September 24, 1962.

Respondents contend that the tables, surveys, and matters officially noticed by the examiner on remand were improperly admitted both because they are inappropriate objects for official notice and because respondents were afforded inadequate opportunity to rebut them.

It is not necessary to pass upon the correctness of these contentions, since the Commission excludes from its present decision any reliance upon the challenged evidence. It finds that the other evidence of record amply supports the conclusions and the order of the hearing examiner. The legal principles relevant to this decision need not be reexamined here because they are set forth at length in the opinions of the Commission in *Goodyear Tire & Rubber Co., et al.*, Docket 6486, March 9, 1961, and *Firestone Tire & Rubber Co., et al.*, Docket 6487, March 9, 1961. Accordingly,

Decision and Order

IT IS ORDERED that the findings of fact numbered 32, 33 and 34 and conclusion number 7 of the revised initial decision be, and they hereby are, stricken.

(2121) IT IS FURTHER ORDERED that, as so modified, the initial decision and order be, and they hereby are, adopted as the decision and order of the Commission.

IT IS FURTHER ORDERED that respondents B. F. Goodrich Co. and Texaco, Inc., shall, within sixty (60) days after service upon them of this order file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

By the Commission, Commissioner Anderson not concurring for the reason that the command of the remand order of March 9, 1961, has not been met and complied with; and Commissioner MacIntyre not participating.

Joseph W. Shea,
Secretary

Issued: April 15, 1963

Excerpts from Testimony

(2129) Hearing Examiner Kolb: The initial hearing in Docket 6485, in the matter of B. F. Goodrich Company, et al, is now open. This is the initial hearing of the record in the present proceeding.

A pre-trial conference has been held and certain admissions or agreements as to facts have been entered into by the respondents. I will read these into the record as I have them here, subject to any change which will occur.

"Both the respondents B. F. Goodrich Company and the Texas Company admit the following:

"One: Respondent, The B. F. Goodrich Company, hereinafter sometimes referred to as 'Goodrich', is a corporation organized, existing and doing business under the laws of the State of New York, with its principal office and place of business located at 500 Main Street, Akron, Ohio.

"Respondent, The Texas Company, sometimes hereinafter referred to as 'Texas', is a corporation organized, existing and doing business under the laws of the State of Delaware with its principal office and place of business located at 135 East 42nd Street, New York 17, New York.

"Two: Goodrich, one of the four leading manufacturers of rubber products in the United States, is engaged in the manufacture and sale of a great variety of rubber and associated products, including tires and inner tubes.

(2130) "It is also engaged in the purchase, resale and distribution of batteries, automotive parts and accessories, and certain other merchandise. Goodrich sells its various products directly to the consuming public through 489 company operated stores, and to other retailers and wholesalers having places of business located in the various States of the United States. Its total net sales in 1954 were more than one-half billion dollars.

"Certain of Goodrich's said products, namely, tires, inner tubes, batteries and automotive parts accessories and

supplies are known in the trade as 'TBA' products (an abbreviation for tires, batteries and accessories) and will hereinafter be so referred to in this proceeding.

"Three: Texas is a large producer and distributor of petroleum products. Directly or through its subsidiaries or affiliated companies it has engaged and is now engaged in substantially all branches of the petroleum industry. It produces crude oil from its wells, cracks and refines gasoline, and refines and produces lubricants and a wide range of other petroleum products. Sales of some or all of such products are made to various customers, including petroleum wholesalers (some of which are herein referred to as 'distributors') and service stations. In 1954 its net sales totaled more than one and a half billion dollars. In certain cases under written contracts and memoranda, Texas promotes the sale of Goodrich TBA products.

(2131) "Four: In the course and conduct of its said business, B. F. Goodrich is now and for many years has been engaged in commerce, as 'commerce' is defined in the Federal Trade Commission Act, in that it ships certain products, including said TBA products, or causes them to be shipped from the States in which said products are manufactured or warehoused, to purchasers thereof located in other States of the United States and the District of Columbia. Texas ships some petroleum products from some but not all States in which they are produced, refined or stored to purchasers or dealers located in some other States of the United States and in the District of Columbia.

"Texas admits the first eight numbered paragraphs of the Proposed Stipulation, except that we will not admit the first sentence of paragraph numbered '4', but will admit in lieu thereof:

> 'B. F. Goodrich ships certain TBA products, or causes them to be shipped from the States in which said products are manufactured or warehoused, to

purchasers thereof located in other States of the United States and the District of Columbia. Texas ships some petroleum products from some but not all States in which they are produced, refined or stored to purchasers or dealers located in some other States of the United States and in the District of Columbia.'

(2132) "Five: Goodrich is now and for many years has been in competition with others in selling TBA products in commerce. In certain cases, under written contracts and memoranda, Texas is now and for many years has been engaged in promoting the sale of Goodrich TBA products.

"Six: Goodrich sells TBA products directly and through distributors to many classes of customers, including service stations who purchase for resale to consumers for replacement use in their automobiles. Service stations, by the nature of their business, are particularly well adapted to be outlets for the sale of TBA products to the motorist consumer. They constitute a large market for TBA products.

"Texas petroleum products are marketed by approximately 38,000 petroleum outlets which buy such products either directly from Texas or from consignees of Texas or from distributors of products of Texas. In addition to petroleum products, a number of these outlets sell TBA products.

"Seven: There are a large number of service stations and distributors which sell principally the petroleum products of The Texas Company. The Texas Company, under written contracts and memoranda promotes the sale of said Goodrich TBA products to some service stations and distributors handling products of Texas, and Texas receives a sales commission thereunder. The service stations and distributors do not receive any part of the sales commission paid to Texas by (2133) Goodrich.

"Eight: Goodrich and its distributors made sales, covered by said written contracts and memoranda amounting approximately to $11,400,000 in 1951 and $12,700,000 in 1952, on which Goodrich paid Texas commissions of approximately $930,000 and $1,090,000 respectively for those years. (Figures to be supplied and agreed on by the parties promptly.)"

Mr. Royall: It should appear in the record that this admission is solely for the purpose of the present proceeding and we reserve all objections as to materiality and relevancy. Is that correct?

Hearing Examiner Kolb: That is correct.

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(2212) MAURICE A. WOLFE was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

(2213) *Direct examination by Mr. Dias:*

Q. Will you state your full name and position with the Texas Company? A. Maurice A. Wolfe, special representative, tire, battery and accessory sales.

Q. Is that home office or field? A. Home office.

Q. What are your duties, Mr. Wolfe? A. It is my responsibility to develop plans and programs for increasing TBA through Texaco accounts; to coordinate those plans with the plans of the tire companies; to evaluate from our sales reports the activities of the TBA sales; to keep contact with our field in trying to evaluate the effectiveness of our plans and programs; and to gain any new ideas for plans and programs. I also maintain contact with the tire company personnel and headquarters to try to coordinate our plans and their plans in so far as it pertains to the sale of TBA merchandise in the field.

Maurice A. Wolfe, for Commission—Direct

Q. Are you concerned with the program as it relates to only Goodrich or both rubber companies? A. Both.

Mr. Royall: Same objection.
Mr. Barton: Same for me.
Hearing Examiner Kolb: Objection overruled.

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(2215) Q. Then from 1940 on you were concerned chiefly with TBA products? A. Yes, sir.

Q. And in that time, or during that time, you did not —or did you devote your time or efforts towards any one company, any one rubber company, or was it the two that you combined in the TBA program?

Mr. Royall: Same objection.
Mr. Barton: Same objection.
Hearing Examiner Kolb: Objection overruled.

A. I worked with both companies.

By Mr. Dias:

Q. With both companies. In compiling statistics did you consider both companies? A. Yes.

Mr. Royall: Yes.
Mr. Barton: May we have a continuing objection on that your Honor rather than have to repeat it every time?
Hearing Examiner Kolb: You may have a continuing objection.
Mr. Royall: Same for us.

• • •

(2216) Q. In the territorial offices, Mr. Wolfe, who is responsible for the TBA program? I mean, what is the title of the person? A. Assistant manager (sales promotion).

Q. Would you repeat that? Assistant manager what? A. Sales promotion.

Q. How many personnel did you have in the Atlanta office involved in the TBA program? A. In the office itself?

Q. Yes. A. We have an assistant manager, sales promotion, and clerk, TBA promotion, which is—

Q. One clerk? A. One clerk, which handles the reports. We have a representative, TBA promotion, that works out of the division office covering the entire division.

Q. What are his duties? A. Exclusively on TBA sales, promotion of TBA sales.

Q. Is he the only one that tries to sell in the field? Is that what you are saying? A. No.

Q. Go on a minute and let me come back to that. What other personnel do you have in the territorial office? You have so far an assistant manager, sales promotion; one clerk, TBA (2217) promotion; representative, TBA promotion. A. That is in the division.

Q. Is Atlanta a division? A. Yes.

Q. Who else do you have in the division? A. There is no one else that works exclusively on TBA.

Q. How about the sales force? Do all salesmen of the Texas Company also promote the sale of TBA products? A. Yes.

Q. How many salesmen are usually in a division office? A. That varies.

Q. How many did you have at Atlanta? A. I don't recall the total number.

Q. The division is a step lower than the territory, is that correct? A. Yes.

Q. Do you know anything about the territorial offices? A. Yes.

Q. Do you know what personnel are involved in TBA sales in the territory offices? A. The assistant manager, sales promotion, and I suppose to a degree his office per-

sonnel that handles our sales promotional work would be included in there, too.

Q. How large a force would that be? A. That varies.

(2218) Q. From what? A. Depending on the requirements of the territory.

Q. Can you give us some round numbers? Two, three, five, a dozen people maybe? A. That I am not familiar with in total number.

Q. What other people, or what other personnel are directly connected with the TBA program in the territories? A. Our territorial manager of course.

Q. Yes, you have given me him. For example, in the division you had a clerk and then a representative, TBA program man. What about the territory? A. We do not have those in the territory.

Q. So that the only executive personnel actually is the assistant manager, sales promotion? A. And the manager.

Q. Territorial manager? A. Territorial manager, of course is interested in it, too.

Q. Getting back to that representative, TBA program, is he sort of a liaison man? What does he do? A. He coordinates in the field the programs of the Texas Company and the tire companies.

Q. In the field, when you say in the field, what do you mean? In the sales area? A. In the sales area.

Q. And what is the normal sales area of a division? How is (2219) that made up? A. Well, as a rule I believe that the division sales area is by state lines. Some are not. The Atlanta division where I was working at that time covered four states.

Q. So the representative then would be responsible for coordinating the work among those four states and his division office. Is that correct? A. He coordinates the efforts in the four states.

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(2223) *By Mr. Dias:*

Q. Mr. Wolfe, I hand you Commission exhibit 41. Will you study that a few minutes?

Will you tell us what that document is? A. That is a section in a manual of procedures that we work with in the handling of forms and records pertaining to the TBA sales as outlined.

Q. Is that the current procedure, Mr. Wolfe? A. The current procedure?

Q. Yes, sir.

In other words, is that still the effective document? Have there been any revisions on it that you know of? A. Yes. There have been revisions.

Q. There have? Can you tell us what was the date that that was in effect? A. This was in effect in August '51, I believe was the last print, for most of these sheets.

Q. Do you know when the amendments went into effect, or an amendment? Was the whole thing amended? A. Well, currently our TBA records in the division offices are prepared on business machines, rather than manually, as outlined in here.

Q. Can you think of any other amendments to that manual? A. No, not at the moment.

Q. Will you refer to pages 14 and 15, Mr. Wolfe, paragraphs (2224) a and b. In sales by the rubber companies to Texaco stations, I take it stations can qualify for quantity discount. Is that correct? A. Yes.

* * *

(2231) (The document heretofore marked Commission's Exhibit for identification 70-A through D, was received in evidence.)

By Mr. Dias:

Q. Will you look at this document, Mr. Wolfe? You refer in there, Mr. Wolfe, to a bald selling ratio in the last paragraph of your letter. Do you see that?

Mr. Royall: What page?

Mr. Dias: That is in the second full paragraph on Exhibit 70-C.

By Mr. Dias:

Q. The question is, Mr. Wolfe, what are those recommended balanced selling ratios? What does that mean? A. That means the ratio of battery auto supply sales to total TBA sales.

Q. The ratio of battery auto— A. Auto supply sales.

Q. Battery— A. Battery and accessory sales.

Q. Battery and accessory sales? A. To total TBA.

Q. That is recommended. Who recommends that? (2232) A. Well, the profit computer referred to is a form prepared for The Texas Company which sets out potential business dependent on the gasoline business being done at a station.

Q. Is it a ratio of sales of TBA products to gasoline sales? Is that what you mean? A. That is used in arriving at the recommended ratios.

Q. Can you explain that a little more fully? Is it a question of so many gallons of gasoline, sales of so many gallons of gasoline should result in the sales of so many dollars worth of TBA products? Is that the idea? A. Yes.

Q. Did you say that Texas made up this profit computer? Is that correct? A. No. I said it was made up for The Texas Company.

Q. By whom? A. I don't know. I think Chek Chart Corporation; I am not sure.

Q. Chek what? A. Chek Chart Corporation.

Q. And then the balanced selling ratio—tell me what is that balanced selling ratio? Batteries and accessories to total TBA sales? A. TBA.

Q. Is that figured also from this profit computer? A. It is included in the profit—

(2233) Q. It is included in it. Does it only refer to batteries or does it also show accessories to tires and batteries or— A. Actual ratio is not shown in the profit computer.

Q. It is not? How about the ratio of sales of TBA products to sales of gasoline? Is that shown in the profit computer? A. Yes, it is related in there.

• • •

Q. Is that the standard that Texas goes by, standard of sales? A. That is a guide.

Q. In determining how many dollars worth of TBA any given station, for example, should sell? A. Yes.

Q. In relation to the number of gallons of gasoline they sell? Is that correct? A. Yes.

Q. On Exhibit 70-B there are some addresses. Will you tell us who they are, please? A. Those were assistant territorial managers, sales promotion.

Q. And is that one in each territory? A. One in each territory.

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Cross examination by Mr. Royall:

• • •

(2246) Q. I notice that the chart which you have identified has on the outside of it "For Texaco Dealers." Do you know whether or not this chart was prepared for the petroleum industry generally? A. Yes, it was.

Q. And the fact that it was directed to the Texas Company dealers is merely something imprinted on there. Is that right? A. That's right.

Q. Are the charts and computations made by Chek Chart generally accepted in the petroleum industry as being sound? A. Yes. They are accepted as an authority.

Q. Do you know whether or not its computations are used and in instances illustrated by the United States Department of Commerce in their analysis of the petroleum industry? A. I don't know, but I think—

Mr. Dias: That is enough. You don't know.

By Mr. Royall:

Q. I believe the actual publication of them is by the Shaw Publishing Company. Is that an affiliated or associated organization with Chek Chart itself? A. Yes.

* * *

(2247) Q. Was the investigation on the basis of this chart made in any part by Texas Company? A. No, sir.

Q. Was it an independent investigation of Chek Chart? A. Yes.

* * *

(2248) Q. Does it appear and do you know that this is based on averages? A. That is.

Q. It is based on averages.

Now, Mr. Wolfe, you were asked about certain ratios between different types of TBA. And I believe you replied that those ratios were shown by this information. Does it also show the ratio of TBA as a whole to a definite quantity of gasoline, say 10,000 or some other thousand gallons? A. Yes.

Q. And in addition to TBA does the computation based on averages apply also to lubricants, labor, and other matters? A. Yes.

Q. In other words, it is true, is it not, that this computation was not directed to TBA alone but to all the services

and products of the petroleum stations, was it not? A. Yes.

Q. And is that what is meant by the term "balanced selling ratio"? A. It is.

Q. Does this figure here, relating to TBA, relate to all TBA whether sponsored or unsponsored, whether Goodrich or something else? A. It does.

(2249) Q. And the average? A. The average station.

Q. And is it from this computer and based on it that you stated in your letter of March 12, and the enclosure in it, and stated in the next to the last paragraph of the enclosure that "the C type account should have averaged approximately $2,200 per station"? A. Yes, sir.

Q. And is it also true that the Goodrich TBA averaged only $720 per station? A. Yes.

* * *

Redirect examination by Mr. Dias:

* * *

(2258) Q. Mr. Wolfe, I would like you to take a look at Exhibit 24-A, and notice the date. A. Yes, sir.

Q. Where were you employed at that time, in 1951? Were you in the home office? A. Yes.

Q. Where? And on these figures, the 30 percent increase on shipments of replacement tires, you can testify that they are referring to units in that instance? A. Yes.

Q. And on that 56 percent increase, that refers to dollar volume? A. Yes, sir.

Q. Exhibit 28-A, referring to form 1213. Was it your testimony that that form only went to the home office? Is that correct? A. It goes to our division management, territorial management, and home office.

Q. Where is it made up? A. In the division office.

Q. So it goes from the division to territorial to home, is that correct? A. Yes.

Q. On document 41 relative to the various forms, you mentioned (2259) that you are now using the IBM machine system? A. Yes.

Q. It is my understanding that you also testified that it does not change the accounting procedures as such, but only the fact that you do it mechanically rather than manually, is that correct? You still compile the same type of statistics that are outlined in those forms and for the same purposes? A. Not completely.

Q. Do they vary in any material way? If so, give us some examples of it. A. Under the old system we posted the purchases on an S-40 card.

Q. What sort of purchases? A. TBA purchases.

Q. By whom? A. By dealers, consignees, and distributors; all Texaco accounts reported to us by the tire companies.

Under the new system those purchases are not posted on a card but are recorded on a form by the business machine.

Q. So that you have the same information but you have it in a different form. Isn't that so? A. That's right.

Q. In other words, fundamentally there is no change in that? You still have the same kind of statistical information but now you have it on a card where as heretofore you had it on a (2260) form? A. The other way around.

Q. How about the other forms that they mention here? What about form S-237? A. We still have that form in use.

Q. Why don't you go through these? You just described S-40. A. We have what is called an S-40 now. It only carries the name of the account and the location of the account. In other words, no TBA sales figures are on the S-40.

Q. Do you have— A. We have an S-40 card as such today.

Q. What form has now superseded that? What IBM form has now superseded that to do the same job that that

S-40 did? Do you have anything of that sort? A. We still have an S-40 card on which we keep the name of the account and the address. But the sales information is now kept on S-79, made in the machine.

Q. And you have had S-79s all along anyway, haven't you? A. Yes.

Q. So the information formerly on the S-40 or some of it is now on the S-79? A. Yes.

Q. And in machine form? A. Yes.

Q. Are there any other forms here? (2261) A. S-47 we still have.

Q. Is there any IBM counterpart of that S-47? A. The present form S-47 is prepared on the IBM machine, rather than manually.

Q. But the same type information? A. The same type information.

Q. S-79 you have already explained, have you not? A. Yes. We still have the S-79. It is prepared now on the IBM machine.

Q. But contains the same information that is set forth in this manual, is that correct? A. Yes.

Q. Now getting to the profit computer, were Texas stations included in that report, do you know? A. What report?

Q. In preparing this profit computer, did this company include Texas stations? A. I do not know.

Q. Did the Texas Company furnish any data on that company? A. Not to my knowledge.

Q. What is the extent of your knowledge of the makeup of that chart, Mr. Wolfe? Do you know anything about how it is computed, how it is made up, where the figures come from? A. All I know is that this company is a recognized authority on potentials and throughout of service stations, among other (2262) type accounts.

Q. How did they get these figures, do you know? A. No, I don't know exactly how they arrived at them. It is based on averages, I understand.

Q. From whom? Texas Company submitted no figures that you know of? A. They developed them in their own way. I don't know how.

Q. You don't have any idea of how they develop them. Then I take it that you wouldn't know the basis for the figures in the profit computer, how many stations are included in the average? A. No.

Q. Nor where the stations are located? A. No.

Mr. Dias: That is all, your Honor.

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(2263) CHARLES R. FROHLIN was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name and position for the record? (2264) A. Charles R. Frohlin.

Q. And what is your title and position and where located? A. I am Division Manager, New York Division.

Q. Are your offices in New York? A. Yes, sir.

Q. How long have you been with the company, Mr. Frohlin? A. Twenty-six years.

Q. How long have you been in your present position? A. Since May 1, 1956.

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(2265) Q. Will you identify this letter, please (handing)? A. Yes, sir.

Q. You wrote that letter? A. I did.

Q. Is that your signature? Who were the zone managers? I mean how many zone managers were there in that division? A. At that time we had 23.

Q. Do all of those initials indicate zone manager or is this further distribution? A. This is further distribution of the letter.

Q. Where else would that have gone to, generally speaking? Not to each and every one? A. It would only go to the zone managers, plus these people.

Q. What type of people would they be? (2266) A. For example, "RBA" is Mr. Allen, Division Manager. These other people along here are staff members.

Q. Division staff members? A. Division staff members.

Q. And this letter was sent to each and all of those indicated, is that correct? A. Yes, sir.

Q. In response to the third paragraph of that letter did you receive replies in response to that third paragraph, do you recall? A. Yes.

Q. From all necessary parties? In other words, each zone? The zone managers were expected to answer to that letter, is that correct? A. From those zone managers who were expected to answer.

Q. Were there some that didn't have to answer? A. There were some who perhaps didn't have consignees.

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Cross examination by Mr. Royall:

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(2268) Q. Mr. Frohlin, your normal duties and customary duties are personnel. What do they deal with? A. Primarily the giving of raises, for example; proper office force in the office.

Q. And as to real estate? A. It is my duty to recommend to management first of all the leasing of new properties.

Q. What do you mean by leasing? Leasing from whom to whom? (2269) A. Leasing from a property owner to the Texas Company.

Q. Did that activity embrace leasing from the Texas Company to a service station? A. No, sir.

Q. And this letter was written with reference to leases to the Texas Company, is that correct? A. Yes, sir.

Q. You often lease stations, either lease the ground or lease the ground and building, from third persons? A. Yes, sir.

Q. And then you lease them back to a service operator. Is that correct? A. Correct.

Q. And your letter related to the first of these, that is, the leasing from an owner to the Texas Company? A. The Texas Company.

Q. As to what types of property, or service stations, which were leased to the company, were you interested? A. Leases on property wherein the company erected facilities; leases on property and buildings.

Q. And property which the company after it was leased to the company did what with? A. Leased to an operator.

Q. You referred in the hearing on this letter to leased accounts.

(2270) Mr. Dias: Would you show him the one that has been offered, sir?

(2271) *By Mr. Royall:*

Q. You refer in the heading of the letter above the body of it to "leased dealers accounts" and in the first paragraph to "leased accounts". As I understand it from your testimony that means that you are interested in the leases to the company of property which was later leased to service stations. A. Yes, sir.

Q. And that is what those two terms mean in the first paragraph? A. Yes, sir.

Q. You say some of the stations which you leased the company built the station on, is that right? A. We leased the property.

Q. And built the station? A. Yes, sir.

Q. And that is designated as one class of company-owned station? A. Right.

Q. You spoke in this letter that the effect of this information is a strong point on renewing leases. What leases were you referring to? A. The lease of the Texas Company and the property owner.

Q. To Texas Company? A. Yes sir, to the Texas Company.

Q. Was this information which you obtained used for any other (2272) purpose except to consider the advisability of the Texas Company taking leases to itself on property? A. No, sir.

Q. And that was your function—that was within your function as being in charge of real estate? A. Yes, sir.

Q. Do you know for what purpose—that is, whether it was for a statistical purpose or otherwise that that information was obtained? A. Statistical.

Q. Yes. And did your inquiry have any connection at all with Texas Company's relation with the service stations or its dealers? A. No, sir.

Q. I believe you have already testified it was not used for that purpose in any way. A. Right, sir.

Mr. Royall: That is all, sir.

* * *

(2274) Q. Is it or is it not a fact, Mr. Frohlin, that before you can determine whether you want to cancel a lease to the Texas Company you must have information to determine that? Is that correct, sir? A. Yes, sir.

Q. And this letter of yours was for the purpose of determining whether a further renewal was desirable. That was one of the circumstances, isn't that correct, sir? A. Right.

Q. If the premises were satisfactory and capable of producing revenue, would you recommend the cancellation or non-renewal of the lease? A. No, sir.

Q. Was that the criterion you applied in making your recommendations? A. Yes, sir.

(2275) Q. And in order to determine that you had to know the possibilities and the demonstrated activity of the property as one of the elements, is that right, sir? A. Yes, sir.

Q. Were there other elements? A. The—

Q. Prospects for the future? A. Prospects for the future; change in roads, perhaps, or something like that.

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(2277) (The paper referred to, heretofore marked Commission's Exhibit No. 31 for identification, was received in evidence.)

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(2278) BEN HALSELL was called as a witness for the Commission, and first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Dias:

Q. Mr. Halsell, will you state your full name and title and where located in the Texas organization? A. My last name is Halsell; first name Ben; Manager of Merchandising, home office.

Q. What are your duties as Manager of Merchandising? A. My responsibility is to find ways and means of assisting Texaco dealers increase their profits, become better businessmen, in the process of which they increase their sales of petroleum products, TBA materials, and allied products and services.

Q. Are you primarily concerned with the TBA purchases or overall sales? A. Both, at the retail level.

Ben Halsell, for Commission—Cross

Q. Primarily is it one or the other? A. Primarily the entire merchandising operation.

Q. At the retail level? A. Yes.

Q. How long have you been in that position? (2279) A. January 1, 1956.

Q. How long have you been with the company in all, Mr. Halsell? A. Since August 13, 1926. Thirty years.

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(2280) Q. As zone manager, how does the zone feature in this scheme of organization? A. Zone is comprised of a manager and within the zone there are salesmen. Today we call those salesmen merchandising (2281) salesmen and general salesmen. And it is the responsibility of zone manager, working both directly and through his sales organization, to help dealers to increase their profits by increasing the sale not only of petroleum but of those items that make the dealer's operation a well-rounded one and therefore make him more profit.

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Cross examination by Mr. Royall:

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(2298) Q. You were asked questions yesterday about the organization in your home office and elsewhere. Are you familiar with the name and duties of the position which Mr. C. R. Frohlin held in February 1951, at the time of the letter which was introduced yetserday as Exhibit 31? A. At that time Mr. Frohlin was the assistant division manager, administration, Norfolk division. I believe that title has been abbreviated now to assistant division manager.

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Q. You described to some extent yesterday the duties of other members of the organization in answer to the questions asked you by government. Do you know whether

or not that position held then by Mr. Frohlin embraces real estate leases from others to the Texas Company? A. His position did embrace the handling of real estate. That is, the leasing of land and properties from land-owners to the Texas Company.

Q. Is that separate and distinct from the leasing of property from the Texas Company to service stations? (2299) A. In our assignment of duties that office has to do only with the leasing of properties from the landowners, property owners, to The Texas Company, to the exclusion of the subleasing of those properties to dealers.

Q. Are you familiar yourself with the handling of leases of property to The Texas Company and the circumstances under which such leases are renewed or in some respects cancelled? A. I am.

Q. Is it or is it not the policy of the company to use the cancellation of a lease to the company as a method of cancelling a lease by the company to a service station operator? A. It is not the policy of the company to engage in that practice.

Q. Have you ever known it to be done? A. It is not the practice. In my experience I have never known it to be done. I have never known anyone to even suggest that it might be a means of cancelling a G-77C lease.

Q. And you have been with the company for how many years? A. Thirty.

Q. Mr. Halsell, do your duties give you information as to how many people in what divisions of the company, including those divisions you asked about yesterday—I mean divisions not in the technical sense but various echelons of the company—do you know how many people are engaged in the TBA activity for Texas Company, approximately? (2300) A. Yes, I do. Between the people who give their entire attention to that work and those who give varying parts of their time to it, I should say there are a thousand-plus.

Q. Can you give a little more definite information as to where they are located, the type of activity they engage in, and so forth? A. Yes, sir. First, there are merchandising and general salesmen. They are the employees of the Texas Company who are in most frequent contact with dealers. I believe—and I am using rough estimates now—that there are in the vicinity of 700 of those. Then there are the zone managers who are the supervisors of the merchandising and general salesmen. There are some 225 of those.

Then there are the state managers. Over the country my estimate is that there are fifty state managers. Each state manager has a certain number of zones within his area.

And then there are the superintendents of sales training; fifteen of those.

And then there are the representatives' dealer training. I would place that number at about twenty.

Then there are dealer service representatives; 35 of those.

And then there are the representatives TBA promotion. The number there, as I recall it, is 18.

There are the assistant division managers, sales (2301) promotion, or assistant division managers, merchandising. That title varies between divisions. Between the two titles there are 15.

And then the division manager, too—at least I, in my function as a division manager—consider that the promotion of the sale of TBA materials, the assisting of dealers in their merchandising problems as they involve TBA and its merchandising, I consider that that was a part of my work.

Q. A part of those people have other activities as well, do they not? A. Oh, yes. I don't intend to convey that all those people give all their time to the TBA problem. They don't.

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(2302) *By Mr. Royall:*

Q. I call your attention, Mr. Halsell, to this paragraph of the letter dated November 15, 1951, from Mr. Pannill to Mr. R. F. Ney and others, which reads as follows:

"I have been active in assisting Texaco dealers to secure more profits through the sale of TBA merchandise regardless of the supplier, and while we have data on the progress of customers of Firestone and Goodrich, we would like additional information on the Texaco dealer customers of other suppliers. Accordingly, it is requested that you develop and furnish this office the following information."

And then it gives the details of dealer's name and location, date station was opened or began handling Texaco products, principal brand of TBA products presently handled by the dealer and the indication as to whether the station previously handled either Firestone or Goodrich.

I call to your attention in addition to that language from Commission Exhibit 34, the Exhibit 55-A and B, which is in reply to it, and I ask you to examine it.

Do you know, Mr. Halsell, the purpose of that inquiry and of the information which it sought and obtained?

Mr. Dias: Your Honor, this man didn't write the letter. Mr. Pannill wrote the letter.

By Mr. Royall:

Q. Despite the fact that Mr. Pannill wrote the letter do (2303) you know the purpose of the letter and its answer? A. Yes.

Q. How do you know it? A. How do I know it?

Q. Yes. A. I know it because of similar experience of mine.

Q. Have your positions in the company brought you in contact with similar activities? A. Yes, sir.

Q. What was the purpose? A. The purpose was simply to investigate the possibility of increasing our aid and assistance to dealers to the end that they become better business men and more profitable merchants and sounder business people, and therefore better servants to the public.

* * *

(2304) Q. Did Mr. Pannill have any position or authority, or did his normal activity relate to the leasing of the filling stations, cancellation of leases? A. No, sir.

Q. Did it have anything to do with promoting sales? A. Sales of what?

Q. Of TBA? A. Yes, sir.

Q. I call your attention further to the Exhibits 36 and 37, which were introduced yesterday by the government, and ask that you examine them briefly yourself.

Was the purpose of the Exhibit 36 the same as that that you have just described as to 34 and 35? A. Substantially the same, involving different classes of accounts.

Mr. Royall: Your Honor, on Commission Exhibit 37 I would like to ask counsel for the government if they have received letters from any of the five persons named thereon, or other communications in writing from them?

Mr. Dias: I don't think I have to answer that, your Honor.

Hearing Examiner Kolb: I don't think that question is proper at this time Mr. Royall.

Mr. Royall: Your Honor, I don't want to argue that at length. Your Honor, I don't know what the purpose is of (2305) offering this letter of March 1, 1951, from Mr. Pannill, which gives a list of five people who handle products other than Goodrich. And of course I don't know whether it is connected

up with evidence which they have announced they are going to offer in the field. But if they offer evidence in the field relating to service station operators, certainly it is competent for us to determine at some time how many they contacted unsuccessfully.

Mr. Dias: Which is a conclusion also, your Honor.

Mr. Royall: It may never arise. Not seeking to argue it greatly, you cannot have many thousand of dealers in any commodity where there won't be some cranks and some chronic malcontents, and some other classifications. In this case, by any stretch of the imagination, whether it be dealers or anybody else, if it is an effort to try by example, we want all the examples that they have contacted and we will at the appropriate time move for them.

Your Honor has made his ruling on that. I want to ask Mr. Dias if the paper I hand him is a correct copy of the letter which he wrote himself to Mr. H. C. Watson, which is one of the names listed on here, and a copy of Mr. Watson's reply.

Mr. Dias: Do I understand that counsel is making this witness his own witness?

Mr. Royall: I am asking you now.

(2306) Mr. Dias: I refuse to answer.

Mr. Royall: What?

Mr. Dias: I refuse to answer.

Mr. Royall: Your Honor, I will not press that point further at this time. I reserve the right to bring it up later.

I wonder if Mr. Dias would object to the identification of these papers for further offer?

Mr. Dias: Yes. How is this man going to identify them?

Mr. Royall: Would you object to identifying them?

Mr. Dias: Yes, I do. I don't believe it is part of this record. I don't believe it belongs in it.

* * *

(2308) Q. I hand you the inventory guide, B. F. Goodrich TBA, introduced by the government as Exhibit 52. I also hand you Exhibit (2309) 50, which is a letter from Mr. Hochuli. What does that letter in general relate to? A. This letter relates to a change in procedure which says that instead of the Texaco salesmen deferring action until a dealer has asked him to take an order for merchandise, that he may solicit an order from the dealer, which order, if taken, would assist in bringing the dealer's inventory up to its basic level.

Q. Going back to the inventory guide, what is the purpose and objective of the inventory guide, if you know? A. The purpose of the inventory guide is first to measure the dealer's inventory requirement by items. Having measured that, to compare the basic requirement with that inventory on hand. After that comparison is made to place on sale or to run a promotion or otherwise to dispose of those items which are in excess of the basic inventory requirement, and to place orders for those faster moving items which were in stock but in lesser quantity than specified by the basic inventory.

So the plan is to keep a balanced inventory on hand at all times. It serves the double purpose of keeping fast-moving items in stock and of ridding the dealer's inventory of those slow-moving items which tend to freeze his capital.

Q. Is it designed in part to see that the dealer keeps sufficient stock to operate effectively? A. That is the purpose, to give the dealer a guide along that (2310) line.

Q. And is it designed also to prevent over-stocking? A. Yes. It protects the dealer in that situation.

Q. And then I believe you stated that it is for the purpose of balance, of balance of stock; the kind of stock that is salable. A. Yes, sir. You see—

Q. What is that based on, that criteria that you fixed? A. It is based on two factors. First, the gasoline volume of the location, and second, on a consideration of the particular or peculiar market conditions that that dealer may face. If the dealer, through his experience, finds that he has an extraordinary demand for a low-priced tire or a premium tire, then he, in establishing his basic inventory, would take all that into consideration and to that extent would deviate from the base provided here.

Q. The initial decision is based on experience generally, on the average, it is? A. Yes, sir.

Q. And the dealer's own circumstances are taken into account in his case? A. Yes, sir.

Q. Who actually fills in and sets the inventory which a dealer is to carry? A. All these considerations are made by the dealer. As a (2311) matter of fact, the form itself, as I remember it, this column is headed "My basic stock"—my basic stock—meaning the dealer's basic stock.

Q. Does that figure come from the dealer after a discussion of the problem? A. Indeed.

Q. The letter, Exhibit 50, as you have stated, provides for the writing of orders. Would that apply in practice to the case where the dealer was under-stocked according to the inventory he fixed? A. Yes.

Q. And in that circumstance that is a selling or merchandising effort to write the orders, is that right?

Mr. Dias: Your Honor, I object to this type of leading questions.

Hearing Examiner Kolb: Overruled.

By Mr. Royall:

Q. Is it a selling— A. Yes.

Q. Do you know anything about the situation where the dealer has named the inventory he thinks proper, and he is overstocked? Do you know what is done usually or in many cases in that instance?

Mr. Dias: I object.

(2312) *By Mr. Royall:*

Q. Do you know? A. Yes.

Q. What is done? A. Well, the dealer in conference with the Texaco salesman decides on a promotion or a plan whereby those items which are in excess of the basic inventory requirement are disposed of, thereby freeing capital for the dealer's use elsewhere.

Q. What is the effect on the dealer of over-stocking; that is, stocking more than he needs for his business?

Mr. Dias: I object.

By Mr. Royall:

Q. Do you know what the effect on him is? A. Yes, sir.

Mr. Dias: This man isn't a dealer, your Honor.

Hearing Examiner Kolb: Overruled.

A. The effect is that he ties up capital in old and slow-moving stock, that he has insufficient capital to provide the items for inventory that do move in rapid order, and thereby he fills his shelves and his storage space with old and slow-moving items that have a very small—that make a very small contribution to his profit picture.

By Mr. Royall:

Q. Is it under those circumstances that the representative assists the dealer in getting his stock back to normal and in (2313) balance? A. Yes, sir.

Mr. Royall: You didn't put in Item 3 in the appendix did you Mr. Dias?

Mr. Dias: No, I did not.

By Mr. Royall:

Q. Are you familiar with the U. S. Department of Commerce's document on establishing and operating a service station? A. With parts of it I am.

Q. Will you refer to the portions that are marked therein in ink on pages 86, 95, 106, 109 and 111?

Hearing Examiner Kolb: Aren't we getting far afield on cross-examination, Mr. Royall?

Mr. Royall: If your Honor thinks so, we won't ask that question.

Hearing Examiner Kolb: I think I have allowed you considerable latitude.

Mr. Royall: I will withdraw that question.

By Mr. Royall:

Q. Do you know whether the principles of balance, of your own knowledge, whether the principles of a balanced inventory of salable items without under-stocking or over-stocking is well accepted in industry?

Mr. Dias: I object, your Honor, it is leading.

Hearing Examiner Kolb: The witness may answer.

(2314) A. Yes. It is one of the basic principles of merchandising.

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(2316) *Redirect examination by Mr. Dias:*

Q. This is the Frohlin document, Mr. Halsell. Will you look at that, please? This is Exhibit No. 31.

In connection with the property that Texas leases from third parties, is the property always improved, or sometimes improved to the extent that it has a station on it or not? A. In some cases we lease land and erect company facilities.

Q. Texas erects the property? A. Yes.

Q. In other instances do they lease land that has stations on it already? Is that so? A. Yes, in most cases.

Q. Is that type of property also involved in the type situation where you lease from an operator and then release to him? Is that type property involved? A. There is a situation where we lease a service station property from the owner and in turn sublease back to that same person.

Q. Would that type property also be involved within the scope of this particular document? A. No.

(2317) Q. It would not? A. No.

Q. You mentioned a number of people that take part in the TBA program. You mentioned that there are about 700 merchandising salesmen? A. I think I said merchandising and general, did I not?

Q. Is there a difference? What is the difference between a merchandising and general salesman? A. A general salesman gives his principal attention to the acquisition of new outlets. He also assists certain dealers in the merchandising problems they face. He solicits the business of car dealers. He handles the car dealer accounts we now have. He is quite a factor in the real estate program, the program having to do with the acquisition of new lease outlets.

Q. Will you explain that, please? Do you mean he finds a suitable location or suitable building? What does he do in that regard? A. The plan provides that the salesman will analyze his territory. In so doing he would divide the territory into marketing areas. Then he designates those marketing areas where his distribution is deemed to be suitable, or sufficient. At the same time he designates those where distribution is insufficient and decides on a way of bringing that deficiency into line.

(2318) If that method decided on involves a new station then he proceeds to select one or two or three real estate locations in that marketing area which may fill that need. Having made that selection he, through a little system of inter-company communication, requests the services of the real estate department to create the outlet that he has expressed a need for.

Q. Does he have complete authority in that line, or is that subject to approval somewhere above him? A. That is subject to approval by several people. That kind of an investment is quite an important one and several people have to agree that it is a proper thing to do.

Q. What type personnel? Can you give me their titles? A. Zone manager, state manager, the possibility that the assistant division manager, if the division is not too large and if the real estate property is not too far removed from headquarters, he may have a personal handling of that transaction.

Q. One of his duties is the acquisition of property. Does he also have anything to do with the disposition of properties?

Mr. Royall: Of what?

Mr. Dias: Disposition of properties. In other words, does he have any say in either the cancelling of leases or disposing of properties that do not appear to be profitable for any reason?

(2319) The Witness: The general salesman?

By Mr. Dias:

Q. Yes. A. Yes, if a property assigned to him is one which for one reason or another is unproductive, and can't be brought into a physical state which would make it productive, then he would be the one to suggest or recommend either a cancellation of the lease, if such a privilege exists in the papers, or to permit a lease to terminate without renewal.

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By Mr. Dias:

Q. Is this disposition of property also subject to the approval of the various personnel that you mentioned before (2320) on the acquisition?

Mr. Royall: Your Honor, I object to the word "disposition" because that is an ambiguous word in view of the previous question of Mr. Dias, and I think he ought to spell out what kind of disposition he means. Otherwise, it might give a wrong impression in the record.

Hearing Examiner Kolb: Objection overruled.

A. Your question is does he have sole authority to dispose of unproductive properties?

By Mr. Dias:

Q. Yes. A. Or do other people join in that decision?

Q. That is correct. A. The answer is that he does not have that sole authority; that other people join in the decision.

Q. He makes the primary recommendation, is that correct? A. Yes.

Q. What are his duties in connection with assisting in the TBA sales? A. Well, they are many. I can give you a great long answer to that.

Q. Suppose you give us a few of the more important ones. A. Well, this inventory control plan that we talked about awhile ago is one which he will suggest to the dealer, and in the process of a conference between the dealer and the salesman—

(2321) Q. Which salesman? R. I am talking about general salesmen. In the process of that consultation the basic stock will be arrived at. The dealer, of course, knows more about his needs than anyone else and he designates that basic stock. And then the two work together according to the plan we talked about while ago.

Q. Does this general salesman ever speak to the dealer in company with a rubber company representative? A. Yes.

Q. Of Goodrich or Firestone? A. Goodrich.

Q. Never Firestone?

Mr. Royall: Object.

Hearing Examiner Kolb: The objection will be sustained.

By Mr. Dias:

Q. When is it that this general salesman contacts the dealer with the rubber company representative? A. Infrequently. Perhaps at times when there is some extraordinary problem at hand.

Q. What would an extraordinary problem be? A. I can think of a sales problem which might involve the services of both men. The dealer perhaps has a prospect for maybe some very large and very costly tires. Maybe tractor tires, or a set of big truck tires. And in that situation we (2322) might acknowledge the fact that the Goodrich salesman has greater sales ability there than anyone else, and he might be willing to give the dealer the kind of sales help that would close that sale.

Q. Does it always involve Goodrich? A. Oh, no.

Q. What is the other type salesmen that you mentioned? A. The other kind of salesmen?

Q. Yes. A. The other kind of salesman that has a relationship with the dealer accounts is the merchandising salesman.

Q. Will you describe his duties? A. Whereas the general salesman gives a substantial part of his time to the creation of new outlets, the merchandising salesman in turn gives his attention to the development with the dealers of greater throughput of petroleum and TBA materials.

Q. Of greater what? A. Petroleum, TBA materials, other products and services that are allied to those operations.

Q. Which of these two are order takers? A. I beg your pardon?

Q. Which of these two salesmen take orders? A. For what materials?

Q. First of all for the petroleum products? (2323) A. They both do.

Q. Which of these two types check the inventory and write up an order for TBA merchandise? A. They both do.

* * *

Q. You mentioned, I believe, that the general salesmen at least conferred with representatives of the rubber companies. Does he ever confer with representatives of rubber companies other than those with which we are concerned? A. Yes, sir.

Q. And how about this inventory supply? Does he write up orders for any TBA supplies, either of these salesmen? A. For any TBA supplies?

Q. Yes, regardless of supplier. (2324) A. The salesman would be happy to write an order for any material where he could be of assistance.

Q. He would be happy to, but does he do it? A. Yes.

Q. Referring to that letter, Exhibit 50, I note that the salesman doesn't wait for any formal request of the station operator. Will you explain that procedure? Does he just walk in and go through the stock and write up an order? Is that the procedure? A. Oh, no. There is the consultation between the salesman and the dealer and there is a measurement of inventory on hand versus the basic stock the dealer has established for himself, and between them they write the order—prepare the order.

Q. They write it together, is that right? A. Yes.

Q. You mentioned that there are about 700 of that type of personnel. Approximately how much of their time is spent on TBA problems? A. I should estimate 10 or 12 percent; maybe 15.

Q. This 700, is that your country-wide sales organization? A. At that level, yes.

Q. You mentioned 225 zone managers? A. Yes, sir.

Q. Will you describe the duties of a zone manager, please? A. As I said yesterday, the zone manager is the immediate (2325) supervisor of general and merchandising salesmen. His job is to coordinate their efforts, to direct their efforts, to assist in the formulation and execution of sales campaigns, to deal with certain operating problems that occur from time to time in the sales department of my company, to help also in this matter of dealer assistance and promotion of the sale of petroleum and allied products.

The zone manager's responsibilities involve also the matter of credits and collections, industrial and employee relations.

Q. Credit and collections—what does that involve? A. It involves the fact that we at times sell our products on credit and it is the responsibility of those field men to see

that the products are paid for in accordance with terms extended.

Q. Are you talking about sales to the gasoline station operators? Is that what you refer to? Or consumer credit purchases? A. All types.

Q. What would be your estimate of the amount of time they spend on the TBA part of the program? A. Zone managers?

Q. Yes. A. I should say about the same as the salesmen do: 10, 12, 15 percent. That is a somewhat difficult question to answer.

(2326) Q. State managers, what are their responsibilities? And, incidentally, are state managers in the line of command over the zone managers? A. Yes. Their responsibilities are about the same as the zone managers except that their field of activity is wider. Whereas the zone manager has maybe four, five, six or seven salesmen with him, the state manager may have that many zone managers—three or four or five.

Q. How does he get into the TBA program? A. On about the same basis, except as you might suspect, he is a little bit more removed from the actual sales line than the salesmen and zone managers are.

Q. Does he have contact with the outlets in any way, personally? A. Yes, sir.

Q. What sort? Does he conduct conferences, meetings, or personal visits? What does he do? A. You have hit it there. All three. It is his job to remain in the field as much as possible; to observe conditions and to assist with particular problems that arise. He also conducts and attends meetings. There are dealer meetings from time to time and his presence is always necessary there.

Q. Can you tell us a little about those dealer meetings? A. Our formal dealer meetings are held usually once a year. That is the formal dealer meeting. At the meetings

we usually (2327) get our sales story across in a combination personal-verbal presentation and by moving pictures. Frequently we will show two or three moving pictures—one feature film and perhaps two secondary ones.

Q. Are those industrial type films? That is, do they concern petroleum or the marketing of petroleum? A. They are almost entirely concerned with the merchandising problem. And that of course embraces not only the actual sale of petroleum but all the myriad details that go with good service station operation, good business management, doing a rounded sales job instead of a partial one, bookkeeping and accounting procedures.

The films are beamed at the dealer and designed to help him do his job better.

Q. Does Texas make that film, or have it produced for them? A. We have the film produced. Usually in California; feature films.

Q. At the same meetings are there ever any TBA films? A. I don't recall that there are any films devoted entirely to TBA. I rather think not. But throughout, woven into all these films, are stories and presentations involving the merchandising of tires, batteries, and accessories.

Q. Are they specified by brand? A. Not in the films, no.

Q. At these meetings, in addition to petroleum representatives, (2328) are there ever any Goodrich representatives present? A. Yes.

Q. Are there any Firestone representatives present?

Mr. Royall: We object to that, your Honor.

Hearing Examiner Kolb: Objection sustained.

By Mr. Dias:

Q. However, you did say there are Goodrich representatives present? A. Yes, sir.

Q. Do they always attend these meetings? A. I wouldn't say they always do, but they are quite generally in attendance.

Q. You say these are held once a year. Are similar type meetings held during the year? A. No.

Q. Is it your testimony that there is only one meeting a year? A. No.

Q. What other type meetings are there? A. Dealer, sales, and service conferences.

Q. Who is present at those meetings? A. A group of from ten to twelve to fourteen dealers and perhaps some dealer helpers. At those meetings we talk about specific merchandising problems, and the meeting, of course, is—it is a conference more than a meeting. It is designed (2329) to help inform the dealer in the matter of service station operation, merchandising and the like.

Q. That too includes discussions of TBA as well as petroleum? A. Yes.

Q. Are there any rubber company representatives present at that time? A. No.

Q. Usually? A. No.

Q. Generally? A. No.

Q. Not even on occasion? A. I wouldn't say that. But as a general thing the TBA people are not there.

Q. How often are those types of meetings or conferences held? A. Every 90 days. There are four this year.

Q. Are the rubber companies notified of these meetings? A. I don't know that they are, no.

Q. How much time do you think then that the state managers spend on TBA? Can you give us an estimate as to their participation? A. I think it is all relative to the amount of time the others spend. The answer is the same.

Q. Would you say that all the way down the line it is about 10 to 12 percent? (2330) A. In those line people, yes.

Q. You mentioned superintendent of sales training? A. Yes.

Q. How does he fit into this picture? Is he superior to the state manager? A. No, he isn't. As a matter of fact, there is no relationship between those two positions in the matter of superiority.

Q. Where is he usually located? A. He is located in the division office.

Q. What are his duties? A. His duties are to conduct regular and protracted training programs designed to improve the selling capabilities of our selling organization.

Q. Does that, too, include TBA program? A. Yes.

Q. You say Yes? A. Yes.

Q. Does he attend these various meetings that you mentioned, or does he hold some of his own? A. He would be in attendance at a number of these—do you mean dealer sales and service conferences?

Q. Yes. A. He would be because an important part of his work is to train our merchandising salesmen to conduct these conferences in an effective way. So having trained, or having gone through (2331) the training process with our salaried people, he naturally is interested in the effectiveness of his work and theirs. So he does a—

Q. You mentioned salaried people. Are your salesmen, general and merchandising salesmen, on salary or commission? A. They are on salary. There is a small bonus there, but it is an insignificant part of their compensation.

Q. Does that bonus depend on their volume of sales? How does the bonus work? What is the bonus based upon? A. The bonus is based on the increased sale of motor oil and grease in a given sales territory one year in relation to another.

Q. Do they receive any bonus whatsoever for TBA sales? A. There is no bonus there. From time to time

there are contests of short duration and the winners of the contest are rewarded with some kind of prize.

Q. The contest involves sales of TBA products? A. It may, yes, and has.

Q. You mentioned a representative dealer-training. Before I get off the superintendent of sales training, you mentioned that he attends those meetings or conferences that you outlined before. Does he ever have any of his own? In other words, does he call some in addition to that other type meeting? A. His work is entirely, as I said before, with our own salaried organization.

(2332) Q. He does not ever see the station operators or get together with them on these conferences? A. Well, as I explained before, he is there as an observer, you see. You see there is only one of those men in a division, so it would be very difficult for him to attend 40 or 50 or 60 dealer conferences except on a spot-check basis.

Q. In other words, these conferences that you refer to, you mentioned before that there are four in a year? A. Yes.

Q. That would be by zone or territory or division? Which is it? By zone? A. Each salesman would have four conferences per year.

Q. Each of the 700 salesmen? A. Yes. Wait now. When you say 700 salesmen you are including general salesmen there. The general salesmen are not quite as active in that program as the merchandising salesmen are.

Q. How many of each do you have? Is there any way of determining? Do you know offhand roughly is there any more one than the other? A. I don't know. I don't know what the relationship is. They are more general in merchandising.

Q. On the representatives of dealer training, how do they fit into this picture? Are they up the ladder here? Are they superior to the others that I have mentioned be-

fore? (2333) A. The representatives, dealer-training, are in the office of the superintendent of sales training.

Q. In territorial or divisional offices? A. Yes. And those men work directly with our salaried organization in improving their techniques and presenting this work to the dealers.

Q. Are they strictly inside men? A. No, they are outside a lot.

Q. Do they ever hold conferences with dealers, and station operators? A. Yes.

Q. Is it the same conferences that you were talking about before? A. The same general.

Q. So up to date at these dealer meetings and conferences we usually have a salesman, zone manager, state managers, superintendent sales training, representative of dealer training. Are they all there at all or some of them? A. All there at meetings.

Q. Present? A. They are all interested and they are all in attendance from time to time but not at all meetings.

Q. One or the other are at all meetings? A. Not at all of them. There just isn't enough manpower to go around. We hold many meetings. In many instances the (2334) merchandising salesman is going it alone.

Q. You stated that your estimate would be 10 or 12 percent of the time spent on this, on TBA? A. By whom?

Q. By the representative, dealer-training. A. Yes, I suppose so. I think perhaps he may spend more than that. I would put him on the high side of the bracket.

Q. Fifteen percent? A. I think so.

Q. How about the dealer service representative? What are his duties? A. The dealer service representative is a sort of a free lance man who gives—he will go to an area where there is a particular problem and work with the salesman, and work with certain dealers in that area.

Q. Those problems also include TBA problems? A. In-

sofar as the TBA problem contributes to a dealer's welfare or lack of it.

Q. But it also— A. It is all involved in the selling process.

Q. Would it also involve the dealer to the extent that if his purchases weren't adequately high, we will say, would he be concerned with that? A. He would be concerned with the fact that a dealer was selling insufficient allied product along with his petroleum (2335) to give him a well-rounded operation and one which led to a suitable profit to that dealer.

Q. Who determines whether a suitable amount of TBA is being sold or not? A. Well, we had a profit guide here.

Q. It is based on the profit guide? A. That gives a general indication of what a dealer should do, TBA-wise and service-wise, to qualify as a good salesman and as a profitable operator.

Q. And the time he spends on TBA would be approximately what? A. Fifteen percent.

Q. The representative, TBA promotion, what are his duties? A. The representative, TBA promotion, is the person in the division office who gives his entire attention to the promotion of TBA sales to dealers, and to the job of assisting those dealers through the organization to merchandise their products in a more effective way.

Q. The TBA promotion, the representative, TBA promotion, does he go into the field, too? A. Oh, yes.

Q. Does he meet with the salesmen of rubber companies together with company salesmen and dealers? A. Yes, he does, but not frequently. You don't have that many people together.

(2336) Q. You have mentioned allied lines several times. Does that include TBA? A. Yes.

Q. Can you give us a little more information about what this representative, TBA promotion, does? A. He

travels in the field. He institutes promotions to increase the throughput of TBA materials with dealers.

Q. The what? A. The throughput.

Q. What does that mean? A. The movement through. He is in frequent contact with the Goodrich people. He helps to transmit their sales campaigns, their product information to the Texas Company dealer organization through our salaried people; he attends Goodrich meetings to better inform himself of the myriad complexities of that business. From time to time he—not from time to time but on a rare occasion he leaves the city and perhaps goes to some factory of Goodrich to better inform himself of modern manufacturing and most recent merchandising procedures.

He is a man who, by the very nature of his work, does little else.

Q. Does he also pass this information along to station operators, the information he gets that way? A. He does. Of course, as I said, so many times, through our organization, yes.

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(2338) Q. You mentioned assistant division manager, sales promotion. What are their duties? First, you also mentioned another name. Would you mind giving us that name? (2339) A. Assistant division manager, merchandising. Is that it?

Q. I don't know. You mentioned two. I missed one. There is assistant division manager, sales promotion? A. Sales promotion.

Q. Yes. A. And assistant division manager, merchandising. In some divisions one title applies; in others the other does.

Q. The duties are the same however, are they? A. Not exactly. But substantially so.

Q. Then substantially what are the duties of that type personnel? A. The assistant division manager, sales promotion, gives all his time to the important work of developing programs, campaigns, sales drives, all kinds of promotional developments which are designed to increase the throughput of petroleum and allied products to dealers.

Q. Does he attend any of these conferences and meetings? A. Yes, sir.

Q. What is his position in relation to these others? Is he superior to these others? A. Yes. He heads that whole operation at the division level.

Let me clarify that. He is in charge of the superintendent, sales training. He is in charge of the representative, TBA promotion. He is in direct charge of the representatives, dealer training. He has supervision over the dealer (2340) service representatives. His relationship with state managers, zone managers, and salesmen is one of a staff person to line organization.

Q. And his time spent on the program, on the TBA end of the program, is that relative, too, to the time spent by others? Or would you estimate 10 to 12 percent? A. Yes, I think you are about right there. Ten or 12 percent.

Q. How many division managers are there? I believe you stated that you are a division manager. Is that correct? A. I was at one time.

Q. At what time? A. I was an active division manager beginning in April, 1943, and ending in 1945. Just about 24 months later. I don't remember the exact date. And I continued in that capacity in two locations, from 1945 to 1953.

Q. I assume there is a division manager for each of the divisions in the organization? A. Yes.

Q. How many divisions are there? A. There are 15.

Q. What are the duties of the division manager? A. The division manager is the general manager. His re-

sponsibilities are complete for the division in which he operates. Do you want more detail?

(2341) Q. No. That will be all right. These others that you have listed, then, fall under his supervision? A. Yes.

Q. His overall supervision.

How much time does he actually spend on TBA promotion? A. Five percent. Maybe three percent. Make it three.

Q. You were asked about this Exhibit 34 and 34-A on cross-examination. It deals with a request for a report, to which this was a reply, Exhibit 35. A. Yes, I believe I saw it yesterday.

Q. I believe you stated that this was not a unusual request to make? A. No.

Q. Do all divisions, zones, make the same requests for the same type information? A. It would depend on the individual and his particular method of compiling that kind of information. But he would write either that kind of letter or he would find another way of acquiring the same kind of information, if he is a good manager.

Q. Then that is the type letter that emanates from the manager's office, is that correct? A. In this case it did. It is from the assistant territorial manager this letter emanated.

Q. I take it that— (2342) A. I am afraid the record might be confused. Mr. Pannill, assistant territorial manager, wrote Mr. Driver, who was in the Norfolk division at that time.

Q. Yes, in response to Mr. Driver's request for that type information. A. No. Mr. Pannill asked for the information and Mr. Driver supplied it.

Q. You are correct.

On this letter again, Exhibit 34, in addition to Mr. Driver there was a Mr. Ney, Mr. Norman, and Mr. Wall.

Do you know whether or not the two filed responses to that letter? A. No.

Q. You have testified quite fully on the Goodrich inventory guide. I will hand it to you. That is Exhibit 52.

Do you have any idea of what the cost of a basic inventory would be? A. Frankly, I don't.

Q. Do you know who made up that guide? A. I don't know. But my inference—the inference here is that the Goodrich Company prepared the guide.

Q. You testified that it was made up on the basis of experience and general information and the like. What and whose experience, do you know? A. Probably the experience—

Q. Not probably. I say do you know? (2343) A. No, I don't know.

Q. You only infer that Goodrich made it up. A. I infer also that it is their experience, but I can't answer positively.

Q. Also you mentioned the fact that the purpose of it is to build up the stock and promote the welfare of the station so they will sell more merchandise and make more money. A. There are two purposes. To increase the stock in certain areas and to reduce it in others.

Q. Reduce what stock? A. Superfluous stock.

Q. Regardless of brand? A. I am sure this guide could be used in anybody's station. It would apply anywhere.

Q. You mentioned that the reason you help them is that the more they sell the more money they make and they are happier. A. That is one of the purposes, yes.

Q. Isn't it also true that the more they buy the more Texas makes? A. Yes, sir.

Q. Were you ever a salesman, Mr. Halsell? A. Yes.

Q. For how long? A. My estimate is four years—three years.

Q. Which type of salesman were you? General salesman or the (2344) merchandising salesman? A. In those far-gone days we didn't have that separation of duties. I was a resale salesman. That was the title.

Q. What year was that, Mr. Halsell? A. 1928-1931.

Q. Have salesmen always been on a salary basis, Texaco salesmen? Or merchandising men? whatever the title is. A. Yes, sir.

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Q. One final question on Commission Exhibit 31. It may be that we are wrong, but did you say that this leasing of property did not refer to situations where an operator leases the property to Texas, and Texas in turn releases to the station operator? A. Do you mean the leased location referred to here?

Q. Yes. A. Let me look at the letter again.

Oh yes, this applies to all types of lease accounts.

(2345) Q. All types of leases? A. Yes. It says so there.

Q. The language "same party lease" is the thing that was not clear.

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(2347) S. C. BARTLETT was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

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Direct examination by Mr. Dias:

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Q. Will you state your full name and title? A. My name is S. C. Bartlett. I am Vice President in charge (2348) of domestic sales.

Q. And you are stationed where? A. In New York, home office.

S. C. Bartlett, for Commission—Direct

Q. How long have you been with the company, Mr. Bartlett? A. Thirty-two years.

Q. When did you start your present position and duties? A. My present position began March 1, 1955.

Q. Will you describe your duties, please? A. I am in entire charge of the Texas Company's sales activities in the 48 states of this country. That includes sales as such, operations, all matters relating at all to the operation of our sales department.

Q. Does that include, too, the promotion of the sale of TBA products? A. It does.

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(2350) *By Mr. Dias:*

Q. I assume you have read this document, have you, Mr. Bartlett? A. Yes, I have read it.

Q. It is addressed I believe you stated, to these gentlemen, the territorial managers? A. Yes, sir.

Q. Did this document also go to dealers? Station outlets? A. Not to my knowledge. I would not think so.

Q. Will you refer to page 3, paragraph 2. That reads: "Immediately contact the sales representative of the dealer's chosen supply point, and if possible make a definite appointment with him for a joint call on the dealer for the purpose of setting up his basic stock and inventory guide."

From whom do you receive these basic stocks and inventory guides? A. I believe that is the item Mr. Halsell discussed this morning. Q. In other words, Goodrich and Firestone, is that correct?

Mr. Royall: Objection.

A. Goodrich.

Hearing Examiner Kolb: Objection sustained as to Firestone.

By Mr. Dias:

Q. Then this paragraph refers to the Goodrich inventory (2351) guide, does it not? A. I would say so, yes.

Q. And is the tenor of the paragraph directed toward Goodrich? A. Yes

Q. I direct your attention to the third paragraph on page 6 of that document, Mr. Bartlett. "In their efforts to promote the dealer's TBA merchandising, our sales representative no doubt will run into situations where the dealer is not entirely clear on his buying arrangements or has some complaint as to the merchandise or treatment received from his supplier. In such cases our sales representative should arrange with the sales representative of the supplier to make a prompt call on the dealer to clear up any misunderstandings. When desirable or necessary when requested by the dealer our sales representatives may be present when the supplier representative makes his call on the dealer for this purpose."

Does that, too, refer to the rubber company representatives? A. Yes, Goodrich.

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(2352) *By Mr. Dias:*

Q. Are you familiar with that letter at all, Mr. Bartlett? Have you seen it? A. Yes, I have read it.

Q. That is a statement of policy, is it not? A. Yes.

Q. Was the same policy repeated periodically prior to or (2353) since that date? A. Yes.

Q. It has been? Have there been some more recent statements? A. Well, I believe there have been. I can't tell you the exact date.

Q. You are certain that there were some prior to that date, are you? A. Yes.

Q. Is it a matter of course that that type letter is put out? Is it put out periodically? A. Well, we reaffirm

these instructions from time to time. We have been very consistent in maintaining this position and reaffirming it from time to time.

Q. Do those letters go to dealers, that is, station outlets? A. They do not.

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(2355) Mr. Dias: I would like at this point to read this stipulation into the record: Texas has submitted copies of all types of credit cards issued during the period 1951 through 1954, and that the conditions printed on the reverse side of those credit cards issued prior to 1955 were the same in all material respects as those appearing on the credit card for the year 1951, namely, Commission Exhibit 97. Commission Exhibit 98 is a copy of the credit card issued in 1955. The conditions printed on the reverse side of that card are the same in all material respects as those appearing on the current credit cards.

(2356) *By Mr. Dias:*

Q. During 1951, Mr. Bartlett, what type credit card was issued? Was it only an annual card or did you have other types? A. No, we have other types.

Q. Will you name them, please? A. At various times in the past we have had, in addition to an annual card, we have had cards that were valid for either four-month periods or semi-annual periods. I believe there was some change at one time between six-month cards and four-month cards.

Q. Exhibit 97, I believe, indicates that that is an annual card. Is that correct? A. It is written in there, in pencil, yes, it is annual.

Q. No, printed on the lefthand corner doesn't it say "year 1951"? A. Yes, that's right. That is correct.

Q. That is an annual card? A. Yes. Correct.

Q. Regarding those credit cards that were issued during 1951 through 1954, do you know what the instructions were that were given to the operators of stations in regard to the use of those credit cards? A. I know generally. It would follow pretty closely the validity of the card, or the usefulness of the card as explained on the reverse side.

(2357) Q. There is a provision on the reverse side to the effect that this card will be honored for the following merchandise, and paragraph 2 indicates new automobile and truck tires, tubes, batteries, et cetera. A. Yes.

Q. In other words, at that time it was good on those purchases, is that correct? A. Yes.

Q. In the 1955 card, Exhibit 98, that now reads "good only for Firestone and Goodrich TBA," is that correct? A. That's right.

Q. What instructions were given to your operators on that card? A. Similar instructions in keeping with the wording on the back of the card.

Q. Do you have any printed instructions relative to the use of credit cards? A. I think we have had at various times in the past more or less a bulletin or a placard that was furnished to dealers, that gave them information as to the proper use of the cards.

Q. Could you furnish for us—not today but in the near future—a copy of the instructions relative to the use of the 1955 and 1956 cards? If there was a change in 1956? A. Yes, I am sure we could.

Q. When may we expect that from you? (2358) A. I don't see why we can't, if there is such a one presently existent, which I assume there is. I know that in the past we have furnished instructional bulletins or placards that would assist a dealer in the utilization of the credit card.

Q. And you will supply us if you have that? A. Yes. As far as I am concerned.

Q. In view of that provision on the 1955 card, that is Exhibit 98, what happens if non-sponsored items are charged on the card? A. Well, as a practical matter it would probably not be noticed. I mean there is no definite policing system involved.

Q. You mean that is just an idle condition? A. No. We mean what we say here, but it has a factor of—there are many, many of these transactions going forward every day and I take it it would be a physical impossibility to check every one of them.

Q. Assuming that one was noted, what would happen? Do you know of any occasions of that sort? A. No, I do not.

Q. Do you have any idea what the procedure would be if a credit card was used for a purpose other than stated? A. I presume if it came directly to the attention of our people, they would remind the dealer of the terms and conditions under which they are to charge tires as per the provisions on (2359) the reverse side of the credit card.

Q. Would they honor the credit? A. I expect that they would, yes. I expect that they would.

Q. Would there be any recourse to the dealer? A. No.

Q. Would you describe the mechanics of transmitting the charge ticket from the station to the accounting department? A. Yes. The general system is that these credit card invoices, both applicable to gasoline, motor oil and other products as well as tires and accessories, those invoices are accepted by us and as we deliver products to the dealer. In other words, if he has invoices in the amount of $100, that is accepted as that much cash by our delivery system, by our truck operators. He is given full reimbursement for the face value of the tickets or invoices representing sales made against these cards.

And they are assembled through—sent back through our division office where our credit card bookkeeping and accounting and billing is done.

Q. And at that point do they or do they not check these slips to determine whether or not the charges on the card are accurate or involve— A. Well, the checking I believe is largely a matter of arithmetic. There are so many of these tickets that we cannot, as a practical matter, do very much checking. They go through (2360) the office in great numbers. They are simply added up as to the total amount involved. We pay no attention to the prices at which the products are priced, the gasoline or the motor oil or anything else, and it is a mass operation.

Q. Is 1955 the first year that that particular legend appeared on the back of the card? A. That's right.

Q. That is the first time it was ever restricted to Firestone/Goodrich? A. Well, it has, so far as I can remember—I believe that in the 1940s, at some point, it was somewhat similarly restricted.

Q. How long did that continue? A. I can't tell you how long it continued. It is my opinion that that was—that the card was changed in line with the exhibit that you have given me here, 97, in 1947 or 1948. Of course, during the war the credit card—the entire credit card system was put aside for the period of the emergency.

Q. However, you did have that restriction in cards in prior years? A. It is my understanding, yes.

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(2361) *By Mr. Dias:*

Q. For the record, Texaco is a contraction of Texas Company? A. It is a trade name, a contraction of the Texas Company.

Q. What type outlets are "C" accounts? A. Well, they are accounts where we lease the property from the property owner and in turn lease them to dealers, and also stations that we ourselves own either on fee property or on leased property.

Q. And "D" accounts? A. They are accounts which we supply on dealer sales agreement, where there is no lease involved.

Q. Do they own their own property? A. Usually, yes.

Q. At least Texas does not? A. No, we do not—in the instance of the "D" accounts?

Q. D accounts. A. We have no ownership.

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(2363) *By Mr. Dias:*

Q. In 1955 there were 38,420 total Texaco dealers. You agree that these figures are accurate? A. I believe them to be, yes.

Q. The number of "C" dealers was 13,366, and the number of "D" dealers was 16,806?

Mr. Royall: Do I understand you are offering that in evidence?

Mr. Dias: No, I am not. I am just getting these figures.

By Mr. Dias:

Q. Mr. Bartlett, in 1955 you appeared on the Hill before Mr. Roosevelt's committee and testified that as of 1954 you had roughly 38,000 retail stations and that of that number some 8700 were service stations on which you owned or held long-term leases, is that correct? A. Is that what it says?

Q. I am reading from the testimony. If you would like to read this—

Mr. Royall: Why don't you refresh his recollection?

Mr. Lorenzen: What page?

Mr. Dias: 740.

(A document was handed to the witness.)

Mr. Royall: Your Honor, the witness who prepared this chart and which they are using for examination, is present (2364) and can explain that difference, if they want to. I have no objection to him asking the witness if he knows.

The chart was prepared by Mr. Glenn.

By Mr. Dias:

Q. In 1955 you stated that there were roughly 38,000 retail outlets and 8700 service stations on which Texas owned or held long-term leases. The company records show that during 1954 there were 38,014 Texas dealers and that there were 12,674 "C" dealers rather than the 8700 that you mentioned. Will you explain that discrepancy? A. Yes. The principal difference there is that we have three to four thousand what we call same-party leases; that is, where we lease from a dealer and lease back to the same individual, as opposed to our third-party type of lease station where we lease from an individual and lease it back to a dealer who is a different person, and company-owned. So that difference is largely due to the fact that there are these so-called same-party leases in effect.

Q. Would the difference be roughly the same as to the 1955 figures? In other words, there are now 38,420 total Texaco dealers, of which there are 13,366 listed as "C" dealers? A. I would think so because our third-party or lessor-built increased in number to some degree since then. Each year they are increasing.

Q. As to the 38,000 that you referred to, roughly 38,000, (2365) and the approximate 8700, you mentioned that the 8700 accounted for about 33⅓ percent of your petroleum sales. Is that correct? A. That was stated in the letter that is quoted from me, wasn't it? Down below?

Q. Yes. Your answers to these questions are in that letter and I would like to read that letter into the record, if your Honor please.

You have read this letter? A. Yes.

Q. And it is accurate? A. To the best of my memory.

Mr. Dias: May I read that into the record?

Mr. Royall: What is the date of it?

Mr. Dias: June 6, 1955.

Mr. Royall: No objection.

Mr. Dias: It is addressed to the Honorable James Roosevelt, Chairman, Subcommittee No. 5 on Distribution Problems, House of Representatives, Washington, D. C. "Dear Sir: At the time of my appearance before your committee on May 26, 1955 the committee requested additional information as follows: (a) Copy of the Texas Company's TBA program and statement of policy as issued to the sales department organization. (b) Information with respect to the gallonage sold through the 8700 dealer outlets either owned by the Texas (2366) Company or held under long-term lease as compared with the volume sold through other dealer outlets.

"In compliance with the request of the committee I am attaching a copy of a letter issued by Mr. C. B. Barrett, under date of December 11, 1953, to our territorial managers at New York, Chicago, Houston and Los Angeles under the subject 'TBA Program, Statement of Policy.' Mr. Barrett at that time was vice president in charge of the domestic sales department. Shortly after receipt of this communication identical call letters were issued by the four territorial managers to our 15 division managers. The division managers are charged with the responsibility of carrying out the policies of the

sales department through the field organization in their respective areas.

"I indicated in my statement to the committee that at the end of last year there was slightly more than 38,000 dealers selling Texaco products in the United States. Approximately 7,500 of these dealers are supplied by Texaco distributors. The balance being supplied directly by the company either through its salaried organization or through Texaco consignees. Our sales figures for the year 1954 disclose that 32.55 percent of our total sales of gasoline was sold through 8,660 service stations either owned by the company or held under long-term lease (We now have more than 8,700 service stations either company-owned or held under long-term (2367) lease). The volume sold by the remaining 21,850 dealers (excluding the 7,500 supplied by distributors) equalled 33.75 percent of our total gasoline sales.

"I sincerely hope that the foregoing represents the information the committee desires.

"Yours very truly," signed "S. C. Bartlett."

By Mr. Dias:

Q. Mr. Bartlett, how many company-operated stations does the Texas Company have? A. I can't give you the exact number but I would think that at the moment it is not over 25 or 30. Most of those or a number of those are in connection with thruway stations that we have bid on successfully such as the New York thruway, Ohio Turnpike, Indiana, and Kentucky, which almost of necessity have to be operated on a salary basis. Otherwise, the other few are largely for training purposes.

Q. Are these company-operated stations all the same or does Texas lease stations to company-operated and vice

versa at will? A. Not at will. There have been some conversions in recent times from dealer operation to a salaried operation; a few instances.

Q. In other words then, the station that may be salary operated today might very well be a leased station tomorrow, and the other way around? (2368) A. It could be, yes. There haven't been many of those switches, however. We haven't operated many salaried stations historically.

Q. You mentioned the training stations. Just what is the purpose of a training station? A. Well, it permits us to train in two different directions. One direction is that we can have our student salesmen, our trainees, who are looking forward to a career with the company beginning as salesmen, we have them spend a certain period of time in those service stations observing good service station operation and practices.

The other function that it can and does fulfill often is that dealers, of their own volition, may come—prospective dealers—and observe and receive training at those stations for their benefit in subsequent times when they themselves are going to operate a service station.

Q. With these trainees exclusive of the salesmen, I mean operators, is it a general rule that a prospective lessee go through a training program first? A. No. We give them whatever training we can. But the number of these training stations is so limited that we can by no means begin to cover the wide field.

Q. However, those prospective lessees who do receive the training program, or go through it, how long a course is it? What length of time do they spend there? (2369) A. I couldn't say. Do you mean at the training station?

Q. Yes. A. I don't think there is any prescribed time. Whatever time he is able to devote to it. We would like for him to spend as much time as he would like, but that varies entirely, I am sure, from just a few days to longer. I have no direct information.

Q. What type of TBA products are handled in those stations? A. It varies. In some we handle Goodrich.

Q. And in others? A. Firestone.

Q. In none of these training stations do you handle anything but sponsored brands, is that correct? A. Not to my knowledge.

Q. Are petroleum products sold directly or indirectly?

I will withdraw that. I think that has been answered by the letter.

Let me put the question anyway. How are the petroleum products sold to outlets? Are they sold directly to outlets through Texas-owned and operated bulk plants, for example? A. I believe the letter stated that except for 7,500 dealers who are delivered to by our distributors, that the balance are delivered either through bulk plants operated by us on a salaried basis or by our consignees who deliver for our account.

Q. I believe part of this has been answered. You employ (2370) salesmen to sell petroleum products. Is that correct? A. Yes.

Q. And are these salesmen paid a commission or a salary? A. They are paid a salary and a small bonus factor.

Q. Do the same salesmen also urge the purchase of the sponsored brands of TBA? A. As explained previously today, both our general and merchandising salesmen in the course of their business cooperate with the dealers in all possible ways to improve their earnings, and one of the large factors in that is the well-rounded job of TBA sales.

Q. Will you look at Commission's Exhibit 18. Is Commission Exhibit 18 the regular lease form used to lease company-owned or lease-held property to operators? A. To dealers; that is right.

Q. And it is the one that is currently in effect, is that correct? A. Yes.

Q. Or substantially similar to it? A. Yes.

Q. Will you take this form and tell me what usually goes in these blank spaces? The first one after the words "Described as follows:", does that just describe the rented premises, the leased premises? A. That's right; the location described.

(2371) Q. After this next sentence "Together with the buildings, improvements, and so on, as follows" is there usually listed there the items that go along with the station? Is that correct? A. You mean such as equipment?

Q. Yes. A. Yes.

Q. In other words, that refers to fixtures, equipment, and facilities. I would like to know what do they usually consist of. Can you tell us that? Is there a fixed grouping of that type of thing that goes with the building? A. Yes. You see, usually and almost entirely we lease a complete facility to the lessee dealer.

Q. In addition to the building what would that be? That is what I am trying to arrive at. A. Usually it would be—

Mr. Royall: Your Honor, may I say this: You have asked for an exhibit on that, haven't you?

Mr. Dias: Yes, but it didn't answer the question in my opinion.

Mr. Royall: The witness should have the benefit of the exhibit.

(2372) *By Mr. Dias:*

Q. What normally goes with a station? Is there any fixed equipment, fixed tools or equipment of any sort? Any of those items that just normally go with a station? A. Yes, most of these.

Q. Most of them? A. In the average case where we are leasing a complete service station, which is true where

we own it or where we hold it under a long-term lease, all of this equipment—and I mean all of the equipment here—is usually furnished.

There are certain items of equipment that the dealer furnishes, more in the nature of lubrication equipment or small tools. But this list is largely one of the equipment that is leased to a lessee dealer along with the building and other permanent fixtures.

Q. There is mentioned in there a large oval sign. Is that furnished or does the dealer rent that from you? A. Oh, no, that is furnished. That is advertising material.

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(2373) *By Mr. Dias*:

Q. This lease also provides for the rent. How do you determine the rental on a station? I notice here first of all that under Section A there is a flat sum, and then there is an alternative method of so much per month plus so many cents per gallon. First of all, when is a flat rental charged? A. These programs—I haven't been close to this for some years—these rental programs vary in different parts of the country. My memory of it, when I was more close to the situation, was that we usually charged a flat rental to cover what we thought was a reasonable facility charge considering the number of lubrication bays and other facilities that he had, and then so much a gallon in addition thereto.

In other words, the common useage of it is a combination, flat and gallonage rental, although that isn't to say that in certain instances where the dealer wishes it and where it seems to be mutually agreeable, we may charge just a flat rental for that property.

There is no fixed pattern actually throughout the country at all.

S. C. Bartlett, for Commission—Direct

(2374) Q. The lease provides various grounds for cancellation. Who determines ultimately that a lease should be cancelled? A. I would think that if any of our field people felt that we had grounds for cancellation—and incidentally which would be very seldom and I don't remember one—they would ordinarily come through to our division office with an explanation of the situation and it would be ultimately referred to our legal department before any move whatever would be made.

Q. Is the lessee given any notification that his lease—that there is thought of terminating his lease? A. Of course, the formal notification is called for in the lease.

Q. I understand that. But then it is accomplished, in other words. That is a notification to get out. My question is, is he notified that such a move is anticipated? A. Those instances are few and far between. Most cancellations are effected by mutual agreement, or by the dealer walking off the premises, which happens. I can't say whether the matter is discussed previously or not. It would vary under various conditions. I can't say.

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(2376) *By Mr. Dias:*

Q. The lease provides for a one year term as I understand it? A. That is right, and then it continues.

Q. And at the end of one year this lease terminates. Is (2377) that correct? A. No. Unless notice is given, ten days notice of its termination. If no notice is given it automatically extends for another year's term. That is automatic. That is done in 99 percent of the cases. More than that.

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By Mr. Dias:

Q. There are housekeeping provisions in this lease. Who checks on those? General appearance, housekeeping, maintenance of station and so on. A. Well, it is one of the duties of our salesmen calling on accounts to advise with the dealer, to encourage him to (2378) keep a clean place of business, with particular reference to rest rooms. And it is one of the prime responsibilities of our field men to, so far as they can, properly influence the dealer to keep a neat, attractive, presentable place of business for his benefit and the benefit of all other Texaco dealers across the country.

Q. When the station is found lacking in its appearance, when it doesn't meet the standards set by Texas, is a report of that turned in to a superior by the salesman? A. There is no regular reporting on a thing of that kind. I believe there is a report of inspection of our registered rest rooms, and that is the only thing that I know of that is in the nature of a report.

Q. What is the procedure when a lease is cancelled? What is the procedure with respect to the disposition of the operator's stock? A. Well—

Q. He will have petroleum products and he will have gas products on hand. What disposition is made of that? A. Of course, you understand that I am not dealing in these situations every day. I can only tell you my general understanding which is based largely on my experience when I was more intimately associated with day to day operations in the field. But if you want an answer on that basis—

Q. You might give us an answer and if it isn't satisfactory (2379) you might tell us who would be thoroughly familiar with that. A. You want to know what happens to the merchandise on hand when a dealer is in a station where we have cancelled the lease.

Q. Yes. A. My opinion of that is that usually the incoming dealer will contact the outgoing dealer and make a mutually satisfactory arrangement between themselves to take over, not only the products involved but probably more important in some instances the equipment, the lubricating equipment and other things that the dealer has invested in. We try to work it on a mutually satisfactory basis as between the incoming and outgoing dealer.

Q. Who would you suggest would be most familiar with that in the event we wanted some further information? A. Do you mean that might be here today?

Q. Well, yes.

Mr. Royall: We will get somebody if you want him.

The Witness: I don't know. We have people about that are constantly dealing in those matters.

Mr. Royall: There is somebody here who would know about that.

The Witness: Mr. Halsell would know more than I.

By Mr. Dias:

Q. Do you have any idea of average investment of a lessee? A. Investment in what?

(2380) Q. In a gasoline station. A man comes in and applies to open up a gasoline station. A. You mean lease a station from us?

Q. Lease a station from you. What is his initial investment usually? A. It would depend of course somewhat on the size of the station, the capacity of the storage, the volume of business that he anticipates doing. I would say, as my opinion of it, that in the order of five, six, to seven thousand dollars.

Q. I would like to show you Commission's Exhibit 19, agreement of sale. Is that the form currently in use? First of all, is it the sales agreement between the Texas Company and a lessee, a "C" dealer? A. Yes. It is agreement of sale. It is all types of dealers.

Q. Is it the form that is currently in use? A. That is my understanding, yes.

Mr. Royall: That is already in evidence, isn't it?
Mr. Dias: Yes.

By Mr. Dias:

Q. Now will you look at exhibit 20. What agreement of sale is that? Between whom? Texas and what type of outlet? A. I would say between Texas and most other types of customers other than dealers.

Q. Other than dealers? Do you mean other than distributors? A. No. I am talking about consumers and other than dealers (2381) because the previous exhibit mentioned covers our relations, sales relationship with dealers. This would cover industrial oil, gasoline to consumers, or any other products that might be sold.

Q. This would be an agreement of sale between Texas and the contract station, would it not? The "D" dealer. A. No, sir.

Q. It would not? A. This is government. "D" type is covered by this agreement also.

Q. 19 then is an agreement of sale between Texas and a lessee, and between Texas and a contract station? Is that right? Between Texas and a lease station— A. And any dealer.

Q. On the other hand exhibit 20 is the sales agreement between Texas and— A. All other types of buyers, industrial or consumers or car dealers.

Q. Commission Exhibits 21-A and B are the consignment agreement running between Texas and its consignee? A. That is right.

Q. Is that still in effect? A. Yes, sir.

Q. And 22-B through C, is that the regular distributor form and is it still in effect? (2382) A. That is the distributor form and it is still in effect.

Q. There is one further question on exhibit 19, Mr. Bartlett. They show a minimum and maximum figure for those various petroleum items. What is the purpose of the maximum figure? A. The only purpose that I can immediately think of is that in periods of scarcity or stress of some kind we would not be obligated to deliver more than that quantity to the dealer. It is largely inoperative. I can't recall any instance where it has been operative.

Q. However, it is still in the form, is it not? A. It is still in the form.

Q. Paragraph 2, Commission's Exhibit 21-A—this is the consignment agreement—provides, "consignee agrees to sell the products of consignor to such customers as consignee may select, either for cash or on credit properly authorized, except that consignee may extend credit to any customer he chooses on his own account and to consignors' customers in excess of credit limits approved by the consignor."

Under what circumstances does the consignee sell to the consignor's customers?

Mr. Royall: May I ask the materiality of that question? I am just curious.

Mr. Dias: You will find later on that consignees also sell TBA products.

The Witness: Would you restate your question? (2383) I will try to answer it.

By Mr. Dias:

Q. Under what circumstances does the consignee sell to the consignor's customers? A. He usually sells to consignor's customers because on many of these customers that he delivers to, consignor or we, The Texas Company, have sales agreements of one kind or another. And the purpose of this clause is to assign responsibility to the consignee if he should see fit to extend credit beyond the limits that we have authorized or on account of his own where no credit has been authorized. That is my opinion of the reason for the clause.

Q. It may be that I don't know what a consignee is. Is he a third party? A. No. A consignee operates a bulk plant, usually bulk plant that is owned by the Texas Company although in some instances the plant may be owned by the consignee. We stock that plant with products—gasoline, lubricants, the petroleum products that we sell. And he delivers those products for us and is compensated for such delivery by commissions, so much a gallon the various products. He is a wholesaler performing the same function that one of our salaried bulk plants would perform, except that he is doing it on the basis of compensation through commissions rather than through being compensated by salary.

(2384) Q. Are his customers "C" or "D" accounts or might they be anything else? A. Yes.

Q. Anything else? In other words, a customer could be C, D, or any type customer? A. Yes.

Q. Would you mind describing your Texaco stations generally, your color scheme, for example? A. Our color scheme?

Q. Yes.

Mr. Royall: I didn't hear that.

Mr. Dias: I asked the witness to describe the stations. First the color scheme.

By Mr. Dias:

Q. Do you have a color scheme? A. Yes, sir.

Q. Would you state what it is? A. Our stations are basically white with light green bands around the top and with a dark green course within two to three feet from the ground. It is a white and green combination.

Q. Are they all the same? A. In color?

Q. Yes. A. Not all of them. We have a certain type of station that we ourselves build and have built under our leases with owners (2385) for the sake of uniformity. Many many Texaco dealers operate stations that are in no way in conformity with what we might consider to be our type.

Q. Do you have any idea of the percentage that are not? A. Of all of our dealers?

Q. Would the majority be in conformity with your color scheme, or would the majority not be in conformity? A. I would think of the total 38,400 dealers possibly more are not in conformity than are.

Q. Do you require your operators to wear uniforms? A. No, sir.

Q. You do, however, recommend certain companies where they may buy them if they want them. Is that correct? A. It has been recommended only as a service item to the dealer. We have no interest—we do not care where dealers buy uniforms. We are only interested, if they wish, that they have a convenient source of supply.

Q. But if they do wear them, you recommend the color, do you not? A. We have a standard uniform that we recommend for the sake of uniformity for identification so that the public will recognize a Texaco dealer when it sees one. We think it is good for all dealers that they wear uniforms, and advise it. But we cannot require it.

Q. Do you on occasion assist dealers who are engaged in a (2386) price war or get caught in a price war? By assist, I mean charge them lower prices? A. Yes, we on occasion do.

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By Mr. Dias:

Q. What about lessee stations? Do they always use the prescribed colors and uniforms and advertising insignia and so on? (2387) A. I wouldn't say always. With respect to uniforms and colors?

Q. Yes. A. No, not always.

Q. Colors? A. No.

Q. These are the leased stations that you are referring to? A. We have leases, sir, on many nondescript stations.

Q. Once again, in your opinion, are the majority of leased stations uniform in appearance? A. I would say a majority of them bear considerable uniformity, leased stations, yes. I spoke awhile ago about the 38,000.

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Direct examination by Mr. Boyd (continued):

(2389) Q. Mr. Bartlett, can you tell us how are the accounts which the Goodrich Company—that is, the Texas stations which the Goodrich Company services or sells TBA to—how are they determined? A. Do you mean on the list?

Q. Yes. In other words, the stations that carry the Goodrich line. Your Texas stations, how are they given those accounts? Just which ones are given? A. Basically, to the ones that they can sell to, it is a selling job as far as Goodrich is concerned as to whether they can sell or not.

Q. I know that. What do you do under this contract, the sales commission contract on which Goodrich pays you

the commission? Just what do you do? Which stations do you designate? A. Well, there is a nominating procedure, as I understand it, in the arrangement, whereby certain stations—where a new dealer goes in he is given of course—he has the full right to choose which he wishes.

Q. Which one of what he wishes? A. Of any type, any TBA supplier. Of course we recommend Goodrich or Firestone in many instances. But he is free to choose any line he wishes.

(2390) Q. Do you ever recommend any other rubber company? A. I don't know that we recommend it. We certainly would have no right or desire to discourage it.

Q. Then it is your testimony that the dealer makes the option himself as to which rubber company of the two you recommend. Is that right? A. It is his option as to which of any type of brand of TBA.

Q. What I am saying now is that the Texas Company doesn't nominate the dealer to the Goodrich Company? Is that what you are telling me? A. After the dealer has made his choice then it is nominated to Goodrich and put on the list for mechanical purposes of in time receiving credit for the purchases. That is the mechanics of the thing. But it is not on the list until the dealer has signified his selection of Goodrich, if that is what it is, if he wishes to buy Goodrich.

Q. Let's say you are opening a new station. At that time do you notify Goodrich in advance that you are opening a station at a given location? A. I think there is no procedure in effect in that direction, no.

Q. They are not told in advance? Goodrich is not told in advance? A. There is no regualr procedure. It may be in certain circumstances in certain instances they might know about it, (2391) but there is no setup that I know of whereby they are automatically advised of new stations opening. I know of no set procedure in that direction.

Q. After the dealer decides that he wants Goodrich, that is when you make the nomination, is that right, to Goodrich? A. That is when we put him in touch with the Goodrich people for working out details of shipping, stocking, and pricing and all the other things. And then he becomes a part of the Goodrich list on which we subsequently, if he buys, which we subsequently receive for certain commissions.

Q. Does he always buy from Goodrich? A. No.

Q. What happens when he doesn't buy from Goodrich? A. He buys whatever he wishes.

Q. You don't suggest the other rubber company to him? A. What do you mean by "suggest"?

Q. Recommend. A. We have recommended initially, say, Goodrich. If he chooses not to follow our recommendation—and many of them do not—then we have no recourse, we have no desire to force. Our prime interest is that he handle a well-rounded line of TBA to be a successful petroleum merchant. That is our prime objective. We are in the petroleum business and we are very anxious that he handle a complete line of TBA products for his own good and for our ultimate benefit in having a successful (2392) petroleum retail operation.

Q. Mr. Bartlett, if the dealer is nominated to the Goodrich Company and he doesn't buy, is there a certain period of time within which he is supposed to buy? A. No time.

Q. Or within which they have to sell him? A. There are no time limits of any kind. There is no time limit, there is no set schedule or anything else that I know anything about.

Q. Do you know anything about the 90-day period within which the rubber company is given to sell a Texaco account? Are you familiar with that? A. I do not know too much about it. It is possible. My memory of it is this: At least in the past—whether it is still true I am not sure

—that if one rubber company is not successful in selling the dealer, then perhaps the name is passed to the other rubber company with the idea that they might have an opportunity to sell the dealer, bearing in mind that it is the dealer's full choice at all times whether he has Goodrich, Firestone, any other type or brand of merchandise that is available to him.

Q. Mr. Bartlett, what I am trying to get to are the mechanics of how the plan operates. If you aren't completely familiar with it— A. I am not. I am not familiar with the details of these things.

(2393) Q. Who in the company would be? A. Well, I would think—shall I answer who in my opinion?

Mr. Royall: Oh, yes, go ahead.

The Witness: Either Mr. Wolfe or Mr. Halsell would be better qualified than myself to speak of the details of it. I simply am not working in those every day. I have a few other things to think about.

By Mr. Boyd:

Q. Mr. Bartlett, I am handing you now Commission's Exhibit 3-A and B, which is the B. F. Goodrich commission agreement with the Texas Company. In the very first sentence it states: "In consideration of the aid to be given and the services to be rendered by your sales organization." This is a letter from Goodrich to your company. Will you explain to us what is the aid that the Texas Company gives the Goodrich Company? A. As we have just said, in case of a new dealer, for example, we explain to the dealer that many Texas Company dealers handle Goodrich products because they are nationally advertised and acceptable products; that we can speak for their good service arrangements, if they have them—warehousing and service; that we are in a position to advise the dealer

that in our opinion that particular company, due to the close relationship—we have meetings, and our organization is somewhat familiar with the Goodrich products and so on—that we feel that he would be well advised in his own (2394) interest if he chooses to do so to handle such a line. But at the same time it has got to be made clear, and it is made clear, that he is free to do whatever he wishes to, that he is a free and independent merchant, and that our only service so far as Goodrich is concerned, I would say there, is initially the introduction and then later on, through our knowledge, knowledge of our men, of the Goodrich line and of the TBA sales possibilities generally, we are able to further educate that dealer in better selling techniques, trading of tires, selling of batteries, all other things.

In other words, it boils down I think to two things: the introduction, which is done in the manner I described, and also what subsequent help we can be to that dealer in being a successful merchant handling that line, supplementing the activities of Goodrich's own organization.

Q. Mr. Bartlett, I refer you to the same agreement again, Commission Exhibit 3-A and B, and the second page of it. The first complete paragraph there reads: "Said commission will be paid upon all net purchases made by all of the above-mentioned classifications of Texaco accounts"—and you are familiar with that—"excepting, however,"—and this is the part I am interested in—"such 'D' accounts as are not approved by the Goodrich Company."

Will you tell us what would be in that category? A. Perhaps Goodrich can best explain that. I would think (2395) that their reason for non-approval might be such as this: that they might have a dealer in the area that this would create some confliction with, or something of

that kind. That would be one of the probably main reasons why they would withhold approval. Those come to mind immediately.

Q. That explanation that you have given is stated in this agreement with respect to "C" accounts. But not as to "D" accounts. That is why I was asking you. A. I really don't know what would be their reason for withholding approval.

Q. Someone else would better be familiar with that?

Mr. Royall: He said Goodrich could tell you more about that.

The Witness: That is what I say, Goodrich could give you their reasons about that.

By Mr. Boyd:

Q. Mr. Bartlett, what instructions are given with respect to Texas salesmen cooperating and working together in calling on Texaco dealers with the rubber company representatives? A. Do you mean working with them? Is that what you mean?

Q. Yes, sir. In handling accounts carried in TBA. A. I know of no set instructions with respect to that. As has been testified to earlier today, I am sure there are certain contacts between them, when certain problems arise, and periodic contacts. But as far as that being spelled out or (2396) defined, at least I know of no particular definition of it.

Q. Isn't that part of the assistance which Texas gives the Goodrich Company, for which it receives this commission? A. Well, it happens in some degree but I would think more important would be the work that we do day by day through our salesmen, perhaps when the Goodrich man is not anywhere near to—

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Q. Mr. Bartlett, would you explain to us why there are different rates of commission paid to the several classifications of account reflected in the commission agreement, which is Exhibit 3-A and B? A. Of course I was not present when this agreement was made. I can only say that my opinion is that we are in a position to be of greater assistance in a case of certain (2397) classifications than we are in others, due to frequency of contact or something else.

Q. That is your opinion? A. That would be my opinion.

Q. Is there someone else in it who would be more familiar with that on that point? A. I don't think anyone else in this room—

Q. I mean in the Texas Company? A. Not that I know of. This contract was written in 1943. I can only give you my opinion, which I did.

Q. Do you know what the average rate of commission is that is paid to the—that is, received by you from the Goodrich Company? A. I have never seen it averaged out; no, sir.

Q. Will you tell us then just how is the commission paid that you receive from the Goodrich Company TBA sales and purchases? A. It is paid by check at periodic intervals.

Q. How frequently? A. I am not certain whether it is monthly or less frequently. I can't say. I don't know. It may be monthly, it may be quarterly. I can't answer.

Q. Here again are you familiar with the mechanics of how this thing operates? A. Not exactly, no. I can't tell you how often the payment (2398) comes.

* * *

Q. Are you familiar with advertising? A. Yes.

Q. By your company? A. Yes, sir.

Q. In connection with TBA? Is there any program between your company and the Goodrich Company in that respect, sales and promotion of TBA products? (2399) A. Where we participate?

Q. Yes, sir. A. There is no participation so far as the Texas Company is concerned in consumer advertising as such. Sure, there is certain cooperative advertising that occurs as between Goodrich and Texaco dealers who also happen to be Goodrich dealers. But there is no participation in any direct consumer advertising by the Texas Company. We do other promotional work throughout our organization, educational work and so on.

I am speaking now of advertising to the consumer, the public. We work with them on preparation of copy and advertising mats that might well be used by Texaco dealers that are also Goodrich dealers. We ourselves do not participate.

Q. Is the cost of such work between the two companies shared? Just how is that done? A. Well, it is not—outside of working with the Goodrich Company on the preparation of certain copy that might go in some of their promotional material there is not any sizable expense involved in this particular phase that you are speaking of. We absorb it, what it costs us, and I suppose we absorb the other. There is no cost factor to speak of. It is not a big item. We do not engage in specific consumer advertising or engage in it on TBA.

Q. What would it be that you do participate with them on? Explain that a little more. (2400) A. We don't participate with them on advertising.

Q. What did you have reference to in your discussion then? A. I have seen in recent years some pamphlets or mailing pieces or handouts that Goodrich dealers would procure from the Goodrich Company, either on some direct mail program or furnish to Goodrich dealers. And we

have on occasion, I am certain, advised as to the copy that might be put in there with respect to their representation to the public that they also sell Fire Chief and Sky Chief gasoline and Marfak lubrication and Havoline motor oil. It is just a matter of coordinating with Goodrich on the copy on certain of these local advertising handouts, pamphlets, or what have you.

We do not go into the newspapers on a participation basis, for instance, as a company.

Q. What about the advertising that gets to the point of the advertising Goodrich does, that it may want to place in your Texas stations that are carrying its products? A. That is strictly a matter between the Goodrich Company and the dealer, as to the dealer's participation in Goodrich's direct mail program which might provide for direct mail for station decorations. That is strictly a matter between Goodrich and its dealers, some of whom of course are also Texaco dealers.

Q. I am speaking now of the Goodrich dealers and Texas dealers. (2401) A. That is right.

Q. Let's keep that in mind. On the placement of advertising on the dealer's premises, are there any instructions from the Texas Company to the dealer, or to Goodrich, as to where such sign will be placed, and things of that nature? A. Yes, we have recommended placement of signs as to size and type, but there again we cannot and do not desire to control that situation. Dealers can put what signs they wish.

We have, as a suggestion, as we have suggested to many other areas, that the signs be of certain size as fitting into our general layouts and arrangement of facilities. But again that is a voluntary, suggestive operation.

Q. In those instances does the Goodrich Company consult with the Texas Company before it proceeds to place those kinds of signs or material in the dealer's station?

A. I think the Goodrich Company no doubt has knowledge of the general pattern that we recommend as to size of signs and type of signs. But again it is a voluntary proposition as far as the dealer is concerned. He can put any signs he wishes on those premises and we have no desire to prevent him. But we attempt to advise him with respect to the signs as best fitting into the size, shape, design of our service stations. It is like uniforms. It is not obligatory in any sense.

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(2403) *By Mr. Boyd:*

Q. Going back to the advertising at the station level, in a leased station, Mr. Bartlett, suppose the operator decides that he wants to carry an unsponsored line, advertise it all over the place, what action, if any, is taken by your company in that respect? A. There are many who do exactly what you describe.

Q. Do you attempt to discourage them in any way on that? A. No.

Q. No way whatever? A. We attempt of course to sell them, suggest to them the Goodrich. There is absolutely no compulsion whatever. He has the perfect right to sell whatever he wishes to sell, and many do.

Q. These attempts to sell— A. Simple—may I say that unless we can be of benefit to the dealer through our better knowledge of, say, the Goodrich line, through our working with meetings, with knowledge of products, by insisting on good supply arrangements, unless we can earn the confidence of the dealer and his willingness in his own benefit to do this, we have no desire, we are not entitled and we have no desire to force that issue. Our principal desire is that he is a well rounded dealer in that he is in a position to obtain revenue from all phases of his service sta-

tion business, because if he does not do that he will (2404) ultimately fail and then to that extent we have an unsuccessful dealer from the petroleum standpoint, which is our prime interest and responsibility.

Q. Have any written directions or instructions ever been issued to any Texaco dealers or are they issued at regular times, indicating to them that they are free to carry any TBA they so desire? A. For quite awhile, I am not certain whether it is still in existence, there was a clause in the letter that accompanied their quantity discount oil check in which we devoted a paragraph to the fact that Texaco dealers are free to choose any type of merchandise that they wish in the conduct of their business. That is the one thing that I think of. There have been—

Q. When was that? A. It has been within the last three or four years. I am not certain whether it is still being done or not. But it was done for—we often times revise forms and letters, this was more or less in the nature of a form letter—and I cannot tell you whether it is still in effect or not. But it was in effect a few years ago. That is one instance of how we did notify them of their independence as far as we were concerned.

Q. Would you have—

Mr. Royall: Just a minute. I am not sure that the (2405) witness has finished or whether there is any other sort of publicity or not—

Mr. Boyd: I don't want to interrupt him. Go ahead.

Hearing Examiner Kolb: Have you finished your answer?

The Witness: I might add to what I have said that in a number of instances various TBA jobbers, battery manufacturers, perhaps manufacturers of other TBA items, have written to the Texas Com-

pany to inquire as to our policy, and we have in every instance very clearly written back and have stated in effect that we have no desire nor right to in anyway control the type of merchandise or the brand of merchandise that our dealers sell. And I have noticed that on several occasions that manufacturer or trade association has placed excerpts from our letter or our letter has been quoted completely in such trade publications as, for example, the Gasoline Retailer, or the Super Service magazine, or others. So I believe that it is a well known principle among our dealers—and they have been notified I am sure in various ways—as to our policy which we are very serious about. We are very serious about that.

By Mr. Boyd:

Q. The one that you referred to with respect to oil, a few minutes ago, is that the only one that you can recall in which there was an express notification to that effect? (2406) A. That is the only one that I can recall at this time, yes. Excuse me. Except individual answers to inquiries that might be made of us, you see. I am sure many of those have occurred. Our dealers have asked us, and certainly in response to that we have had no hesitancy in going on record to those dealers. And I am not too certain but that we have put statements to that effect in some of our dealer literature or publications, although I am not able to be certain of that point or to identify it.

But I feel that has been put in some of our dealer publicity or information, although I cannot be certain.

Q. But it has been done maybe pursuant to inquiries, you say? A. Yes.

Q. Have such inquiries of that type been numerous? A. I wouldn't say numerous, no.

Q. Just infrequent. But as a result of those no general policy statements have been issued by your company in an express statement to the dealers to that effect? A. Not that I know of, unless it appeared in our dealer magazine or in some of our other dealer publicity media. It may be. I cannot be certain of that.

Q. Can a lessee dealer of the Texas Company start in business without carrying any TBA supplies? A. Surely can. It is not a very wise way to enter business but he can.

(2407) Q. Has it been done? A. I am sure that it has. I have seen some stations where from looking at their stock I would judge they have virtually none.

Q. This is a new station? A. It would certainly be inadvisable. We would certainly advise against it. That dealer in his own interest should certainly handle some brand of TBA merchandise.

Q. Even an unsponsored brand? A. Certainly. Because he cannot live, he cannot progress in this business unless he has available to him the revenue from that end of the business, and also be in position to serve his customers completely. It is simply not good business. The main point is that we advise strongly that dealers handle a well rounded TBA line. That is the number one thing. We are very, very strong in our recommendations that they do that, without regard first to brand at all.

Q. Without regard to brand? A. Yes, sir. That is the main principle that I wanted to express.

Q. Mr. Bartlett, in a new lessee station opening up, does the Texas Company ever finance or make loans to such lessee dealers for TBA stock inventory to start in business? A. I can say that we do provide loans to dealers as working capital on an easy repayment basis to assist

them in getting (2408) a start in the gasoline service station business. Whether some of that working capital is used for TBA I am not sure. It could be. But it is largely for equipment, for working capital, and the things of that kind. Presumably the Goodrich Company would in its own right and in its own decision afford that dealer such credit as he might need in the purchase of these products, or some other TBA supplier would do the same.

Q. In those instances where there are such loans and a part of them are used for stocking TBA, do you make recommendations there as to what TBA will be carried by that dealer? A. We have no part in it whatever. Our concern in establishing this practice of loaning money to dealers is to get them on their way as successful petroleum merchandisers because, as I have said, it requires five, six, or seven thousand dollars in capital to open a new service station. And in many instances we have seen fit, because the man has the talent, if not the money, to make him these loans for general working capital purposes, equipment largely, in order that he may be established and enter the business.

There is no angle on TBA whatever. Our purpose is to get this dealer started on the right foot as a Texaco dealer, primarily in our interest which is petroleum—oil, gasoline, and so forth. And we have often a very substantial interest in this station, even through ownership, or through long-term lease obligation, and it is most essential that we establish (2409) and make possible a tenant, a lessee dealer, who can make that a successful operation, else we have no success.

Q. In the station of the type you talk about, five to seven thousand dollars, what type inventory, how much TBA inventory would you say would be involved in that type? A. I wouldn't really know. I wouldn't want to say. I am not close enough to tell you that.

Q. Mr. Bartlett, I think earlier today another witness gave us some idea as to TBA personnel in the various lines of the company except at the home office. I wonder if you can tell us at the home office the number of people involved in the TBA program, the Texas Company? A. Of course Mr. Halsell, whose capacity is manager, merchandising, has a large interest in that field. Mr. Wolfe, who is a special representative, TBA, devotes virtually all of his time to it. Of course they have certain clerical assistants —secretarial assistants.

Q. How many of those would there be? A. Probably two people there. Of course it is part of my responsibility and the part of my general sales manager and others on our staff—the assistant sales manager in charge of dealer sales is very interested in that and devotes some of his time to it.

Q. Would you tell us as to yourself and the assistant general manager, Mr. Halsell, and the other man you named—Mr. Wolfe (2410) I believe, as to the amount of time you estimate that they devote to the TBA program? A. It is very difficult to estimate except in Wolfe's case. That is 100 percent.

I would hesitate to say with respect to Halsell. But he has assumed most if not all of the duties formerly of Mr. Bronson, who was head of our tire and sales division. I would say that upwards of 50 percent of his time would be well allocated to TBA and related questions.

Q. How about the assistant general manager? A. His people are in attendance at meetings, they confer with tire company officials from time to time, they are engaged in planning for many of our merchandising conferences. It is difficult to say. I would think that five to ten percent of their time as a minimum would be a good figure.

Do you wish me to describe anything else? Our sales promotion division, which is headed by a manager and an assistant and quite a number of others on his staff, devote a considerable amount of their time to the planning of these dealer meetings that we hold annually.

Q. Who would these people be that you just referred to? A. Sales promotion group in our home office.

Q. In the home office? A. Yes.

Q. How many of them are there? (2411) A. Well, of course in the sales promotion department—

Q. That are connected with the TBA. A. I would imagine that there would be six or seven of those people at least who would be pretty vitally concerned with it, maybe more, because here is what they do: They help to plan these meetings that were spoken of this morning. We hold approximately 700 meetings around this country and we have attendance of maybe 40 to 50 thousand people. Part of these meetings, as explained this morning, are devoted to principles of merchandising, which certainly has application to successful TBA sales. And the same group—sales promotion group—are also engaged in the development of these dealer training conference programs, of which we have three or four a year that were spoken of this morning. So I may be low by seven or eight, but we have a substantial sales promotion department that is engaged in the promotional work, a good proportion of which can properly be classed as TBA.

(2412) Mr. Royall: Your Honor, I do express again the hope they won't rehearse all this hierarchy.

Hearing Examiner Kolb: Haven't you got all of that already?

Mr. Boyd: I was asking him about the home office. That was not covered earlier.

Mr. Royall: I think you are wrong about that but that is already in. There is nothing more we can do about it.

By Mr. Boyd:

Q. We have the percentage of time devoted by the various TBA people. The only one left is yourself. What about yourself? A. You mean that I personally spend?

Q. Yes. And describe it for us. A. I would say that anything that I do that would be of any assistance in the way of planning for better dealer training or dealer relations or in the over-all approval of better training or service to our dealers, it is directly or indirectly related to TBA. But if our dealers are successful they of necessity and naturally will be successful TBA merchants.

The whole sales structure that I have done much work on, having to do with the development of the merchandising group salesmen that were spoken of this morning, and other organizational changes that are planned for the future, most of that has as its objective a more successful retail service station performance because essentially this company is a dealer (2413) company. Eighty percent of our products at least move through Texaco dealers, branded as such. We sell nothing to unbrands and to things of that kind. So our dealer success is our success. And much of my time, of necessity, is devoted to consideration of things that will affect and benefit the Texaco dealer. I expect that I can give you ten or fifteen or twenty percent of my time along those lines.

Q. Mr. Bartlett, do you know whether or not the salesmen calling on the dealers are instructed to report instances—and particularly let's confine it for the moment to lessee dealers—to report instances where those dealers carry on sponsored TBA? Do they do that? Are such reports submitted? A. I know of no regular report of that nature.

Q. They are not instructed to make such reports? A. No. Not to my knowledge.

Q. Would that be true as to contract stations, too? A. Oh, yes.

Q. You say you know of none? A. I know—there was something introduced this morning, or yesterday, where in an individual instance the assistant territorial manager, I believe, wrote and asked that a list be prepared of dealers and consignees and distributors who were not handling so-called sponsored lines. There may be—in this instance—there may be other spasmodic instances of it where they gather such information. But I know of no regular (2414) established procedure where that is done or called for.

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(2415) Q. Mr. Bartlett, will you tell us just what is the value of the Goodrich TBA program to the Texas Company? A. To the Texas Company or the Texaco dealers?

Q. To the Texas Company. A. Will you say that again?

Q. I want to know what is the value of the Goodrich TBA program to the Texas Company, your description of it. That is, the Commission arrangement between them? A. I think the value of the Texas Company first is that Goodrich is a widely distributed, nationally advertised, well developed brand of tires, batteries, and accessories. They provide fine merchandising services, advertising programs for our dealers, and provide convenient supply arrangements for our dealers and wholesalers. I think it is valuable to us as a company because it is primarily valuable to our dealers, because they provide a service to our dealers that helps them to become better merchants, to make more money and to be successful, and through

their affording our organization opportunities to learn of their products and the qualities of them, through meetings and other things, they help us to help the dealer too in doing a better job.

In short I think they provide a product and services that mean much to our dealers and of course aside from any (2416) commissions that we obtain, which we naturally do, primarily we are interested in services to the Texas Company dealer to make him a healthy individual businesswise because we have many stations, we have high investments, and one of the great problems in the industry today is keeping these stations in operation and successful. So I say that summarizes, at least in my opinion, what value it is to us.

Q. Doesn't it eliminate warehousing and distribution facilities? A. I said that they did afford warehousing and service arrangements which I meant in terms of that—warehousing, yes. Naturally if they deliver to dealers as opposed to our carrying and selling tires, they afford that particular convenience to our dealers as would any other supplier of TBA afford that convenience to our dealers.

Q. Has the Texas Company itself ever sold TBA, that is to its outlets, to maintain this distribution system, as some companies do today? A. No, we never have.

Q. You never have? A. I think there was a short period when we took title to the merchandise and resold it to the dealer. That is a long time ago. But—

Q. Prior to these commission arrangements? A. It must have been. Because it is just faintly in my (2417) memory. But we never stocked them. We have never stocked tires in our warehouse.

Q. Then before the commission arrangement, can you tell us just how the TBA was handled by the dealers if you know? A. I don't know.

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(2422) *Cross-examination by Mr. Royall:*

Q. Mr. Bartlett, have these policies announced and described in the government's Exhibits 48-A through J, and 49-A through D, been the policies of the company since that time? A. Yes, sir.

Q. And before that time? A. We have had a consistent policy, before and after those letters.

Q. Have those policies been followed to the best of your knowledge? A. They have.

Q. Have they been often reiterated? A. Yes, sir.

Q. Do you know of your own knowledge of any case where a dealer complained of being coerced?

Mr. Dias: I object, your Honor.

By Mr. Royall:

Q. In your present capacity?

Hearing Examiner Kolb: Objection overruled.

A. No, I have no knowledge of any case.

By Mr. Royall:

Q. Do you know that there have been complaints from some suppliers and they have been investigated? A. Yes.

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(2423) Q. Do you know whether or not the investigation showed any of those instances to be justified? A. I have received no information to that effect.

Q. Do you know in your present capacity, or from anyone through which this knowledge would come to you since 1951, where any lease has been cancelled by reason of any TBA circumstances? A. No, I do not.

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By Mr. Royall:

Q. Were instructions issued at any time by the Texas Company to its salesmen to the effect that anyone violating these policies, including the independence of the dealers, would be (2424) subject to dismissal from the company? A. Yes. That information has been sent to our salesmen.

Q. Were there efforts made in some of your lower echelons as late as 1955 seeking to get that policy changed, that policy of dismissal? A. I recall one letter that one of our managers felt it was a little severe.

Q. And did you refuse to change your policy? A. A letter was written by one of my assistants, Mr. Fritts, very determinedly taking issue with it and saying that we would not and could not change the policy.

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(2426) *By Mr. Royall:*

Q. Mr. Bartlett, in your examination by the government you were asked about a new credit card for 1955, which I believe mentions the name of Goodrich and Firestone. I believe you also testified that you had a card in the 40s, up to 1947 or 49, similar to the character that you have now with the one naming them.

Will you tell us why the change was made in 1955? A. The reason the change was made is that effective January 1, 1955, we, in order to meet competition of other oil companies, adopted a policy of allowing tires and batteries to be sold on a deferred payment basis on our credit cards. Those terms extended in the case of products I think in the value of up to $30.00 we would allow 30-60-90 day terms. That is three payments for a period of 90 days. If the invoice value of the merchandise was more than $30.00, then we would afford terms to the purchaser of six months credit to be paid one-sixth each month.

We knew at that time—and it has subsequently been verified—that this would involve a sizable amount of money tied up in receivables for long periods of time. We felt that in affording our dealers this service, in order to keep them competitive, that our only opportunity for any form of compensation would be to specify that in the handling of these sales that they would be confined to the two brands mentioned. That (2427) was the sole reason for making the change in the credit card on January 1, 1955.

Q. Because on those two brands you got commissions? A. Yes, sir.

Q. Mr. Bartlett, in determining the renewal of a lease what is the major factor? A. The renewal of what sort of lease?

Q. Of the lease to a service station? A. To the dealer?

Q. To a dealer I mean. A. The primary factor is how successful he is from the standpoint of the sales of our products.

Q. Of gasoline? A. That's right. Gasoline and motor oil.

Q. Is the question of TBA a significant factor in making that determination? A. I would certainly think not.

Q. Do you have a form for renewal of a lease to be signed by the service station? A. We have a form that is submitted to our division office carrying the recommendation of the zone manager as to the continuation or not of a lease with a dealer. Yes.

Q. And is that form upon which you finally act, and whether or not you renew a lease, is that one of the factors? A. Yes.

(2428) Q. Does that form contain any mention of TBA? A. No.

Q. Does it represent your policy in renewing leases? That form and the data on it? A. I would say that it does.

Q. And is that your practice as well as your policy? A. It certainly is.

Q. Some mention was made of occasional financial assistance in price wars. State whether or not that assistance is either dependent on or affected in any manner by the TBA situation of the station? A. It is not. It is never considered.

Q. Mention was made of the fact of making loans in some instances, particularly to new stations, in order to provide them operating capital for equipment and other things. State whether or not in determining on those loans, the TBA situation is given any weight. A. I would say that it is given no weight at all.

Mr. Royall: Your Honor, this is the final set of questions.

By Mr. Royall:

Q. You were asked to state the reasons for the TBA commission plan which Texas has. What is your main objective? A. Our main objective in the whole situation is that our dealers are more successful, that is, that they will through it—

(2429) Q. I mean the main objective from your standpoint? A. It is to increase our petroleum sales through more successful dealers.

Q. And what is the indispensable element in increasing your petroleum sales? A. In today's competitive market a dealer has no opportunity to build a well-rounded increased volume business unless he is in a position to offer to his customers TBA—batteries, tires, accessories and other automotive needs.

Q. Without those TBA items what would be the result in the volume of business that a dealer would do?

Mr. Dias: I object, your Honor.

By Mr. Royall:

Q. Based on your experience.

Hearing Examiner Kolb: Objection overruled.

By Mr. Royall:

Q. You can answer. A. Based on my experience, I would say that a dealer who was not in a position to offer a balanced product line and services could not hope to succeed except in unusual situations where he was situated on a highway out in the country or something of that kind, where he only sold gasoline. But in the average situation he could not hope to be successful unless he sold a well-rounded line of TBA products of some brand.

Q. Is the welfare and progress and sales of a dealer assisted (2430) by carrying standard and well-known brands of TBA? A. I would certainly think so. That is my belief.

Q. Has that been your experience? A. That has been my experience.

Q. Is a dealer's progress, welfare and sales favorably affected by confining himself to a few brands or one brand rather than many? A. I expect—

Q. If so, in what way? A. In several ways. In the first place, a dealer who stocks too many items or too many lines or too many brands unnecessarily ties up capital in duplication of stocks. Secondly, from a sales psychology standpoint, any merchant in my opinion has a better sales argument, is in a better position to present the merits of a particular brand rather than to say that I have two or three or four brands; take your choice.

It is better selling psychology and it can be more successfully sold.

Q. Did you mention investment? A. Yes, because my first point was that it eliminated the necessity for duplication of inventory, and also another important factor is that by confining purchases to one line—whatever that be—he gets advantage of any quantity discounts that might be available to him.

Q. In what way, if any, does a single brand affect the easy (2431) or difficult operation of a station, accounting and otherwise? A. Simplification of line, less the accounting, less inventory keeping, less storage space consumed by the—again the duplication of items. The whole operation accounting-wise, storage-wise is simplified.

Q. Are those matters we have mentioned of vital importance to the dealer? A. I believe so, certainly. Yes.

Q. What is the chance, on averages, of a dealer staying in business today without a sound TBA program?

Mr. Dias: I object.

By Mr. Royall:

Q. If you know?

Hearing Examiner Kolb: Objection overruled.

A. The chances are very poor.

Mr. Royall: That is all, your Honor.

Redirect examination by Mr. Dias:

Q. We talked about a form for renewing leases, Mr. Bartlett. Is that correct? A. Yes.

Q. I don't suppose you have a copy here? A. I think they have one over there.

Mr. Royall: We will supply that.

Ben Halsell, Recalled, for Commission—Redirect

(2432) *By Mr. Dias:*

Q. Also you mentioned that in renewing leases TBA was not a significant factor. Did you mean that it was taken into consideration? A. Not a factor, I should have said.

Q. You are changing that part of your testimony? A. I am changing.

Mr. Dias: That is all, sir.

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(2438) BEN HALSELL was recalled as a witness for the Commission and, previously having been duly sworn, was further examined and testified as follows:

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Redirect examination by Mr. Dias:

Q. I hand you Commission Exhibit 100-A through C, Mr. Halsell. Would you explain what that is? A. This is a lease form usually referred to by Texas Company people as a G-77 form. This form is used in two ways. First, it is used as a lease instrument on properties from the landowner to the Texas Company of those properties usually already (2439) in existence and of a non-conforming nature.

Q. Properties already in existence? Do you mean with buildings on them? A. With buildings on them and buildings do not conform with the Texas Company type buildings. That is one use.

The other use is in connection with the same-party leases that we have discussed here from time to time. On this form we lease a property from a dealer and in turn sublease back to him on a lease form not represented in this group.

Q. Are those the only uses for that? A. As far as I remember, yes.

Q. Now, would you look at 101-A through C and tell us whether or not that is the same type lease or is that used for another purpose? A. G-77-B, as we refer to it in the company, is a form on which we renew leases; leases that we have held on properties. Other leases expired and this form is used for the renewal.

Q. The type lease you are talking about here now is similar to the lease 100-A? In other words, the same type property? This is not the lease running from Texas to an operator, in other words? A. No. This lease covers a property, the lessor of which is the property owner. The lessee being the Texas Company.

Q. 102-A, will you tell us what that is? A. This is a form referred to as G-77-E. As far as I know (2440) this is used in somewhat the same way as the form previously described.

Q. In other words— A. There are some minor differences here. Frankly, I can't discern them.

Q. Substantially it is for the same purpose— A. As far as I know.

Q. (continuing) —as Commission Exhibit 101-A? A. And the lease form is substantially the same.

Q. And 103-A to C? A. This form is commonly known within the Texas Company as form G-77-A. We use this form in negotiation with a lessor, which negotiation begins at the very outset. That is, this form is used when the property is undeveloped and when we are bargaining with the lessor to start from the ground up and create a service station structure. The building is usually—the building is always one of our regular typical buildings.

Q. The company itself erects the building? A. No, sir. That form is used when the lessor erects the building.

There are provisions there for setting forth the type of building.

Q. Are these all Texas forms? A. They are.

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(2442) *By Mr. Dias:*

Q. Do you know when Texas first nominates a station to the rubber company? A. Yes. I think I understand that procedure.

Q. Will you tell us when that occurs? A. Let's take the case of the new station, a station that is nearing completion. At that time we talk to perhaps one or two or three prospective dealers and finally come to terms with one, general terms, a person who seems to be best qualified from the various angles to be a successful dealer.

Our first conversations with him involve the many aspects of service station operation, particularly pertaining to the marketing of petroleum.

We talk to them about all those details: the need for proper stocks of petroleum merchandising; the need to carry on a proper advertising program; the need to give good service and to maintain a station that is clean and to conduct his registered restroom program in such a way as to give the best service to the motoring public.

All those things are gone into with the dealer and he of course agrees that they are sound business practices. (2443) After that discussion has been concluded we come to the matter of a choice, his choice of TBA materials.

At that time we explain to him that the B. F. Goodrich Company is ready and perhaps willing to serve his needs. We talk to him in very general terms about the company as a national organization, its products are well known and well accepted by the motoring public, and if he agrees then that the Goodrich line is one which might fit into his

overall operation we in turn ask the Goodrich salesman to come and have a talk with him.

Q. When did you ask him to come and have a talk with him? Prior to the time the station opens? A. Yes. Usually it is before the station opens.

Q. You mentioned that if this prospective dealer agrees to your suggestions as to the proper way that he should run his business—suppose he doesn't agree? A. I beg your pardon?

Q. Let us assume that the prospective lessee does not agree that your ideas of what he should do to run his business are appropriate for him. What is the situation then?

Mr. Royall: Your Honor, I think that question ought to be clarified. You don't mean whether he would use Goodrich or not but whether to run the station?

Mr. Dias: Yes.

A. There is a general agreement there on basic business (2444) principles, and if he doesn't agree he just withdraws.

By Mr. Dias:

Q. He withdraws? He doesn't take the station? A. If that is his decision, yes.

Q. Having submitted his name to Goodrich, how much time is allowed Goodrich to consummate a sale? A. Nomination of the account to Goodrich is in effect the placement of that account on the Goodrich prospective list, and it means simply that if the sale of Goodrich products is made to that dealer that that sale qualifies for the sales commission.

Q. Let us assume, though, that the lessee is on the Goodrich approved list and you have nominated the lessee and he is on the Goodrich approved list. But let us suppose that the lessee doesn't purchase for sometime. How long is he permitted, so to speak, or how long is Goodrich allowed to dicker with the lessee? A. For a reasonable time. I suppose in defining the word "reasonable" in this case, sixty, ninety, 120 days.

Q. May I suggest 90 days? Isn't it true that they usually allow the rubber company 90 days to make a contract with the lessee? A. It isn't that specific. It is a variable period of time.

Q. At any rate, there is a period of time during which—

Mr. Royall: Your Honor, the question I am sure (2445) wasn't intended to create a false impression. The witness didn't say that they allowed anybody anything. That is the language of counsel. "Allowed" contains an inference.

By Mr. Dias:

Q. Suppose you tell us in your own language then what the period of time is, and is it allowed or how would you describe it? A. As I said before, the period of time is a reasonable one—60, 90, or 120 days.

Q. Let us assume that whatever the period is, there has been no sale consummated. What happens then? A. Then the other company, the Firestone Company, is invited to try to make a sale.

Q. On the initial contact with the new station operator, does the Texas salesman accompany the rubber company salesman in calling upon the lessee or prospective lessee? A. What do you mean by "initial contact"?

Q. It is my understanding that the oil company salesman, the Texas Company salesman, introduces the rubber

company salesman to the prospective lessee on the initial contact. Is that correct? A. I still don't know exactly what you mean, Mr. Dias, by "initial contact." We have been in touch with the dealer previous to any B. F. Goodrich connection there.

Q. I am talking about the initial attempt by Goodrich to (2446) sell or start its sales talk to the lessee. A. I get that. The answer is there is usually a personal introduction.

Q. By "personal" you mean a Texas salesman or other representative in company with the rubber company representative? A. That is usually the case.

Q. Is that true in regard to all type outlets—"C", "D", distributor, consignees? Is the procedure the same? A. I don't want to ask questions but which procedure?

Q. This procedure of nominating the new account, accompanying the rubber company representative? A. The answer is No.

Q. When does that occur? Does it happen with "C" dealers where there is a lessee involved?

Let me make it clearer. You are opening a leased station. That account has been nominated to the rubber company. On that occasion, on the occasion of the first visit of the rubber representative—the rubber company representative, I believe it is your testimony that the oil company representative accompanies the rubber company representative and introduces him to the prospective lessee? Is that correct? A. Usually.

Q. That is the lease operator? Now what is the situation in regard to the "D" station or contract station, so-called "D" or contract station? (2447) A. In that situation, if we can be of service, if the dealer is such a person and if he has such a physical setup in his station as to lend itself to the successful sale of TBA products, then we would be glad to give that same service.

Q. You would be glad to do it. Are you saying that it isn't the normal thing to do? A. No, I am not. It is the normal thing to do.

Q. It is normal to use the same procedure in regard to "D" or contract accounts? A. Provided the facility and the person lend themselves to a successful venture in the sale of TBA materials.

Q. Will you explain that a little bit further? What is the criterion in your opinion for a contract operator to be a successful operator? A. Many of the accounts designated "D" are not service stations in fact. They don't have the complete facilities for the one-stop service performance that many of our "C" stations have.

Many "D" locations are located far removed from Goodrich supply points. The very nature of some of the "D" accounts excludes them from this kind of an operation. And when I say "nature" I am referring to the roadside account or maybe the account that is associated with a farm implement sale operation; the occasional location where you see two pumps in front of a roadside tea room.

Q. Two different pumps? A. No, gasoline pumps.

(2448) So the point is that so many "D" accounts are not qualified either from the standpoint of personnel or type of operation or physical property to permit them to engage in a successful TBA operation.

Q. And in that instance you do not nominate them to the rubber company, is that correct? A. That is correct.

Q. Can you give us some idea of the number of such accounts? A. I might give you an idea, but I would be estimating it. I think perhaps you can have a better figure in the future from our statisticians.

Q. What about consignees now? Are they treated in the same way as the lessees in regard to nomination to the rubber company? A. Yes, I guess they are.

Q. And the distributors? A. Yes.

(2449) Mr. Royall: Would you read the previous question and answer?

(Question and answer read.)

The Witness: I would like to say in the same general way. I don't know the details.

By Mr. Dias:

Q. Would there be any material difference? A. I think not.

Q. What is an approved account from the Texas viewpoint in regard to the TBA program? Would that get back to the type stations just not fitted to handle the TBA program? A. The approved accounts are the ones that are.

Q. You are correct. A. That is true, yes.

Q. That is what would be involved in that? A. Yes.

Q. What is an active account? A. An active account is one that buys.

Q. Within any given period or at any time? In other words, is there a limitation? A. I think the limitation there is six months.

Q. If he does buy within a six-month period he is considered an active account. Is that correct? A. I think that's right.

Q. What is an associate account? (2450) An associate account is an account such as would be supplied by a Texaco distributor, or an "E" account.

Q. "E" is a distributor, is it not? A. Yes.

Q. Would he also be one supplied by a consignee? A. Yes.

Q. Is that a term used only in connection with the TBA program or is that also common to the petroleum end of

it? A. That is a term used—which is limited to the TBA program.

Q. To the TBA program? A. Yes.

Q. Can you tell us what a direct account is, and indirect. Let us have the direct account first. A. A direct account is one that is served directly by a B. F. Goodrich supply point, whether that supply point be a store or a company warehouse or one of their designated dealers.

Q. When you referred to store you meant a B. F. Goodrich company store? A. I was thinking of a retail store. They operate stores that retail. Those stores at times are designated as supply points for Texaco dealers.

Q. The indirect account, will you describe that please? A. I don't know—we don't use that term, "indirect".

(2451) Q. Texas does not? Do you think that might be a rubber company term? A. Frankly, I don't recognize the term.

Q. At any rate, you don't know what an indirect account is? A. No.

Q. You testified that the Texaco representative accompanied the rubber company representative on an initial contact or interview or talk or introduction to the new operator? A. Yes.

Q. And you confined that I believe to an instance where there is a new station. Is the situation the same where a station changes hands? A. Substantially, yes.

Q. And I assume it would be the same where a station has just been rehabilitated, that is, redecorated, rebuilt, refurbished, and a new operator comes in? A. If a station has been rehabilitated and if facilities for the successful handling of TBA are created in that rehabilitation process, then the same procedure would follow.

Q. During that 90-day period and after the initial introduction, does the petroleum company representative again

at any time usually or generally talk to the new operator in regard to the prospective TBA program? A. Oh yes, there are many details to be discussed, many arrangements to be made. There is as much initial assistance to (2452) be given. I suppose much of that assistance would come in the form of educational work, help with displays and the institution of the inventory control plan, perhaps. Although that work, too, is certainly done by the Goodrich salesman. But there is a certain—

Q. At the same time? A. No. The Goodrich salesman does most of his work at the outset. From that point on the principal contact is by the Texaco salesman who carries on and services the account.

Q. How often does a Texaco salesman call on a Texaco outlet? Let me rephrase the question.

How often does the Texas salesman call on the outlet to take his orders, for example? Is there a periodic time, every week, every two weeks? A. I suppose the answer to that is every week.

Q. They call once a week to take an order? A. Once a week to every ten days. Not with the specific thought to taking an order. There is so much to be done at the merchandising level. It is not so much putting product into the station as it is to show the dealer how to move it out of the station. The reordering process is less complicated than that.

Q. Does that educational work also involve TBA? A. Yes.

Q. I am not sure that you have the information I want on (2453) these questions. Do you know how often these commission overrides are paid? A. Yes.

Q. You do know that. How often are they paid? A. Monthly.

Q. Do the checks come into the home office or to the various territorial offices, do you know? I assume they are checks.

* * * *

The Witness: They come to the Texas division office.

(2454) *By Mr. Dias:*

Q. Do they come from a rubber company division office and go to a Texas division office. A. I think the rubber company division is the district.

Q. And the District? A. From the rubber company district to the Texas company division.

Q. And then the Texas field office, do they forward that to the home office or is it kept in the field office account? A. It is kept in the field office account.

Hearing Examiner Kolb: Read the last three or four questions and answers.

(Questions and answers read.)

Mr. Royall: That is correct.

By Mr. Dias:

Q. Does Texas check the accuracy of these payments? A. Yes we do. We don't quite arrive at an accurate check but we make an endeavor in that direction.

Q. What do you do? In other words, what sort of a reporting system do you have to check the payments made by Goodrich? A. Field people are informed of the credits designated for their accounts, and then field people make an effort, although it isn't a very effective one at times, to verify the accuracy of the credit.

Q. Which particular field people? (2455) The salesman is the man who does that.

Q. Are these reports and these figures used to determine a ratio of sales of TBA products to petroleum? I have heard references of so many gallons of gasoline, so many dollars of TBA. Is that how you determine what the ratio is or should be? A. That is the way we determine what the ratio is.

Q. Then how do you determine what the ratio should be? A. There are certain authorities on that, as we saw yesterday or the day before. That balanced selling ratio thing is one guide.

Q. Earlier you testified that when a new account opens you notify Goodrich of the possibility of a sale, of a prospective account. A. Yes.

Q. How do you determine which of the rubber companies to nominate that account to? A. Well, the dealer is asked if he feels any preference there. And if he does of course that preference is observed. If he has no particular preference the salesman will confer with the dealer and between them they will make a little analysis of the whole situation.

Q. Between whom? Between the salesman and the operator? A. Between the salesman and the dealer. I say between them because the salesman, with his wider experience, is able to give the dealer certain valuable guidance There is a (2456) consideration of the competitive situation surrounding the dealer location. If the Firestone Company is known to have two or three very active dealers in that same community, that seems to suggest that Goodrich would be a better product for a dealer to handle. If the condition is reversed, then Firestone might get the call.

If the dealer, as we have said so many times before here, has had a prior experience with some rubber com-

pany other than Firestone or Goodrich, and prefers that, he takes that.

Q. And in that instance does the Texas salesman attempt to get a personal interview for him with the account that he has chosen? A. If the dealer indicates such a desire, he gets it.

Q. In other words, the Texas representative will notify that supply point, that unsponsored brand, that here is a lessee or an operator that would like your products? A. Yes. I think though I had better continue to finish the answer to your question.

There are other factors that would enter into a decision as to what brand might be handled.. I think local people have a big bearing on that, on the value of one franchise versus another. One company may have a very active and a very cooperative, a very helpful local personnel, which would certainly influence a choice of supplier.

So you have all those factors. They are all taken into (2457) consideration by the dealer in conference with the salesman, in consultation with him. And every effort is made to arrive at the supply situation that will best fit the dealer's need.

(2458) Q. In those situations again if there is no sale consummated in whatever the particular period is, is the account referred to another supply point? A. Yes. Not another supply point but—

Q. Another supplier? A. Yes.

Q. That is true even if the original choice was an independent, is that correct? A. Yes. Those dealers who select another brand, they remain prospects.

Q. My point is that if they have determined in the first instance to purchase an unsponsored product, your representative arranges the initial introduction for that supplier. But let us assume that somewhere along the line

the sales attempt breaks down and the operator doesn't buy from that particular supplier? A. From that particular unsponsored?

Q. From that particular unsponsored supplier. In that event does Texas follow up after 60, 90, 120 days and attempt to find another supplier? A. The prime consideration there is to get the dealer into TBA business, because it is an integral and a necessary part of his operation. That is No. 1.

If we can't do it one way we want to do it another. It is that important.

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(2459) *Recross examination by Mr. Royall:*

Q. Does your experience indicate how many of your dealers buy unsponsored goods? A. General Royall, it is a fact that many—a substantial number of our dealers—don't buy any Goodrich products at all. And if you will forgive me the words, they don't buy any Firestone products at all. They buy brands that are totally unrelated to those two companies—many of our dealers. And most of our dealers—

(2460) Mr. Dias: I think that answered the question.

Mr. Royall: I don't know.

Hearing Examiner Kolb: Let the witness finish his answer.

Mr. Royall: Let the witness finish his answer.

Mr. Dias: He said "many." I believe that is a response.

Hearing Examiner Kolb: Let him complete his answer.

A. (continuing) And most of our dealers buy product that is neither associated with Goodrich or Firestone.

Ben Halsell, Recalled, for Commission—Recross

By Mr. Royall:

Q. In the case of those associated with Goodrich or Firestone, a very large proportion of them buy partially other than sponsored goods? A. The vast majority of those dealers buy so-called "unsponsored materials."

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(2462) Q. In your selection of a new filling station, a new service station, do you impose any condition of any character as to whether or not the lessee of that station—that is, the person to whom you lease it—handles Goodrich or Firestone or any particular brand? A. There is no imposition there whatever.

Q. This personal introduction that you make to Goodrich, or to whatever company you introduce, does that occur after you have discussed the matter with the service station, the manager or owner, to determine his preference for TBA? A. Yes, General. That is done afterwards. The desire there is to recognize the dealer's preference.

Q. You were asked by Mr. Dias about the service which your salesmen render to service stations who had TBA programs. Will you give that, please, in more detail? What service do your (2463) salesmen render to stations who handle TBA, regardless of what brand?

Mr. Dias: I object to the latter part, your Honor. That is leading.

Hearing Examiner Kolb: It is cross-examination.

Objection overruled.

Mr. Dias: This is a company official.

Hearing Examiner Kolb: I don't care whether it is company official or not. We are dealing with cross-examination now.

Ben Halsell, Recalled, for Commission—Recross

Mr. Dias: That will be your ruling continuously?

Hearing Examiner Kolb: That is my ruling.

By Mr. Royall:

Q. Will you state not in too great detail the various types of service that your salesmen render to these service stations which handle TBA? A. I am glad you made that clarification because it is a long story, otherwise. I will give it to you briefly.

There is the matter of the inventory control plan which the salesman cooperates with the dealer in administering. I believe it has been brought out in this testimony that our salesmen are permitted now to actually solicit orders from the dealer; orders designed to bring his basic inventory up to its proper designated level.

There are always questions of promotions and new (2464) products and there are meetings which the rubber companies hold from time to time, conducted by their executives and sales personnel.

Our people cooperate in announcing the time and place of those meetings and are, I think, quite influential in seeing that our people have the advantage of the promotional and product information that is provided there.

We all know that products well displayed are partly sold and our people have worked with dealers in assisting them in the formation of effective display materials which I suppose you might term a service rather than a sales item.

I know our people always stand beside the dealer. They stand at his side in his negotiation with his supplier.

Rubber companies sometimes get a little bit careless about supplies and orders and service and what not. It is the responsibility of the Texaco salesman to use whatever

influence he has with the rubber companies to get them to give this man the service that he needs to do the best possible sales job.

Q. How about the service and assistance rendered by the operator himself to the public? A. You mean the service and assistance rendered by the operator himself to the public? A. You mean the service he renders to the public?

Q. Do you confer about that? A. Indeed we do. It is one of our very most important activities among our merchandising and general salesmen. So many motorists don't know the Texas Company other than the Texas (2465) Company dealer and it is always important that the dealer put his best foot forward with the public to increase his repeat business and his overall volume.

Q. Does that apply to the TBA items, also? A. Yes, sir. As a matter of fact, General, there is a service that the Texas Company dealer advertises to the public known as Texaco Circle Service. You have no doubt seen that advertising in some of the national magazines.

Texaco Circle Service is nothing more than a service routine that the dealer is encouraged to perform with each motorist who drives into his yard. That service provides that the dealer go first to the left-hand side of the car, and while cleaning the left-hand side of the windshield greet the customer and take his order for gasoline.

Mr. Dias: I don't see the relevancy of this, your Honor.

The Witness: There is a relevancy.

A. (continuing) And then as the dealer leaves that side of the car and walks around to the left rear, where he puts the gasoline in the car, his first act there is to observe the condition of that left rear tire.

As he completes the circle of the car he observes the condition of all four tires. In the process of that he uncovers a need for tires, if one exists, and that circle service, that activity, provides the first step in the dealer's (2466) sale of tires.

So I think there is a connection between the service the salesman renders the dealer in teaching him that circle service routine, and reminding him how important and how valuable it is, and in the things we are talking about.

By Mr. Royall:

Q. Are there other examples except tires, without going into detail, affecting TBA? Other items of TBA? Does the service uncover the need of them? A. Oh, yes, there are many others. Fan belts, oil filters, spark plugs and the like. They are educational jobs that we do in connection with the sale of those items.

Q. Does that in general cover the principal items of service by your salesmen to the service station? A. That is a long story, General. It highlights it.

Mr. Royall: Your Honor, we will introduce later and go into that in more detail.

By Mr. Royall:

Q. You spoke yesterday, in answer to Mr. Dias, about dealers' training—and I think Mr. Bartlett also mentioned it. Is that tied in with the same sort of service? A. Yes, sir; it is. But it is a long story and it is pretty much a story of its own.

Q. I believe yesterday you were asked on what was designated as redirect examination, about the time spent by the various (2467) people in connection with the service on TBA. As I recall, you were not expressly asked

about merchandise salesmen as a class, but were asked just about the regular salesmen? A. Yes.

Q. What percentage of the time would you say the merchandise salesman gave to TBA? A. I think I said yesterday that salesmen in general gave 10 or 12 or 15 percent of their time to the TBA merchandising problem.

In the case of a merchandising salesman I am sure that figure is low.

Q. What would you say it is? A. I think it goes more nearly in the vicinity of 25 percent.

Q. You were asked yesterday also about a bonus given to salesmen and managers in connection with TBA. Is that a bonus or a prize? A. I think I called it a bonus yesterday. It is actually a prize.

Q. What is the maximum amount that anyone, regardless of position, can win in one year as such prize? A. It wouldn't be in excess of $100.

Q. Does it go as low as $15 or $10? A. I think some of the prizes go as low as $10 or $15; something like that. We have those contests once a year.

Mr. Dias: What was that?

(2468) The Witness: I think those contests are run about once a year. There is a very unimportant amount of money involved.

By Mr. Royall:

Q. Do you know from your knowledge and experience whether the dealers themselves, those that own and operate the service stations, know that you consider them independent businessmen? A. General, yesterday it was pointed out, I think, that—not pointed out but the point was made that maybe our communications were not good in connection with our dealers. I contend that our communications are good.

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Ben Halsell, Recalled, for Commission—Recross

(2469) *By Mr. Royall:*

Q. What proportion of the service station dealers do in fact buy non-sponsored products? A. The vast majority of them do.

Q. I believe you defined this morning the B and E accounts, did you not, which Mr. Bartlett— A. I don't believe I did.

Q. Mr. Bartlett was asked about it yesterday and referred it to you or Mr. Wolfe.

Will you tell me what they are? A. "B" account is a Texas Company consignee. An "E" account is a Texas Company distributor.

Hearing Examiner Kolb: Does the filling station come within either the "B" or "E" account?

The Witness: The answer is No.

The Texas Company consignee is a wholesaler. He sells to dealers.

The Texas Company distributor is a wholesaler. He sells to dealers.

Hearing Examiner Kolb: Which one is the filling station, which account?

(2470) The Witness: "C" and "D".

Hearing Examiner Kolb: "C" and "D" are filling stations?

The Witness: Yes.

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(2474) *By Mr. Royall:*

Q. The first matter relates to the question, Mr. Halsell, about active accounts. As to that I believe the time that has elapsed before you consider it inactive varies doesn't it? It varies from time to time? A. Yes, I think so.

Q. If an account becomes inactive what happens if they again buy merchandise? Does it again become active?

A. The account is inactive, if it then purchases, it then becomes an active account.

Q. Mr. Halsell, if a dealer, either when he first becomes a dealer or at any time—let's say first when he becomes a dealer, if he prefers some other brand other than Goodrich or Firestone, do you still take him on as a dealer? A. As I have said, our prime interest is in—

Q. Do you still take him on as a dealer? A. Yes.

Q. Are there instances of that? A. Yes.

Q. Does the fact that he does not designate either Goodrich or Firestone affect you in taking him as a dealer? (2475) A. No.

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Further redirect examination by Mr. Dias:

Q. You mentioned that salesmen are now permitted to solicit orders. Were you referring to TBA orders? A. Yes.

Q. Do the salesmen solicit orders for only the sponsored brands? A. If the salesman can perform a service for a dealer who is handling a product other than Goodrich or Firestone, he will do that.

Q. Is this information given to the dealer, that the Texaco salesman will write up his orders for him? A. Given to the dealer?

Q. Yes. To the operator. A. The dealer understands it.

Q. How does it understand that? A. Through practice.

Q. Is he ever told? A. Yes.

Q. By whom? A. The salesman.

(2476) Q. The salesman tells the dealer that he will write up or solicit orders for any type of TBA, regardless of the source of supply? Is that correct? A. He doesn't

solicit orders for companies other than Firestone and Goodrich. He will, though, perform a service for the dealer in transmitting.

Q. But he only solicits for Goodrich and Firestone, is that correct? A. He will do anything the dealer asks him to do, regardless of the brand handled.

Q. The question is will he solicit orders? You indicated earlier that he might not solicit orders for anything other than Goodrich or Firestone brands. The question now is will he solicit orders for unsponsored brands?

* * *

(2477) A. The salesman does not customarily solicit that type of order. However, he will cooperate with the dealer in transmitting an order wherever the dealer wants it sent.

By Mr. Dias:

Q. You mentioned when the rubber companies get careless the salesmen use their influence with the rubber companies, or whatever influence they have. A. Yes.

Q. In what respect do you mean? A. I probably used the improper word when I said influence. I probably should have said association or knowledge of, or acquaintance with.

Q. In connection with what rubber companies? A. With Goodrich principally, and Firestone.

Q. You mentioned the circle service and how it occurs that the salesman can detect his first possible tire sale. A. The dealer.

Q. In connection with that, do you have any idea of the percentage of sales of passenger car tires in stations as compared with truck, tractor and so on? A. My statement on that would be of little value to you. It would be a guess.

Q. Do you have any idea of the volume of tire business done through station outlets, overall tire business done through station outlets? (2478) A. I think the rubber people and their own statistics could give you an answer to that.

Q. You testified that the vast majority of your stations buy non-sponsored products. Can you clarify that a bit? Do you mean that they buy exclusively non-sponsored products, or some non-sponsored products? A. The vast majority of our stations buy some non-sponsored products. I might add, also that a great many of our stations buy no sponsored products.

Q. Isn't it true also that of the non-sponsored products, the greatest percentage is in the accessories field rather than tires or batteries? A. I think that's right.

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(2480) Thereupon,

MAURICE A. WOLFE was recalled as a witness for the Commission and, previously having been duly sworn, was further examined and testified as follows:

Redirect examination by Mr. Dias:

Q. It is our information, Mr. Wolfe, that at one time during the history of this TBA program, stations or outlets were assigned area-wise to either Goodrich or Firestone. Can you give us some information on that?

Mr. Royall: Your Honor, we object to that, unless it is within the period in which this case is being tried. I don't know what relevancy it has.

Mr. Dias: I was first trying to find out if that is so. And then if it was, when it was discontinued and why? I frankly have no further information on it.

Mr. Royall: I will make my objection, and if your Honor overrules it at this time and it appears it was before 1951, we will move to strike the answer.

Hearing Examiner Kolb: The objection will be overruled.

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(2481) A. Stations or dealers, as such, were never assigned.

By Mr. Dias:

Q. Let's use a different word. Were they nominated, areawise, city-wise, some territorial or divisional nomination? Is that correct? A. There was a time when we worked primarily with one company; secondarily with the other.

Q. When was that? A. 1940 to about 1948 or '50.

Q. '48 or '50, you say? A. Yes. I don't know the exact date. It was not later than 1950, and it could have been as late as 1948.

Q. Will you explain how that worked, Mr. Wolfe?

(2482) A. Well, as I said, we worked primarily—

Mr. Royall: Your Honor, I want to move to strike that testimony, and any further testimony.

Hearing Examiner Kolb: The motion will be denied.

A. Back in those days the territory where we worked primarily with B. F. Goodrich, they had their supply points set up and their distribution in that—

Mr. Royall: Your Honor, we have a continuing objection to this.

Hearing Examiner Kolb: You have a continuing objection.

Maurice A. Wolfe, Recalled, for Commission—Redirect

By Mr. Dias:

Q. Will you proceed? A. (continuing) —whereby we felt that probably they did a better job than maybe another supplier would there. Therefore, that being so we would work with them.

Q. With whom? A. With B. F. Goodrich Company in that given area unless the dealer said of his choice that he didn't want B. F. Goodrich. Then we would work with the other.

Q. How does that tie into the proposition that they were assigned or nominated by areas? Was it city-wide, state-wide, section of the country, or how did that work? A. Well—

Mr. Royall: Your Honor, I object to the question (2483) because he didn't say they were nominated by areas. He said it was a priority or preference given.

Hearing Examiner Kolb: Objection overruled.

A. In a division, in other words one of our divisions, maybe we would primarily work, or it could be a state area.

By Mr. Dias:

Q. When you talk about divisions you are referring to Texas division rather than the rubber company division? A. Texas Company division.

Q. And it could work out by a division or state area? A. Yes.

Q. Other than that, was the procedure in regard to the program the same? A. Yes.

Q. Commissions and type of merchandise and that sort of thing? A. Yes.

M. A. Wolfe, Recalled, for Commission—Redirect, Recross

Q. What type of outlets were involved in that? Were they all the outlets? A. All accounts.

Q. All Texaco accounts. Was this accomplished throughout the country or was this limited to East Coast or any particular place? In other words, when you say it was done by divisions, by divisions nationwide or a particular area of the country? A. It was nationwide.

(2484) Q. Nationwide? A. I would like to add this: I think at the beginning of this, in 1940, our sales personnel weren't fully familiar with TBA merchandising and by working primarily with one company as against another we were better able to educate our own people fast in carrying on the services from there on out.

Q. How did you educate yourselves? A. First of all the Texas Company sent a group of men to Akron where they spent time in going through the tire company sales training class. Then they go back and through those men try to carry that training into the field, through our own personnel into the field. That was the beginning of our activities in the TBA program.

Q. You mentioned a group of your men. What type personnel were they? A. They were the representatives, TBA promotion, from each division.

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(2485) *Recross examination by Mr. Royall:*

Q. Regardless of that fact, since 1950 has that system been in effect at all? A. No, sir.

• • •

George H. Glenn, for Commission—Direct

(2486) GEORGE H. GLENN was called as a witness for the Commission, and, first having been duly sworn, was examined and testified as follows:

(2493) *Direct examination by Mr. Dias:*

* * *

Q. Mr. Glenn, I would like you to take a look at Commission Exhibit 94-A and B.

Will you please state for the record your full name and position in the Texas Company? A. My name is George H. Glenn, and my position is manager of the marketing research division.

Q. Will you state the scope of your duties in that position? A. In that position my duties consist of directing and supervising those activities having to do with marketing research, sales analysis, and sales and budget forecasting.

Q. How long have you been in that position, Mr. Glenn? A. Since May 1, 1955.

* * *

(2494) Q. Among your duties in your current position are you responsible for the compilation of statistics? A. Yes, sir. Might I restrict that answer to statistics in the sales department?

Q. Would that include TBA? A. It may. I would like to qualify that answer in this way: Since I have been on the job, May 1, 1955, other than (2495) the development of statistics having to do with information we are furnishing here, I have had no concern with statistics for TBA.

Q. Other than those that you are now furnishing here, is that right? A. Yes.

* * *

(2502) Mr. Dias:

* * *

George H. Glenn, for Commission—Direct

(2503) I would like to have marked for identification as Commission's Exhibit 116 a tabulation showing by divisions, the number of dealers, consignees, and distributors located in each during the years 1952 through June, 1956, and the number of each handling Goodrich TBA products.

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By Mr. Dias:

Q. Mr. Glenn, was this tabulation prepared by you or under your direction? A. Yes, sir.

Q. In order to clarify this, will you explain how this tabulation is set up? A. The title of the form is "Total Texas dealers, consignees, and distributors by divisions, and number purchasing Goodrich TBA."

In the left-hand column all of the 15 divisions listed, and a line left for each of the years 1952 through 1956, including the half of '56.

There is then a group of a dozen columns over which is (2504) carried the title Texas Company dealers.

The first of those columns is entitled "Total Texas Company Dealers." That total is inserted for each division for each of the years for which the information is available and marked "NA" in those instances where it is not available.

The next column is headed "C and D dealers." Here again for each division it shows the number of C and D dealers combined for each of the years, and where not available, so stated.

The next group of eight columns, I believe, sub-headed "Number purchasing Goodrich," first has a column entitled "Tires and tubes"; secondly "Batteries and auto supplies"; and third, "Batteries"; fourth, "Accessories and other merchandise."

In each one of those columns is indicated the number of Texaco dealers buying Goodrich merchandise for which Goodrich pays us a commission, divided between the four categories. Except in the case of batteries and accessories and other merchandise for the years 1952, 53, and 54 they were not separated, but rather consolidated.

The next group of columns, comprising ten, carries a master heading of "Consignees" and a sub-heading of "Number purchasing Goodrich."

The first pair of columns is used to indicate the total number of Texaco consignees by divisions and for the individual periods for which the information is available.

(2505) The second pair of columns is used to indicate the number of consignees purchasing Goodrich tires and tubes. The third pair to indicate the number of those purchasing batteries and auto supplies. And the last two pairs to indicate the number of those purchasing batteries and accessories and other merchandise for those periods which are the year 1955 and the first six months of 1956 when information was available on that breakdown.

The last section to the right of the form, again carrying a total of ten columns, carries a master heading of "Distributors" and a sub-heading of "Number purchasing Goodrich".

The first pair of columns here again tells by divisions and by each of the periods indicated the number of distributors that the Texas Company has.

Secondly, the number purchasing Goodrich tires and tubes.

Third, the number purchasing Goodrich batteries and auto supplies.

Fourth and fifth, and for 1955 and 1956, the only years for which it is available, those buying separately batteries and accessories and other merchandise.

I believe I have explained the exception of these additional items. First, that it carries a summary, which represents a total of all that I have described for 1952, '53, '54, '55, and the first six months of 1956, and the fact that the figures are taken from December reports, except for the year 1956, which is taken from June reports.

(2506) Q. Are you finished? A. I believe so; yes, sir.

Q. In order to help us with this, will you refer to the lefthand side under "Boston", 1954. You have total Texaco dealers, 2,318. A. Yes, sir.

Q. Then under "C" and "D" dealers, 1,980. Does that indicate that there are 2300-plus dealers, and of the 2300-plus 1,980 are the "C" and "D" dealers? Is that correct? A. That is correct.

Q. What type dealers would the remainder be? A. Those not contracted to the Texas Company or not in the contract to the Texas Company.

Q. Would they be customers of consignees? A. They might be customers served directly by the Texas Company salary bulk plan; they might be customers in consignee areas, and they would predominantly be customers in distributor areas.

Q. When you show figures under the breakdown of tires and tubes, batteries and auto supplies and accessories, by adding those three columns you then get the picture as to the number of "C" and "D" dealers who bought during that year. Is that correct? By subtracting the total of those three columns from the total shown under "C" and "D" dealers? A. No, sir. I think I know what you mean and it is not right.

(2507) Q. There are some numbers left over and I want to determine what that amounts to. A. Would you repeat your question?

Q. Referring to the year 1954, under the column "Texaco Total Dealers" there appears the figure 2,318.

Mr. Royall: What are you referring to?
Mr. Dias: Boston.

By Mr. Dias:

Q. Under "C" and "D" there appears the figure 1,980. Explain, please, the difference between the total number of Texas dealers and "C" and "D" dealers. Or put it this way: Is it the explanation that you have given us? A. So far as I am concerned, it is the explanation I have given you.

Q. Under the heading "Tires and Tubes" there appears the figure 154, and under "Batteries and Auto Supplies" the figure 86. My question is, by adding the figures 154 and 86 do we get the total number of "C" and "D" dealers who bought TBA products in that particular division during that particular year? A. You have asked several questions there, Mr. Dias, to which I can't give you one answer, to be very honest with you. I will try to answer them.

Q. I don't want you to be confused. A. I am not confused but I would rather answer them in parts.

(2508) Q. All right. A. No. 1, you cannot add the number under "Tires and Tubes" and the number under "Batteries and Auto Supplies" and get a true number of the total who are buying TBA, because each dealer is qualified under each category that he bought under. So there were 154 bought tires and tubes, and maybe the 86 who bought batteries and auto supplies are that same part of the 154 or they may not be. They may be entirely different dealers.

The second part of your question is answered by my explanation previously that the figures shown are as of the month of December.

Q. That is the month of December only? A. Yes, sir.

Q. In other words, this isn't a report for the entire year? A. No, sir.

Mr. Dias, may I make this qualification, too, as to the period. In 1952, as I remember, that figure that we would take for the month of December would represent those accounts who bought in December, November, and October.

In 1953—frankly, I have this all explained on your next statement, and I am trying to remember it—for a later period, let me put it that way—I don't want to be specific as to date—for the next period the number represents the dealers who bought within a quarter, or within 90 days.

And for 1955 and 1956 it represents the dealers (2509) that bought in a given month for which the count was made, or in this case the month of December.

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(2510) *By Mr. Dias:*

Q. I ask you, Mr. Glenn, is this identical in all respects to the preparation and interpretation as you gave us in connection with 116? It is prepared the same way, is it? And we read the columns in the same fashion?

Your explanation of 116 applies to 117 too, does it not, with the exception that one deals with Firestone and the other with Goodrich? A. Yes, sir; it does.

• • •

(2511) Mr. Dias: I would like to have marked for identification as Commission Exhibit 118 a tabulation showing total (2512) number of Texaco dealers in the United States, with a breakdown as to "C" and "D" classification for the years 1952 through June 1956, and the number of each purchasing Goodrich TBA products.

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By Mr. Dias:

Q. Mr. Glenn, will you state whether or not this tabulation was prepared by you or under your direction? A. Under my direction.

Q. Will you explain the tabulation, please? A. Here we have a statement entitled "Statement showing total TT Company dealers", which means the Texas Company dealers in the United States, and the number of "C" and "D" dealers purchasing Goodrich products.

As contrasted to the previous statement this is (2513) not by divisions but this is a summary for the country as a whole.

In the left-hand side we have a column headed with the word "Year", subcaptioned indicating each year 1952 through 1956, and further subcaptioned indicating each month of the year excepting 1956, where it indicates just the first six months.

The next pair of columns is entitled "Total TT Co. Dealers" which again means the Texas Company dealers. It shows for each of the months during the period covered, for which the information is available, the number of Texas Company dealers.

The next pair of columns is entitled "C Dealers" and it shows for each of the months of the period covered the number of the Texas Company dealers that are classified as "C" dealers.

The next pair of columns is entitled "D Dealers" and for those months for which the information is available it shows the number of the Texas Company dealers which are classified as "D" dealers.

The next column is headed "Total C and D Dealers" and represents the total of the first and second columns, C and D dealers, when there is a figure in each of those columns.

The next section carries a master heading of (2514) "Number Purchasing Goodrich" and is divided into four subsections. The first is three columns headed "Tires and Tubes", with a subheading "C, D, and Total".

For each of the months covered there is a figure indicated under column "C" and column "D" and "Total" of the two representing the number of "C" or "D" dealers who in each of those months bought a dollar's worth or more of Goodrich tires and tubes on which Goodrich paid the Texas Company a commission.

The next three columns entitled "Batteries and Auto supplies" again broken down into subheadings of "C, D, and Total" indicate for each month of the period covered the number of dealers in each of the months who bought one dollar's worth or more of batteries and auto supplies from Goodrich on which Goodrich paid the Texas Company a commission.

The next group of three columns is headed "Batteries" and subheadings "C, D, and Total."

The next group of three columns is headed "Accessories and other Merchandise" and "C, D, and Total". However, we note that data for these two groups of columns was not reported separately during the years 1952 through 1954, so it is therefore only recorded separately for the years 1955 and the first six months of 1956.

The statement carries the further data in the form of a memorandum. The number of dealers purchasing TBA in each (2515) category arrived at is as follows: Year 1952 to May 1953, inclusive, the monthly count indicated is based on the number purchasing $1 or more during a three-month period ending with the current month.

Next, for the period June 1953 through December 1954, inclusive, quarterly count based on the number purchasing $1 or more during three-month's period ending with June, September, December, and March.

Next, that for the period January 1955 to June 30, 1956, inclusive, monthly count based on number purchasing $1 or more during each month.

A further note reading "Grand Total dealers purchasing all TBA items combined is not possible as dealers who purchase in two or more categories are duplicated for each category in which they purchase."

Finally, the designation "NA" appears on the report in a number of cases and is explained as meaning "Not available."

Q. Mr. Glenn, would you mind explaining for the record the method by which we can use document 118, in view of the fact that Commission Exhibit 116, and Commission Exhibit 117 for identification, were compiled during the month of December, or taken from figures shown during the month of December? Will you explain how we can use this chart, 118, to transpose figures and get similar information for 116 and 117? (2516) A. Frankly, I am a little bit at a loss to understand what information you want to get.

For example, on Exhibit 116, on the bottom, a section of the summary of all divisions, the figures as to the total Texas Company dealers for 1952 reads 39,045 and is the same figure that we find for December on Exhibit 118.

And then following next in 1953 we find 37,385, and that is the same on 118.

Then getting into the category of "C" and "D" dealers we find a figure on 118 of 11,858, in 1952, and we find that in the Exhibit 116 our figure is a combined one. I would like to offer an explanation as to the combination.

On Exhibit 118 you will note that for each of the months except December, during 1952 through 1956, we don't have available a number of "B" dealers. We don't count them. So that when we get over to this statement

here it was necessary to combine it. This count of dealers is made twice a year.

Q. Will you explain that exhibit a little further? A. There is an additional point of information. For the purpose of using the two reports together it is possible to use from Exhibit 116 the information shown in the summary in application to the columns with which you may be concerned and as are covered in the same manner in both reports, the individual monthly figures as shown on Exhibit 118.

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(2517) *By Mr. Dias:*

Q. Mr. Glenn, is Commission Exhibit for identification 119 similar in method of preparation and interpretation—is it similar to Commission Exhibit 118? A. Yes, sir.

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(2521) *Cross-examination by Mr. Royall:*

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(2523) Q. There was introduced Exhibit 114-A through D showing the annual TBA purchases and the commissions paid by Goodrich to Texas for the years 1952 through June, 1956, and that showed for the year 1952 a total commission for all divisions of how much? A. $1,090,583.

Q. Is that correct? A. That is what it says there.

Q. Is that a gross figure on commissions? A. Yes, a gross figure.

Q. It makes no deduction for expenditures and costs in connection with the plan, does it? A. No, sir.

Q. Are you familiar with the computation made in 1952 as to the commissions on all TBA plans during that year, the expenses incurred, and the net left after expenses? A. In total?

Q. In total, yes. A. In total, yes.

Mr. Dias: I object. We are going beyond the scope of the direct.

(2524) Mr. Royall: No, sir. I am going to show what that means.

Hearing Examiner Kolb: Are you going to refer to another exhibit?

Mr. Royall: One which he introduced and related to this.

Hearing Examiner Kolb: I will overrule the objection.

By Mr. Royall:

Q. Have you an opinion based on the investigations that have been made as to approximately what proportion of the gross commissions received from TBA is consumed by expenses and costs? A. Yes, sir. The figure runs around 70 percent or thereabouts.

Q. Seventy percent of what? Of costs? A. Of costs, yes sir.

Q. And expenses. Leaving approximately 30 percent of the gross commissions as earnings? A. Correct.

* * *

(2530) *By Mr. Royall:*

Q. From the other side of this picture I hand you Commission Exhibit 118. I think I have already asked you if the number of "C" stations have increased? A. Yes, sir.

Q. You say that the number of "C" stations purchasing Goodrich are arrived at on the basis of whether they purchased in some years only $1 a month or more, and in some years only $1.25? A. Any time a number appears it is based on $1 or more.

Q. There is nothing on this chart to indicate that any of those stations did not purchase amounts or nothing on there to indicate that they did not purchase large amounts of other products, is there? A. No, sir.

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JOSEPH A. HOBAN was thereupon called as a witness for the Commission, and having been first duly sworn, testified as follows:

(2558) *Direct examination by Mr. Boyd:*

Q. Mr. Hoban, will you give us your full name please? A. Joseph A. Hoban.

Q. With what company are you connected? A. I am Vice President of marketing for the B. F. Goodrich Company.

Q. Where is your office located? A. My office is located in Akron, Ohio.

Q. How long have you been with the B. F. Goodrich Company? A. Thirty-four years.

Q. How long have you held your present position? A. I was elected to my present position in June of this year—1956.

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(2259) Q. Yes. A. My present position is a corporate-wide position where I am a marketing advisor to all divisions of our company on any of their sales and marketing problems. I have no direct line authority in my present position. I am a staff marketing Vice President.

Q. And this is since June of this year? A. Yes, sir.

Q. What about prior to that time in the position that you held before June? A. For the period 1953, June, to 1956, I was Vice President in charge of replacement tire sales.

Q. In that position what were your duties and responsibilities? A. Complete authority on all matters pertaining to policy and programs, prices, advertising, selling. Complete charge of the (2560) replacement tire division of our company.

Q. Then with respect to the TBA program will you describe your duties in that respect? A. I had all the contacts with the home office of the Texas Company that were involved in the discussion here, and I was responsible for the assistance in developing the programs which are used and in the approval of any and all programs of promotion and selling effort and distribution. Every phase of the TBA program came under my personal direction.

* * *

Q. Mr. Hoban, could you tell us briefly the line of products which are manufactured by the B. F. Goodrich Company? A. Well, I wouldn't be so bold as to be able to name them.

Q. General category. A. Our company is a widely diversified company, as you gentlemen know. We are engaged in the manufacture of tires and (2561) tubes of all types, kinds, and descriptions, for passenger cars, for trucks, for farm vehicles, for industrial vehicles, for airplanes, for vehicles that operate in the mines. Every type and kind of transportation, B. F. Goodrich builds a tire for that particular type.

In addition to the tire end of our business, we are widely diversified. I don't know whether you wish me to go into that or not. We manufacture an entire line of industrial products. We have an industrial products division, hose, belting, packing, all the things of that nature.

We have a footwear and flooring division that manufactures flooring. In addition to that footwear of various types and kinds, sport footwear for good old snow storms

and rain, that some of you anticipated yesterday and didn't happen. In addition to that we have a chemical division involved in the production of many various products in the chemical field.

We have an aviation division, or company, involved in the manufacture and selling of aviation products other than tires, and tires they sell, too.

I think that covers most of them. I don't know that I missed any. It is a very widely diversified company.

Q. The company does purchase and resell some products, isn't that true? A. Yes, sir.

Q. Will you tell us the category of products of that nature (2562) that they buy and resell? A. Well, if you are interested largely in discussing TBA, I can answer that pretty easily for you.

We purchase batteries that are sold through our dealer outlets across the country. We purchase a large number of smaller auto supply items. We have spark plugs, we have oil filters. It would be much easier for me to give you a list of all the things because I don't offhand remember them. But a complete auto supply line that we make available to all of our dealers as part of our B. F. Goodrich franchise.

Q. Then with respect to these TBA items that you buy and resell through your outlet, are any of them sold under the brand names of the B. F. Goodrich Company, and if so, which ones and what are the brand names? A. Our battery is sold under the B. F. Goodrich brand name. The other items that I mentioned like spark plugs and filters are sold under the national brand that we carry.

Q. That you carry? A. That we stock and sell. Do you wish me to mention the name to you?

Q. No. A. Spark plugs, we do not have it under our own brand. We have a national brand. Champion, if you wish to know the name of it. We sell Champion spark plugs.

Q. Of the TBA items that you resell, are batteries the only (2563) one of the items on which you have your own brand name? A. I don't know whether you would call it a brand name on the fan belts. It is on there. Manufactued by B. F. Goodrich. Would you consider that? Any of our rubber products might have it. Some of our radiator hose is branded, some isn't. But we are inclined to national branded products of other than our own manufacture, if that is what you are trying to get at.

(2564) Q. Just to get me clear on this point: You do not sell any other TBA items besides batteries under any brand name other than B. F. Goodrich Company's name, do you? A. No, sir. We sell only our own brand of batteries.

Q. Then none of the other TBA items are sold under any other brand name owned by Goodrich. That is what I am trying to get to. Is that right? You sell them under the names of the manufacturer from whom you purchased them? A. Yes, sir. The name of the manufacturer from whom we purchased them, like Fram filters and Champion spark plugs, as two examples.

Q. And you sell to all company outlets, B. F. Goodrich Company does. Is that right? A. B. F. Goodrich Company sells to dealers across the country, not only service station dealers, as we speak of them, we sell to tire dealers, car agents, service station operators. A wide variety of types of people sell tires, you know, and we move into every channel of trade where tires are sold.

Q. That is what I was coming to. I wanted you to describe the other types of outlets that you sell to besides oil company outlets. A. We don't speak of them as oil company outlets because—

Q. How do you speak of them? A. We speak of them as service stations. Some of them are owned entirely by the man who is operating, and all he does (2565) is pur-

chase his petroleum products from some petroleum company. So we call them service stations. We make no distinction, you know, when we are selling a Texas dealer over and above selling a Shell dealer as far as the B. F. Goodrich franchise is concerned. When we move in we move in to the dealer with our regular program.

It is no different when we are selling a Texas Company dealer as it would be if we were fortunate enough to snare a Sinclair or a Shell dealer, which we have in many cases.

Q. In that connection, you do sell, though, do you not, to say distributors and consignees of the oil company. I want to make sure that you sell to outlets of the oil company other than at the retail level. That is true, isn't it? A. Oh, yes, sir. We sell to a classification known as consignees who in turn sell to their own outlets or possibly to other outlets designated for them to serve.

Distributors, too, of the Texas Company.

Q. Mr. Hoban, will you tell us the outlets, the company-owned outlets that the B. F. Goodrich Company sells its products through? A. I don't know that I understand your question. What do you wish me to tell you? Are you referring now to our company-owned stores?

Q. Yes, and any other company-owned outlets that you sell your products through, besides stores. Are there any others? (2566) A. You will have to elaborate on that a little for me. I don't know that I understand your question.

Q. I am trying to get some idea of the numerous outlets through which B. F. Goodrich products are sold, which outlets are owned by the company. A. You are speaking of B. F. Goodrich tires now? You are talking about B. F. Goodrich tires?

Q. B. F. Goodrich TBA; yes, sir. A. We have a number of company-owned, completely-owned stores, through which we sell our tires and our complete line of products.

It includes many things that the ordinary service station would not purchase and it would have no place to be in that business. Certain types of our stores are more like department stores than they are service stations. So we sell a much wider variety of merchandise in our own company-owned stores.

Q. Right at that point, at those company-owned stores, do they sell at retail or just— A. Our stores are in business primarily to do a retail business, and wholesaling is but very minor; in some cases non-existent altogether and in other cases they serve as emergency points for our dealers.

Q. When you speak of dealers in that sense you don't mean company-owned dealers. You mean dealers otherwise that you sell to, independent dealers? (2567) A. Yes. Dealers of all types and kinds. A store might have a tire that a dealer who has a connection with, or has no connection with at all, an oil company, might have a sale for. And we use the store as a supplemental service when ever that emergency arises. But our store is predominantly and primarily in the retail business. The little service they render is emergency pickup service for the dealer trade generally.

Q. Is there any other type of company-owned selling outlet in the Goodrich Company besides the B. F. Goodrich stores? A. None that I know of, sir.

Mr. Barton: Are you referring to retail?

Mr. Boyd: I was including other than retail.

Mr. Barton: You mean distribution?

Mr. Boyd: Yes.

Mr. Barton: Branch operation?

Mr. Boyd: Yes, company-owned.

The Witness: Oh, thank you for having me get a better understanding of your question.

You are talking now about our wholesale districts?

For instance, you can start right off, if you want to get a picture of our company, if that is what you are after, we have five tire manufacturing plants. They are located in Akron, Ohio; in Oaks, Pennsylvania; in Tuscaloosa, Alabama; in Miami, Oklahoma; and in Los Angeles, California.

(2568) Tires are manufactured in all of those plants. Shipments are made from those points principally—not entirely but principally—to what we speak of as merchandising warehouses, and we have some fifteen merchandising warehouses. In addition to the merchandising warehouses, tires are shipped from factories or from the merchandising warehouse to some 31 districts around the country.

From those factories or merchandise warehouses or districts tires are shipped to our stores and to our dealers. In addition to that, dealers are served from a few warehouses, so-called, company-owned, and emergency pickup service is rendered to dealers from some of our stores.

Does that give you a picture of our distribution?

By Mr. Boyd:

Q. Yes, sir.

In some of these documents I believe, that are in evidence, the term "BFGS" is used. What is that? A. B. F. Goodrich store.

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(2570) *By Mr. Boyd:*

Q. In your description a moment ago of the channels through which the tires manufactured by the company move, you listed merchandise warehouses and there were 15 of them. Do they sell or distribute only to the 31 districts? A. No, sir. I explained to you that the merchandise warehouse would ship to stores, to dealers, to districts, and possibly to the few warehouses that we have over and above the districts that I mentioned.

Q. Then the 31 districts, would those be district warehouses? A. Those are district warehouses and usually offices, district sales offices and warehouses. They ship to dealers, to stores.

Q. What about independent wholesalers, jobbers of B. F. Goodrich line? Where do they fit into the picture? Do you sell through independent jobbers and wholesalers? A. Yes. We have a regular wholesaling tire franchise and the wholesaler would be set up in an area. It might be part of a big city, it might be an entire county. It might be several counties. It depends upon car registration in the area.

And he would actually sell and deliver our tires to dealers in that area. That is a method of servicing smaller dealers.

Q. Would these independently owned wholesalers and distributors sell to oil company outlets? (2571) A. Service station outlets? Indeed they do.

Q. That are under the commission plan? A. Yes, sir, both under the commission plan and not under. They serve small dealers and service station dealers falling in that general classification.

Q. Mr. Hoban, I hand you a document which has been marked as Commission Exhibit 128-A through F, which is entitled "B. F. Goodrich Tire Dealer Franchise."

I believe Commission's Exhibit 128-E and F says "associate agreement." Which one of those two, if both of them, are used with oil company outlets? A. You and I speak of the same things under different names. Service station outlets, I speak of them, and both of these contracts are used with what you call oil company outlets and what I call service station outlets.

If we are serving the account directly, from one of these districts that I spoke to you about, as an example—

Q. A company-owned— A. A district.

Q. (continuing)—outlet? A. I don't speak of our districts as being company-owned because the building might be owned by John Doakes. It isn't like a company owned property of any kind. It is a place where we pay rent in most cases and store our products and have the offices for the area and have that company operated, if you (2572) would speak of it that way, that company-operated district, if we are soliciting the business and servicing it from that point, this is the regular dealer or direct dealer franchise.

Q. In other words, Commission Exhibit 128-A through D are the franchise agreement, tire dealer? A. That is right. If one of these wholesalers that you spoke about.

Q. Independent wholesalers? A. Independent wholesaler. If he was supplying and servicing, he would have this associate dealer franchise sign, and this record would come in to us.

Mr. Boyd: That is Commission Exhibit 128-E and F.

By Mr. Boyd:

Q. And independent wholesaler would have a franchise agreement? A. He would sign the one that is signed by all direct accounts, that one that you have in your hand.

Q. Commission Exhibit 128-A through D.

Joseph A. Hoban, for Commission—Direct

Mr. Hoban, I want some information about the sales department, that is, the selling end of the B. F. Goodrich business as it relates to the TBA program. Will you describe that for us from the top down to the ultimate sale through the service station outlet? A. I don't know how detailed you wish me to go. But in my immediately previous position of vice president of the tire (2573) division I handled the so-called home office contacts with the Texas Company. Moving from that particular operation we have under the tire division vice president a general manager of sales.

Under the general manager of sales we have 31 district managers. Under those district managers we have wholesale supervisors, truck and bus tire supervisors, farm tire supervisors, and in many districts petroleum representatives.

Under the various classifications district managers direct or wholesale supervisor in most cases, we have what we call territorial managers. They are called wholesale salesmen.

Q. How many would there be? A. As of right now?

Q. Yes. A. The most recent time I can remember?

Q. Yes. A. Close to 400.

Q. You mentioned petroleum company representative, I believe you have it as coming under the category of district managers. How many are there? A. Petroleum company representatives?

Q. Yes. A. As of today?

Q. Yes. A. We have under the merchandising manager, as we have (2574) again resorted to calling him in Akron, we have a petroleum sales manager.

Q. Excuse me, if I may interrupt you. You said merchandise manager. Is that his correct title? A. It is again. You are asking me as of today. Under the tire division vice president today we have a merchandise manager. The

merchandise manager has under him certain departments, one of which is the petroleum sales department. The manager of petroleum sales reports to him.

We have in that department a certain staff. I would guess, out of Akron, on field men, we might have four and then stationed in the field in zones we might have maybe as many as ten. And in districts, depending upon the volume of petroleum business being done in the district, we might have on an average maybe one in the district.

Does that give you the general idea that you are after?

Q. I believe so. A. You see in our business we serve the petroleum accounts that you are speaking of here in the same manner with our organization that we serve a regular dealer—our territorial managers make the franchise presentation, they sell the goods, our supervisors assist. We handle them just the same as they are. They are one of our dealers, just the same as if they had no connection in any way. I will explain the difference later on. But as far as our selling is concerned, our entire (2575) field organization works right with the dealers. There is no distinction at all. They get full credit for them whether they are an oil company account or a contractual account of ours or not. It makes no difference.

(2576) Q. Then am I to understand from what you just said that the salesmen of the B. F. Goodrich Company, outside of the petroleum company representative's jurisdiction, also sell to oil companies or service station outlets? Is that right? A. The salesmen?

Q. Yes. A. The territorial manager?

Q. Yes. A. The territorial manager is the man who does the real selling. He is the fellow who sells the dealers. He makes the presentation, he solicits the account, and he is the fellow that is primarily responsible for the dealer outlet. It is his in his given little area. He is kind of like a little king, that territorial manager. That is

why we designate him with the term territorial manager. He is really a boss-man in his area. He is responsible for the complete establishing of new accounts and the promotion of business and everything else.

He gets assistance, if you wish me to go into that. He is the man who does the selling.

Q. In other words, he is the direct contact man. There is no other salesman under him that would be doing the selling? A. No, sir. There are others under him that deliver merchandise, but you don't want to go into that I suppose.

Q. No, sir. A. Like supply points.

(2577) Q. On these territorial managers— A. We call them territory managers.

Q. On these territory managers, just how are they compensated for their sales activities? A. All of the territory managers operate on a fixed salary on bonus. And of course their traveling expenses are compensated for. So they operate on salary and expenses, plus an annual bonus.

Q. Is the annual bonus tied to their amount of sales they do with the service station outlets? A. Not as far as any identification of a service station outlet. They have a quota and their quota is established on the car registration and the potential in the particular territory assigned to them. Whether they get some portion of that through service station dealers or none, that varies very widely. It is a question of getting it from dealers, whether they happen to be service stations or whether they happen to be garages, or specialized tire outlets or car agents, whatever they may be. It is tire dealers. They have a definite quota that is given to them, and the attainment of quota is one of the factors in our bonus plan. Not the only factor, but one of them.

Q. One of the items you mentioned is potential in the territory assigned. Does that include the outlets of the Texas Company, say, that are in that area? A. We would have no calculation of any Texas Company. The (2578) way we arrive at quotas, Mr. Boyd, there is a certain car registration in a given area. We draw a circle around this area. There are so many cars, so many trucks, there are so many farm vehicles, so many industrial vehicles in this territory manager's assigned territory. That constitutes a certain definite potential of rubber business. We know what it is for the industry. We know what we would like to get for ourselves. And the difference between what exists and what we would like to get for ourselves and what that quota is, Mr. Boyd, is the common sense that you have to use in arriving, with the experience you have, at the handling of quotas for salesmen.

Q. Still in that connection, is it one of the factors, though, of the number of Texas outlets that would be part of his potential within his territory? Isn't that taken into consideration, in setting his quota? A. No. The number of dealer outlets in his territory is not the guide. The guide is the number of cars which establish a potential for the industry.

In some areas you deal with large dealers. Thereby you get your potential of the industry availability through a small number of accounts. In some other area you might deal through a large number of accounts. We deal strictly and entirely on the basis of the potential that is available in the area. Whether a salesman elects to get it from a smaller number of accounts or larger, or whether he gets it due to the availability (2579) of a lot of small dealers because he can't secure and there doesn't exist a large dealer, that is his problem. That is why he is a territorial manager.

Q. Could you give us some idea of how often these territorial managers call on the oil company outlets or Texas outlets in this instance, in his territory? A. You can't set up any exact basis of calling on Texaco outlets. You would have to go into a certain section of the country and you would have to find out what the salesman's territory is, and exactly how many active accounts he has and what the routing that is established for him by his district manager and the supervisor and himself, just how frequently that enables him to contact. If you want me to give some general ideas I will be glad to. But you have to be specific when you are routing salesmen. You can't route salesmen on just any broad general idea. You have to get right down to cases. If you work in North Dakota the problem is entirely different than in the City of Washington. It is just an entirely different problem of dealing with them. So you have to get right down to cases.

Q. His immediate territory manager or salesman, who directs and routes him, who does he report to? A. He reports, generally speaking, to the district manager. In some cases, however, the district manager has a wholesale supervisor and he designates in some cases the actual reporting (2580) of territory managers, some number of them in his district, directly to that supervisor. So we might have 15 salesmen in a given district and the district manager might have reporting directly to him eight, and to the wholesale supervisor seven. But in our organization thinking the territory managers report to district managers. Actually, in many cases some of them report to the wholesale supervisor, who in turn reports to the district manager.

Q. And there are 31 district managers? A. Yes, sir.

Q. From that point it goes on up to the general sales manager? A. The district manager? No, sir. The district manager reports to the zone manager. We have five

zone managers. The zone manager reports to the general manager of sales at the home office, the five zone managers.

Q. As I understand that, the general manager is directly under the vice president, tire replacement? A. Yes, sir.

Q. Mr. Hoban, could you tell us as to the line of tires sold to the service station outlets by the B. F. Goodrich Company? By that I mean the categories quality-wise and price-wise. Are they, say, three different qualities in price lines? A. That is quite a complicated subject indeed. The B. F. Goodrich brand tires start with what is spoken of in the trade as premium tires. It is our Lifesaver Silvertown tire. I (2581) may have to go back to explain to you the premium tire.

Q. Just price-wise we are interested in, the five categories. A. Then you move from that particular tire down to the so-called hundred level, as we speak of it in the industry, which is the quality of all original equipment tires, our own original equipment tires. From that point we drop down to a tire that is spoken of as an 80-level tire. That would be so-called second-line tires that we speak of. From there we drop down to a third line of tire that would be about a 70, or 75, level tire.

Those tires are made in various types of materials. If you go up to the premium tire, the No. 1 that I gave you, the Lifesaver tire, it is made in nylon car case, and it is made in rayon. It is made in all black, and it is made in black and white, And of course it is made in many sizes. Do you wish me to enumerate some of those?

Q. No. A. Then you move down to the hundred-level tire and it is made in nylon, and made in rayon. I might go back and say to you that the Lifesaver tire is made in tubeless construction only.

We move down to the hundred-level tire and we have that in nylon, rayon, black, and in white. In addition to

that, we have that in tubeless construction, and we have that in tube-type tire.

Then you move down to the second line tire, and we have that in black and in white, made only in rayon. (2582) You drop down to the third-line tire, and we have that in black and in white, only in rayon.

Q. Are all of these categories of tires sold by B. F. Goodrich to oil company outlets? A. Yes, I would say all of them are sold. Not necessarily every one of those tires in every station, as that would not be suitable in some cases for a man to stock every one of those particular tires. But across the country all of those tires are sold through some service station outlets.

The percentage breakdown varies depending upon the dealers, the location, and the area which he serves, and many other things that go to merchandising tires.

Q. Now as to the batteries that are sold to oil company outlets, are they of one quality only or is there more than one quality? A. No, we have several qualities of batteries. I don't carry it in my mind as well as I do the tire end of our business. But in a rough sort of a way, I would say to you that we possibly have five price lines. If you are interested, I would ask to give you that correctly, if you wish it.

It is shown on our price list. I think there are about five lines.

Q. Referring back for a moment to the tire question, Mr. Hoban, could you give us some idea as to the extent to which truck tires are sold through oil company outlets as compared to (2583) passenger tires? A. Oh yes, Mr. Boyd. Service station outlets are very fine places to sell passenger tires and very poor places to sell truck tires. The percentage of truck tires flowing through service stations is very small in comparison to passenger tires. Those

truck tires that are sold through service stations are the smaller type, for the pick-up vehicle and so forth.

When you get into big truck tires you are getting into specialized tire selling which has very little place in service stations.

Q. Could you give me some idea percentage-wise on that question?

Mr. Barton: What do you mean? I don't understand your question.

(2584) *By Mr. Boyd:*

Q. Are 90 percent of passenger tires sold through oil company outlets, more or less, and the balance truck tires? A. That is a very difficult question. You are wanting it entirely for the whole United States? Is that what you are thinking of?

Q. Yes, sir. A. You see some particular dealer that you might go out here to in Washington might sell one percent truck tires and 99 percent passengers. Then you might find somebody down in the smaller market that might go five percent on truck or five times more than the Washington residential dealer would do.

If you are wanting a figure just to kind of have in your mind, consider that it might be not much more than five, six, seven percent.

Q. On the sale of tires or TBA, I believe that the record indicates that quantity discounts are available to some extent on the dealer's purchases. Is that right? A. Are you speaking of service stations?

Q. Yes, sir. A. That has very little interest to service station dealers because their volume of business is not large enough for any quantities to get into the picture to any extent. Very minor.

Q. But if their volume of purchases is sufficient to qualify, they are included? (2585) A. Oh, yes, indeed. They get everything a regular B. F. Goodrich dealer does that has no connection with the oil company of any kind. The same thing exactly. Everything is available to them. There is no difference of any kind. But their volume, by the nature of their business, when you are talking about a thousand dollar dealer you are not talking about quantities and getting into quantity prices.

Q. Mr. Hoban, as to this TBA program with oil companies, and particularly the Texas Company, would you briefly describe it in your own words for us? First tell us, if you know, how did it get started? Did you start it? In other words, did you take the initiative in proposing it or did Teaxs take the initiative in proposing it?

Mr. Royall: Your Honor, I object to the inclusion of other companies in this question. I don't think he meant to put that in. I think he just dropped it in accidentally.

Hearing Examiner Kolb: I will sustain the objection to the question asked as to other companies unless Texas is specified. The objection will be sustained.

By Mr. Boyd:

Q. As to Texas, tell us. A. As to Texas I had quite a hand in the Texas relationship. B. F. Goodrich has been particularly interested in service station outlets as future development for the sale of passenger tires. We rather thought that some day tires might become more (2586) or less a convenienced goods item rather than a specialty product as they have grown up being.

We like the idea of a neighborhood service station and the opportunity to bring a passenger car tire service closer

to the automobile owner and his home, a place where he would normally trade.

So I guess in all probability on many occasions we talked to the Texas Company and tried to encourage them to speak with their organization and get their dealers into the tire business.

As, what is this new show in New York? The Reluctant Bride, or something—they were not hasty in getting into the tire business; they were slow. They permitted us to conduct tests in various areas of the country. And we conducted tests to establish with them how beneficial this would be for their dealers.

By Mr. Boyd:

Q. Was this only on tires or on the complete line? A. Primarily tires and batteries in these testing days that I am talking to you about. And some of the successes that we had developed, finally Texas Company's realization that maybe it did have some part. But if you want to get into the real situation, the Texas Company and the service stations never blossomed in the tire business until World War II, when rationing and limitation went on and suddenly the car owner (2587) needed a friend to keep those tires on his car running during this indefinite period and he appealed to the neighborhood fellow who was close to him and who could watch his tires and service them and so forth, and during that period of rationing and restriction two things happened: The consumer found that the service station could be of a real service to him in looking after his tires and batteries, and the service station operator found that this is something I have been overlooking here, this golden kind of tree here of opportunities to sell tires.

As a consequence of that since the World War II, since the period when rationing and price controls went off, I

guess about 1946, as I remember it, the service station has blossomed as a natural in selling passenger tires.

Q. Was the Texas Company the first company that you undertook this type arrangement with?

Mr. Barton: Objection. If we are going to keep out other oil companies we might as well go down the line on it.

Hearing Examiner Kolb: The objection will be sustained.

By Mr. Boyd:

Q. Mr. Hoban, I want to refer you to Commission's Exhibit 3-B, which is the second page of the Commission's agreement between B. F. Goodrich Company and the Texas Company. In the first complete paragraph appearing on Commission Exhibit 3-B, would you read that paragraph for me? A. "Said commissions will be paid upon all net purchases made (2588) by all of the above mentioned classifications of Texaco accounts, excepting, however, such "D" accounts as are not approved by the B. F. Goodrich Company and such "C" accounts where their location would cause a conflict with our already established distribution."

Q. Are you familiar with what a "C" account is and a "D" account? A. Yes, sir, yes indeed.

Q. Would you explain that exception that is in this paragraph where it says, "Excepting, however, such "D" accounts as are not approved." A. That is a very easy thing for me to explain to you. The Texas Company have many thousands of accounts. I would make a guess maybe 37 or 38 thousand accounts. Many of those accounts are in the petroleum business as a very minor part of their other operations, like car agents, like commercial garages, like service stations in commercial areas that service

trucking accounts primarily, general stores and roadside stations and so forth. Those are "D" accounts, those wide number of all types of accounts.

The Texas Company, they presumably, before they suggest an account to us, screen them to see whether they have TBA potential. But sometimes the screening job they do is not as complete as the screening job we do.

Then in many cases the "D" account may be a very very small merchant whose credit is such that we couldn't afford to (2589) extend any open account credit to him.

So on "D" accounts you are up against credit, you are up against the location not being suitable for TBA, the facility or the area or the kind of business or credit. So when those are looked at we just turn them down.

Q. Then as to "C" accounts, what is that? Is there a difference in the handling of them? A. Yes. "C" accounts in practically all instances are good outlets that would qualify for the selling of TBA. They would be fine facilities for the selling of TBA. But as I explained to you, we market through dealers. We don't just market through the Texas Company service stations. That is a minor part of our business. We market through dealers.

So in many cases we have a very fine dealer outlet. We may have had him for ten or fifteen years. And possibly a good facility might be available across the street from that dealer by the Texas Company, but we would have no interest in putting that Texaco dealer in competition to our well-established and good dealers. So we reserve the right to turn the account down. Not because of the facility but just because of conflict with our established distribution. We are not obligated to take any Texaco account we don't wish to take.

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(2591) *By Mr. Boyd:*

Q. In keeping with that, do they normally nominate to you only outlets that would not conflict with your other established outlets? A. Well, I will tell you: B. F. Goodrich is pretty aggressive after business. We don't wait for anybody to be nominating. We are out seeking business at every turn. If there is ground being turned that looks like it might be a service station of somebody's, we are right in there pitching.

So we don't wait for the Texas Company to take us by the lily hand and tell us about an account. But when it comes down to a Texaco service station operator that preferred to handle B. F. Goodrich tires that we would have to turn down due to conflict in distribution, it would be a very, very minor matter.

It is a great exception, you understand. We take them. We like them. They have fine facilities. Generally, they just fit in beautifully. We work hard on trying to sell them on B. F. Goodrich to take them on. It is only a rare exception, as I pointed out to you, where we have a wonderful account established over the years, giving us a wonderful volume of business, that we would not think of taking on that fine new Texaco facility if we could possibly sell the dealer into buying our franchise.

Q. I take it from your answer that you normally accept— (2592) the B. F. Goodrich Company normally accepts all "C" accounts that are nominated, generally speaking? Is that right? A. Well, I don't know what you are getting at on accepting accounts that are nominated.

Q. You attempt to sell? A. You bet we do. There is hardly any, just this occasional exception where we would ever turn down a "C" account if we could sell them. But boy, we have a job selling some of them.

Q. That leads us up to the procedure with respect to the handling of accounts, Mr. Hoban.

If the B. F. Goodrich Company sells an account before it has been nominated to them—sells a Texas account before it has been nominated to them by the Texas Company—does the B. F. Goodrich Company pay commissions to Texas on the sales made to that account? A. Well, the way that operates is this: Texas are alert, and you don't find them asleep very often. And if we are successful in closing one of their service station dealers very likely they knew that we were working on the problem long before we closed them, and when we did get the final contract signed and the order they knew all about it.

So what you seem to be referrring to as nominating, all in my language that amounts to is that they record at our operating center the name and address of the account for our accounting people to pay the commission on. That is (2593) all that amounts to.

Do I answer your question?

Q. Yes, sir; I believe so.

I take it from what you say that normally doesn't happen. You are apprised by them of the account, and then— A. Not even necessarily apprised by them. We are alert to the opportunities of selling goods. That is why we have these hundreds of territorial managers and supervisors and district managers and all. They are supposed to know when new stations are being built and where new opportunities to get business are going to exist. And they should be on the job before Texas Company even mentions to us. But sometimes they mention it and sometimes they even make arrangements for one of our territory managers to meet a prospective operator.

Generally speaking, we know about it before they ever talk to us.

Q. Mr. Hoban, let's take an instance in which you are not selling a Texas outlet. And say the installation is rehabilitated and the man that was selling it goes out of

business and a new man takes over, and you come in and succeed in selling him the Goodrich line. That is, you do that entirely. That is the B. F. Goodrich Company does that entirely on its own. Then would you pay a commission to the Texas Company on the purchases that that outlet made from your company? A. Oh, yes. You see the Texas Company really gets going (2594) after we make the sale of our franchise.

Q. Will you explain that? You say they get going. What do you mean by that? A. I don't know how familiar you are with it, but I will take a minute's time to explain to you the way these things operate. The Texas Company does very little, in my book—I don't want to say nothing—very little as far as selling a dealer the B. F. Goodrich franchise. That is done by the territory manager of the B. F. Goodrich Company who knows our prices, our programs, the quality of our lines, the types and kinds and distribution points, and he is a master in knowledge of our products, our programs, and our policy. He sells the Texas Company dealer.

Once that fellow is sold, boy, the Texas Company is a great help to us. A great help to us then. When we have our line established they have merchandising plans of their own. They know a good deal about our ideas of tire merchandising and battery merchandising. And with their own merchandising experience and with the training that we have given to them—I am speaking of the Texas Company organization—they are of a tremendous value to us in helping that dealer sell more of our products. That is where they come in. That is why we pay them this commission. We pay it to them to work for us, and we are constantly needling them to do more and more work in the dealer's place of business that we have established (2595) a dealer in order that he may sell and his people

may sell more of our products to the consumer. That is where Texas renders a service to us. That is what we pay for.

Q. Mr. Hoban, just where does it fit in the picture that Texas is notifying you as to outlets which it proposes to open? Isn't that an important factor in this arrangement? A. Well, that was an important factor during the period of shortage. We were very anxious to kind of keep a little ahead, you know, of their plans when tires were short. But they wouldn't have to appraise many things this year. We have enough merchandise this year that we would welcome them opening twice as many new outlets as they are opening, and we wouldn't require previous notice. We would handle it the same day if we got the chance.

But if you go back a few days we did ask for a kind of advance information, so as to be kind of better prepared to know what was going to be required.

Q. Even as of today wouldn't that prior notification be of considerable help in selling a new account? A. The fact that they are planning on opening maybe a new service station?

Q. Yes. A. In Washington?

Q. Any place. A. It wouldn't be of any help to us at all today unless we (2596) were told the operator's name and privilege to start going to work on him.

Q. That is what I mean. Who it is and who you could sell. A. That doesn't happen sometimes until the station is a week or two from opening. Quite often they don't have an operator at all. They run an ad, select a location, build the facility, and then try to find an operator with enough money to go in there. There is no use of our going to the Texas Company until such time as they have closed with an operator. We kind of like to get in there after they close with an operator as fast as we can.

Q. As soon as they have closed with an operator and they know that he is the man who is going to be there, and before the station is opened, they do give you that information, don't they? A. Well, as I said, sometimes Yes, sometimes No. Generally speaking, we find it out for ourselves before they tell us. If we can't we go to them and ask them. If they know, they tell us. I guess it is the custom or the same thing—I shouldn't discuss our other suppliers, I guess. With us, we generally try to find out for ourselves. If we can't find out we ask them. They are not at all reluctant to telling us after they have the operator closed.

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(2597) Q. After the plan is working, you have an account in which you are selling the Goodrich line, that is through Texas, will you describe for us briefly the mechanics of how you determine the commissions and just how it is paid, and who handles it? A. I am not sure that I am clear on what you mean. The contract that we have with the Texas Company sets forth the commissions. Our field organization have nothing to do with it whatsoever. Is that what you are asking?

Q. Who handles the actual payment of the commissions? (2598) The tires, for example, and how much is paid? A. You are talking about the mechanics of accounting and so forth.

Q. Yes. A. I thought you were talking about establishing rates in the field?

Q. No. A. Accounting is a very simple thing. The Texas Company sends us on some form—I wouldn't dare guess at it, even; I think it begins with an "S" but I am not sure—a list of their accounts into our district. That becomes the check list, let's say, that our operating department uses in connection with recording the business

by tires and tubes and automotive merchandise, and reporting the actual sales that we make to each one of those individual accounts monthly to the Texas territorial office designated for the particular district of ours that is in that territory.

And every month we report to the Texas Company by individual accounts, by individual districts of ours, our sales to those particular accounts. That is entirely an accounting matter. The sales department has nothing to do with it. They have no authority on rates or anything. It is all established. It just gets its list and picks up the figures and we pay by check to the Texas Company.

Q. On this initial list, on which you pay, if they buy—the (2599) initial list of dealers—these are the nominated and approved dealers that you have agreed on on which the commission is to be paid, is that right? A. I don't know of any nominating list that we agreed to pay on. We go out and try to sell an account. If we sell them, we know that the Texaco dealer and the Texaco Company knows—the Texas Company knows that B. F. Goodrich has signed them as a dealer, so they send a record of that name over to us. Sometimes our territory manager has already recorded it in our district.

But they send an official record, John Smith Service Station, 202 Forbe Street, Pittsburgh, Pennsylvania, to us, and that goes on the list that our accounting people keep. That is their instruction to pick off the ledger the actual sales to that account and pay the designated commission to the Texas Company monthly on the purchases made by that account.

(2600) Q. And then you pay only on those accounts that have executed this franchise agreement with you, either the franchise agreement itself or the associated dealer franchise agreement? A. That's right.

Q. What happens in the instance where the B. F. Goodrich-Texas dealer doesn't buy any TBA say for about 90 days? Do you continue selling him? Does anything happen then? A. Well, I can't tell you what would happen, but the District Manager of ours is looking over his outlets regularly and consistently. If one of them would go 90 days without purchasing, he would be checking in to find out why.

In most cases we find it is a credit problem. He has past-due accounts, we have orders on hand but we can't deliver them until we get the money. That is about what happens. Nothing has happened. We just keep trying to get the money. When we get the money we might take another gamble on a hundred or two hundred dollars on orders that are already waiting to deliver as soon as we can clear the man's account. That is what happens on most of those cases.

Q. In instances where he would not be buying, suppose it is not credit reasons. Would you seek out the assistance of Texas Company? A. The first thing of course, our district manager would be putting the finger, so to speak, on the territory manager and asking, "What is the matter that you are not getting any business (2601) from John Doaks." That would be the first step. Then the territory manager either would give the answer that it was credit, or he would say that, "I am having a little trouble, he hasn't taken enough interest and so forth." Maybe our district manager would say, "Why don't you get the Texaco service manager to make a call with you and find out how he can take advantage of the various things Texaco suggests to sell, and why don't you point out to him the potential again, go over the opportunities that our franchise offers and together see if you can't get this man into the business."

Because unless he is selling some other line he is just a pretty poor outlet for the Texas Company for the future, if he is just drying up on TBA. If he has gone off and bought another line then our territory managers get the job.

He has to sell him the idea that he would be a darned sight better off selling B. F. Goodrich products than you would be buying these John Doak tires.

It depends on what the problem is.

Q. In those instances, Mr. Hoban, maybe he is giving some thought to another line other than the Goodrich line. Do you then seek the assistance of the Texas man? A. Not as far as trying to present arguments in favor of B. F. Goodrich versus the other line. We wouldn't risk that. We are delighted to have the Texaco merchandise man help the fellow sell his goods. They have a lot of plans and programs. (2602) They do a swell job along that line.

When it comes down to the fact that he says, "I am thinking about another line instead of yours," that is when our territory manager, who is trained right to the nth degree and indoctrinated with B. F. Goodrich and the quality of our products and the opportunity to sell, and our tremendous merchandising program—I could take an hour to tell you about them, how superior they are to anybody else's—that is when he is supposed to move in and convince the fellow that the B. F. Goodrich merchandising, quality and product is what you ought to get back of and not give any thought to anybody else's being in our class, that your opportunities are so much greater.

We couldn't risk that. We wouldn't ask Texaco for any help at all on that phase of it.

Q. Do you seek his assistance on any phase? A. On the phase of encouraging the man to sell, teaching him how to merchandise, oh, yes. That is as I explained to

you before, the Texas merchandising salesmen, as I like to think of them—I understood there was some distinction here between general and others, I don't know that, they are all salesmen as I have seen them in the field and I have seen lots of them and talked to lots of them—they are of tremendous help to B. F. Goodrich in increasing the sale of the dealer's merchandise, our merchandise by the dealer to the consumer.

So if they can help us sell more tires and more (2603) batteries, or their dealers, that means we get the business. That is where they come in and do a job.

They are in far more frequently than our man. They are in there many times more than our men because of their close-knit territories. They are of tremendous merchandising assistance to us. When it comes down to closing an account we don't ask for help from them.

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(2604) Q. Would those divisions be concerned with other than oil company outlet distributions? Or are their activities to some extent confined to service station outlets? A. Mr. Boyd, I have tried to explain to you. We don't have any division of our dealers whatsoever. The manager of passenger car tire sales is interested in selling dealers. He hasn't the remotest interest whether it is a Texas dealer, Sinclair, Shell, or what it is. He is interested in selling B. F. Goodrich dealers. He couldn't tell you a single thing about whether he happened to sell Texaco products or not. His job is to develop plans, programs, advertising, promotions for (2605) B. F. Goodrich dealers, whether they are service stations or other dealers.

Q. Let's take the battery and accessories department. Do they handle the acquisition of those items? A. Yes, sir.

Q. The purchasing of them? A. Yes, sir. Batteries—let's stay with that if you would. Accessories are nearly entirely our own manufactured products. Maybe a few valves or something, Schraeder valves might be in there. It is such a small thing. It is mostly our manufactured products. But batteries, yes, they charged with the purchasing responsibility as well as the pricing and warehousing.

Q. Who supplies the batteries that you sell? A. We have two manufacturers. We have had for quite a long number of years. The Gould National Battery Company, with home offices in St. Paul, Minnesota, and the Globe Union Battery Company, home offices in Milwaukee, Wisconsin.

Q. Are contracts made with those battery manufacturers on an annual basis?

Mr. Barton: If your Honor, please, I don't know how this is relevant to the picture. I submit there is none.

Hearing Examiner Kolb: What is the relevancy of that?

Mr. Royall: Your Honor, we object to that. It hasn't anything as far as we know that remotely affects the commission system. Certainly it doesn't remotely affect Texas.

(2606) Mr. Boyd: Your Honor, I wish to show that their purchases are made on an annual basis, prospectively, part of which is based on the expected sale of these products to outlets of the Texas Company, among others; and that that plays an important part in their determination as to the amount that they will contract to buy from these producers.

And then I propose to show the flow of those batteries down through the various channels of dis-

tribution from the manufacturer to the Texas outlet. That is the purpose of it. Getting into the matter of the Interstate Commerce jurisdiction feature of it.

Hearing Examiner Kolb: Read the last question. (Question read.)

Hearing Examiner Kolb: The objection will be overruled.

The Witness: No, we don't make contracts with them on an annual basis. We have a continuing contract for our requirements. Whatever our requirements might be.

By Mr. Boyd:

Q. Do you notify them of what your expected requirements on an annual basis are? A. No, not on an annual basis. The way we operate with them is pretty much on a thirty-day definite forward and sixty-day estimate basis throughout the year. In other words, we would give them, say, sometime between the first and fifteenth of (2607) December or January requirements—our estimated February and March requirements. Then by the middle of January we would give them our definite February requirements and forward March-April requirements.

We are always working with them on a basis of thirty days definite and sixty days estimate. It is a continuing problem.

Q. Mr. Hoban, will you describe for me the system by which these batteries move from the manufacturer down to the ultimate user? A. You see, the battery manufacturers have a number of battery plants across the country. I don't recall when the two of them—they might have 15 plants across the country, strategically located, and they would ship those batteries to our district office or to our merchandising warehouse that I described to you.

In some cases they ship directly to our stores. In the case of very large dealers—it wouldn't apply to petroleum dealers; conceivably they might ship a very large tire dealer direct from the factory—and then from the district those batteries would flow either right directly from the district to the dealers, whether they be Texaco service station dealers or not, or from the district to a supply point in the case of a small service station dealer, which is the vast number of oil company dealers. They would be handled from a supply point, which gets its batteries from the district.

(2608) Q. And from the supply point? A. The supply point would go right to the service station dealer or the other dealer if he is a designated supply point for other than service station dealers.

In the petroleum business, if that is what you are trying to stick with here, your deliveries are all very small and they are made generally by a close by point. You will find as far as shipping a tire or battery or anything of that kind, the advantage of the supply point is the big thing. It would be right in the same market or right in the adjoining area. The closer the supply point is to the small dealer the better chance you have of enjoying his business.

Q. When you notify the manufacturer that during the next 60 days you intend to use whatever the requirements of the company are, do you take into consideration the amount or prospective amount of batteries that these various districts, supply points, and so forth will take from you? Is that right? A. Oh, sure. We take into consideration what our B. F. Goodrich dealers and stores have been buying and what they are very likely to buy. If we have a promotion coming we take into consideration that the business might be accelerated at some period. All those things are taken into consideration.

Q. And the amount that the Texas outlets might be buying, too? They are B. F. Goodrich dealers? A. There would be a small percentage of the total B. F. (2609) business.

Q. They would be taken into consideration? A. Oh, yes, to the small degree they would affect us. It would be very small against our total.

Q. Mr. Hoban, with respect to other accessory items—and I am referring now to things such as waxes, polishes, filters, spark plugs, things of that nature—do you buy those similarly as you described with batteries? That is, prospectively your requirements for a 60-day period? A. We have the same kind of arrangement: When you are talking about polishes, the DuPont Company happens to be one of our polish suppliers. They make up their own merchandise and they stock it in field warehouses. We don't have to give them our forward requirement. We are such an insignificant part of their business that we don't have to. It isn't like having our own brand battery. In the case of batteries that is our own B. F. Goodrich brand and we have to work with them on producing our own brand. When you are talking about practically all the other items we sell, it is a national brand, other than batteries, that is the national brand manufacturer's problem to have enough inventory so that when we give him orders he will supply them.

We don't have any worries about them. He has plenty inventory.

Q. Am I to take from what you say that you do not (2610) buy those items—filters, spark plugs and so forth—in such huge quantities as to buy them directly from the manufacturer. A. Oh, yes, we buy them directly from the manufacturer.

Mr. Barton: I object to the question, the hugeness of it. I think it can be phrased without using those terms.

Hearing Examiner Kolb: The objection will be overruled.

The Witness: We buy the Champion. Let's take the Champion spark plug. We buy them directly from the factory. We don't have to give him forward 90 days. We haven't become quite the factor in the Champion spark plug business that we have to work with him as we do with National, the Globe Union Battery Company, producing our brand of battery and only for us. Champion has a tremendous distribution besides B. F. Goodrich.

(2611) *By Mr. Boyd:*

Q. Your purchases then of Champion spark plugs come from the manufacturer? A. To us?

Q. Yes. A. Yes, sir.

Q. Do they move down through the chain of distribution, B. F. Goodrich Company? A. Not the complete chain. They would go pretty much the same way.

Q. As the batteries? A. Pretty much, yes.

Q. Are your needs or anticipated requirements of those items, spark plugs, filters and so forth, estimated in the same way? A. We don't give them any estimates forward for 90 days, if that is what you are referring to. I have tried to explain to you that we are such a small part of their business that they don't need for us to indicate to them that we are going to have a certain quantity requirement positively next month and estimate the quantity the next two months. They don't need that.

Q. Mr. Hoban, in placing your orders for these other items—accessories items—with the manufacturer, do you take into consideration the anticipated sales or the amount

you will sell through these various outlets that you sell to? A. Through all our B. F. Goodrich outlets, whether they be (2612) dealers or stores.

Q. And whether they be oil company outlets or— A. Oh, yes. That isn't in our classification at all. They are just B. F. Goodrich dealers, B. F. Goodrich stores.

Q. And the Texas dealers are B. F. Goodrich dealers, too? A. He would be a B. F. Goodrich dealer.

Q. Mr. Hoban, I hand you now what is in evidence as Commission Exhibit 129-A and B, and which I believe is a list or description and the name and address of each of your warehouses. Would you define for us the various categories of warehouses, beginning with the factor of shipping, and then the district office and so forth, as to what type warehouse they are? A. I would have to just repeat what I have already told you, Mr. Boyd. But I would be happy to do it.

Mr. Barton: Your Honor, I wonder whether this is necessary? The exhibits in evidence say district offices include all supplemental warehouses. I wonder whether it is really necessary to go into this detail on the question of interstate commerce which is admitted in our answer.

Hearing Examiner Kolb: Are you dealing with interstate commerce so far as Goodrich is concerned? Or Texas?

Mr. Boyd: So far as Texas is concerned.

By Mr. Boyd:

Q. I don't believe you have told us what a master warehouse is. (2613) A. The merchandising center would be the same thing. I think I referred to them as merchandising warehouses. It is a little nicer name.

Q. What about the term supplemental warehouse? A. That would be somewhere where we found it necessary to store some Texas stock temporarily. A temporary place.

Q. And dealer warehouses? What are they? A. They would be a place where we have established a warehouse in a dealer's place of business which he operates for us. I mentioned a very few warehouses, as I outlined to you. If you notice there there are very few.

Q. Mr. Hoban, what is a divisional operating center in the B. F. Goodrich Company? A. Back a great many years ago we had an operating—an accounting unit in every one of our district—31 districts. We made a test in one area of bringing the accounting work of five districts into one spot where, with new type equipment and all we could handle the accounting and issuing of invoices and monthly statements much faster and more efficiently. We tested whether there would be any complaint on the part of dealers from getting their invoices and monthly statements from some other point than the district office with whom they were in constant contact on the sales problems. We found that as far as the bills and statements were concerned, the dealer didn't care where it came from, just so long as he received it reasonably (2614) promptly.

We then proceeded immediately to eliminate the accounting offices in every one of our other districts and we went to this five plan that you speak of, which has not only speeded up and made us far more efficient, but I am happy to think we have saved a couple of bucks for our good company.

Q. Would those centers also handle the accounting and determination as to the amount of purchases or sales made to Texas outlets and the amount of commissions due to the Texas Company? A. They don't have anything to do with the amount of sales.

Q. Accounting-wise? A. They are just accountants. They pick up the information that the district sends them and compile it and follow the instructions that are given to send a check for the amount involved. It is purely an accounting procedure, Mr. Boyd.

Q. That is handled on a monthly basis? A. Yes, sir.

Q. Mr. Hoban, on Texas outlets, as to their acquisition of supplies from the B. F. Goodrich Company—in other words, will you tell us from whom the service station dealer acquires his stock? A. I could tell you in a broad sort of way that in order to supply small dealers you have to bring your source of supply very close to them.

Q. Is that what is known as a supply point? (2615) A. Yes, you have to bring your supply point close to them. So in all practical instances, in a city, if it is a large city, it would be within the county or very close. The small dealer has to be served by supply points very close to him. So you would be talking about a city or county or something of that nature.

Is that what you are getting at?

Q. Yes. A. There is no factory shipping to a small service station involved. They never get the business. They can't buy that way. They have to have a close, quick, nearby source of supply.

Q. How is it determined let's say in this vicinity? A. We have located in Washington, D. C., if you are talking about the District here, a district office. That is one of our 31 district offices. And our district manager here would be the final one in approving the setting up of the supply point. He would have as a background for setting it up his intimate knowledge of the number of dealers and the location of the dealers, and whether or not he could increase his business by setting up a particular type of supply point or changing it if he wished to change it. It would be at the discretion of our district manager.

Q. How many outlets do you normally assign to a given supply point? A. That varies tremendously, Mr. Boyd. If you are talking (2616) about a metropolitan city, a man might be serving 150 towns. If you are talking about a much smaller community, he might only be serving 25 or 30.

Q. Does a B. F. Goodrich supply point—incidentally, are they independent supply points? A. Yes, sir.

Q. Those would be franchised? A. Yes. Goodrich dealers, wholesale classification. B. F. Goodrich dealers, wholesale. You will find "WA" as you look at our price list.

Q. Do these supply points sell only to oil company outlets? They distribute only to them? A. No. We do not restrict them to only oil company outlets for the same reason I explained to you before. We don't differentiate between our dealers, whether they happen to be an oil company outlet or not.

It is true that most small dealers are service station dealers, not all, however. Not all. So that a supply point might be serving a hundred oil companies stations, many of whom have nothing to do with the sales commission plan of any kind, and he might be serving an accessory store-front small dealer, or a car agent. We don't restrict him just to service stations. He serves whatever dealers we assign to him to serve. In some cases we give him the privilege of picking up some business on their own. And hope they do in some cases, Mr. Boyd.

(2617) Q. Texas outlets are normally assigned are they not to one given supply point? A. Nearby supply point.

Q. Nearby? A. Yes.

Q. That would be the only place from which he would obtain his supplies? Is that right? A. Generally speaking, yes.

Q. In other words, he could not go to any other B. F. Goodrich dealer, company-owned or independent, to obtain his purchases? A. If you recall, when I described our stores I told you that they were available for emergency pickups.

Q. But other than emergency they would go to the assigned supply point? A. He would go to the assigned supply point. But in an emergency he could go to a B. F. Goodrich store. If he could go to a B. F. Goodrich dealer would depend on his relationship with that dealer. If they were buddies, friends, and exchanged merchandise, no doubt he would. We have nothing to do with that.

Q. The actual record keeping would be at that assigned supply point? A. Yes.

Q. Are consultations had with the Texas Company to determine where would be the supply point for its given station? (2618) A. I wouldn't doubt but what a Texaco supervisor or zone manager might advise with our territorial manager. The way in our organization it would flow, our territorial manager would make his recommendation to either his wholesale supervisor or directly to his district manager. And also the supervisor or district manager would check into the problem and make the decision.

In the course of that it is conceivable that the zone manager more likely than anyone else, and maybe a supervisor of the Texas Company, might talk it over with our territorial manager and say "wouldn't it be a good idea if you had a closer supply point here? We think you could increase your business."

Q. Do the oil companies ever request that an outlet—that the supply point for an outlet be changed?

Mr. Barton: I object, unless it is as to the Texas Company.

Mr. Boyd: That is understood in this question.

A. I would say that the Texas Company is always interested in improving the service to their dealers, and if they felt in any place that one of our supply points was falling down, they would be calling it to the attention of our territory manager or wholesale supervisor or district manager that they felt that the supply point should be improved. They would not dictate to us in any way. But they would complain about poor service. If our investigation showed that it needed attention, certainly (2619) our district manager would give it attention, either to have the supply point do a better job or if necessary change the supply point.

(2620) *By Mr. Boyd:*

Q. Mr. Hoban, I believe you described the people that were calling on your dealers as territory managers? A. Yes, sir.

Q. I am curious now. Do any supply points—I guess independent supply points would have salesmen possibly calling on accounts, too? A. Yes. They would just be picking up orders and delivering them. They wouldn't be doing selling. They have nothing to do with establishing selling. They would be just the service. They would be picking up orders at supply points.

Q. Would there be any difference between a company-owned supply point and an independent supply point? A. You speak of a company-operated supply point. You are talking of wholesale operations apart from the district. They would be merely making delivery. Local supply point does a little bit more. Local supply point, they might pick up an order. Certainly we wouldn't have any objection to that if he could pick up a few batteries or an order for a half dozen tires. That would be a fine thing to do. He doesn't do the selling. The territory manager does the selling. The supply point delivers the merchan-

dise and does pick up orders if he gets a chance. But he is merely carrying out the service phase of the business.

Q. The B. F. Goodrich owned company retail stores, are they (2621) frequently supply points for service station outlets for Texas? A. Not frequently. I mentioned to you that there were some exceptions. And we do have some exceptions where we haven't been able to obtain the independent supply point or we don't have a sufficient volume of business for the man to be happy and make a profit out of. We use the store in just a few cases.

Generally speaking, as I told you, our stores are in the retail business. We try to keep them there.

Q. Mr. Hoban, I believe there is in evidence a basic stock or inventory guide, from the Goodrich Company, Exhibit 52? A. We have a much more up-to-date one.

Q. This was prepared by your company (handing)? A. Well, if I might in modesty say B. F. Goodrich developed the finest program that has ever been developed in service station selling in the form of this industry guide, inventory guide. It is a development by B. F. Goodrich of which we are very proud. In our business when you are proud everybody rushes to copy what you have done after they have seen it operate for a year. You can be sure it is good when you find that happening.

We are the boys who developed this program and it is a wonderful thing for the dealer. It is our plan, widely copied now by others in this business, large and small tire dealers.

(2622) Q. Mr. Hoban, on what basis were these suggested stock assortments or quantities of items established that appear in this exhibit? Under the column "Suggested Stock Assortment" there are three categories. Then it lists the number of items of that particular—the number of TBA items that it is suggested be carried. Who made that determination? A. Let us just take tires as an exam-

ple. We know how many of a given size. Let's take the most popular tire, 6.70 x 15, which fits the Ford and Chevrolet car. We know how many tires of that kind are manufactured and sold in the country. As a consequence, against the total number of tires that has a certain relationship. Say it is 50 percent of the total number of tires sold in that one size.

In that size we know the number of white tires and the number of black tires. We have the statistics for the industry on that. We know what our own experience is on that. We know our experience by sections of the country. So we take the industry totals, which we secure—if you are interested I can explain all that to you—and then we take our own known experience, and on the basis of those two factors we get down to the local level.

Here is a man who has in our opinion, based on his gasoline gallonage in the area in which he operates, a potential of so much in tires. Then based on the statistics that I have outlined we break that down into the size and the (2623) type of tire. And that is adjusted to local conditions because in some sections of the country more of one size is sold than nationally. And the dealer and the territory manager have local knowledge. They take our suggested national pattern and they adapt it right to the local dealer and local community.

It is a very understandable way. It is not perfect but it is a very understandable way. The idea of this whole thing is the king bee. When a dealer intelligently arrives at his basic stock he has the advantage of having the fast-moving sizes in the right quantities and the slow-moving sizes in the right quantities. And if the plan operates as it should, and does in the vast majority of cases, he gets a better turnover on his merchandise. And he loses less sales.

If he gets better turnover and loses less sales he makes more money. The whole program is just a thrill and a delight to a dealer who actually works with it for a length of time to really get the feel of it. It is a tremendous success.

Q. Could you give us some idea as to what it would cost a dealer to stock—if he carried everything that is in column 1—what would be the total investment he would have? I would like to know the investment in 1, 2, and 3, if a dealer carried everything that is in the suggested inventory. A. This primarily, as you know, is for service stations.

(2624) Q. Oil company service stations? A. No, just service stations and small dealers. It isn't intended for a great big large half-a-million-dollar tire dealer. And the stock assortments that run in round figures from say $1,000 to $2,500, in round figures. When you get down to the actual application of it you have to see what his potential is in his own station. If you are talking about a service station, one of the best guides is what is his gallonage. We know national figures on how much TBA is sold per a gallon of gas. There are good yardsticks of estimates on all those things.

So we have a pretty good idea of potential. We know how many customers the man has, we know how frequently most of them come in his station. If you intelligently approach this thing you can get right down to a 90 or 95 percent accuracy on the actual number of potential tire sales he could make if he would really make the plan work and do the right sort of a promotion and selling job.

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(2626) *By Mr. Boyd:*

Q. Mr. Hoban, I hand you again Commission Exhibit 52. You gave us a figure of $1,025 as regards tires that would be the cost, I take it, of the suggested tire inventory. Would that be as to one, two or three referred to in here? A. On tires the assortment would run from about a thousand dollars to twenty-five hundred dollars. Now—

Q. That is between one and three? A. Yes, sir. Between one and three.

Q. Could you break it down as to one and two? A. You can't break it down in a definite figure. Number one might in one case be $890 and in another be $1,200, and two would be fifteen to eighteen hundred dollars, and you might conceivably have three that would be $2,200 and maybe another one $2,700. It is an assortment of figures.

Q. Give us similar information as to batteries and other accessories. A. Batteries would run from a low of maybe $100 to a high of $500.

Q. And accessories? A. That is very small. They would run from a low of $50 to a high of say $250.

Q. We were discussing earlier, Mr. Hoban, the matter of how batteries moved from the manufacturer down ultimately to the station outlet, would you tell us now as to tires that are (2627) produced by your company, how they move down through that same chain. Is it similar to that? A. I thought I covered that in quite some detail earlier in the morning when I gave you the flow. Five factories into what I described to you as the merchandise warehouses, big, large master warehouses as you had them on your sheet. I think I called them merchandise warehouses. From those merchandise warehouses to districts or to stores or dealers. And then in some cases from districts to stores and dealers and in some remote cases from merchandise warehouse to the dealer warehouse, those two or three examples that you had there.

In other words, it just flows on down.

Q. And from there to station outlets? A. From there it goes to the station outlet or to the supply point for the station outlet.

Q. On the service station outlets—Texas service station outlets that are B. F. Goodrich dealers, what arrangement is made for identifying that station as a B. F. Goodrich outlet? A. I think we do a pretty good job of identifying them. We have for our B. F. Goodrich dealers certain types of signs. All of them are not suitable in any one place. You have to adopt them to the particular place. Some would be wall signs, some would be post signs, some would be fence signs.

The Texas Company have a little manual and we work (2628) with them on it, that gives us a guide of the way they think identification looks best. But the net of the whole thing is that our sign truck pulls up there and he tries to identify it in the best possible way he can with B. F. Goodrich.

If he has a cooperative dealer we do quite a fine job of identifying it. We don't overdo it, because a cluttered place is not good. But we have the suggestions of the Texas Company and we look the premises over and unless the dealer is strong-minded about what he wants done we go right ahead and adequately identify the place with B. F. Goodrich.

Q. Do you normally follow the suggested line of Texas in this book that you referred to? A. We pay attention to it. We were part of creating it you know. It is a good balanced thing. But we don't have any instructions where we have to follow it in any way. We work it out in each location. Some dealers are very finicky about the identification. They want limited identification. Some we are able to go considerably farther than Texas suggests, and

we get more B. F. Goodrich. On the other hand we don't want to just clutter the place with our signs. There is a proper way of identifying a station, if I can explain to you our viewpoint on it. We like to have the identification prominent, but we don't like the place to look cluttered.

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(2629) *By Mr. Boyd:*

Q. With respect to that suggested station identification booklet you were talking about, do you have something further you want to say on it? A. We have a booklet of proper identification of our dealers. I think in there we show service stations and suggested identification of service stations in there. That would apply to the Texas Company or any other B. F. Goodrich dealer that was operating the service station.

Q. To the extent of service stations I gather from your earlier testimony that has been worked out to some extent with the Texas Company. Is that right? A. We have shown them suggestions and I am sure that they know what our identification plan for service station dealers is.

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(2630) Q. Mr. Hoban, who pays for this identification at the station outlet? A. B. F. Goodrich.

Q. Does the Goodrich Company engage in any cooperative advertising with the service station outlets of the Texas Company? A. Yes, sir. We engage in cooperative advertising with all B. F. Goodrich dealers that we can encourage to use our suggested advertising and promotion. And part of this three-step plan that I told you about, of which this book (Exhibit 52) step one, involves the actual use of advertising of promotional material which we cooperate with the dealer on.

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Joseph A. Hoban, for Commission—Direct

Q. Earlier I believe you mentioned, Mr. Hoban, that you didn't sell to every station outlet but I gathered from what you said (2631), that you had some qualifications set up for B. F. Goodrich dealers. Is that right?

Mr. Barton: Wait a minute, your Honor. I thought we went over this about two hours ago in some detail. Unless there is some pressing reason I would suggest—

Mr. Boyd: I want to know if he makes any deviations pursuant to suggestions from the Texas Company.

Mr. Barton: Then I have no objection.

By Mr. Boyd:

Q. In other words, deviations from what you consider to be the ideal B. F. Goodrich outlet? A. I discussed with you what is called "D" accounts and I discussed with you what is called "C" accounts.

Q. Yes, sir. A. I told you on "C" accounts that unless there is a conflict in distribution, their facilities and all are usually such that we welcome them and rush to get them as B. F. Goodrich outlets.

On "D" accounts many of them are totally unsuited for the sale of TBA merchandise, due to location, facility, many of them due to credit and other reasons. We screen them and turn down those whose credit, facility, other type of business or what not, including credit, disqualifies them from being the kind of outlets that would do both our companies credit in the TBA field.

(2632) Q. Right at that point, suppose the Texas Company has a different feeling, that they think it is a pretty good TBA. A. We are the one to make the decision and we make it.

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(2633) Q. How did the B. F. Goodrich Company sell its TBA before it had any arrangements with oil companies on a commission basis?

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A. Well, as I recall, the first contract that I remember we had with the Texas Company it was made before my time at the home office. I think about 1940. So I guess you are talking about a period prior to 1940.

(2634) We didn't have TBA as we know it today prior to that time, Mr. Boyd. Would you like me to explain how we sold tires and a few other additional items we may have had prior to that?

Q. You sold only tires then, I take it? A. I wouldn't say we sold only tires. It depends on what period you want to get into.

Q. Prior to the time of these arrangements, 1940 that you referred to. A. In 1940 we were selling batteries as well as tires, as I recall. We didn't have a diverse sideline of auto supplies as we have today. But I wouldn't be able to say to you that batteries were the only item. Maybe we might have had tire repairs. Yes, in those days we fixed punctures and we had tube repair kits that we sold, and items of that kind.

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(2635) Q. Immediately prior, I am talking about. A. Immediately prior to having any arrangements with the Texas Company we sold tires to tire dealers primarily, and through company-owned stores, and to those service stations as we do today that we could interest in selling tires. And if you remember I explained to you that the service station in the new tire business didn't blossom until World War II, in the period from 1942 to '46 when

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they suddenly found that the consumer liked to come to them to keep the old tires going.

Having gained that customer contact they blossomed in 1946 into being worthwhile outlets. Prior to that they were a minor factor in passenger tires, and passenger tires were sold through company stores, tire dealers, car agents, garages, outlets of that type.

Q. I gather from what you said earlier that you sold tires primarily, and batteries to some extent, but you didn't sell accessories to any degree? A. Actually, we sold accessories but different kinds of accessories. Tube repair kits today are not a very fast moving item. But in the Thirties there were just millions of (2636) those sold. You wouldn't want to go out on the road without a tube repair kit. There were just millions of them sold. That is an item that we sold.

It was a very limited line, if I can make my point to you. It was a limited line of what today is known as TBA. We had the tires, we had the batteries in 1939 and '40, and we had a very limited line of accessory merchandise that was available to the dealer trade.

Q. Since this agreement with the Texas Company, has that been one of the factors or the factor which has caused you, the B. F. Goodrich Company, to market auto accessories to a wider extent than it did prior to the time of the commission arrangement? A. No, I wouldn't think so. I would think that the reason that we are selling more auto accessories today is that B. F. Goodrich dealers generally have found diversification helpful to their retail profits, and that applies to a B. F. Goodrich dealer who is not selling gasoline and oil. He has found that by adding batteries and auto supplies, in some cases even getting a little farther diversified into some of our lines like possibly small radios and something of that nature, that he is able to make more sales to the same customers and have them

come back more frequently and very substantially add to his profits. I think we have developed more of a rounded franchise, Mr. Boyd, that makes more profits for the dealers generally, (2637) not just the service station dealers, but the dealers generally.

Q. Then I take it you attribute no part of it to the fact that you sell Texas outlets that you have this wider line of TBA that you carry now, particularly the accessory end of it? A. I wouldn't want to reflect upon the value of a very fine association that we have with the Texas Company and thousands of their dealers across the country. They are of value to us. But the service station business—not the Texaco business only—the service station business in the passenger, battery, and auto supply field has changed its complete complexion in the period of 1942 to 1955.

As a consequence of that change we have certainly been keeping up with the parade. In fact this, if I ever got into steps 2 and 3, I would be able to explain to you that we are outstanding leaders in the merchandising at service stations. That is not entirely Texaco. It applies to all the other independent service stations that we have.

(2638) Q. Mr. Hoban, have any determinations been made by your company as to the average amount of commission paid to the Texas Company on sales that you make to their outlets—I mean by that the averaging of the various categories, five percent, seven percent, and 10 percent—to some average figure as to the amounts of commissions that are paid? A. It varies every year, depending on the volume of business that flows through the 5, 7½ and 10. As you would know, I carry figures of various years in my mind. I couldn't identify them to you. But I would guess—it is a matter of a mathematical calculation, you know; it depends entirely on the flow of business—I would guess 8.3 to 8.6 would be the range at which the thing would average out.

Q. That average figure would be, would it not, an additional cost to selling B. F. Goodrich TBA through Texas outlets? A. It would be an additional cost less the value we get out of the very unusual services that the Texas Company renders for us.

Q. If there were no such commission arrangement, would your company have to employ any more sales people in order to sell TBA products to the Texas outlets? A. I am afraid we would. It would vary very greatly, because it depends entirely on the type of account. For instance, in a metropolitan area where the Texas Company has these merchandise salesmen coming into the dealer's place of business once (2639) a week or twice a week, we can route our salesman so that he only comes there maybe once every month or once every six weeks.

If we didn't have the continuous merchandising assistance of the Texas Company with that particular dealer, our salesman might have to come there every two weeks to be sure that the merchandising was going on and that the application of programs and all were being carried on. So the Texas Company takes that burden off our shoulders and enables our man to be spread out into more area, thereby saving his money.

We have a lot of counter to the 8.3 or 5 that we pay the Texas Company, we have a lot of counter savings, one of which is manpower, and another is additional sales that we would never be able to make through that dealer if they weren't in there far more frequently encouraging them through their merchandising techniques to take advantage of the opportunity to sell.

Q. When you said they, you meant Texas? A. Texas merchandising representative. The more they can get this fellow to sell more tires to the consumer, the more tires we send through the station. They do a whale of a job increasing their business by their frequent contacts.

Q. One final question, Mr. Hoban. With respect to this identification program, does the B. F. Goodrich Company seek the assistance of Texas in getting dealers to identify themselves as B. F. Goodrich dealers? Getting its Texas dealers to identify themselves as B. F. Goodrich dealers?

(2640) A. I would think that would be part of the merchandising assistance that the merchandise salesman would render. Generally speaking, you don't need a great deal of help. If a man takes on a B. F. Goodrich franchise, by that time he is so indoctrinated with B. F. Goodrich that he is proud of it, he wants the signs out and he wants them put out prominently in a manner that would draw customers to his place of business. So you don't have very many problems with dealers. You might have a question of whether he would prefer one kind of a sign or whether he would prefer it here or there. But you don't have to rush to the Texas Company to get any help. If that man is sold on B. F. Goodrich, he probably puts out our shingle and ties to that for making money.

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(2641) *Direct examination (Resumed) by Mr. Boyd:*

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(2643) Q. Again, Mr. Hoban, I hand you the two exhibits, 42 and 44. Under Commission's Exhibit 41, it provides that the tire company receives that Commission Exhibit 42, Form 287, and the account sets forth the details of the account as to its prospects as a TBA purchaser.

And then the tire company either accepts or rejects the account. What I want to know, Mr. Hoban, is can you give us some idea as to the number of Texaco outlets which have been nominated or given to your company to sell by the Texas Company? A. I tried to explain to you that my understanding of "nomination" and yours is slightly dif-

ferent. What this means to me and to the B. F. Goodrich Company, as I understand it, is that after we are successful in selling a B. F. Goodrich franchise to a Texaco dealer, that the Texas Company, for the purpose of the record, file a form, and maybe this is the exact form, and send it to us to record the name and the address and so forth of the customer.

We have already signed him up and we already (2644) have the customer for B. F. Goodrich.

This then becomes the record of the account from which we start setting up our necessary accounting to pay the commissions to the Texas Company. That is the way it works.

Q. What is the provision in here about accepting or rejecting the account? A. We have already accepted it because when this comes in to us we have already sold the account. That is the way the thing operates.

Q. Referring you to Commission's Exhibit 118, which shows the total number of Texaco outlets, total number of "C" dealers, total number of "D" dealers, and also the number of "C" and "D" dealers that are buying Goodrich TBA, referring to the year 1955—that is a complete year—and the figures December, going across there, it shows that in December 1955 the Texas Company had 13,366 "C" dealers. Going to the column "C" dealers under tires and tubes, it shows that the B. F. Goodrich Company sold tires to 2,729 of those "C" dealers.

What I am trying to get to is, were all 13,000 of these "C" dealers nominated to you and you just sold 2,700? Just what is the picture? A. It so happens that we are not successful in being able to sell all Texaco dealers in the United States. We have competition in this business. And a certain number of these accounts have been sold by another supplier that the Texas (2645) Company blesses, and possibly a large number of these accounts are selling other than sponsored lines of TBA merchandise.

We do our very best job of selling all the "C" accounts with the exception of that very few that I spoke to you about where it might be in direct confliction with our distribution. We try our best to sell all of them. But as good a salesman as we are, and with the fine progress we have made, we haven't quite been able to accomplish that feat. It is a pretty competitive business.

Q. Mr. Hoban, does the Texas Company ever submit to you, or have they ever submitted to you a list of dealers for you to sell? In other words, that these are the ones we would like you to sell, we will give them to you, and prior to your having signed one up? Do you see what I mean? Prior to your signing him. As I understand your testimony you don't sign this agreement until you actually sold the dealer? A. That is right.

Q. Don't they give you some dealers that you endeavor to sell? A. I don't think they gave us any dealers at all. I think that we endeavor to sell all Texaco dealers excepting the rare cases where it conflicts with our distribution.

Q. To come back, don't they give you some to sell, a list or group to sell? A. Never.

(2646) Q. Potential dealers that would be B. F. Goodrich? A. Do you mean could we ask for a list of all Texaco dealers in the City of Chicago or something if we wanted it?

Q. No, sir. I mean the ones that they give you to sell. A. They don't give us any Texaco dealers. Never have given us any Texaco dealers, that these are the ones we are supposed to sell. We are supposed to sell every Texaco dealer in the United States that we are capable of selling, and we would like to sell them all. We won't stay out and never have stayed out of any Texaco dealer's place that we felt we could use in our normal distribution selling.

I know of no listing that you are talking about that they would give us to sell. I don't know that I fully understand your question, unless I have answered it for you sufficiently.

Q. Referring you again, Mr. Hoban, to Commission Exhibit 118, and again to the December figure under "C" accounts, tires and tubes, would those be the only accounts, that 2729 figure there, that were nominated to your company by the Texas Company?

Mr. Barton: I am going to object to that question, your Honor. Mr. Glenn yesterday testified at length as to the basis upon which exhibit 118 was prepared, and what the individual figures on that exhibit represented. And it is already in the record as to what each of those figures represented.

As I recall it it was a very complicated setup on the basis of an examination of certain forms in the Texas records as (2647) to whether a dealer had made a dollar purchase or more in a month's period or a three month's period.

I submit that it is not proper to ask this witness, who didn't get up the exhibit, and who may not have heard Mr. Glenn testify as to what the particular figures on here represented, a question concerning what a figure on that exhibit represents.

Hearing Examiner Kolb: Read the question, Mr. Reporter.

(Question read.)

Hearing Examiner Kolb: I will overrule the objection.

A. I wouldn't be able to answer that question, Mr. Boyd, because naturally I don't carry in my mind the number of "C" Texaco dealers that the B. F. Goodrich Company are selling in some one month of the year. And I have no

idea whether we sold 1,500 more or a thousand more or some other time during the year.

I couldn't verify that figure at all. I have tried to explain to you the manner in which we obtain the business and I don't think I can make it any clearer than I have to you.

By Mr. Boyd:

Q. What I am trying to get to is did they nominate a group—I didn't expect you to be able to tell me precisely how many may have been nominated—but did they nominate to you say 3,000 and you sold 2729 as reflected on this figure. That is what I was trying to establish. A. They don't nominate any groups to us at all. There is (2648) none of that done. I don't understand what you are getting at. There is no allocation of accounts, there is no nomination of a group of accounts or anything like that ever existed or does exist.

We have to go out and one over one we have to sell these accounts. And then they are put on the record form. And what that is is that at some time, whether it is December, the month of December or whatever the gentleman testified to, that particular month, we actually sold some quantity of merchandise to 2729 "C" dealers.

Maybe we are selling 3,500, or 2,900 or some figure. Certainly we sold every one we could.

(2649) *By Mr. Boyd*:

Q. Then everyone you ever sold to would have one of these forms, I take it, which you have approved? That is form 237, Commission Exhibit 42? A. I would imagine that this form, or some other form similar to it, was sent to us on every account after they became a B. F. Goodrich dealer that were a Texaco dealer. That form or some

other form, recording the name for the payment of sales commission.

Q. Then could we have that information as to how many of these that you have, that have been nominated, or that this form has been given it by the Texas Company? A. I couldn't answer that question because I don't think that information is available. The information that is available would be the information shown on the records of the Texas Company as to those accounts that we have done business with. We don't have any list of accounts other than those that we do business with.

Texaco Company may have their own list of those 30,000 "D" dealers. We don't have them.

Q. Is it your testimony that you do not have these forms, Commission Exhibit 42, form S-237 in your records, that you make use of in selling to Texaco outlets? You don't have these and keep them and use them? A. We don't use them for selling at all.

(2650) Q. Do you have them? A. They have nothing to do with selling. I have said to you that I can't testify as to that exact form. I can say to you that a form of some kind is used by the Texas Company in listing with us the name of a given Texaco dealer after we have sold him the B. F. Goodrich franchise, and that listing is for the purpose of our recording ourselves and paying them their sales commission, and we have that record.

I can't testify to the fact that it is that form. It could have been some other form, and we may be using a different one now.

Q. I hand you now Commission's Exhibit 128-A through F. Would every Texaco account have one of these forms executed by your company with it? A. Every Texaco dealer who is a B. F. Goodrich dealer is on one of those two forms.

Q. Would your records show the number of Texaco accounts that have executed these franchise agreements either as a tire dealer or as an associate Goodrich dealer? A. Not as being a Texaco dealer. I could give you, if it is relevant to this case, the number of B. F. Goodrich dealers that we have. But we don't classify the Texaco dealers. They are only a small part of our national distribution of tire dealers.

Q. Do you mean that your records would not show which (2651) B. F. Goodrich dealers were Texaco dealers? A. No, sir. We have a list of our contract dealers. We have a list of our associate dealers. We can go into our accounting and find the payments, through our payments the number at any time of dealers that we are selling and paying commission on. But we don't group our dealers that way at all; don't keep records of them that way. You see you confuse the point that there is some difference in our business between a Texaco dealer and a B. F. Goodrich dealer. They are synonymous.

When we get a B. F. Goodrich franchise and a Texas dealer he is a B. F. Goodrich dealer. We have no other kind of a dealer.

If he is selling Shell or anything else he is a B. F. Goodrich dealer once we get him on that dotted line. We have no differential between this one, or difference between them, or records of any kind. They are B. F. Goodrich dealers, Mr. Boyd.

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(2652) *Cross-examination by Mr. Barton:*

Q. Mr. Hoban, I have noticed during the course of your direct examination that several times you spoke about the promotional program which the B. F. Goodrich Company had, and in particular (2653) you noted that the Inventory Guide, Commission's Exhibit 52, was one point

in that promotional program which the B. F. Goodrich Company had and which the Texas Company assisted in carrying out in connection with Texaco outlets.

I would like you to explain briefly what the other components of that promotional program of the B. F. Goodrich Company are. A. When you get me off these statistical forms and on to a question that has to do with promoting the sale of merchandise I am very much at home and I understand it all very thoroughly.

The master merchandising program has several parts, and I will try to do it very briefly for you. The basis first is the Inventory Guide, which after careful analysis sets up a base stock which would give the maximum amount of turnover and the maximum amount of opportunity to sell which should result in very much improved profit for the dealer.

The second phase of the master merchandiser program has to do with the training of the operator.

We have a very extensive and very down to earth practical training plan. We teach a service station dealer how to trade tires. If you don't know how to trade tires you are just about passing up 50 percent or more of the opportunity to be in the tire business.

We have a meeting, a training meeting that we hold. That is where the Texaco merchandise salesmen are of such great (2654) help to us. They are thoroughly acquainted with our training techniques. They have sat through our meetings with our own organization, and they help our territory manager put on this program. And it is a program like you might liken to "Meet the Press." We have a back and forth exchange between the service station operator asking questions and the one conducting the meeting. It might be our own territorial manager assisted by the Texaco merchandising salesmen, giving them the right approaches and the right answers to trading tires.

I could go into this in great detail with you but possibly that is enough to say about it. It is only one example of countless training programs that we have and that we are assisted in putting into effect by the Texaco salesmen.

The third phase of it was something that was long needed in service station marketing, and that was some way for the small merchant, the small dealer, to use advertising himself and directly at his particular station get some value out of the tremendous expenditures for national advertising that we do.

So we developed a program, and it consists of a jumbo mailing card, which offers a very unusual special. We call the products that we use in this promotion "traffic builders." We will take an item that we have pre-tested—and I can explain that to you later, if you wish me to—and we have (2655) a very attractive price on it. To that dealer, he buys the complete master merchandiser program which consists of a certain number of those jumbo cards to send to anywhere from a hundred to maybe 500, if his territory is that large, and if he is that large a dealer, inviting them to come in and take advantage of that particular promotion.

The very week that he is sending out those cards in his city or his community, over our great national Texas show, the Burns and Allen show, we are plugging that very traffic builder at that sensationally low price. If he opens page 1 of Life Magazine there it is in the Life magazine. So we are tying national advertising right down to that little merchant's local place of business.

The first time it has ever been done in the tire industry, and it is just a phenomenal success. And we go to a great deal of expense and trouble.

In the application, the follow-through of all that, we make good use of the Texaco personnel.

Is that enough?

Q. Yes. What is the story on this pre-testing item? A. I could spend so much time—and I don't think you want me to go into the details of it. You know when you are going to have a so-called promotional item, the judgment of a group like these gentlemen right at this front table here is not sufficient. They may be unanimous in thinking that a particular (2656) item is a very good promotional item to attract people. But until you put it to the acid test you never know. So we have some 50 service stations that work with us 12 months of the year, and right now we are testing items that will not be used nationally in this national advertising and promotional until next year. Some of them will never be used because they are duds.

But those that go through the testing period and show a very unusual acceptance by the public, they become our tested item for the following year. So that when we move in with one of these traffic builders, we know that the consumers are going to go for it and go for it in a very substantial way. It brings new traffic into the merchant's place of business, it increases his sales in his place of business, and golly, it is just one of the greatest tie-ins ever developed in the tire business.

That is one of the biggest reasons why B. F. Goodrich are doing such an outstanding job and increasing their service station business.

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(2660) *By Mr. Barton:*

Q. Mr. Hoban, you have explained the merchandising program which the B. F. Goodrich Company has in connection with the sale of tires, batteries and accessories through service stations. Now I ask you what is the role which the Texas salesman, merchandising salesman, plays in implementing that program in Texas service stations?

A. Mr. Barton, I thought I had covered that pretty thoroughly but I will be glad to repeat it.

The B. F. Goodrich territory manager makes a sales presentation of the B. F. Goodrich franchise to a Texaco dealer. And if he is successful in signing that Texaco dealer up as a B. F. Goodrich dealer, the big job starts from there. In our way of thinking the only way we can be successful in merchandising tires is for the dealer to be able to put those tires on (2661) consumer's running wheels.

For us just to sell a dealer some times, and then stop at that point, is of little or no value to us at all.

So the Texaco merchandising salesman is a tremendous help to the B. F. Goodrich territory manager in showing our technique and the Texas Company's technique of merchandising, particularly showing him how to move tires and batteries, which are the major items in our line.

How to spot cars that come on to the court for possible new tire sales; how to trade tires, that I spoke to you about.

The Texaco merchandising man is in there so frequently he can be constantly drumming that into the B. F. Goodrich-Texaco dealer and he is just performing a wonderful service for us. In my book that is what we pay for. We pay for the service—and it is doggone near day in and day out because he is in there in many cases more than once a week, he is in many of those places more frquently than that, where our man only gets in there once a month or once every five or six weeks.

So the constant assistance in the application of the B. F. Goodrich merchandising programs by the Texaco dealer is where the Texaco salesman performs just a wonderful service for us.

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Redirect examination by Mr. Boyd:

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(2669) A. You get an account occasionally that has been a B. F. Goodrich account for many years, possibly an account that we have financed and built and so forth, and he decides to either change his gasoline suppliers or he is going into gasoline for the first time. We naturally recommend one of our good associates in the business and he takes on Texaco gasoline; possibly through a lease and re-lease arrangement.

(2670) When a situation of that kind develops the Texaco salesman finds here is a Texaco outlet selling B. F. Goodrich tires in large quantities and he reports that to the division manager of the Texas Company who immediately contacts the B. F. Goodrich district manager who says: "John Smith is now a Texaco-B. F. Goodrich dealer and should qualify for commissions."

Our district manager says: "Oh, no, that is an account which is a 20-year B. F. Goodrich account which we have financed and leveloped and doesn't qualify under our contract." He refuses to honor the account.

It stops for good reasons at that level and the two managers, the division manager of the Texas Company and the district manager refer it to the home office. That is what that means. We have some of those.

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(2671) (Witness excused.)

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(2689) Mr. Royall: Your Honor has overruled our motion for the names of people who have been contacted and not been called as witnesses. I saw a copy of the order this morning.

I want to say to your Honor that I have noted the ground on which you made that ruling. We will at a later

date, when the situation is changed, renew that matter in some other manner before your Honor.

Secondly, I want to say that we did not really intend the request for information from the witnesses who might be examined to be a motion, but it is of course immaterially, really, at this time. I am not seeking in any manner to reargue, but it is still our opinion that in the interest of expedition if the witnesses which are to be offered, other than company witnesses, would have available at the time of their examination data on the total sales 1952 to 1956, the TBA sales during that period, the number of TBA customers, the names of TBA customers who handle petroleum products, the brand name of each TBA product or if no brand name the name of (2690) the manufacturer, the TBA sales of each such product for this period 1952 to 1956, and also the territory of each salesman at present and any changes in the 1952-1956 period; and also to furnish a list of the records on which such information is based, and such records in the case of sales to include a list of all tax returns reporting such sale, either sales or otherwise, and we believe as the case proceeds it will be apparent that the lack of all or part of that information will certainly delay the examination of witnesses and may make it unnecessary to complete our cross-examination, which we very much hope we can avoid asking.

Your Honor, I assume that we may, if we so elect, note now or at any time during the hearing a formal exception to your Honor's rulings?

Hearing Examiner Kolb: You have an automatic exception.

Mr. Royall: I know we do. I just want to make it clear.

JAMES L. DOSS, was called as a witness on behalf of the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Dias:

Q. State your full name for the record, please? (2691) A. James L. Doss.

Q. And your position with the Texaco Company? A. Since January 1, Regional Manager. Prior to that time Territorial Manager, Domestic Sales Department, Central Territory, Midwestern Area.

Q. Chicago is a— A. Chicago is the headquarters office; yes, sir.

Q. You say since January 1 you have been what? A. Since January 1, 1957 my title has been changed to Regional Manager. We have been undergoing a reqrganization of the domestic sales department. My duties from that date forward will be slightly different than prior to that time.

Q. Will you describe your duties prior to the January 1, 1957 date? A. The territorial manager is charged with the administration of the company's policies and programs as promulgated by the executive sales office in New York for the Midwestern area.

Q. How is that changed since January 1? A. Since January 1 we have transferred authorities held at territorial level down to the division managers. As a matter of fact, some of those authorities were transferred prior to January 1 but became complete on January 1, 1957.

* * *

(2694) Q. You say you were a salesman at one time. What type salesman were you? A. Back in those days we called all the salesmen resale salesmen. We called on

all classes of business at that time. Of course, that has been many years ago.

Q. Have salesmen's duties changed now? A. They have to some extent, yes. We have merchandising salesmen today, and we have general salesmen today.

Q. Can you describe the duties of each? A. Our merchandising salesman calls only on resale accounts, that is, service station dealers. He works with those dealers in merchandising methods, sales promotion assistance, training, counsel, guidance, and so forth, in order to help them become more successful merchants.

Q. And the general salesman? A. He has similar duties involving having some resale accounts. That is, service station dealers in his assignment. But in addition thereto he probably calls on automobile dealers, farm implement dealers, and in some cases consuming accounts such as dairies, laundries, bakeries, et cetera.

Q. Is it true that the merchandising salesman calls on only lease accounts? A. No. He has some contract dealer accounts and some leased accounts. There probably would be cases where he had nothing other than leased accounts, but that is not a part of the (2695) position description.

Q. How about the general salesman? Does he have some lease accounts? A. Yes he does, in some areas—I would say in practically all areas he has some leased accounts.

Q. In your present position you have charge of local bulk plants? A. Yes we do.

Q. They are under your jurisdiction? A. Yes.

Q. How many bulk plants do you have in Chicago? A. We are speaking now of metropolitan Chicago?

Q. Yes. A. Well, we have a bulk plant at Des Plaines, one we call North Kingsbury, on the north side, which is near the north side of Chicago, one at Archer Avenue, and we have one at Joliet, which covers that area.

Q. Do you have one at Pullman? A. Yes, we do. I omitted that because it is only partially in operation. We are making most of the deliveries in that area from Joliet.

Q. Can you tell us—incidentally, these Texaco bulk plants, are they Texas owned or independents? A. The ones I mentioned are owned by Texaco.

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(2698) Q. Do each of these bulk plants have a sales force? A. Yes they do.

Q. How many salesmen are there in each? Does it vary? What type do you have? A. We have 21 merchandising salesmen and 16 general salesmen in the total area of metropolitan Chicago, which I described.

Q. They take care of all those bulk plants? A. Yes.

Q. Out of those bulk plants? A. Yes.

Q. That is not 21 and 16 each? That is total for the City? A. Twenty-one merchandising salesmen and 16 general salesmen covering the entire area which I described.

Q. Do they work out of those bulk plants or do they work out of the division office? A. They work out of the bulk plant.

Q. Who is in charge of salesmen at the bulk plants? A. A zone manager.

Q. What are his duties? A. He is responsible for all sales and operating matters, including credits, collections, and many other things that occur within the boundaries of his prescribed territory.

Q. Does he have anything to do with TBA sales? (2699) A. Yes he does. He also directs the activities of the salesmen and assists them and so forth.

Q. Who else at the home office has authority over the salesmen? What I mean is the division office. A. The division manager is, of course, in charge of all personnel.

—policy, programs, and everything else within his division, which usually comprises three or four states. He has a staff of assistants. And the one in charge of sales generally directs the activities of the general salesmen, and the one in charge of sales promotion works more closely with the merchandising salesmen.

Q. Who is that who works closely with the merchandising salesmen? A. The assistant division manager, sales promotion.

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(2700) *By Mr. Dias:*

Q. Are any of these salesmen assigned specifically to each of these bulk plants? Are they sort of generally working out of each bulk plant? It doesn't work that way? A. No. The merchandising salesman and general salesman cover prescribed geographic areas within the limits of a particular bulk plant. We have other salesmen that free lance, or other representatives. But not salesmen.

Q. You said they free lance. What does that mean?

(2701) A. What I mean is that we have men who are known as dealer service representatives, representatives dealer training, TBA representatives who more or less work out of the division office and might cover the entire area.

Q. What does the TBA representative do? A. He spends all of his time in the promotion of TBA, working with members of tire company organizations, working with our own salaried people and helping them become more proficient in assisting dealers. He holds little seminars from time to time with salesmen, keeping them up to date with TBA merchandising methods.

Q. What salesmen? A. Both general and merchandising salesmen.

Q. Is it at that time that they have meetings with station operators too, at these seminars? A. I don't think

the representative, TBA, himself would hold many meetings with dealers. There are probably occasions on which he would be in attendance. But he primarily works with our own salaried organization and members of the rubber companies.

He does make some calls on dealers from time to time, particularly if a problem arises.

(2702) Q. What sort of problem? A. Well, there could be some misunderstanding between the dealer and the rubber supplier regarding prices or quality or adjustments or credits; many other things.

Q. We asked you for a number of the Texaco outlets in Chicago. Do you have that? A. Yes, I have a memorandum on that. Unfortunately, our records do not make this information available for the years 1952 and 1953. I do have it for the years 1954, 1955, and 1956.

Q. This then is the number of Texaco outlets in Chicago during the years 1954, 1955, and 1956? Is that correct? A. The memorandum I have involves C, D, and E accounts. Of course we have some others that are not nominated.

Q. Suppose you give us the figures on that first? A. 1954, in the area which I described as metropolitan Chicago, we had 385 C accounts. In 1955, we had 386 C accounts. In 1956, we had 392 C accounts.

In the year 1954, in the same area described, we had 102 "D" accounts; 98 "D" accounts in 1955; and in the year 1956, 100 "D" accounts.

For each of those three years 1954, 1955 and 1956 we had three "E" accounts.

Q. You say you had others in addition to those nominated? A. There are probably ten percent of this total number that (2703) are not nominated to either Goodrich or Firestone for TBA solicitation.

Q. Just to be clear, taking 1956, there were 392 "C" accounts. You say ten percent. In other words, about 39 or 40 were not nominated to either Firestone or— A. Either company, probably 40 or 45.

Q. So that the total number of stations in the area would really be then 432, adding 40 to that 392 figure, is that correct? A. That would be pretty close; yes, sir.

Q. Is that true in each year and as to each classification? A. I would think so.

Q. It would probably be true of the "E" classification, wouldn't it? A. No. The "E" classification is a distributor. We have three each year and that is all we have.

Q. And there are no others? A. No.

Q. Nominated or otherwise? A. No.

Q. What is the reason why, or is there a reason why 40 in 1956, for example, were not nominated? What is the reason for not nominating the station? A. They would not be considered as potential merchandisers of TBA; possibly some garages, roadside service stations and (2704) small combination restaurants, service stations.

Q. How many of these—using the same figures for 1954, 1955 and 1956—how many were nominated to Goodrich? A. In the year 1954, 228. In 1955 there were 229. In 1956: 283 nominated to Goodrich.

Q. How many of those were approved by Goodrich? A. As far as I know they were all approved.

Q. How many were nominated to Firestone? A. 104 in the year 1954.

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(2705) *By Mr. Dias:*

Q. Will you state the number that were nominated to Firestone in 1954? A. Firestone in 1954: 104 accounts; 1955: 107; 1956: 136.

Q. How many were approved by Firestone? A. As far as I know all of them were approved.

Q. Do you know the difference between an active and inactive account? A. An inactive account is a non-buying account.

Q. This is in relation to TBA? A. Yes, sir.

Q. Isn't there a period during which if a station fails to buy it is classified as inactive? A. I don't know of any definite definition of that. I think each division probably has its own interpretation.

Q. My understanding is that after say a 90-day period if an account does not purchase it is considered inactive. Is that so? A. That could be true. I don't know.

Q. In other words, you don't know whether or not there is an arbitrary period? A. No, I do not.

(2706) Q. Do you know what happens when an account becomes inactive? A. Well, it would become inactive because a fellow was not buying.

Q. I didn't make that clear. What does the rubber company do when an account becomes inactive? Do they notify Texas? A. I don't believe there is any set procedure for them to notify us. Of course if the account is nominated to the rubber company and approved, and we receive information from them each month on the purchases of that account, we would know, too, that it was inactive or non-buying. I don't think they notify us.

Q. Let me start at the beginning. Do you recommend the purchase of Goodrich or Firestone to an operator? Is that correct? A. That is correct.

Q. Let us assume that the operator decides on Goodrich and no sale is made within some period—30, 60, 90 days. What happens to that particular station at that time? A. At that time if he hadn't been sold on Goodrich he might be nominated to the other company and give them an opportunity to try to sell them. If he hasn't bought

from Goodrich in 90 days I think he would have probably made up his mind to buy from somebody else. It could have been anybody.

Q. But at any rate you then nominate him to the other rubber (2707) company? A. I would think so. That would be the natural thing to do.

Q. Let us assume that a dealer buys either Goodrich or Firestone, say for about a year, and then stops buying. After a certain period if he stops buying the line that he had chosen originally is he then nominated to the other rubber company? A. If he should stop buying Goodrich after a period of a year he would have already selected some other line. That would have been the reason he stopped buying. There wouldn't be any point—

Q. Though that doesn't follow. Let's suppose he goes along for a year buying Goodrich products and for some reason best known to him he decides he is not going to buy them anymore. Do you or do you not receive notification from Goodrich that he is not buying Goodrich products? A. I don't think so.

Q. But you did say that you get these accounts or records—is it monthly that you receive notification as to the amount of purchases— A. Yes, sir.

Q. (continuing)—by individual stations? You would know from those records that he was not buying? A. That is correct.

Q. What is the Texaco procedure then if they notice that (2708) a station is not buying the sponsored brand? A. In other words, the division office, as I understand your question, would develop the fact the man was not buying because we had had no report on him. While there isn't any set procedure for them to notify the field, they sometimes might verbally or might comment on it to the zone manager. The salesman would probably know about it. I don't know just what they would do.

Q. On these figures that you gave, are all of them active with the respective rubber companies? A. Most of them are, I believe. These are nominated and approved by.

Q. Of those figures, referring to Goodrich, in 1954, 228 nominated, all were approved; 1955, 229 were nominated, all were approved; 1956, 283 nominated, all approved. As of 1956 are all these 283 accounts active? A. Yes, sir. I hope I didn't answer your question incorrectly. We didn't nominate this number each year. This is the total nominated and approved for each of the years.

Q. And it is just cumulative? Is that the idea? A. Yes.

Q. I think there was a misunderstanding there. Is the same true as to Firestone? In 1956 a total of 136 that had been nominated to Firestone and had been approved, and they are all active, is that correct? (2709) A. Yes, sir.

Q. Do you keep your records separately as to those stations that buy Goodrich and those that buy Firestone TBA? A. We have an individual record on each station, yes.

Q. Then as the stations break down into Goodrich purchases or Firestone purchases, are they kept separately? A. Yes, they are.

Q. On these stations that are buying the Goodrich line, taking 1956, do your records show those that buy tires and tubes, a breakdown as to batteries and another breakdown as to accessories? A No. We have a total sum for tires, batteries, accessories, and all TBA merchandise.

Q. Do you mean a dollar sum? A. We have the number of accounts and we have also the wholesale dollar purchases.

Q. In other words, the number of Texaco outlets buying tires, batteries, and/or accessories is 283 as of 1956?

A. That was the nomination, sir. They were not all buying. Some buy at some times and some don't.

Q. But you told me they were all approved? A. They were all nominated to and approved by. But that doesn't mean that each and every one of the accounts is buying.

Q. You told me they were all active? (2710) A. Then I made a mistake if I said that.

Q. What is the answer to that then? Are there some inactive? A. In the case of Goodrich, in the year 1954, 193 accounts were buying Goodrich and other products. And of course there were a total of 228 nominated and approved.

In the year 1955, 210 accounts were buying Goodrich and other TBA merchandise, out of 229 nominated and approved.

In the year 1956, 202 Goodrich accounts were buying Goodrich and other TBA merchandise out of 283 nominated and approved.

Q. Then your answer is changed to the extent that all were not active during those particular years, is that correct? A. That is correct; yes, sir.

Q. Can you give me the same information for Firestone? A. Yes, I can on Firestone.

In the year 1954, 61 accounts were buying Firestone and other TBA merchandise out of 104 nominated and approved.

In 1955, 55 accounts were buying out of 107 nominated and approved.

In 1956, 54 accounts were buying Firestone and other TBA out of 136 approved.

We had also in 1954, 19 accounts buying both Goodrich and Firestone and other TBA.

(2711) Q. Would they be 19 out of that 193? Or would they be 19 out of the remainder between the difference of 228 and 193? In other words, my question is: Is

this 19 in addition to the 193 you already mentioned above? A. That is correct.

In 1955 we had 30 buying both lines, and 35 buying both lines in 1956. We also had, in addition to the figures I gave you, nine buying Goodrich only in 1954, eleven buying Goodrich only in 1955, and fifteen buying Goodrich only in 1956.

Q. Tell me again, what are those figures? Are they of a different classification? A. No. These are dealers out of this total number I gave you nominated and approved. For example, in 1956 we had 283 dealers nominated to and approved by Goodrich.

Q. Maybe this is where I am off. Of those 283, are they "C" dealers? Is that correct? A. No, that is all dealers.

Q. Then I don't understand what these nine, eleven, and fifteen are. A. The nine, eleven, and fifteen are buying Goodrich products only. The other figures I gave you, as I mentioned, are buying Goodrich and other TBA. And in the year 1954 we had only two dealers buying Firestone exclusively, the same number for the years 1955 and 1956.

(2712) Q. That was two? A. Two buying exclusively. All those others were buying other lines of TBA in addition to either Firestone or Goodrich.

Then we had 13 dealers in 1954, 16 in 1955, also 16 in 1956, where the buying habits were not determinable at the time this information was compiled. It is a little doubtful as to just how they were buying. The point is that we tried to break this down in detail here to give you full information.

* * *

(2714) *By Mr. Dias:*

Q. What type assistance does this division or zone here in Chicago render to rubber companies in selling TBA? A. Our people of course work primarily with the service sta-

tion dealer in convincing him that he should handle TBA merchandise. We recommend Firestone and/or Goodrich. Of course, he is free to select anything of his own choice.

Q. Which of your people, specifically, do that? Is it just the merchandising salesman? A. The merchandising salesman, the general salesman, sometimes the TBA representative is called into the picture. And the zone manager sometimes.

Q. Does Texas conduct meetings with station operators? A. Yes.

Q. And the purpose of those meetings? A. It is to make them more successful merchants.

(2715) Q. And at that time do they discuss the promotion of TBA? A. Yes.

Q. Do you ever have representatives of Goodrich or Firestone at those meetings? A. There are representatives of both companies from time to time at some of the larger dealer meetings.

Q. Simultaneously? A. Yes. Usually in the spring of the year we have a large dealer meeting and generally a representative from those companies is present. Not always. But we display merchandise.

Q. Do you have those meetings at which only one or the other attend—Goodrich or Firestone? A. To the exclusion of the other?

Q. Yes. A. Oh, no.

Q. In other words, every time you have a station operators' meeting, representatives from both rubber companies are present? A. They are always invited, sure. I mean as a standing invitation. Our meetings are not closed. They can come to any of them.

Q. As further assistance to the rubber companies, do you or do you not advise Goodrich or Firestone that a new station is opening or a new operator is taking over a station? A. Well, the procedure generally works something

like this: (2716) In the selection of a replacement dealer or new dealer the salesman goes over it with him.

Q. With whom? A. The dealer, the prospective dealer.

Q. The operator? A. Yes, that's right. All the phases of successful merchandising, of which there are many, and talks to him about the importance of TBA. And if the salesman decides upon Goodrich or Firestone, that company is notified, yes. As a matter of fact, in most cases a letter is written to both companies notifying them that a new station is going up. Sometimes before the dealer is ever selected or even interviewed. So that they both know that the station is going to be available.

Q. Do you also contact the new operator? Having chosen a new operator, do you contact him before or after he gets into the station with this rubber representative? A. Well, he—it would depend, sir. The dealer may have selected the TBA line he chooses to sell before the station opens. But often times he doesn't until after he has taken the station and the rubber company representative convinces him that he has a good line of merchandise.

Q. Isn't it true that it happens very often that a Texas representative, in company with one of the rubber company representatives, calls on the prospective station operator at his home? (2717) A. That does happen sometimes.

Q. Before he even opens his station, isn't that true? A. I wouldn't say he called on him every time, but I would think it does happen. A dealer would want to know more in detail, for example, about the quality of the merchandise and pricing and so forth which our salesman might not be completely familiar with. We have a lot of new salesmen sometimes that need help like that.

Q. You mean the representative from the rubber company? A. Yes, that's right.

Q. So it does happen that after a dealer has chosen his TBA supplier before he opens his door to the station, is that correct? A. Well, I wouldn't say that happens any more often than it does later.

Q. But it does happen? A. It does happen.

Q. You mentioned notification by mail to the rubber companies that there are new stations in the process of building or intending to be opened. Is that correct? A. That happens in some areas. I know it happens here in Chicago.

Q. Does it also happen that you notify the Goodrich and Firestone distributors that there is a new station or a new operator about to take over a station? Let me change that.

(2718) You have stated that you notified the Goodrich Company and Firestone that there are these anticipated openings. Isn't it true that you also notify the local distributors for those companies? A. Well, that might happen if—are you talking about a distributor of Firestone or a distributor—

Q. Or a distributor of Goodrich merchandise. A. Goodrich merchandise?

Q. Yes. A. Sometimes those distributors are supply sources for a dealer. I don't know that that happens. It might.

Q. As a matter of fact, back in about October and November, didn't a letter issue from your office to each of the designated supply points for Goodrich and Firestone products notifying them that there were, as I recall, five or a half dozen new stations about to open up and inviting them to go see the operators? Isn't that so? A. A letter from my office?

Q. I believe that is right, yes. A. Do you mean over my signature?

Q. I don't know if it was over your signature or not. A. I don't recall that.

Q. Is that a general practice? A. I wouldn't know. That is an odd—you said five stations were going to open here in Chicago?

(2719) Q. Yes. Either a change in operators or a new station opening up. A. I know it is the practice of the zone manager here in Chicago when a new station is going to be built to notify the Firestone and Goodrich people. I know that. That is about all I know on that.

Q. They do that by mail. Do they also do that by 'phone? A. It could happen. I don't know that they do.

* * *

(2721) *By Mr. Dias:*

Q. Do you ever conduct sales meetings with the salesmen? Do you do that or is there somebody else in the organization who does that? A. I would not personally conduct sales meetings with salesmen. I might attend one as an observer.

Q. Who normally does conduct those sales meetings? A. Either the division manager, the zone manager, or one of the division manager staff assistants.

(2722) Q. How often are those sales meetings held with the salesmen? A. In the case of the division manager and/or his staff assistants those meetings would not be held more than once or twice a year. The zone manager might have a meeting with his salesmen weekly or monthly.

* * *

Cross examination by Mr. Royall:

(2723) Q. I will start by having you go back to some records. Mr. Doss, there are about 4,000 service stations, are there not, or a little more, in the Chicago District about which you are speaking? A. Something more than that.

Mr. Dias: I object.

Hearing Examiner Kolb: Overruled.

By Mr. Royall:

Q. As I understand the figures that you got up for Mr. Dias and gave, in the case of Goodrich you nominated, taking the year 1956 as illustrative, 392 accounts, C accounts, and 100 D accounts, and 3 E accounts. Is that what you meant, that you nominated those? A. Those are the total numbers of accounts nominated to the rubber company.

Q. Aren't those the total accounts instead of the total nominated? Isn't that the number of your entire Texas outlets in that area? A. That's right.

Q. Those figures do not relate to either Goodrich or Firestone, do they? A. No. The number nominated, I read that out specifically, the number nominated to and approved by Firestone in 1956 are 136; Goodrich, 283.

Q. I am taking the Goodrich figures. So you have in (2724) Chicago all your accounts totalled in 1956—392, plus 100, plus 3, which is 495 accounts. A. We have accounts in addition to those that are not classified as anything.

Q. But those are the ones that are classified C, D, and E? A. That's right.

Q. Out of that 495 you nominated and the nomination was approved in the case of Goodrich for 283 account? A. Yes.

Q. And in the case of Firestone, 136 accounts? A. Yes.

Q. Those would add up to 419? A. That is correct.

Q. As compared with the total number of stations of 495? A. That's right.

Q. That 419 I believe you testified has some duplication because in some of the stations both Firestone and Goodrich are nominated. Is that right? A. That's right.

Q. Do you know about how many that is? A. No, I don't. I know how many are buying both products but I don't know that.

Q. Therefore the number nominated and approved, which came to— A. I do know that some accounts are nominated to both (2725) companies.

Q. I understand that. And the number of 419 nominated accounts would be reduced by whatever— A. Whatever the duplication was.

Q. (continuing)—the duplication was? A. Yes.

* * *

By Mr. Royall:

Q. You said the buying habits, I believe you said, were not determined as to 16? A. Oh, yes. That is correct.

Q. I just wanted to be sure I understood you. Of those accounts, Goodrich accounts, 283 were nominated and approved, am I correct in saying that your testimony was that out of that entire number there were only 15 which sold Goodrich sponsored goods alone? A. During the year 1956 only 15 handled Goodrich exclusively.

Q. Out of the 283? A. That is right.

(2726) Q. Does that mean that the others all sold either no Goodrich or sold Goodrich and some other non-sponsored items?

Mr. Dias: I object.

Hearing Examiner Kolb: Objection overruled.

A. Yes, sir.

By Mr. Royall:

Q. In the case of Firestone, you testified that there were 136 stations nominated and approved. Is that right? A. In the year 1956; yes, sir.

Q. And of those stations, the 136, there are only two that sold Firestone-sponsored goods exclusively? A. Yes, sir.

Q. Out of the whole 136? A. Yes, sir.

Q. All of the others either sold no Firestone-sponsored goods or sold other competitive non-sponsored goods, is that right? A. That is right.

Q. They either sold no Firestone or they sold Firestone and other non-sponsored goods? A. That is right.

Q. As a matter of fact, some of them didn't even sell, even though they were nominated and approved, any Goodrich or Firestone? A. That is right.

* * *

(2728) Q. I believe you testified in answer to Mr. Dias' questions that you were in charge of the various territories which you described, from time to time. And I believe you testified that the policy matters were your decision, is that correct? A. Yes, sir.

Q. Who made the choice as to whether a dealer would use a sponsored TBA product or whether he would use one of those two if he used either? A. That would be up to the dealer to make his own choice.

Q. I believe in one part of your testimony—and my recollection may be incorrect—you inadvertently used the (2729) word "salesmen" when you meant dealer. Did you say or intend to say that the salesmen ever made that selection? A. The salesman only recommends to the dealer, and the dealer makes his choice.

Q. During the time that you were in charge of the policy arrangements in connection with the petroleum and the TBA program, were instructions sent from time to time to the salesmen as to your policies? A. Yes, sir.

Q. Were they sent out in accordance with or under your authorization and your knowledge? A. Yes, sir.

Q. Did those letters say that the dealer was independent and made the selection? A. Certainly.

Mr. Dias: I object. Do you have the letter?

Hearing Examiner Kolb: Objection sustained. The answer will be stricken.

By Mr. Royall:

Q. Was there anything in those letters inconsistent with the policies that you just stated? A. No, sir.

Q. Will you note this letter. Was this letter that I hand you sent to the salesmen in this territory, the letter dated January 14, 1952? (2730) A. I believe this is the Denver letter.

Q. Was one similar to that sent to your— A. Yes, sir. All those letters of policy emanate in New York, come to the territory manager. He gives them to the division manager and he gives those same instructions to the field.

Mr. Dias: Is that letter in the record?

Mr. Royall: No, sir. I will have it identified.

By Mr. Royall:

Q. With that letter was there enclosed a circular letter dated January 3, 1952? A. That is right; a statement of policy.

Q. And that is referred to in the other letter? A. Yes, sir.

Q. I asked you a moment ago about a letter sent to Denver. Was a similar letter sent from the Chicago office on January 21, 1952 to the resale salesmen? A. That's right.

Mr. Royall: I would like that identified.

Hearing Examiner Kolb: The document will be identified as a document dated January 2, 1952, and marked 9-A through C.

(The document referred to was marked Respondents' Exhibit 9-A through C for identification.)

(2731) *By Mr. Royall:*

Q. Another letter was sent out of similar character, was it not, dated December 29, 1953, and this thereupon was superseded, is that right? A. That is right. We restated the policy.

Mr. Royall: Your Honor, if I may state this for the record, the letter sent out in 1953 has already been put in evidence in the Washington hearing.

Mr. Dias: What is the exhibit?

Mr. Kerins: 2-A through E.

By Mr. Royall:

Q. Is this a letter containing similar instructions relating to the independence and choice of the dealer dated December 20, 1955 and sent to both merchandising salesmen and general salesmen? A. That is right.

Q. And it has attached thereto a statement of the policy? A. Yes, sir.

Mr. Royall: I would like that identified.

Hearing Examiner Kolb: Mark it as Respondents' Exhibit 10-A through C.

(The document referred to was marked Respondents' Exhibit 10-A through C for identification.)

* * *

(2732) *Redirect examination by Mr. Dias:*

Q. I am confused about some of the figures you gave earlier. I think you testified one way and then changed it. A. It wasn't intended.

Q. I understand. I would like to get the record clear because I am confused and maybe the record is, too.

Using the year 1956, 283 accounts nominated to Goodrich? A. And approved.

Q. In 1956, 202 accounts were buying B. F. Goodrich—they were the active ones. Is that correct? Are my figures correct so far? A. They were buying Goodrich and other merchandise.

Q. Yes, I understood that. Then you gave for Firestone in 1956, 136 nominated and approved and 54 active accounts. A. Fifty-four accounts buying Firestone and other merchandise.

Q. Then you said—and here is where I may be confused—you gave the figure of 35 stations in 1956 also buying both, and at that time I asked you if that was in addition to the figures you had already given. And on cross-examination I think you stated that the 35 was included among those two prior figures. Which is correct? (2733) A. It would be included in the 136 for Firestone and 283 for Goodrich. The division between the two I do not know, but that would be a duplication.

Q. That is what I want to get clear. The duplication would come in that 136 and 283 figure, rather than in the 202 and 54 figure. Is that correct? A. That is right.

Q. You also stated that of the 202 purchasing Goodrich TBA, only 15 purchased exclusively. Is that correct? A. That is right.

Q. And of the 54 purchasing Firestone, only two bought exclusively, and those figures were for the year 1956. Do you know, or can you find out for me, how many of the

remainder of those two figures—202 and 54, Goodrich and Firestone respectively—were buying tires and/or batteries? A. Let me see if I understand you correctly.

Q. Let me restate it. Of the 202 you took out 15 because they were the only ones buying exclusively. That would leave roughly 187. Is that correct for Goodrich?

Mr. Royall: I think you misunderstood. The 202 he stated were buying non-sponsored goods.

Mr. Dias: And also buying Goodrich.

Mr. Royall: And also buying Goodrich. But the 15 were the ones buying Goodrich only, so they are not a part of the 202. I thought your questioning inferred they were.

(2734) Mr. Dias: Yes.

By Mr. Dias:

Q. Then in other words there are 202 buying Goodrich and other products, is that correct? A. That is correct.

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(2735) *By Mr. Dias:*

Q. Of those 202 Goodrich accounts that you stated were buying Goodrich and other products, how do you know that they are buying other unsponsored products? A. In developing this information which you desired it seemed appropriate to develop the complete details on the accounts, and that was the occasion for this.

Q. Are those records normally kept? In other words, do you normally get a report showing that a station is buying Goodrich or Firestone and other merchandise? A. No.

Q. That was compiled for the purposes of this— A. We have no reports of that character at all. This was developed in connection with this request in order that it would be clarified.

Q. Is there any report ever made by anybody—salesman or station operators—that they buy other products, other TBA products other than the sponsored brand? A. No.

Q. How did you compile this information then that these 202 were buying other than the sponsored brands? A. By physical survey.

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(2738) DONALD J. KNIGHT was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name for the record? A. Donald J. Knight.

• • •

Q. Will you state your official position with the Texas Company? A. Zone Manager.

Q. How long have you been zone manager, Mr. Knight? A. Approximately six years.

Q. Will you describe your duties as zone manager? A. To promote the interests of the Texas Company through the development of new business, protect their present (2739) investment and interests in a defined territory.

Q. Do you promote the sales of TBA, too? A. Through my salesmen assigned to me.

Q. How many salesmen do you have assigned to you? A. Four.

Q. Are they general or merchandising salesmen? A. Both.

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Q. Do you have charge of one of the bulk plants? A. Yes, sir.

Q. Which one? A. DesPlaines.

Q. You heard the description of the territory described by Mr. Doss. Was that accurate? A. The north and west section of metropolitan Chicago.

Q. Do you have salesmen's meetings? A. Yes, sir.

(2740) Q. How often? A. Weekly.

Q. What is the purpose of these salesmen's meetings? A. To review policies, to handle correspondence which arrived during the past week, and to assign the salesmen to specific duties.

(2741) Q. Are your salesmen called in for meetings by higher echelons at times? A. Yes, they would be. Usually on an annual basis we have an organization meeting.

Q. Do you maintain a performance record for your salesmen? A. Would you define "performance"?

Q. Yes. First of all, are your salesmen on a salary or commission basis? A. They are on a salary and bonus basis.

Q. How do you determine that a salesman has earned a bonus? A. The bonus is paid on the lubricating products only, and that is paid on the basis of previous year's sales.

Q. In other words, if it is exceeded— A. If they exceed the previous year's sales, yes.

Q. The bonus or added extra compensation is not payable on petroleum sales? A. On lubricating products. Grease and motor oils. Not gas.

Q. These salesmen promote the sales of TBA? A. Yes.

Q. How does that figure in their performance? A. There is an objective established, based on the previous year's sales.

Q. What is that objective? You say it is based on previous year's sales. To the individual station in there? A. No. As a whole.

(2742) Q. Do you mean as a whole for the particular bulk plant or territory? A. Correct.

Q. Let me see if I understand now. Let's assume that the stations in the territory of your bulk plant purchased $100 worth of TBA last year. That takes care of all four salesmen, is that correct? In other words, all four salesmen sold or promoted the sale of $100 worth of TBA. A. I don't follow your question.

Q. You state that the objective is to sell as much TBA, or promote the sale of as much TBA during the current year as they sold in the preceding year. A. Correct.

Q. From the whole bulk plant or the territory of the whole bulk plant. Is that your testimony? A. The four salesmen would have individual objectives.

Q. That is what I want to be clear. Each salesman then has the objective of matching at least his prior year's TBA sales, his own rather than the whole bulk plant's, is that correct? A. Correct.

Q. How do you determine whether or not he has made those sales? Do you receive reports? A. We receive a report from the division office as to the dollar volume.

Q. Is he supposed to increase or maintain his prior year's (2743) business? A. Maintain and increase.

Q. So it is continuously rising year after year? A. No. I would not say it is continually rising, because sometimes our volume is below what it was the previous year. We do not equal our figures. Our figures are not always plus figures.

Q. What is the situation then where a salesman does not equal his previous year's performance? Is he considered a good salesman? A. There are factors taken into consideration there. It might be a loss of some business which might have an effect on there which is beyond his control.

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CARD 11

Q. When you say loss of business, do you mean stations going out of business? A. A station going out of business; changing product.

Q. If the station does not go out of business, if he has as many stations in his area from one year to the next and his sales dropped down, what is the situation then? A. Well, there are factors entering into that. It may be a reduction on a national basis of sales of tires, batteries or accessories, which might be a factor to cause that, and it also could be a factor where the salesman was lax due to sickness or—

Q. At any rate, his performance is based upon his sale of (2744) petroleum products, sales of lubricating products, lubricating to the extent that he receives a bonus on the part which exceeds last year's sales, and also sale of TBA products. A. There is no bonus on TBA products.

Q. But that is one of the rating factors? A. One of the measuring factors.

Q. You have heard the testimony of stations in the territory purchasing other than sponsored-brand TBA. Do they figure in that salesman's rating? A. We have no record of the outside purchases.

Q. What is the procedure when a salesman does not meet the standards that you expect of him? A. That covers a broad range of factors.

Q. There is nothing different between one of your salesmen and a general salesman is there? You encourage him to sell more of whatever it is that he is lax in, is that correct? A. Correct.

Q. So that if his sales were down in either petroleum or lubrications, or TBA, you would encourage him to sell more? A. That's right.

Q. Do you have anything to do with the closing down of the station, of a leased station, or the recommending of a closing down of a station? A. Yes.

Q. What sort of authority do you have in that regard? (2745) A. I have authority in recommending only. I have no authority to cancel leases.

Q. Where do you get your information as to whether or not a lease should be continued or be allowed to lapse? A. From the sales figures, from the cost per gallon.

Q. Do you receive recommendations from your salesmen? A. No. The salesmen do not recommend that. Their work is not of that category.

Q. I am talking of merchandising and general salesmen. Neither can recommend? A. The original recommendations start with me.

Q. And the only time that you have any indication that a station may need cancellation for one thing or another, is from your own records, the records in your office, is that correct? A. The division office has similar records. The forms originate in the division office and are sent to the field and I inspect those records.

Q. Do you also inspect the stations from time to time? A. Yes, sir.

Q. How often do you do that? A. I would say that I probably cover all the stations once every six months.

Q. Do you have any idea how many are in your particular territory? A. Approximately 75. Retail service stations?

(2746) Q. Yes. A. Yes.

Q. When you check those stations what is the purpose of your visit? Do you check the housekeeping? A. The physical aspects of the service station.

Q. Anything else? A. I might look to see if the premises are clean, if there is any repair work that is needed, if the lights were in proper working order. A physical inspection of the station. Cleanliness, proper maintenance operations.

Q. When a station needs repairs do you recommend that those repairs be made? Does Texas do it? A. Texas may in some instances, and the lessor, that may be his obligation to do that.

Q. When you come upon a station that has a poor sales record, what do you do in a situation of that sort? A. Endeavor to analyze the situation so that we can make recommendations to the dealer to assist him to better sales, better profits.

Q. And that is regardless of whether the sales are on petroleum, lubricating oils and grease, or TBA? A. In line with the petroleum sales.

Q. You don't encourage the purchase of TBA products? A. Yes.

Q. Then if his present figures are lower than they were last (2747) year, you don't try to encourage him to pick them up?

Mr. Royall: Your Honor, we object to cross-examining the witness. The witness said the determination is made entirely on petroleum sales. Now he is trying to cross-examine him on it. We suggest non-leading questions.

Mr. Dias: A hostile witness.

Hearing Examiner Kolb: I think the witness is an adverse witness. You may answer. Will you read the question?

(Question read.)

A. Yes, I do encourage him to pick them up.

By Mr. Dias:

Q. So that on the occasion of your visits to these various stations, you do try to improve his purchases and sales of petroleum, lubricating oils and grease, and TBA products, is that correct? A. If there were factors that entered

into it that he needed some assistance or recommendations on those three items, yes.

Q. On your visits to these dealers do you ever reproduce or present to them these policy letters of the Texas Company? A. No, sir.

Mr. Dias: That is all.

Cross examination by Mr. Royall:

Q. Do you discuss the policy with them? A. Yes, sir.

(2748) Q. And are the policies you discuss the same as come from the home office and also contained in these letters which are sent to dealers? A. Yes, sir.

Q. Not to dealers but to salesmen. A. To salesmen.

Q. Do your recommendations and discussions vary from those policies as stated by the home office and in the letters from the division and zone headquarters? A. If I understand your question, I follow the policy.

Q. I believe you stated that no bonus is paid for TBA sales. A. Correct.

Q. Am I correct in my understanding that in determination of the question of cancellation or renewal, the determining factor is the gasoline sales? Is that correct? Policy sales? A. Yes, sir.

Q. In your experience has there been any failure to renew, or any cancellation based in any way on the lower amount of TBA sales? A. No.

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(2749) Q. During the period from the time that you were salesman to when you were zone manager were you fully familiar with the policies of the Texas Company as to the independence of the dealers? A. Yes, sir.

Q. Did you follow that policy in the administration of the affairs of the company? A. I have.

Mr. Royall: That is all.

Redirect examination by Mr. Dias:

Q. You mentioned that you discussed those company policies with station operators. How often did you do that? Every time you would go around? A. No, I do not.

Q. Can you give us some idea? Do you renew statements to them about the company doesn't want you to do this, that, or the other? A. If the occasion arose, yes.

Q. How would the occasion arise with regard to TBA, let's say? A. Do you mean what would bring about my discussing the policy of the company with an operator regarding the sale of tires, batteries and accessories?

(2750) Q. Yes. A. Possibly it would be the lack of gasoline sales due to his not properly displaying tires, batteries and accessories or not giving that service to his customers.

Q. What about the brand of TBA? A. Nothing as to the brand.

Q. You don't go into that at all? A. He is an independent operator. I would recommend to him, yes, that he call on Goodrich for assistance to help promote, or some other concern, whatever it might be.

If he had tires there, we would suggest that he display those tires, possibly run a promotion on them.

Q. From your statement, I take it if he sells more TBA he will sell more petroleum. Is that what you said? A. The offering of the service, tire service, sale of tires, battery service, sale of batteries, we feel will enable him to sell more gasoline.

Q. You mentioned that leases were never cancelled, that Texas never failed to renew because of low TBA sales, Has Texas Company, those stations in your area that you are familiar with, have they ever been cancelled out because of poor housekeeping? A. That could be one of the factors.

Q. Hours of operation? A. That could enter into it.

(2751) Q. Can you mention some other reasons for cancelling? A. Unsatisfactory finances to operate the service station, issuing bad checks to us, acts which would hinder other Texaco dealers. By that I mean discourtesy to the trade, obscene language, conditions of filth.

Q. How about leaving the station closed for any given period of time? Don't you have a provision in your lease about hours of operation? A. No, sir.

Q. Pardon? A. No, sir.

Q. Isn't there a provision in there that stations shall not be closed for 24 hours, 48, or something of that sort? A. I think that there is a provision in there that the station must not be closed down.

Q. What is that period? A. I do not have a copy of that lease with me.

Q. May I suggest 72 hours? Does that sound familiar? A. I will not answer that question without a copy of the lease.

Mr. Royall: The lease I believe, your Honor, is in evidence.

By Mr. Dias:

Q. Have leases been cancelled or have you failed to renew leases for violation of that type thing? (2752) A. I have had no instance where an operator closes up for a day or two days and would reopen the station. I have had cases where the operator closed the service station and said, "I can no longer operate."

Q. How about hours of operation? Do you require 24 hours a day operation? A. No, sir. We require no hours.

Q. Have you ever? A. No, sir.

Q. Of no lessee in your area? A. No, sir.

Q. After your survey, when you determine that a lease for some reasons best known to yourself should be cancelled or not renewed, do you notify the lessee, the operator, that such action is being contemplated? A. We usually discuss that with the operator, yes.

Q. When do you discuss that with him? Before you notify him that he is out? A. Prior to that time. We always counsel the operator, encourage them, try to get them to be better business people.

Q. Do you give them a period of probation, so to speak? A. No, I do not put them on probation.

Q. In other words, you talk to them about it and then cancel him? A. No. They are given an opportunity to correct those things (2753) which we have discussed with him and which we feel are poor business practices. After a period of working with him through the salesman and myself, if we find that our efforts are of no avail, at the expiration of the lease it is possible that we may have to decide that this is the wrong operator for this operation. Then he is given notice of perhaps 30 days' notice—

Q. You give him a 30-day notice that his lease will be cancelled. Before you give him that notice you tell him what is wrong and he has a period to correct that deficiency. A. We recommend certain things to correct the condition, and encourage him and work with him to help him do it.

Mr. Dias: That is all.

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(2754) *Redirect examination by Mr. Dias:*

Q. Is there any difference in your mind between a cancellation and a failure to renew a lease? A. A cancellation and failure to renew?

Q. Yes. A. Are you talking of cancelling an operator out and the failure to renew a lease on a piece of land and building?

Q. No. You have an operator in a station. He has let's say a one-year lease. You talk about cancellation, that you only know of two in the past 12 months. Were those two cancelled at the end of that 12 month period or sometime before the end of that 12-month period? A. They were cancelled at the expiration of their lease.

Q. Is there any difference between a cancellation and just a failure to renew? In other words, failure to renew their lease? A. They all fall into the classification to fail to renew their lease. We cancel no lease other than at the expiration.

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(2757) ARNE L. CARLSON was called as a witness for the Commission and first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name for the record? A. Arne L. Carlson.

Q. And your position with the Goodrich Company? A. As of January 1, this year, District Manager. Prior to that time, General Supervisor.

Q. General supervisor? A. That is right.

Q. How long were you general supervisor? A. Since June 1953.

Q. Will you describe your duties as general supervisor? A. As general supervisor I was indirectly responsible for the development of wholesale business, TBA-wise, through our independent dealers reporting to the district manager.

Q. And now as district manager? A. It becomes a direct responsibility.

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(2760) Mr. Royall: And the same is true as to any other oil company mentioned in connection with Goodrich. May we have that understood, too, sir, the same objection?

Hearing Examiner Kolb: You have a standing objection to all the questions relating to other oil companies other than Texas, and other suppliers other than Goodrich.

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(2761) *By Mr. Dias:*

Q. Will you explain what that column under the title "Continental" is? A. The "X" there indicates that the distributor is servicing an account handling Continental petroleum products. The numerals likewise indicate the number of such outlets that this distributor services.

Q. What is meant by the column "Others"? A. That could be garages, stores, or some type retail outlet that handles some other type petroleum product than is shown in the other four columns.

Q. Using as an example the Builtmore Tire Company, this indicates that they sell or that they are a supply point for 82 Texas stations, 11 Continental stations, and also serve as a supply point for others, maybe another oil company? A. Could be.

Q. Does this list indicate that every Goodrich distributor, (2762) with the exception of the Wholesale Oil Company and the B. F. Goodrich store at 6215 Cottage Grove Avenue, is a designated supply point for one or more Texaco stations? Is that what that indicates? A. It indicates that they are now servicing some Texas outlets. In fact, the way a supply point becomes designated is by the dealer, the service station outlet making a purchase, and then the distributor thereby becomes a supply point.

According to our records today those stores with the "X" were distributors now servicing and supplying outlets as indicated.

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By Mr. Dias:

Q. In connection with that list of distributors, Mr. Carlson, will you explain exactly how those stores operate in connection with their supplying duties in connection with the indicated oil companies? (2763) A. Just how do they operate? Is that your question?

Q. Yes. A distributor is designated and the Texas stations that are indicated by those numerals purchase from that distributor. Is that correct? A. No. The dealer designates his own supply point. He might have one or he might have a half dozen different supply points.

Q. Which dealer? A. The Texas dealer, or any dealer.

Q. He designates his own supplier? A. We make available to an associate dealer, as we refer to them, supply points that are available to them that are set up to serve them, and then it is the choice of the dealer as to what supply point he prefers, or a group of supply points.

Q. Those numerals after the indicated distribution point, if you were to total all those numerals would that give you the total number of Texaco stations, or do they overlap in some instances? A. They overlap in some cases, because one dealer might be serviced by, like I say, two or more distributors.

Q. How long has that been in effect, Mr. Carlson? Has that always been the case? A. Your question is how long has it been in effect that two or more might supply?

(2764) Q. That is right. A. It has been in effect ever since I have had any responsibility with wholesalers, and prior to that time I couldn't answer how long prior to that.

Q. How much experience have you had along that line? A. Since June 1953.

Q. It is my understanding that the Goodrich Company designated a supply point? A. We tell them our nearest supply point. As an example, it would be normal to assume that a dealer would choose the supply point near to him. However, that is not always true. We have a case where a dealer at approximately 4600 North Chicago is being supplied by a distributor which is 6800 South, and we do have distributors between the present supplying distributor and the dealer.

Q. Are you familiar with this TBA program, Mr. Carlson? A. I believe I am.

Q. Are you responsible for the promotion of the TBA to petroleum companies? A. That is part of my responsibility.

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(2765) *By Mr. Dias:*

Q. Will you tell us what Commission Exhibit 143 is, Mr. Carlson? A. This is referred to as the TBA Inventory Guide which we make available to any dealer, whether it be a petroleum dealer or some other type dealer.

Q. Is that the current issue that is now in effect? A. Yes, sir. It is the last one I have seen.

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(2767) *By Mr. Dias:*

Q. From your opportunity to glance through it, can you tell us whether or not that includes all items in the automotive accessories line that are included in the TBA program? A. It would certainly include the majority of them. I would be of the opinion that it would cover all of them.

Q. What about such items as repair parts, cash rate or parts. Does Goodrich sell those items? A. No, sir.

Q. How about mufflers and shock absorbers? A. We do not.

Q. How about service station equipment and supplies. Do you handle that? A. We have available some service station equipment such as battery chargers. That is about it. Tire spreaders we do not have available; larger tire equipment, pieces of equipment we do not have available that we can sell direct to the dealer.

Q. Do they come within the TBA program, sales to petroleum companies? A. Equipment?

Q. Yes. A. I don't think so.

Q. The Inventory Guide recommends certain basic stock. Do you have any idea what a basic stock would cost, if they were to purchase everything listed in there? (2768) A. No, I haven't. I don't have that figure available. You will notice we show three recommendations, but the most important column for the dealer on this is the column way off to the right, and that is the basic stock that the dealer himself returns, which is right for his particular operation.

Q. I understand that. There are three categories as I recall. There is one station doing so much business and the next station. A. That's right. They are recommendations. But they too would differ based on certain type automobiles in that given community, even though the gallonage might be the same in Chicago as it might be in Rockford, for example; the type merchandise that those two dealers would stock would differ to quite a degree.

Q. So you couldn't just follow that example? A. That's right. You cannot.

Q. You can't give us an example? A. No, sir.

Q. In addition to that basic outline, what else would the dealer need? Does that cover about everything that

the average station operator would require? A. The recommendation that we make?

Q. Yes. A. As of today it doesn't because new sizes of tires have been added since this book was printed, with the new cars (2769) coming out on 14-inch, there is no 14-inch recommendation in this booklet.

Q. I am thinking more of category of supplies rather than sizes of any particular item. A. Everything that we have available through our sources I would say is pretty well shown in here. We have left several blank pages in this booklet to make it easy for the dealer to list other things that he would like to keep a control on, regardless of where his supply might come from.

Q. With the election that the station operators have as to source of supply, how does that affect your record keeping in so far as the TBA commissions are concerned? Does each distributor send a record to you of the purchases of the various petroleum stations? A. Each distributor or supply point does give a report to our accounting department of sales made to various outlets.

Q. There is no more designated supply point, is there? A. The dealer can go buy from anyone he sees fit.

Q. Do Goodrich salesmen call on the Texaco and Conoco stations? A. Pardon?

Q. Do your B. F. Goodrich salesmen call upon the Texaco and Conoco stations in an attempt to sell TBA products? A. Certainly.

Q. Do they make regular calls on them? (2770) A. They make—I don't know if I understand your question about regular calls.

Q. Do salesmen have a certain fixed route? A. Yes, they have areas they cover.

Q. In those areas are there Texaco-Conoco stations? A. And all other types.

Q. Surely, but included are Texaco and Conoco stations. Do the B. F. Goodrich salesmen call on those stations regularly? A. Not regularly. If they are now buying TBA from one of our distributors they would make periodic calls, possibly with our distributor salesman. If they are not handling our TBA they most certainly do contact them in an effort to get our products into that outlet.

Q. That was what I was trying to determine. Normally then your distributor salesmen call on Texaco-Conoco stations that are purchasing B. F. Goodrich products? A. That's right, the supply point.

Q. And on occasion the B. F. Goodrich's own salesman would call on them? A. He would call on them with the distributor that is now supplying them.

Mr. Dias: I believe that is all.

Cross-examination by Mr. Barton:

Q Mr. Carlson, you have indicated that the dealer elects (2771) the supply point which he is going to utilize. Do you receive something from the Texas Company which indicates when a dealer has elected to take on the Goodrich line? A. Yes, we do. We receive a notification form which we in turn fill out, indicating to the Texas Company the initial order that has been delivered to that outlet.

Q. What is the situation with respect to whether the dealer has already been contacted by B. F. Goodrich before that so-called nomination form is received by you from the Texas Company? A. You refer to nomination. However, the form we receive is called a notification form on which we notify the oil company of our progress in selling our merchandise to that operator.

Q. What is this nomination form? Is there a nomination form used? A. I know of no such form called nomination. Like I say, the form that I am familiar with is called a notification form.

Q. What is the situation with respect to whether you have been in contact—B. F. Goodrich salesman or distributor salesman—has been in contact with that dealer before that notification form is received by B. F. Goodrich? A. That happens quite frequently because when a new building or a new station is being erected in that given territory, the manager, as we call them, or salesman, is certainly going to (2772) try to find out who that operator is going to be and make every effort to sell his merchandise. And as a result, like I say, we sometimes made the initial sale long before we ever receive any form of any description from anyone.

Q. In the case where you make that initial sale what transpires thereafter in order to get the records in shape so that you pay the Texas Company a sales commission? A. We indicate on this notification form the name of the dealer, the supply point—supply points if there are more than one involved at the time, and indicate the amount of the initial order and return a copy to our accounting office, which indicates on our records that such and such an account is now being supplied by one or more supply points, and a copy of that is also sent to the Texas Company.

Q. Suppose you do not know prior to the time that the station opens who the dealer is. What happens in that type of situation? A Texas dealer. A. Suppose we do not know?

Q. Yes. Your salesman or distributor salesman has not determined who the operator is. How is a situation like that handled? A. Of course, the aggressive salesman is going to do everything in his power to find out who the

operator is. And if it is a Texas station, he will certainly make every effort possible to find out through the Texas Company if they have (2773) given us any information as to who that operator is to be. Sometimes our distributors have been successful in coming up with the operators. It may seem a little unusual, but four of our distributors in the Cook County area prior to becoming a distributor were service station operators. And with that background they have a pretty good idea of just exactly what type individual would be needed to successfully operate a station, and also the type individual that would fit into that type of business.

Q. In connection with the sales presentation that is made by the B. F. Goodrich territorial manager and the distributor of B. F. Goodrich, is the Texas Company salesman along on that presentation or not? A. To my knowledge the Texas Company salesman has never been with us on that presentation. He may be with us on a follow-up call. He has been on a number of occasions when the dealer has made a decision as to which line of merchandise he is going to carry.

Q. What is the nature of that sales presentation that is made to the Texas Company dealer or to any other petroleum dealer? A. The first thing we present to the dealer is the quality of the products that we have to offer, the completeness of our line, the public acceptance of the line, and of course the numerous supply points that we have in the territory.

(2774) Q. Anything else in connection with merchandising? A. Various merchandising helps that we have, promotional items, promotional programs. We have for the past number of years had a program which we refer to as traffic builders. They are leader items. In the past few years they have been tested one year prior to the time we make them available to the service station dealers so

that we know whether or not the item we are selling them is an item that will move in its type of outlet and help him increase his sales, not only TBA-wise but petroleum likewise.

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(2775) *Cross examination by Mr. Royall*:

Q. As I understand your testimony, the Goodrich people, through their distributors or through their stores, approach a prospective or a new station owner as soon as they know anything about it and try to sell him. Is that right? A. That is part of their job, yes sir.

Q. They, if possible, get the first order from him as promptly as they can, do they not? A. That's right.

Q. And then from that time on they continue to sell him and to keep him as a customer. Is that correct? A. That is correct. That is the intent.

Q. These distributors that you list here, they are not subsidiaries or connected with the Goodrich Company except that they distribute your goods. Is that correct? A. The only ones that are connected with our company, or over which our company has any control, are the company-owned stores shown on page 2.

Q. I didn't ask about that. The distributors themselves— A. Are strictly independent merchandisers.

Q. Independent businessmen, seeking to sell other independent businessmen? A. Yes, sir.

Mr. Royall: That is all.

(2776) *Redirect examination by Mr. Dias*:

Q. These independent businessmen, the distributors, where do they get their supplies from, Mr. Carlson? A. They get the majority of their supplies shipped from our warehouse here in Chicago.

Q. And your warehouses, where do they get their supplies? A. Our warehouse here in Chicago. The majority of that comes from Akron, some of it might come from Miami, where we have factories. And then a number of our "A" items such as our polish and wax will come from various manufacturers of that produce. Simonize, DuPont and so forth.

Q. Located all over the country? A. Yes, sir.

Q. Do you know anything about the Goodrich warehouse operations? A. Very little. I know where it is.

Q. That is not within your— A. I have nothing to do with that whatsoever.

Q. You stated that Goodrich often makes a sale before it is notified by Texas. Is that what you said? A. Yes.

Q. Do you go out and find new Texaco business, I mean you see the store and station being erected and you make the contact ahead of time? (2777) A. If we know who the operator is, if we can find out we don't wait for anyone to tell us that this man is going to operate this station. We will make a call or any number of calls that we can to sell our franchise rather than wait for someone to say that Joe Blow will lease the station from us.

Q. Isn't it true that Texas notifies you in each instance when they have a new station going up or a change of operator? A. I wouldn't say it is true in each case. In a number of cases, as I have indicated, we have an operator sold before we receive any notification.

Q. Does Goodrich sell to every station—let's take Texas for example. Texas notifies you that they have a half dozen stations. Do you automatically try to sell each and every one of those? A. Yes, sir.

Q. Do you screen them in any way? A. Do we screen them?

Q. Yes. Suppose you had a station within the same trading area of each other. A. If we have a good dealer,

associate dealer, maybe right across the street from one, we certainly wouldn't put forth as much effort, and if it would interfere with the distribution of our other dealer we may pass up a dealer.

Q. In other words, you approve some and disapprove others? A. That is correct.

(2778) Q. When you disapprove a station do you notify Texas in return that you don't care to do business with a particular station? A. Since I have been on my new assignment I have never had an opportunity to do one or the other as yet. Prior to that time if he was disapproved, I am sure they would be notified accordingly.

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HUBERT J. REICHERT was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name and title please? A. Hubert J. Reichert.

Q. And your title? A. Presently I am on the staff of the regional manager. Prior to that, January 1, I was district manager, Chicago (2779) district.

Q. When did you first become district manager? A. November, 1946.

Q. November, 1946? A. Yes.

Q. Through December, 1956? A. Yes, sir.

Q. What were your duties in that capacity, from November, 1946, to December, 1956? A. To regulate the sales activities of the Chicago District of the B. F. Goodrich Company, which included sales through stores as well as to and through dealers and distributors. Several of those things were delegated of course to store supervisors, men like Mr. Carlson.

Q. You were primarily responsible, however, is that correct? A. Yes, sir.

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(2781) Q. Mr. Reichert, in your 10 years in that position was it your experience, too, that Goodrich sold to many Texas stations before being notified? A. I would say so, yes. In the main. B. F. Goodrich was one of their distributors.

Q. Isn't it true that Texas notified you when they did have a new station or a new operator taking over a station? A. I believe so. I think that was part of the plan of the program. I don't know whether it was done all the time or not, but I believe that they did.

Q. And is it your testimony that you were still able to ferret out and sell to these new operators or new—either new station operators or replacement station operators—before being notified by Texas?

Mr. Barton: I object to the form of the question.

Hearing Examiner Kolb: Objection overruled.

A. Yes.

By Mr. Dias:

Q. Is the same true in connection with your experience with (2782) Conoco? A. Yes, I would say so.

Q. And any other oil companies in the district to which you sell. In other words, you do not sell to Emblem? A. No.

Q. Shell American? A. In Indiana, not here.

Q. How about Ohio Oil? A. Yes we do.

Q. And the same is true— A. Not in Cook County but in the area, in the district.

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Q. Do you know what an active account is Mr. Reichert? A. I wouldn't know how to answer that.

Q. Does Goodrich— A. For this reason: We desire to do our share, which is a certain amount of industry potential in each area, and perhaps through such things as spring dating that we have—

Q. Such things as what? A. Spring dating, where we sell in the spring and winter on extended terms, we may early in the year get our necessary share of the business out of the market. So the fact that a man didn't buy for awhile would not make it—I just wouldn't know how to answer that.

Q. In your experience has it ever become necessary to notify or have you ever seen fit to notify one or the other of these (2783) oil companies that an account was inactive? A. Oh, I see what you mean. You are talking about service station dealers entirely.

Q. Yes. A. No. The notification usually comes from them.

Q. Comes from whom? A. From the petroleum company, in the case of Texas.

Q. They notify you that they are not buying your products? A. Yes. When they haven't bought for a certain period of time, and ask for increased activity to activate the account.

Q. What is the procedure in that instance? What does Goodrich do about that? A. I get after Mr. Carlson and he gets after the territory man to get something done about it to generate some sales.

Q. We understand that after 90 days if you do not sell them they go over to the other recommended rubber company. Do you know anything about that? A. No, I don't.

Mr. Dias: That is all.

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(2786) ARTHUR V. RICHMOND was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Boyd:

Q. Will you give us your full name, please? A. Arthur V. Richmond.

Q. With what company are you connected, Mr. Richmond? A. The owner of the South Tire Service.

Q. Where is it located? A. At 6622 South State Street.

Q. Does it have any other place of business besides that? A. No, sir.

Q. How long have you been in business as the South Tire Company? A. Roughly 17 years.

Q. Exactly what is the business? Will you describe it for us? A. I beg your pardon?

Q. Will you describe the business of the South Tire Company? A. Yes. We are wholesale and retail tire dealers, and (2787) also deal in batteries and have a repair and recapping department.

Q. What brand of tires does your firm sell? A. Primarily Goodyear, although I do handle some Cooper and McCreary.

Q. How long have you been handling McCreary tires? A. Since last April or May of 1956.

Q. What about Cooper tires? A. About the same time.

Q. And how long have you been selling Goodyear tires? A. Since the start of our business about 17 years ago.

Q. What about the batteries you sell? What kind are they? A. We sell our own brand of batteries. We have them made up by another—by a manufacturer with our name, the name of Richmond on the battery.

Q. How long have you sold that brand of battery, the Richmond battery? A. At least six or seven years.

Q. Mr. Richmond, what would you say is the geographical trading area of your company? A. On the truck tires we cover pretty much the entire city. By that I mean that we have customers as far north as Evanston and as far south as Chicago Heights. We also have customers in Franklin Park. However, that is considered a remote section. The reason that we have those customers (2788) is through service that we have rendered at one time or another.

Q. Will you explain to us then—do you sell truck tires? A. Yes, sir.

Q. And passenger car tires? A. Yes, sir.

Q. Is the trading area different for the two? In other words, is it different for the truck tires as compared to the other? A. Yes.

Q. Will you explain that? A. For the passenger tires I would say that 55 Street on the north, and on the south we may go as far as 111th Street, and Cicero Avenue on the west, and to the Lake.

Q. How many salesman does your firm employ at the present time? A. Three. Outside salesmen you are talking about?

Q. Yes, sir. A. Three.

Q. Do all three of those salesmen call on service stations? A. No. Right now I only have one salesman calling on service stations. I used to have two.

Q. Who is the one salesman that calls on service stations? A. His name is Joseph Arey.

Q. And the other two salesmen, what class of accounts do (2789) they handle? A. Primarily truck; commercial, we call it.

Q. Mr. Richmond, will you tell us the class of customers with whom your firm does business? A. We sell tires to the retail trade, the trucker, manufacturers, and service stations and garages.

Q. Can you give us some idea of the approximate percentage of business with those several classes of customers as of the present time? A. Percentage of business with service stations today, I would have to say was about 10 percent. That is ten percent of our tire business would be service stations. Is that what you wanted to know?

Q. Yes. And the balance would be with these other categories, truckers and so forth and garages? A. Yes. The truckers would amount to 35 to 40 percent.

Q. How does the amount of service station business done today compare with what it was last year? A. I would have to say that it was off probably ten percent from last year.

Q. Bring us down from 1952 to date. A. I think you have my records on that, Mr. Boyd.

Q. Before we get into that let me ask you another couple of questions.

Mr. Richmond, how many service stations of all (2790) kinds would you say there are in the trading area in which your company does business? A. I would just be guessing but I would say roughly 500.

Q. Do you have any idea as to how many Texaco stations are in that group? A. I would say about 40.

Mr. Royall: How many?

The Witness: Forty.

By Mr. Boyd:

Q. And stations of the Continental Oil Company? A. I wouldn't have any idea on Conoco.

Q. You brought some records with you, Mr. Richmond, and I now hand them to you. Will you tell us what those are? A. This is a summary of our annual bonusable volume—annual volume—

Mr. Royall: Your Honor, we object to that. Have you offered it yet?

Mr. Boyd: Not yet.

Mr. Royall: On the grounds they are not the original records and there is nothing to support them.

Hearing Examiner Kolb: Identify the records.

The Witness: May I answer that?

Mr. Boyd: Yes, sir.

A. (Continuing) These records are the year-end summary sheet mailed to us by the Goodyear Tire and Rubber Company (2791) indicating the amount of business that we did during the entire year.

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

By Mr. Boyd:

Q. And for what purpose did they mail those to you? A. It is for the purpose of us checking for our bonusable volume. In other words, they pay a bonusable volume on certain sales, and this carries a breakdown of all types of sales and what bonus it carries.

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

By Mr. Boyd:

Q. What years do they cover?

Mr. Royall: May we have a continuing objection to this, your Honor?

A. I have the years 1953, 1954 and 1955.

By Mr. Boyd:

Q. Have you made some summarization of those particular records, Mr. Richmond? A. Yes, sir; I have.

Q. What does that summarization reflect? A. In the—

Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

(2792) A. In the passenger tire business, Mr. Boyd?

By Mr. Boyd:

Q. Yes, sir. A. In 1953 our passenger tire purchases from Goodyear amounted to $198,011. In 1954 it dropped to $128,371. In 1955, $102,437.

By Mr. Boyd:

Q. Have you received the report—

Mr. Royall: Your Honor, we move to strike that and object to it.

Hearing Examiner Kolb: Objection overruled. Motion to strike denied.

By Mr. Boyd:

Q. Have you received the report from the Goodyear Tire and Rubber Company covering similar information for the past year 1956? A. I have not.

Mr. Royall: I have not.

Hearing Examiner Kolb: Objection overruled.

By Mr. Boyd:

Q. Do you have some idea of what that was in 1956?

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

A. I would say in the neighborhood of $80,000.

Mr. Royall: Motion to strike.

(2793) Hearing Examiner Kolb: Denied.

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By Mr. Boyd:

Q. What types of tires are sold in service stations? A. Mostly passenger.

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(2797) *By Mr. Boyd:*

Q. Mr. Richmond, could you tell us as of today how many Texaco service station accounts your firm sells new tires to? A. Actually, we don't sell any. Occasionally we will get a sale from a Texaco station where the customer comes in and demands a special brand of tires other than what they are handling. But those are few and far between. I would say that that happens maybe once every three months or even less.

Q. What was the situation a year ago? A. About the same. It is gradually getting worse from year to year, actually, but I think possibly that a year ago we sold a few more tires, but not many. Just talking strictly of Texaco sales?

Q. Yes. A. That is right.

Q. What about from the situation say 1952 to date? Can you tell us about the amount of business that has been done with the Texas stations?

(2798) Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

A. In 1952—Mr. Boyd, that is going to be awfully hard to answer. In 1952 we sold considerably more. I wouldn't want to place a dollar and cents value on it because I

wouldn't know. But we did sell quite a few more tires to Texaco stations then than we do now. It was easier to sell at that time.

Mr. Royall: Motion to strike the whole answer, and particularly a motion to strike "easier to sell" which is a conclusion.

Hearing Examiner Kolb: The motion to strike is denied.

By Mr. Boyd:

Q. Mr. Richmond, you have told us you sell the Richmond battery. Of your volume of sales what percentage of your business is batteries? A. Five to eight percent.

Q. Do you sell any accessory items such as spark plugs, fanbelts, radiator hose? A. No, sir; none at all.

Q. Then your business is tires and batteries only? A. And vulcanizing and recapping.

Q. In that connection what percentage today is recapping and vulcanizing? (2799) A. That would run about 23 percent.

Q. How has it been since 1952 to date? A. Vulcanizing and recapping has increased every year.

Q. From what to 23 percent? A. You are talking percentage-wise what was our vulcanizing in 1952 as against our sales in 1952?

Q. Yes, sir. A. I would say in 1952 our recapping was 15 to 20 percent.

Q. And it has increased to 23 percent over the four-year period? A. Yes. The figures for 1956 is what I have in mind as being roughly 23 percent of our total business, vulcanizing and recapping.

Q. At the present time does your firm sell any new tires to Texaco stations? Tires and tubes?

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

A. I have a record of one sale of four tires in the last 90 days, and that is for a customer—I followed this up myself, figuring that there might be more business there—it was where a customer demanded Goodyear tires, and rather than lose the sale he purchased them from us. That is the only sale that I have any record of as far back as I can recall or as far as I could find looking over invoices.

Mr. Royall: I move to strike because it embodies (2800) hearsay, your Honor.

Hearing Examiner Kolb: Motion to strike denied.

By Mr. Boyd:

Q. Mr. Richmond, what efforts were made by your company to sell new tires and tubes to Texas stations? A. In the last four or five years—not that long ago—say the last three years—we have put forth very little effort because at that time we more or less gave it up as a bad job. No matter how many calls we made our efforts were just nil.

Mr. Royall: Motion to strike the answer, your Honor, on the ground it contains a conclusion.

Hearing Examiner Kolb: Motion to strike denied.

* * *

Q. Why have you given up the efforts?

* * *

A. When you make a hundred calls and they show no signs of business, and then maybe continue to make calls another

hundred and still are told from time to time that they can't buy your tires, that they have to buy Goodrich, I think it is time to give up on it.

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(2801) *By Mr. Boyd:*

Q. By whom are you given such information as you just related? A. By the Texaco stations that we called on.

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Q. Is there any Texaco station today that openly displays tires that your company sells to them? A. No, sir, not that I know of.

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Q. Mr. Richmond, does your company do any recapping business with Texaco stations? A. Yes, we do.

Q. Has that been true over the years 1952 through 1956? A. We have always done some recapping and vulcanizing with (2802) the Texaco stations—with some of them.

Q. About what percentage of your business of recapping is with the Texas stations? A. Mr. Boyd, I—

Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

A. (continuing) I don't think I could come up with a percentage. It is small, but it wouldn't be over say 1 percent of our total sales.

Q. Do you sell any new batteries to Texaco stations? A. No, sir.

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(2803) Q. Mr. Richmond, in order to set the record straight: Even in view of your earlier testimony that you have given up generally soliciting the Texas stations, have you made some recent efforts, within the last two months, to sell Texas stations?

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A. Yes, we have.

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(2804) Q. Can you tell us what the results of those efforts were? A. Mr. Boyd, I instructed my salesman to make the calls, and the only way that I could give you the results is through a note, memos that I brought with me, which were taken off of his route cards.

Q. Who is the salesman? A. Mr. Joseph Arey.

Q. He is here in the hearing room? A. Yes, he is.

Q. Has he been subpoenaed to testify? A. I beg your pardon?

Q. Has Mr. Arey been subpoenaed to testify? A. Yes, sir.

Hearing Examiner Kolb: It is immaterial.

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(2809) *Cross examination by Mr. Royall:*

Q. Mr. Richmond, I believe you described the territory in which you operated. What part of the Greater Chicago area does that embrace as far as filling stations are concerned, would you say? A. As far as filling stations, I would say that we don't stray very far north of 55th Street.

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(2810) Q. Have you any approximate idea of how many filling stations or service stations there are in that area? A. You are speaking of 55th and the north?

Q. The territory you described. A. I only guessed when I said 500.

Q. And you are not at all certain that that is correct are you? A. No, sir.

Q. There might be many more. A. Yes, sir.

Q. Tell me a little about your business. Who is the owner of the business? A. I am the owner, sir.

Q. When did you start? A. I started in July, 1939.

Q. Do you keep any books? A. Yes, sir.

Q. Who keeps them? A. We have a bookkeeper and an accountant.

Q. Do your books and records disclose your sales and to whom you sold them? A. By that do you mean a breakdown of sales to trucks and trucking companies and service stations?

Q. That's right. The people to whom you sell. Do you keep (2811) any books and records on it? A. On the charge accounts, certainly, yes. But the cash sales are kept by invoice.

Q. And do you have the invoices? A. Yes, sir.

Q. In the various figures which you gave today, did you refer to any of the invoices? A. Yes, I did.

Q. Where are they? A. The invoices?

Q. Yes. A. At the office.

Q. You didn't bring them with you? A. No, sir.

Q. Did you look at them or your bookkeeper? A. No, I looked at them.

Q. Can you produce for us in the morning the invoices of the amount you sold to service stations during the period you testified about? A. I don't know if I could or not. I would have to go through each and every invoice and that would be a pretty tough job.

Q. Didn't you go to the invoices when you were preparing for your testimony here? A. Yes, I did.

(2812) Q. You can do that again, couldn't you? A. Covering a period of three years?

Q. You testified over a period of three years. Could you do that again? A. I assume I could. It would take considerable time.

Q. You wouldn't object to bringing them in tomorrow, would you? A. Well, I have other commitments for tomorrow.

Q. You have other commitments. So you haven't got those available for us.

Describe your place of business. A. Do you mean the frontage and so on and so forth?

Q. Where it is located, what size is it and so forth. A. We are located at 6622 South State Street, and we have in one part a garage consisting of an area 50 feet wide and 115 feet long, approximately; a warehouse 25 by I would say 90, two floors. By that I mean a basement and the first floor. And we have a recapping plant 25 by 176.

Q. How many employees do you have? A. Nineteen.

Q. How many salesmen? A. Three.

Q. Are you acquainted with the Texas filling station at 5000 Archer Avenue? A. I wouldn't be myself because I don't call on service (2813) stations.

Q. You don't call on service stations? A. I have a salesman who calls on service stations.

Q. When is the last time you called on a filling station? A. I have made—I shouldn't have said that I didn't call at service stations. I do. But I haven't called on a Texaco service station—

Q. In how long? A. I guess the last one was about two months.

Q. And before that when was the last one you called on? A. I don't recall.

Q. Was it within a year? A. I would say yes.

Q. What station was it? A. The one I called on recently or previously?

Q. Let's say recently. A. It is located at 120th and Western Avenue.

Q. What was the last one you called on before that? Approximately you said a year before. When was that? A. That I don't—I couldn't honestly answer that question.

Q. The year before that how many did you call on? A. I don't know, sir.

Q. Did you call on any in the year before that? A. It is possible.

Q. It is possible that you did. You don't remember which (2814) one do you? A. No, sir.

Q. And the year before that? A. That I wouldn't be able to answer without possibly digging into the records and hunting for that particular information.

Q. But so far as you know now, this one that you have mentioned to me is the only one in the past several years that you can remember specifically? A. That is fresh in my mind, yes.

Q. That is the only one that you can remember right now? A. Yes.

Q. By the way, 5000 Archer Avenue is in your territory that you cover, isn't it? A. No, sir.

Q. Isn't it? A. No, sir.

Q. You said the 5000 block, didn't you? A. Cicero Avenue on the west.

Q. What? A. 5500 on the south, and Cicero Avenue to the west. 5000 Archer would be out of that territory.

Q. In other words, this may be a block or two west of where you deal? A. It would be further than that.

Q. How about 3101 North Manheim Road; is that in your (2815) territory? A. No, sir. That is on the northside.

Q. Lincoln and California, is that in your territory? A. No, sir.

Q. Van Buren and Des Plaines, is that in your territory? A. No, sir.

Q. 5450 North Elston? A. No, sir.

Q. Can you give me the name of any Texas stations in your territory, about three or four of them? A. Can I refer to notes?

Q. No sir. I would rather you tell me. A. Well, the one I named at 119th and Western; 55th and Emerald. That is all I recall offhand.

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(2816) *By Mr. Royall*:

Q. Did not you testify that no station openly displayed the type of tires I sell. Didn't you say that? A. What I was referring to in my testimony was that the only tire we sell to the service station is Goodyear. We do not sell Cooper tires.

Q. Have you ever sold Cooper tires to service stations? A. I don't recall ever selling any. If we did, it was a rare occasion. And none of the stations that we sell display Cooper tires or Goodyear.

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(2817) Q. Do the Texas stations display any Goodyear tires? A. None that I know of.

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(2821) *By Mr. Royall*:

Q. Have you got a list of the time and the stations you went to in that hundred? A. This, sir, goes back to 1952 or '53, and I would not have a list that old; no, sir.

Q. Have you any record of where they were, when it was? A. Not as far back as that; no, sir.

Q. Have you got it any period back? A. Yes, sir.

Q. Where is the record? A. I have a record with me of calls that we made just (2822) recently.

Q. You didn't make them, did you? A. No, sir.

Q. Have you any record of those that you made? A. No, I don't have any record of calls that I personally made.

Q. Have you got a record of any that you made except for the one that you told about? A. No, sir, I do not.

Q. Have you with you your books and records on your sales and to whom you sold them? A. I didn't get the first part of the question.

Q. Do you have with you, available, the books and records on your sales, year by year, and to whom you sold? A. No, sir.

Q. Have you records you could produce here tomorrow to show that? A. Not tomorrow I couldn't produce them.

Q. Did you use any of those records in preparing for this testimony? A. Yes, sir.

Q. Where did you put them? A. I have them at the office.

Q. Did you put them right back where they were? A. That is correct.

(2823) Q. You could get them immediately, could you? A. I could but I have other commitments for tomorrow.

Q. Is that your reason for not producing them? A. I would be glad to show them to anybody who wants to come out to the office.

Q. Is that the best you are willing to do? A. Unless subpoenaed to do otherwise, yes.

Q. I believe you testified—you have testified that you do not carry any accessories, do you? A. No, sir.

Q. Just tires and batteries? A. Yes, sir.

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Cross examination by Mr. Barton:

Q. Mr. Richmond, I think you testified that you sold about 45 percent of your business to truckers. Is that right? A. I don't recall that figure. That figure wouldn't be hard to look up but I don't recall saying 45 percent.

Q. You also said you sold to manufacturers? A. Yes.

Q. What kind of manufacturers is that? A. Do you want me to name them?

Q. Just the general type. A. Like the Crane Company, for instance.

Q. Pardon? (2824) A. People like the Crane Company, National Biscuit; and it is not a manufacturer but I would include railroads in there, too.

Q. Those would be commercial accounts? A. Yes, sir.

Q. Just as truckers are commercial accounts? A. That is considered commercial in our field.

Q. And that is a rather well defined section of the tire business, isn't it, the commercial business? A. That is right.

Q. It is a rather separate type of business from the wholesale business? A. Yes, sir; it is.

Q. And it requires a different type of salesmanship and solicitation, doesn't it? A. Correct.

Q. And the commercial accounts don't use accessories. They don't buy accessories; they buy tires, is that right? A. Not having ever sold accessories, I couldn't answer that intelligently because I never asked anybody to buy them.

Q. In other words, it isn't necessary to have accessories in your line to sell commercial accounts, is it? A. Well, yes. I think that accessories, all the truckers can be sold accessories, and use accessories, but that manufacturers, strictly a manufacturer, I would have to agree (2825) with you that you don't need accessories to go and sell the National Biscuit Company or something like that.

Q. What percentage of your business is to manufacturers like Crane and others of that type? A. I would have to refer to the records to give you an intelligent answer.

Q. Isn't it a fact that about 75 percent of your business is this so-called commercial business, for hire? A. I don't think 75 percent. I am just trying to think back how our retail sales ran last year, along with service station dealers. I think that is a little high.

Q. Do you mean your retail business, that you have a retail business in your store? A. Yes, sir.

Q. Over the counter? A. Yes, sir.

Q. To customers who come in there? A. Right.

Q. But your retail business along with your commercial business would be over 75 to 80 percent of your business, wouldn't it? A. I would say Yes, that it would be roughly in that neighborhood.

Q. And you started out in 1939? A. Right.

(2826) Q. With no business? A. No business.

Q. Since 1939 you have grown to a tire dealer of more than $450,000 or $500,000 retail, haven't you? A. Do you mean per year?

Q. Yes. A. Oh, those figures are approximately correct; yes, sir.

Mr. Barton: That is all.

Redirect examination by Mr. Boyd:

Q. Mr. Richmond, just to clear this up, you said a moment ago that your volume of sales is $450,000 to $500,000 retail? Or is that the total amount of your business, the volume that year, roughly right now? A. Right now it is—I don't recall the exact figures for 1956, but—

Q. In other words, is that all the business or just the retail business, this $450,000 to $500,000? A. That is the entire amount of business that we are doing.

Q. In other words, to commercial accounts— A. To everybody.

Q. (Continuing) —retail, service stations? A. Everything; that is right, sir.

Q. Since you have been in business, Mr. Richmond, since 1939, and it has been brought out that your sales are now $450,000 (2827) to $500,000, what has been the relationship of your commercial account business over those years? Has it increased or decreased? Just what is the situation as compared to the filling station business? A. I would have to say that the commercial business has increased.

* * *

By Mr. Boyd:

Q. Mr. Richmond, is it normally part of your duties to call on accounts yourself? A. I would say that, to put it in terms of my own words, that I try to hit the high spots.

Q. Commercial or gasoline accounts? A. In—

Q. I mean by that commercial or service station accounts. A. If I feel like a service station account might develop, (2828) I will make calls on them. But mostly it is commercial. I make considerable more commercial calls than I would make in service stations.

Q. On cross-examination you also mentioned a station at 119th, I believe, and Western Avenue. Is that on the South Side? A. I said 120th and Western, which is in error. It is at 119th and Western. It is known as Norm and Bob's Texaco Service.

Q. Had your firm made a sale there? Just what was the situation? A. Yes, we sold a set of tires about three months ago to them and on my way home I stopped and talked to them about the tires they purchased from us because we had done no solicitation there. I was wondering if there was any prospect for any additional business.

* * *

By Mr. Boyd:

Q. Had you sold any tires to that dealer prior to that time? (2829) A. No, sir.

Q. Have you sold any since? A. I don't believe so. I looked for a record on it and couldn't find it.

Q. Have you endeavored to sell that station since, yourself? A. Not myself, no.

Mr. Boyd: That concludes the redirect.

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JOSEPH C. AREY was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Boyd:

Q. Mr. Arey, will you give us your full name? A. Joseph C. Arey.

Q. What company are you connected with and your position? A. South Tire Service, 6622 South State Street.

Q. What is your position? A. Salesman.

Q. How long have you been with South Tire? A. Since 1940, except four and a half years working for "Uncle" in World War II.

Q. Do you have a geographical area that you sell in for (2830) the South Tire Company? A. Not specifically.

Q. Tell us where you do sell? A. My main activity is from 55th Street on the north to Lake Michigan on the east, 119th Street South, and approximately 5200 West. I have one or two accounts the other side of Cicero Avenue.

Q. What class of customers do you sell? Accounts? A. I call on gas stations and car dealers, a few garages. That is, repair shops.

Q. What percentage of your sales that you make, your accounts, would be service stations? A. Percentage of business?

Q. Yes. A. My total business?

Q. Yes. A. To gas stations?

Q. Yes, sir. A. Approximately 80 percent now.

Q. Do you sell any Texaco accounts?

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(2831) A. Yes.

By Mr. Boyd:

Q. What type of business do you sell that account? A. Occasionally I can get an order for Goodyear tires from a Texaco account in which the customer specifically asks for Goodyear. The rest of the business I am able to get from Texaco accounts are strictly repair business—section repairs, small amounts, $2.58, $3.61, whatever it amounts to; small amounts.

Q. Would that include recapping business? A. I haven't been successful in recapping except one or two cases.

Q. Then this business that you have of, you mentioned, 80 percent of your accounts being service station business, what you have named, is stations other than Texaco? A. That is correct.

Q. What products do you sell to service stations? A. Goodyear tires and tubes, retreading, and section repair work.

Q. What about batteries? A. No.

Q. Have you made a recent effort, Mr. Arey, to sell Texas stations? A. I have.

(2832) Q. Would you relate to us when this was? A. Last month. I mean the month of December 1956, and a few calls in November 1956.

Q. What was the result of those calls? A. I got a few section repairs and a couple of retread tires, tires to retread with a so-called snowcap, and that is it. That is the extent of the business I have been able to get.

Q. Can you tell us when these calls were made? A. Yes. I keep card records of the accounts that I call on. May I refer to these?

Q. Are these records— A. There are my own records.

Q. That you regularly make? A. My own personal records; yes, sir, of calls that I make.

Q. All right, sir, would you tell us when the call was made, the station, and the result? A. Benson Texaco Service Station, 2154 East 79th. The call was made 11/16/56. I made just a notation of the general conversation and the result of the call. He said he was pretty much soured on the tire business—disgusted, in other words, with the tire business as such.

Q. Just a second before you leave that. What line of tires did that station carry? (2833) A. Goodrich. They have Goodrich advertising on the outside of the station.

Q. Go ahead. A. John and Ken, Texaco Service.

Q. When was that? A. This was the 19th of November, 1956.

Q. Where is that station? A. They operate three stations. The station that I called on was at 8512 South Racine Avenue.

Q. What happened? A. The station operator, John Nemec — N-e-m-e-c — was the man I talked to. He said they are allowed to sell Goodrich or Firestone. He didn't care to offend Texaco by taking on, attempting to sell, any other line of tires. I offered to put a Goodyear Suburbanite tire on display, on a memo billing, and he could return it in 30 days if he had no luck with it. The answer was: "I am supposed to sell Goodrich."

Q. All right, sir. A. Check's Texaco Service Station.

Q. Where is that located? A. His name is Charles. It is 8700 Loomis Boulevard.

Q. What tire does he sell? A. He is advertising—that is the tire advertising is Goodrich.

(2834) Q. What happened? A. This is one of the leased station gas operators that is disgusted with the tire business and just didn't want to talk or care anything about it.

Q. Will you give us the date of the last one? Chuck's? A. 11/19.

Q. Go ahead. A. Berkland Texaco Service Station, 8259 Cottage Grove. Talked to Luke Berkland 10/15/56. Correction: 11/16/56.

Q. You mean November, in other words? A. Yes, November 16, 1956.

Q. Go ahead. A. He stated that he buys entirely from Lambie Brothers.

Q. What tires did he have on sale? A. Nothing but Goodrich. He had quite a stock of them, 40 or 50 tires. Not interested in Goodyear or any other make. Very much satisfied, he says, with Goodrich.

John Brown, Texaco, 2145 East 79th Street, 16th of November 1956. He also buys from Lambie Brothers, has six Goodrich in stock; said he didn't care to make any other arrangements at all.

Q. You mentioned Lambie Brothers. Who is that? A. They are a distributor for Goodrich. They are in a comparable position to us in the Goodyear business?

Q. Go ahead. (2835) A. Lewis E. Lioritti. May I withdraw that name, please?

Hearing Examiner Kolb: All right.

A. (Continuing) Arthur Gewalt, Texaco Service Station, 1237 East 79th Street. Called on him on the 10th of November 1956. He said he buys only from Lambie Brothers, wouldn't consider Goodyear.

By Mr. Boyd:

Q. What tires did he have? A. Goodrich.

Bob and Norm's Texaco Service Station, 11900 South Western Avenue. Talked to Bob Schultz on the 21st of November 1956. The gist of his conversation was to the effect that he wouldn't dare buy or display Goodyear tires.

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By Mr. Boyd:

Q. Does that conclude the specific instances that you can name now of recent calls?

Mr. Barton: I would like the record to show that he is not naming these from memory but has cards in front of (2836) him which he is reading, your Honor.

Hearing Examiner Kolb: The record may so show. He is refreshing his recollection from his cards.

The Witness: I have another record here that goes back sometime ago. I don't know whether it is allowable to bring it up. It is another Texaco station.

By Mr. Boyd:

Q. What year is it? A. 1954 and 1955.

Q. Who is it and what happened? A. Emerald Texaco Service Station, 740 West 69th Street. The operator at that time was Philip Kapella. The only business I was able to get out of Mr. Kapella was a little repair business and once in awhile I could make a fast delivery on a Goodyear tire, it goes on a customer's car.

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(2837) *Cross-examination by Mr. Royall:*

Q. Mr. Arey, have you any records of any other visits except those you have there on those cards? A. Yes, sir.

Q. Where are the records? A. In my car.

Q. In your car? A. Yes, sir.

Q. What period do they cover? A. From about 1952, sir.

Q. How many cards have you got? A. In the vicinity of 250.

Q. Do they embrace other stations besides Texas? A. Yes, sir.

Q. Have you with you any cards for this period for any other stations besides Texas? A. Not here at the moment. I have them in my car.

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(2838) Q. Have you any Texas cards for December of this year? A. 1956?

Q. Yes. A. Yes, sir. The evidence I gave is from these cards, 1956.

Q. Yours are from November. Do you have any for December? A. No, sir. That was the extent of my calls.

Q. Have you any for October? A. No.

Q. Or any of the months preceding it in 1956? A. No, sir.

Q. Have you any for 1955? A. I probably have.

(2839) Q. But you don't know? A. I believe I have a few cards of 1955, yes sir.

Q. Do you have any for 1954? A. I probably have, yes sir.

Q. When were you first approached about testifying in this case? It was in October was it not?

Mr. Boyd: I object, Your Honor, as being immaterial and irrelevant and not part of the direct.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Royall:

Q. When was it? A. My recollection, sir, is that it was the first part of November.

Q. The first part of November? A. Yes, sir.

Q. You are sure it wasn't the latter part of October? A. I wouldn't swear one way or the other. It is in that vicinity some place.

Q. One way or the other? A. Yes.

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(2840) Q. Do you have any other occupation besides that? A. Yes, sir.

Q. You are part-time on sales? A. Yes, sir.

Q. What is your occupation? A. Electrical operating engineering.

Q. Employed by whom? A. The Sanitary District of Chicago.

Q. The Sanitary District of Chicago? A. Yes, sir.

Q. Do you work a regular work week for the Sanitary District? A. It is shift work. They rotate, change from week to week.

Q. But you work a regular number of hours? A. Regular tour of duty, yes sir.

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(2841) Q. You know stations that sell Goodrich and have Goodrich signs—Texas stations—and also have signs of other tires, do you not? A. I have seen one other make, yes.

Q. What other make? A. Firestone.

Q. You never saw Goodyear? A. I don't remember seeing a Texaco station with a Goodyear sign.

Q. You have seen them with Cooper, haven't you? A. No, sir.

Q. Do you travel pretty much around Chicago? A. My activity, sir, is limited to very much the territory which I described.

* * *

Redirect examination by Mr. Boyd:

Q. Mr. Arey, will you tell us what part of your time is devoted to working as salesman for the South Tire Company? Tell us when you work. (2842) A. I will average between three and four hours a day.

Q. During regular business hours? A. Yes. I mean three or four hours a day during the workweek of Monday to Friday, inclusive.

Q. What about Saturday? A. No. Saturdays, Sundays, holidays are out as far as the tire business is concerned.

* * *

HAROLD A. GEHRKE was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name for the record, Mr. Gehrke? A. Harold A. Gehrke.

Q. And place of employment? A. Berry Tire Company.

Q. And the address of Berry Tire Company? A. 6415 North Bosworth.

(2843) Q. What is your position with the Berry Tire Company? A. Sales manager.

Q. How long have you been in that position? A. Two years.

Q. Prior to that time? A. Salesman.

Q. How long? A. Five years.

Q. How long were you with them before that? A. Sixteen years.

Q. Have you had any other experience in a related business? In the same type business as Berry is in? A. Before I came with Berry?

Q. Yes. A. No.

Q. Your total experience has been about sixteen years in that type business, is that correct? A. With Berry.

Q. What kind of a business does Berry Tire Company have? A. Wholesale house, tires, batteries, accessories, vulcanizing and recapping.

Q. What brand tires do you carry? A. Dunlop.

Q. Is that the only one? A. Outside of the take-offs that we get through change over (2844) business of car dealers.

Q. What is a take-off? A. A take-off is a tire that you take off a brand new automobile. It could be one of the big four—Firestone, U. S., Goodrich, Goodyear.

(2845) Q. What battery do you handle? A. Auto-Lite.

Q. Is that the only make that you handle? A. In the new battery, yes, sir.

Q. How about accessories? Can you name a few of the more popular accessories? Filters, for example. A. We dropped the filter line. We don't have it any more. We are in the sealed beam business, polishes—we handle sealed beam, Gates fan belts, that type of merchandise, and polishes.

Q. You said you dropped filters? A. Yes, we don't handle filters.

Q. When did that happen? A. We dropped filters approximately about a year ago.

Q. What brand did you carry then? A. We had the Wix.

Q. Why did you drop that brand? A. Sales were not there. No sales.

Q. Do you handle any oils? A. Veedol.

Q. When did you drop that? A. I dropped that approximately a year and a half ago, that I dropped that line.

Q. Why did you drop it? A. Sales dropped down to less than one and a half percent (2846) of our business. It wasn't worth carrying.

Q. What about antifreeze? A. Antifreeze we have the Prestone line.

Q. Still carry it? A. Yes, sir.

Q. What are your annual sales figures, Mr. Gehrke, for the last four years? 1952 to date. Do you know those offhand? A. Approximately, in round figures, about $550,000.

Q. That is 1952 through 1956. Are there—are they still around the same figure? A. There was a slight figure in 1956. That is due to material increase and sub-jobber business, but not through territorial sales.

Q. What do you mean by that? A. Sub-jobber business entails—we have the warehouse on fan belts; we have the warehouse on spark plugs and the Auto-Lite line now, and batteries are so designed that you can put a sub-jobber in with the business and that business has crawled up and increased our sales.

Q. What type customer do you sell to? A. We sell 90 percent to gas stations, garages, and car dealers.

Q. What about the other ten percent? A. I imagine retailwise we do two percent of our business retail.

(2847) The rest would be the truck end of it—commercial.

Q. Eight percent of your business is to commercial? A. I didn't hear your question.

Q. About eight percent to commercial accounts? A. That would be on the heavy side; yes, sir.

Q. How about this jobber business that you talked about? Do they figure in this, the sub-jobbers that you talked about? A. Yes.

Q. Do they figure in these estimates that you gave me? In other words, are these sub-jobbers affiliated with your company? A. They are independent jobbers that we are doing business with, selling merchandise that we sell to them. They owe no allegiance to us.

Q. What I am trying to establish or find out is do you sell to these sub-jobbers. A. Yes.

Q. You sell to them? A. Yes.

Q. What percentage of this total business represents sales of that type? Do you have any idea? A. I would say 6 or 7 percent.

Q. These are all approximate figures? A. They are all approximate, yes, sir.

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(2848) *By Mr. Dias:*

Q. Do you do any business with Texaco stations? A. Some.

Q. What sort of business? Do you sell them tires? A. I would say we sell them some tires. In our line Dunlop is original equipment on foreign cars, and where a customer has to have that particular size that we can supply and it has to be Dunlop, we sell them.

Q. And the request comes from a Texaco station? A. It could.

Harold A. Gehrke, for Commission—Direct

Mr. Royall: Objection. Leading.
Hearing Examiner Kolb: Overruled.
Mr. Royall: Please try to avoid that, sir.

By Mr. Dias:

Q. Do you sell any Dunlop tires other than to Texaco stations? In other words, do you have any steady Texaco station customers? A. Offhand I would say—would you mean where we would (2849) go in and stock a dealer with tires?

Q. Yes. A. Not that I know of; no, sir.

Q. Do you sell Texas stations any batteries? A. A few batteries, where Auto-Lite is demanded, yes.

Q. Are they bought on a stock or fill-in basis? A. Mostly by request.

Q. By request of whom? A. In other words Auto-Lite is original equipment on the Chrysler line and a few other lines, and the customer wants put back in his car what was taken out and it has to be Auto-Lite.

Q. That is the extent of your sales? A. As far as I know.

Q. What about accessories? A. Accessories are practically nil.

Q. Do you sell any other products to Texaco stations? A. Vulcanizing and recapping, a little bit. Not much.

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(2851) *By Mr. Dias:*

Q. What is the sales territory of Berry Tire Company? A. What territory do we cover?

Q. Yes. A. We cover everything in metropolitan Chicago. We don't cover south of 25th Street or east of Kedzie.

Q. Do you employ salesmen? A. Yes, sir.

Q. How many? A. Five.

Q. Are you in charge of those salesmen? A. Yes, sir.

Q. Do those salesmen in their normal course of business call on Texaco stations? A. I would say—

Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

A. I would say they pass them up.

By Mr. Dias:

Q. They pass them up? A. Yes.

Q. Why?

Mr. Barton: Objection.

Hearing Examiner Kolb: Objection overruled.

A. Our men are on a commission basis and if you want to (2852) make some money you have to have calls that produce some sales for you.

Mr. Royall: Move to strike.

Hearing Examiner Kolb: Motion denied.

By Mr. Dias:

Q. Was your company at any time ever able to sell any Texaco stations?

Mr. Royall: Objection. That is a conclusion.

Hearing Examiner Kolb: Objection overruled.

By Mr. Dias:

Q. You may answer. A. What was the question?

Q. Has your company ever been able to sell Texaco stations? A. Before my time I suppose they were. But since I have been around I would say No.

* * *

(2853) Q. Do you consider your Dunlop tires and Auto-Lite batteries competitive with Goodrich and Firestone tires and batteries?

Mr. Royall: Objection.
Hearing Examiner Kolb: Overruled.

A. I do.

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By Mr. Dias:

Q. These Texaco stations that do buy your products, do they advertise them? A. No, sir.

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(2854) *Cross examination by Mr. Barton:*

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Q. Your customers are throughout the whole Cook County and Du Page County area, are they not? A. We travel all the way to the Wisconsin line.

Q. In Cook, Du Page, Lake and Will County, generally speaking? A. Part of our area.

Q. You have more than 600 accounts in that area, do you not? A. Are you talking about all our sales area?

Q. That's right. A. I would say so.

(2855) Q. That is pretty predominantly service station accounts? A. That's right.

Q. The new car market has sort of dropped off, hasn't it? The switch-over business? A. To a great degree, yes.

Q. You have an exclusive franchise for this area, for the four-county area for Dunlop tires? A. Yes, sir.

Q. You say Dunlop is a foreign tire; English tire? A. I did not say it is foreign.

Q. There is a Dunlop Company in England, isn't there? A. That's right.

Q. And they have an American company which also manufactures? A. In New York, yes, sir.

Q. But it is not used as original equipment on U.S.-manufactured cars, is it? A. No, sir.

Q. But it is used as original equipment on the British-made cars? On some of the British-made cars? A. That's right.

Q. And the battery which you stock is Auto-Lite, isn't it? A. That's right.

Q. Made by the Auto-Lite Company? (2856) A. Yes.

Q. You have a number of competitors in the Chicago market, don't you, who are selling tires? A. I would say so.

Q. United States tires, for example, are sold here? A. Yes.

Q. By a number of very strong and prominent distributors? Is that right? A. That's right.

Q. Among them are, in your area, Accurate Tire, located on North Western Avenue—3300. You are not familiar with them?

How about Chick Brothers, on the South Side? Are you familiar with them? A. Yes.

Q. And Serlin Tire. They are a large U. S. distributor in the Chicago area, aren't they? A. Yes.

Q. And Terman Tire is a large U. S. distributor? A. Yes.

Q. And of course there are a number of Firestone distributors in this area, aren't there? A. That's right.

Q. One of the largest is Allied Tire? A. Yes.

(2857) Q. And there are a number of independent B. F. Goodrich distributors in this area, aren't there? A. Yes.

Q. And you compete with Biltmore Tire Company, an independent Goodrich distributor, don't you? A. Well, compete is a broad word, but I will say Yes.

Q. And you compete with Gardner & Kienzle, don't you? A. Not too much.

Q. They are out of— A. Some of those companies serve an area that we dropped. In other words, don't serve that area any more.

Q. You compete with Lambie, don't you? A. Don't know him.

Q. And you also are in competition with a number of Goodyear distributors, aren't you? A. That's right.

Q. Al Maier, Inc., is one of the largest, isn't he? A. Yes.

Q. And you compete with him? A. To a certain extent.

Q. You also compete with South Tire? A. That's right.

Q. And there are a number of other Goodyear distributors in the Chicago area with whom you compete? A. That's right.

(2858) Q. And there are a number of other Goodyear distributors in the Chicago area with whom you compete? A. That's right.

Q. Do you run in competition with Michelin Tires? A. No.

Q. You compete with City Tire Company, who sell Mohawk, don't you? A. If they are in the tire business, we must compete with them. I don't know.

Q. You compete with the Pennsylvania Tire in Chicago? A. I suppose.

Mr. Dias: I object to the answer, your Honor. If you do or don't. You do or don't know. That is the answer.

Mr. Barton: Let the witness clarify. You can clear it up on redirect if you would like to.

By Mr. Barton:

Q. You compete with Champion-Graham Tire Company, selling Armstrong tires, don't you? A. Yes.

Q. And you compete in connection with the General tire with Dunne General Tire Company, located at 2249 South Cottage? A. Yes, sir.

Q. And you compete with Banner Tire Company, don't you? A. I never heard of Banner. I have no—

(2859) Q. You run into them occasionally, don't you? A. I have never heard of them.

Q. And you compete with National Battery on South Archer in connection with Dayton Tire? A. No, sir.

Q. You don't? A. No, sir.

Q. Never run into them? A. No, sir.

Q. Do you compete with City and Joe's Tire on the Seiberling Tire? A. No, sir.

Q. You have never run into Seiberling tires in competition with you? A. I have seen them, but never run into them, no, sir, not in sales.

Q. You have seen them around. They are selling in the Chicago market? A. They must be.

Q. You know they are here? A. Yes.

Q. And you know that Lee Tires are here, don't you? Lee Tires? A. Yes, sir.

Q. And they are sold to service stations, aren't they? (2860) A. Yes, sir.

Q. And Gates Tires are here? A. Yes, sir.

Q. And Fisk Tires are here? A. Yes, sir.

Q. Over the past few years you have had an increasing number of service station dealers in this four-county area, haven't you? A. I would think so, yes.

Q. Are you familiar with the negotiations which took place between B. F. Goodrich and your company in con-

nection with your company becoming a distributor of B. F. Goodrich Tires? A. No, sir.

Mr. Barton: That is all that I have.

By Mr. Royall:

Q. Mr. Gehrke, there are a great number of TBA distributors even in addition to those mentioned by Mr. Barton, aren't there? A. Yes.

Q. In the Chicago area? A. Right.

Q. As a matter of fact, there are in excess of 500 that are listed in the telephone directory, aren't there; in the classified section? (2861) A. I never counted them.

Q. That sounds about reasonable to you, doesn't it? A. It could be, yes sir.

Q. And there are 4,000, more than 4,000 service stations in Chicago are there not? A. There could be. I never counted them either.

Q. Does that sound reasonable to you? A. It sounds like quite a bit.

Q. But they are in the thousands anyhow, aren't they? A. Yes, sir.

Q. As a matter of fact, you sell and have been selling 46 Texas stations, that is, your company has, in Chicago, some of them for a great period of years? A. I couldn't verify that now.

Q. What position do you have in the company? A. Sales manager.

Q. Sales manager? A. Yes, sir.

Q. If they were called to your attention, you would remember a good many of them wouldn't you? A. I think that the names would ring a bell, yes sir.

Q. Do you know the Vince Allen station at Penn and Glenwood? A. Yes, sir.

Q. Have you been selling them Dunlop tires for 13 years and Auto-Lite for 13 years? (2862) A. Yes, sir.

Q. And Gates Radiator Hoses for 13 years and Ever-ready light bulbs and sealed beams for 13 years, and Prestone Antifreeze for 13, years, haven't you? A. Well, you are taking me back through a history, prior to the history of the company that I don't know anything about.

Q. I mean as far back as you remember. A. As far back as I remember they were customers.

Q. How long is that? A. Actively on the accounts I am just starting to associate myself with them. In other words, could I give you a little history?

Q. No, sir. I would like to hear it, I know it would be interesting, but what I would like to do is to get— A. For the last two years I know that they have bought from Berry Tire.

Q. Do you know Andrew Gumbar? A. No, sir, I don't.

Q. You don't know whether or not the company has been selling them Auto-Lite and Prestone for about 6 years, do you? A. No, sir, I do not.

Q. Do you know Arthur Hull, at Rogers and Damen? A. He picks up from the store, yes sir.

Q. And he has been carrying Auto-Lite for 7 years and Prestone for several years, hasn't he? (2863) A. Yes, sir.

Q. I believe you testified that the Texas Company did not advertise competitive products. Are you sure about that? A. To the best of my knowledge, yes sir.

Q. Do they display them? A. Some of our products are up in their tire racks, yes sir.

Q. This is Arthur Hull that I asked you about. That is his station, isn't it (handing)? A. It has been up for quite a while. That is his station.

Q. He displays Prestone—

Mr. Dias: Is this being offered?

By Mr. Royall:

Q. Doesn't he?

Mr. Dias: I object to this unless it is going to be offered.

Mr. Royall: I use it to refresh his recollection.

A. He displays Prestone, yes sir, in the window.

By Mr. Royall:

Q. Do you know J. Lipshultz, at 5459 North Clark? A. Say that name again?

Q. J. Lipshultz, 5459 North Clark. A. Catalpa filling, yes sir.

Q. And they have been selling for ten years Dunlop, Auto-Lite, Auto-Lite sparkplugs, A. C. filters, Westinghouse bulbs, and Evenseal caps? (2864) A. They have been more or less a pick-up service.

Q. They have been steady customers of yours, displaying your wares for ten years, haven't they? A. Yes, sir.

Q. Do you sell Delco batteries? A. No, sir.

Q. Do you know who sells those? A. Delco.

Q. Yes. A. Bell Park auto park, on Cicero Avenue.

Q. But it is not Goodrich? A. I wouldn't think so.

Q. Do you remember Al Johnson, at Belmont and Damen? A. No, sir.

Q. Maybe it will refresh your recollection. Would you remember a customer who buys 50 percent of his tires from you? A. By that name?

Q. Yes. That address. Maybe he has some trade name. A. No, sir.

Q. Do you remember the M and M Texaco Service at 304 East Central, Villa Park, Illinois? A. No, sir.

Q. Do you remember Elmer Mandell at Clark and Thome, in Chicago? (2865) A. No, sir.

Q. Do you remember M. Menke, who has been buying a number of your products, including Dunlop tires, for ten years? A. No, sir.

Q. You don't remember him? A. No, sir.

Q. Do you remember William Yucas, at Grass Lakes Road, Antioch, Illinois? A. Yes, sir, very well.

Q. They have been buying Dunlop, Exide, Westinghouse bulbs and sealed beams and Prestone, and 80 percent of his TBA from you. Haven't they? A. Yes, sir.

Q. For 8 years? A. I started to sell him myself five years ago.

Q. And they have been buying ever since, haven't they? A. Yes, sir.

Q. Do you know Art and Ed Behrens, at L and L Service Station, 134 North West Highway, Arlington Heights? A. Never been there.

Q. Would it refresh your recollection if they had been buying Dunlop from you for 15 years and Auto-Lite and other products for more than five? Would that bring anything to your mind? A. No, sir, it don't.

* * *

(2867) Q. Have you got a list of the Texas Company stations that your company sells TBA to? A. We have a sales record; yes, sir.

Q. That is in your office? A. At all times; yes, sir.

Q. Could you bring it here tomorrow so that we could get the names of those who buy and check them with our list? A. No, sir. It is available at our office.

Q. You decline to bring it without a subpoena? A. Yes, sir.

* * *

(2868) *By Mr. Barton:*

Q. I take it you found it to be a practical necessity as well as profitable to carry accessories along with your line in selling to service stations? A. Part of the business, yes, sir.

Q. It is part of the service station business and therefore (2869) anyone who is going to supply tires to them has to supply accessories, too? A. Yes, sir.

* * *

Redirect examination by Mr. Dias:

Q. Mr. Gehrke, is the Berry Tire Company the only Dunlop distributor in this town? A. Yes, sir.

Q. How about Auto-Lite batteries? A. Auto-Lite batteries, we are one of a hundred.

Q. You mentioned that you first sold William Yucas. What type of station does he have? Is he a leased or contract station? A. His station he owns outright. It is not leased or contract.

* * *

Q. How about Vince Allen? A. I believe that is his own station.

Q. A contract station? A. Yes, I believe so.

* * *

(2870) *By Mr. Dias:*

Q. You mentioned pickups from a store. What did you mean by that? A. Nearby dealers who are requested to get the products that we handle come in and pick them up.

Q. What do you mean "requested to get the products"? A. If their customer demands an Auto-Lite battery or (2871) Dunlop tire and we are the nearest source of supply, they come in and get them.

Q. Arthur Hull, did you say you recollected Arthur Hull? A. Yes, sir.

Q. Is that the type business you do with him? A. About 90 percent of it; yes, sir.

* * * * *

(2881) ARTHUR EDELSON was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

* * * * *

(2882). *Direct examination by Mr. Dias*:

Q. Will you state your name and business address? A. My name is Arthur Edelson.

Q. And your business address? A. 6208 Cottage Grove Avenue.

Q. What is the name of your company? A. The name of the company is J. E. Auto Supply Company, Incorporated.

Q. How long have you been with that company? A. Approximately 30 to 32 years.

Q. What is your position in the company? A. President of the company.

Q. How long have you been president? A. Since '38.

Q. Since '38? (2883) A. 1938. Approximately '38.

Q. When was the company founded? A. The company was founded, it will be 38 years on July 6, by a brother, Joseph Edelson.

Q. As President what are your duties? A. Purchasing agent, I do the buying, and I have my accounts that I contact, such as jobbers and dealers. Originally I was a salesman calling on the trade, originally.

Q. For how many years did you do that? A. I called on the trade approximately ten years. I was outside man.

Q. When was that? A. I would say about from 1927 to about, I would say, '37. Somewhere in there. Or '36.

Q. Since then you have served as President I believe. A. That's right. And I still call on trade.

Q. What type trade do you solicit? That is, your company? A. All kinds. Jobbers, gas stations, garages, car dealers, chain stores, jobbers.

Q. Can you give us some idea of the percentage of business that you do with each class of customer? A. Well I think that we—this is in round figures—I think our gas station business is I would say today about 40 percent. At one time it was 75.

Q. What type merchandise do you handle? (2884) A. We carry all name brands. All advertised lines. We are DuPont distributors, we are Champion sparkplug distributors, we are Auto-Lite distributors, and at one time we used to have the B. F. Goodrich Company make our inner tubes for us. That is going back to 1930. Under the name of State Line. When they took over the Miller Rubber Company.

Q. Do you handle tires? A. We don't handle tires today. At one time, years back, we did.

* * *

By Mr. Dias:

Q. How about tubes? A. We handle inner tubes today.

Q. What make? A. Made by Durkee-Atwood. They are at Minneapolis, Minnesota.

Q. Do you handle fan belts? A. Yes. We are distributors for Gates Rubber Company.

Q. Radiator hose? A. Radiator hose, fan belts, windshield hose. We handle Van Cleve tape.

(2855) Q. How about filters? A. We are Fram distributors.

Q. Do you handle chemicals and oil? A. We handle the Valvoline line oils, and we have lines such as we are

distributors for DuPont, which I mentioned previously, and we handle Caseite and Gumout, and we handle the Permatex line. We have maybe 25 lines of chemicals, factories, all name brands.

Q. What is your sales territory? A. We cover Chicago and Whiting, Hammond, Gary, East Chicago, Joliet, and we ship to several different dealers that we have.

Q. Do you mean the entire city of Chicago? A. Our heaviest is south. Our concentration is on the south side. South of Madison Street.

Q. Do you employ salesmen? A. Yes, we do.

Q. How many do you have? A. With us brothers there are 7 of us.

Q. Seven salesmen? A. Yes, with us boys.

Q. How are your salesmen compensated? Salaried or commissioned? A. We give them a car expense every week and we give them commission. We watch their sales every month. What they (2886) bring in. If they have a steady increase over a three or four month period, we give them a raise and at the end of the year we see what their volume is and we—it is a salary basis.

Q. In your sales area are there any Texaco and Conoco stations? A. Yes, there is.

Q. Do you have any idea of how many Texaco stations are in your sales area? A. I wouldn't be able to give you accurate, but I imagine there are a hundred gas stations or 150 or 200 somewhere south of Madison Street, Texaco and Conoco.

Q. Texaco and Conoco? A. Yes. Maybe 250. I don't know exactly. I never studied it.

Q. Are there more Texaco than Conoco? A. That is correct.

Q. How many of that roughly— A. I think there are about anywhere from 25 to 50 to every Conoco.

Q. Do you call on those stations regularly? A. Yes, we do. Our men call on all stations every week, promptly.

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(2887) *By Mr. Dias:*

Q. Are you able to sell to these Texaco stations? A.

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By Mr. Dias:

Q. Will you restate your answer please? A. You see, it is not—we are not able to go in and sell a Texaco service station.

* * *

Hearing Examiner Kolb: Read the last question to the witness.

(2888) (Question read.)

A. At the present time, very little.

By Mr. Dias:

Q. How about the Conoco stations? A. Very little.

Q. Do you sell anything at all to the Texaco stations? A. Yes.

Q. What type produce do you sell to them? A. We have a—the merchandise we have we can sell them every produce if we are able. Let's put it that way.

Q. That is the point. Are you able? A. No.

Mr. Royall: Wait a minute. I object to the comment on that. I object to counsel's comment.

The Witness: We are limited.

Mr. Royall: Wait a minute.

Hearing Examiner Kolb: I will let the witness answer it. Go ahead.

A. Our sales are limited to a company-owned, Texaco-owned station that is leased. A lessee.

By Mr. Dias:

Q. Do you sell any produce to any Texaco station? A. We are limited to what products we can sell.

(2889) Q. But you do sell some? A. Yes, sir.

Q. What type produce do you sell? Do you sell tubes? A. No, we are not able to sell tubes only under cover.

Q. Do you sell batteries?

Mr. Royall: I move to strike.

Hearing Examiner Kolb: Motion denied.

By Mr. Dias:

Q. Do you sell batteries to those stations? A. We are able to sell batteries if it is 6:00 o'clock at night and the man can't get his supplier.

Mr. Royall: I move to strike.

The Witness: That is a Goodrich supplier.

Hearing Examiner Kolb: Motion denied.

By Mr. Dias:

Q. Do you sell filters? A. That is likewise; I mean the same answer to that.

Mr. Royall: Move to strike.

Hearing Examiner Kolb: Motion denied.

By Mr. Dias:

Q. How about radiator hose? A. We are limited to sales of—it is a matter of urgency when our sales are available to us, on a pick-up basis.

Q. Is the same true of Conoco stations? A. That is correct.

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(2890) Q. Regarding those Texaco stations that you have sold some merchandise to, do they advertise your products on the station? A. No, sir.

Q. Do they stock them?

Mr. Royall: What is the question?

Mr. Dias: Do those Texaco stations which buy his products stock them?

A. Only on an emergency basis. Our sales are limited, • • •.

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(2891) *By Mr. Dias:*

Q. Can you give us some idea of your company's annual sales from 1952 to date? A. I don't think our sales has anything pertaining to—every company has a growth, every year, I mean if they are progressive. But pertaining to what our problem is here, I don't think our sales has any bearing.

Q. Would you rather not mention your sales figures? A. That is correct. The simple reason is that—

Mr. Royall: We object to the explanation.

The Witness: For the simple reason—

Mr. Royall: We object.

(2892) Hearing Examiner Kolb: Let the witness answer.

Mr. Dias: What was the ruling?

Hearing Examiner Kolb: Let the witness explain.

The Witness: For the simple reason that, like every business, when you are not able to get business

in from a certain source, certain outlet, then you have to concentrate on other outlets. So if you are a progressive enough company you can secure more business. But I don't think my sales has anything pertaining to this.

But our sales with gas stations with the particular Texaco gas company outlets are far less. I would say it is only 25 percent or 20 percent of what they formerly were previously.

Mr. Royall: I move to strike. That was not the question, your Honor; not responsive.

The Witness: I am just giving an instance of our sales.

Hearing Examiner Kolb: Motion denied.

By Mr. Dias:

Q. When did you start selling to jobbers and other classifications—truckers, did you say? A. Jobbers—we have been selling that class of trade for 30 to 32 years.

Q. On those Texaco stations that you are able to sell, are they leased accounts or contract stations? Do you know?

(2893) Mr. Royall: Objection. What is the question?

Mr. Dias: You didn't hear it?

The Witness: The majority are leased to the Texaco Oil Company.

(Question read.)

A. They are leased stations from the Texaco Oil Company.

By Mr. Dias:

Q. Have you ever sold any—A. Pardon me. Could I have that repeated again?

Mr. Royall: We object, your Honor.

Hearing Examiner Kolb: He has the right to have it read back again.

(Question read.)

A. No. I am not able to sell them—leased stations.

Do you mean if they are leased or contract? Is that right? What do you mean by the word "contract"? They own their own ground?

By Mr. Dias:

Q. They own their own station. A. Contract. We are able to sell contract. That is the point I missed. Contract. I am just a young boy without a diploma.

Q. Have you ever sold any Texaco stations on a regular basis?

Mr. Royall: Objection.

(2894) Hearing Examiner Kolb: Overruled.

By Mr. Dias:

Q. Have you ever sold any Texaco stations on a regular basis? That is, week after week, get orders, or month after month, whenever they usually buy. Do you have any such accounts or have you had any such accounts? A. The picture has changed the last four or five years. We are not able to—

Q. Sir? A. The picture changed the last four or five years. We are not able to get regular business.

Mr. Royall: Move to strike.

Hearing Examiner Kolb: Denied.

By Mr. Dias:

Q. Do I understand that prior to that time you could sell to them on a regular basis? A. Correct.

Q. Is the same true of the Conoco stations? A. Yes, sir.

Q. Do you consider your products competitive with those of the Goodrich and Firestone companies? A. Did you say parts?

Hearing Examiner Kolb: Products.

By Mr. Dias:

Q. Do you consider your products—batteries, fan belts, hoses, filters, et cetera—are they competitive quality-wise, (2895) price-wise, et cetera? A. Very much more competitive, and more advertising.

Mr. Dias: Your witness.

Cross-examination by Mr. Barton:

Q. Mr. Edelson, in the Chicago and Northern Indiana area, you have around 1200 customers, is that right? A. Approximately.

Q. And you have seven salesmen? A. That is right.

Q. Who cover those 1200 customers? A. That is right, sir.

Q. And that includes you and your brother? A. That is right.

Q. How often do you get around to those? A. Once a week.

Q. The seven of you cover 1200 customers once a week? A. That is right.

Q. And you sell to those customers these nationally advertised Fram filters, Auto-Lite batteries, et cetera? A. That is right, sir.

Q. How many trucks do you have? A. We have two delivery trucks and we ship by parcel post and freight and different things of that type.

Q. And you have one warehouse? (2896) A. Yes, sir.

Q. One place of business? A. That is correct.

* * *

(2897) Q. They are desirable accounts, are they, in Chicago? A. I think that every station is a—

Q. The Conoco accounts are the desirable? A. As far as selling?

Q. Yes. A. If we are able to sell, yes, they would be a desirable account.

* * *

(2899) Q. Your sales have progressed from very little to better than a quarter million dollars? A. Much more than that.

Q. Much more than that? A. That is right, but our sales is changed from different outlets. I mean from class of trade, like our gas station business today is only 25 percent of what it was previously, due to the fact that we are not able to sell all types and kinds of gas stations.

Q. Twenty-five percent of what? A. Of our sales, of what it was previously.

Q. In other words, sometime past you had lots smaller sales but the gas sales were a bigger percentage of that? A. No. Our sales were greater to gas stations five years (2900) previous than they are today.

Q. But your total sales were less? A. Our total sales were less. What do you mean our total sales? From gas stations?

Q. From the overall sales of your business? A. Our overall picture has nothing to do with the gas stations.

Q. Wait a minute. Your overall sales were less, weren't they, five years ago? A. That is only growth of the business what you are asking now. It is pertaining to gas stations. That is the question that is here.

Q. I am asking you about your business. A. In growth, yes; in growth, yes.

Q. You are listed in the telephone directory under the heading "Automobile Supplies and Parts, Wholesale and" — A. Wholesale and auto supplies. Manufacturers' distributors.

Q. You are about one of more than 600 such firms listed in the telephone directory, aren't you? A. There is a different classification. There's jobbers and distributors.

Q. There are about 700 names on four pages of the telephone directory under your listing, aren't there? A. If you take the Red Book you will find a great many retailers are listed as jobbers. Actually, jobbers are not (2901) distributors. So far as the Red Book it is very misleading.

Q. You have— A. Champion spark plug only have approximately eight distributors in the city of Chicago.

Q. You are one of them? A. That is right, sir. And Auto-Lite—

Q. All the other seven are competitors of yours, is that right? A. They are very good competitors of mine.

Q. And all of the AC Spark Plug distributors are competitors of yours? A. That is correct.

Q. And all of the producers of—all of the distributors of the manufacturers of filters that are sold here are competitors of yours, aren't they? A. There is no such word today as "competitor." A man goes out and works and handles the advertised lines and he can get the business. Good competition is all right with me. We get our business on merit. That is the way we built our business, on honesty and merit.

There is only one thing else—

Q. That is all. You answered my question. A. All right.

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(2902) *Cross-examination by Mr. Royall:*

Q. Your territory is even larger than the City of Chicago, isn't it, that you cover? A. Right, sir.

Q. You cover all of greater Chicago and perhaps some outside, don't you? A. Correct, sir.

Q. And that has grown, the area covered has grown over the years, hasn't it, expanded? A. Like every business that has growth, but in different fields.

Q. Like every business that has growth you expanded over the years, you have taken on a great variety of lines, haven't you? A. Now, I know you are trying to make the impression or get the impression that I am—

Hearing Examiner Kolb: Just answer the question.

By Mr. Royall:

Q. I am trying to get the facts. A. It has no bearing on our decrease in business with gas stations; our growth. If we are able to sell gas stations—

Hearing Examiner Kolb: Let Mr. Dias argue this. Don't argue the case. Just answer the questions.

By Mr. Royall:

Q. I am not asking you whether it is relevant or not or the (2903) proper question. The Court will have to rule on that.

Hearing Examiner Kolb: Just ask the question.

By Mr. Royall:

Q. I just want to ask you the question. You have taken on additional lines, haven't you? A. Right, sir.

Q. And you are encountering competition all the time, competitors in those lines or similar lines? A. Some good competition and some dirty competition. Let's put it that way.

Q. But you are encountering competition? A. Yes, sir.

Q. And the number of your competitors are increasing all the time? A. Yes, sir; good and bad.

Q. And are you pretty well familiar with all that territory you cover? A. Well, I have a fairly good knowledge. I will do the best I can.

Q. And you get around all of it one time or another, don't you? A. That is right. But time changes, in certain territories, like different operators.

Q. I realize that. But you still keep fully in touch with it, do you not? (2904) A. That is right, as best I can. I am limited to my strength and ability.

Q. Let me ask you about some specific Texas stations. My inquiry is merely if you sell these stations. A. Yes, sir.

Q. Barney & Harolds— A. 103 Rhodes?

Q. Yes. A. Right.

Q. You sell. And I believe you call on them every week? A. Correct.

Q. And their business is pretty well divided between you and three other jobbers, isn't it? A. It is not divided well. I would say, as long as you asked that question, we get what is left of what the Goodrich distributor gets.

Q. You don't get as much as you would like to? A. We could get it if we wouldn't have the restriction there.

Mr. Royall: We move to strike that.

Hearing Examiner Kolb: Motion denied.

By Mr. Royall:

Q. You try to get—I mean you do get a part of that business? A. We try.

Q. You do get it, don't you? A. We try to get it.

(2905) Q. Don't you get business from them? A. We get what we are able to sneak from them, from the Texaco Company.

Q. What kind of a station is that? Is it leased or owned? A. I believe that the Texaco Oil Company leases it from a private party and that in turn is leased to Harolds.

Well, there are two—there are some Texaco-owned and some they lease from them.

Q. It is leased by the Texas Company? A. Yes. It is subleased to the operator.

Q. Do you know John Benson's station? A. 79th and Paxton?

Q. That is right. You know that, do you not? A. Yes, sir.

Q. And you sell them Westinghouse light bulbs, sealed beams, Fram filters, and waxes, do you not? A. Our sales are limited to there, too.

Q. But you do sell them? A. Whatever is left we get.

Q. And you have been selling them steadily for ten months at least, haven't you? A. Since he has been there. He has been a new operator.

Q. That is the same— A. Pardon me. We didn't get the original order.

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(2906) *By Mr. Royall:*

Q. That is also a station leased by the Texas Company to the operator, isn't it? A. Right, sir.

Q. Do you know Emil Biergyenudek? A. Where is he located?

Q. At 120th and Halsted. A. He calls that—is that a Mills service station?

Q. Yes. A. Yes.

Q. You know that? A. Yes, sir; I know them all.

Q. That is also a station leased by the— A. I believe it is, I am not positive about it.

Q. (Continuing) —Texas Company. You have been selling them Zerone and Zerex for two years, haven't you? (2907) A. Our sales there is limited on antifreeze as well as any supplies.

* * * *

By Mr. Royall:

Q. Do you sell them both? A. It is limited.

Q. Do you sell them both? A. Maybe a case of each.

Q. Answer my question. A. In emergency, yes. In emergency, yes.

Q. And you have been selling them regularly for two years, haven't you? A. I would say approximately, somewhere around there.

Q. Do you know Gerald Carlton? A. 95th and Bell?

Q. That is right. And that also is a leased station, isn't it? A. That is right.

Q. And you have been selling them Auto-Lite for ten years, have you not? A. Not exactly ten years; on emergency only.

(2908) Q. Haven't you been selling them for ten years? A. On emergency, yes.

Q. And you have been selling them Fram filters for ten years? A. A limited amount.

Q. But you have been selling them for ten years? A. A limited amount.

Q. Answer my question, please.

Hearing Examiner Kolb: He answered the question.

By Mr. Royall:

Q. For ten years?

Hearing Examiner Kolb: He said he sold them.
Mr. Royall: He hasn't answered that.

A. We have sold them for ten years. Our sales are limited to them.

By Mr. Royall:

Q. Have you sold them sealed beams for ten years? A. Now and then.

Q. Do you know Henderson Carr's station? A. Henderson?

Q. At 56th and South Michigan. A. I know it exactly. I used to sell the station four or five years ago but I have not been able to sell them today. We were pushed out of there.

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(2909) *By Mr. Royall:*

Q. My question is, have you been selling them? A. No, we haven't sold them in the last five years.

Q. Haven't you sold them Prestone for ten years? A. No, sir.

Q. How long have you sold them Prestone? A. I haven't been able to sell them anything for the past five years. Previous to that I sold them.

Q. Have you been selling— A. Previous operator.

Q. Have you been selling Auto-Lite and spark plugs for ten years? A. Have we been selling them?

Q. Yes. A. Have we been selling to a certain party or have we been selling them?

Q. Have you been selling Henderson Carr? A. We haven't been able to sell them for the past five years. Previous we sold that station.

Q. You sold them back as far as ten years? (2910) A. Well, I wouldn't take the last five years.

Q. You sold them for the five years previous to that, you say? A. If it was the same operator. If it was the same operator, I can't keep up with some of those operators.

Q. Where does he get his Prestone that he carries now? A. I don't know.

Q. Others sell Prestone besides you, do they? A. I think—do you want to know where he gets his Prestone? He gets it from a Goodrich distributor: from Gardner and Kinsley, or Lambie, where all the business goes, by force.

Mr. Royall: Your Honor, the record shows that that is not a sponsored product.

By Mr. Royall:

Q. Where does he get his Auto-Lite spark plugs from? A. Pardon me. You have a Goodrich distributor who is a Prestone distributor. Gardner and Kinsley. That is one of your distributors for Texaco Oil Company.

Q. Not for Texas Oil Company? A. He is a distributor. He handles your "PT" and also Prestone. He is a distributor. He is the one selling it to him.

Q. Who does Carr buy his Auto-Lite spark plugs from? A. He doesn't buy them from J & E Auto Supply. We haven't (2911) been able to sell them for the past five years.

Q. Do you know who he buys them from? A. No, sir.

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(2912) *By Mr. Royall:*

Q. How well do you know Wally Cohen's station? A. I never met the man.

Q. I know, but you have seen the station? A. I passed by but never been in the station.

Q. That is a Texas station, isn't it? Texas outlet? A. I presume it is. I don't call on that trade. One of our men calls on it.

* * *

A. I don't call on the customer. One of our salesmen calls on him. I am not familiar with the stop. I know that our sales are limited and we do deliver to the man. I am not familiar with it.

I believe the man has only been there a year. Not quite a year.

* * *

Q. * * * I will ask you if he does not advertise publicly at (2913) his station at least three brands which I will name that are not Goodrich brands, and they are as follows— A. They really hand-picked them.

Q. A. C. sparkplugs? A. I wouldn't know.

Q. Universal batteries? A. I wouldn't know.

Q. And Bardahl? A. I wouldn't know.

Q. I believe you testified that the Texas station did not advertise products except those under this Goodrich arrangement. You don't know that is true as to all the stations, do you? A. Pardon me. Say that over again.

Q. What did you say about Texas not advertising, about the Texas stations not advertising? A. I didn't say anything about Texas not advertising. I say we handle much more advertised products than Texas.

Q. Do you know Chuck's Evergreen Texaco station? A. Chuck's Evergreen?

Q. 103rd and Western. A. We don't sell them. Yes, I know where it is. It is on the northwest corner.

Q. I will ask you to reflect on that a minute. Don't you sell them regularly? (2914) A. I am not able to sell them.

Q. What? A. I am not able to sell them.

Q. You don't sell them? A. No. I am not able to sell them. I try.

Q. Do you know Charles Curletti? A. Charles Curletti? Where is he located?

Q. At 87th and Loomis. A. Yes, sir. That is John Caveni was there previously. That is on the southwest corner.

Q. That is a leased station too, is it not? A. Correct.

Q. And he buys more than 50 percent or at least 50 percent of his entire "TBA" line from you, does he not?

Mr. Dias: I object to that.

The Witness: No, sir. I will answer that. No sir, he does not. We can, though—

By Mr. Royall:

Q. You have been selling him Gates fan belts and Zerone for two years, haven't you? A. I wouldn't say two years. It is on and off. On and off. When the pressure is not on.

Q. This station that you sell, is that a station that does not advertise any competitive products with Goodrich's line? A. I am not familiar with it. I don't know.

* * *

(2916) Q. Do you know Joe Debulski? A. Is that 11919 West 11th Street?

Q. It is 103rd and Michigan. A. Yes.

Q. That is also a leased station, is it not? A. Yes, I believe so.

Q. I will ask you if that station does not buy 25 percent of its TBA from you?

Mr. Dias: I object, your Honor. How can this man testify as to a percentage?

A. I don't know what he buys other places so how could I tell you 25 percent?

By Mr. Royall:

Q. He buys a considerable part from you, doesn't he? A. Limited?

Q. Doesn't he handle and hasn't he handled for several years AC sparkplugs, Westinghouse bulbs and sealed beams, Stant gas and radiator caps, and Zerex? A. It is possible he could have gotten through your Goodrich (2917) distributors the same products. They handle a lot of other products besides Goodrich.

Q. Doesn't he buy those from you? A. We are limited in our sales. But your Goodrich distributors that sell these Texaco stations are also pressured in to buy this other merchandise that Texaco doesn't handle.

Mr. Royall: Move to strike "pressured to buy".

The Witness: Suggested to buy. Let's put it that way.

By Mr. Royall:

Q. Do you not yourself sell him those items that I mentioned? A. Limited, sir.

* * *

Q. Do you know Benjamin Douglas? (2918) A. Is that 68th and Vincennes?

Q. 29th and South Parkway. A. Same operator. That is the same operator. He has both stations.

Q. You know him? A. Yes.

Q. That is a leased station too, isn't it? A. I am positive 68th Street is leased. I don't know about 29th. I am not sure.

Q. You sell him Gates radiator hoses and Zerex, for several years? A. Not for the past four years. Previously we did. Previously we sold them stations.

Q. I ask you if you didn't sell him some in the last few months. A. I doubt it.

Q. Do you know? A. Positively I don't know. But I don't think so. I don't think so.

Q. I will ask you if you didn't also sell him some in the spring of this year? A. If it has, it has been a few dollars. Very limited.

Q. Didn't you also sell him some in the year 19—I mean last year, 1956 and '55? A. I believe we got more business from him in 1954 and '55 (2919) than we do today. Very little today. I don't think we got $50.00 business this year.

Q. Do you know whether you sold him anything in 1955 and '56? A. In '55, yes. We got quite a bit of business.

Q. '56? A. In '56, very little. Very little.

Q. Do you know Ross D. Foreman and Marvin H. Kloster? A. 5610 Harper and 83rd and Ellis?

Q. That's right. A. They are out of there now.

Q. That is a leased station too, isn't it? A. I believe it is. If I am not mistaken.

Q. And you have been selling them for ten years? A. I believe so.

Q. For 15 years, haven't you? A. I couldn't state exactly, but it has been a great many years.

Q. Auto-Lite, Gates fan belts, Champion sparkplugs? A. Limited amount.

Q. Gates radiator hoses? A. Limited amount.

Q. And GE and Westinghouse light bulbs? A. We don't handle GE.

Q. Auto-Lite bulbs. I said GE and Westinghouse. (2920) A. Yes.

Q. And radiator caps and wax. A. We are limited on what we can sell them.

Q. Those two you have been selling over a period of some 15 years? A. Somewhere in there.

Q. Do you know Charles Goff? A. 71st and Indiana?

Q. 71st and Indiana. A. Yes.

Q. That is also a leased station? A. I believe it is.

Q. I will ask you if he doesn't buy 80 percent of his TBA from you?

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Mr. Dias: This man can't testify as to the percentage of his purchases. Your operating man can tell you that. He doesn't know.

The Witness: How do I know what he buys from the other fellow? He buys $10.00 a month from me. He must buy $100 from your Goodrich distributor. I am only getting $10.00 a month. He is only a pick-up emergency.

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(2921) *By Mr. Royall:*

Q. I will ask you if you don't sell him a vast majority of these products? A. No, sir. Limited.

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By Mr. Royall:

Q. Mr. Edelson, do you know Leon Sider? A. 67th and Jeffrey?

Q. That's right. That is also a leased station? A. Right, sir.

Q. You have been selling him Gates fan belts, AC filters, Gates radiator hoses, Auto-Lite bulbs and sealed beams, and Prestone, over a period of approximately 8 years, have you not? (2922) A. We have never sold him any Gates unless it was a special order. Your Goodrich distributor sold him Prestone and "PT." Our sales are limited.

* * *

(2924) Q. Do you know Wesley Sippel? A. Sippel?

Q. S-i-p-p-e-l. A. 107 Vincennes?

Q. 134th and Western. A. Yes. That is another one. There is a Sippel at—

Q. That is a leased station? A. I think they are brothers. Yes, I think so.

Q. His station and his brother's station have both been buying from you for about five years, haven't they? A. Within a limited amount of purchases.

Q. And the items, among the items they bought they bought Gates fan belts, Fram filters, Gates radiator hoses, Westinghouse bulbs, Badger caps and Zerex and Anco windshield blades? A. On an emergency basis, yes.

Q. They also bought spark plugs and oil filters from you? A. On an emergency basis. We could sell them more, if we were able to.

Q. As a matter of fact, you would like to sell everybody all (2925) they need in these things, wouldn't you? A. Under our setup we can sell anybody in the city of Chicago.

Q. You try to sell them all naturally do you not? A. Try?

Q. Yes. A. Well, if there is no restriction, yes, that's right.

Q. And you try to do it. That is what you would like to do. A. We can sell them if we are not stopped. If we are not stopped.

Q. Bernard Hackstra, do you know that one? A. Where is he located?

Q. And Harold Gervais. They may be operating together. I beg your pardon. Bernard Hackstra succeeded Harold Gervais—G-e-r-v-a-i-s. A. Where is he located?

Q. At 103rd and Rhodes. A. That is the two previous names that you gave me of Harold and Barney. Barney runs a Shell station at 107th and Halsted and Harold runs a Texaco. They were formerly partners at 103rd and Rhodes.

Q. And you have been selling them Zerone and Prestone for a number of years? A. Only on an emergency basis. If we have no restriction there we can sell them all their antifreeze.

Q. Emil Hudek? (2926) A. That sounds familiar.

Q. At 120th and Halsted. A. You mentioned that, 120th and Halsted, that's right.

Q. That and the previous one are also both leased stations? A. I believe he is. Our real estate department hasn't caught up with that one.

Q. And you also sell him, don't you? A. On a limited basis.

Q. William Jamison? A. Is that the one on 71st?

Q. 75th and Indiana. A. That is right. We used to sell a lot of—wait a minute. Okay. You ask a question.

Q. I will ask you if you haven't sold them regularly during the last two years? A. Very limited.

Q. Auto-Lite, AC spark plugs? A. Only on a pick-up basis.

Q. AC filters, Zerex and wax? You have sold them. A. Only on a pick-up basis. But we could do much better.

Q. Ed Madden? A. Ed Madden at 79th and Yates. Right?

Q. That's right. Is that a leased station, too? A. I believe it is. We are limited in selling.

Q. You have been selling them filters, distributor parts, (2927) Zerone and Zerex? A. We haven't sold them ten cents worth in the last three years.

Q. What? A. We haven't sold them ten cents worth in the last three years. But we could—

Q. I will ask you if you didn't sell them some in 1956? A. I doubt it. If it was on a pick-up basis—

Q. Do you know whether you did? A. I don't think so.

Q. I will ask you— A. We could sell them.

Q. Did you sell them some in 1955? A. I don't believe so. But we could sell them.

Q. I will ask you if you didn't sell them more in 1956 than in 1955? A. To who?

Q. To Ed Madden? A. We didn't sell them anything, so it couldn't be any more.

Q. Matthew Minarcin? A. Where is that?

Q. 3030 South Archer. A. 3030 South Archer?

Q. Yes. A. That is owned by a Texas gas jobber. His father owns (2928) that ground. Your Texaco oil jobber, gas jobber, owns that station. That is leased to his son or son-in-law.

Q. You sold them for ten years Gates fan belts, AC filters, GE bulbs, gas caps, Zerone and Zerex, and wax, haven't you? A. On a limited basis. But we could do better.

Q. George M. Messinger? A. 58th and Kedzie?

Q. That's right. A. Sold them for 28 years.

Q. And you have been selling them for ten? A. Been selling them sure for ten years. Since they have been in business. On a limited basis.

Q. And that is a leased station? A. That is correct.

Q. And you sell them more than half of the spark plugs he needs?

Mr. Dias: I object.

A. I doubt it. We could sell them all.

By Mr. Royall:

Q. And would like to? A. We could.

Q. Would you like to? A. We would love to. Just give us the go sign and we can do it.

Q. John F. Polivka? (2929) A. 3925 Archer Avenue. I believe he owns his own ground and he has a lease to the Texaco Oil Company. Then he in turn leases back to himself. I believe that is what the set up is. John Polivka.

Q. You know that station pretty well. A. I think so.

Q. You have been selling him for five years? A. I believe so.

Q. Exide batteries? A. We don't handle Exide. We handle only a good brand.

Q. Auto-Lite? A. Auto-Lite.

Q. Gates fan belts? A. Yes, sir.

Q. AC spark plugs? A. We handle Champion.

Q. Who handles AC? A. Your Goodrich-Texaco distributor.

Q. And a great many other people? A. I don't know who else handles it, but I know they handle them.

Q. Auto-Lite spark plugs? A. I think your Goodrich distributor and Texaco distributor handles that also.

Q. And other handle them? (2930) A. I don't know who else. I know those two handle them.

Q. Champion spark plugs? A. Champion spark plugs is handled by Gardner Kinsley also, and Lambergs and they are Goodrich and Texaco distributors.

Q. And others handle them? A. I don't know that.

Q. You handle them, don't you? A. Yes, sir.

Q. And you sell them to this man? A. We sell part to a limited place. Limited. Put it that way.

Q. And you sell Fram filters to him? A. We are limited on that.

Q. And you sell Prestone to him? A. We don't handle Prestone, but your Goodrich-Texaco distributor handles Prestone and sells them.

Q. A great many others handle it? A. I don't know that.

Q. You would recognize—look at this picture. A. Is that Polivka's place?

Q. Refresh your recollection of that (handing). A. I recognize the name. That is what they have on their check. But anything else, I recognize Texaco, Goodrich, and that is about all.

* * *

(2931) Q. I will ask you if the station doesn't advertise Champion, Auto-Lite— A. I don't know what he advertises. All I know is that we could get more business if we were allowed to.

* * *

(2932) Q. John and Charles Supple? A. That sounds familiar. Where are they located?

Q. 99th and Vincennes—99. A. 1818?

Q. 99th Street and Vincennes. A. I think at one time we sold them. Today we don't sell them.

Q. That is a leased station? A. That's right, sir. We could sell them, if we were allowed.

Q. I will ask you if the reason you don't sell them now is because of poor service, slow delivery, and unstable prices on your part? (2933) A. We are in a position as a distributor to meet any kind of competition, and we can sell merchandise at the same price that your Goodrich distributor or Texaco distributor, we could sell at his cost to the gas station and still make a profit. We are in that position. We can sell anybody.

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By Mr. Royall:

Q. Did not this station cease business with you because of poor service, slow deliveries and unstable prices on your part? A. There is not station ever discontinued business because of our service. We have the finest service there is. We give 24-hour service.

Q. Did— A. Our prices are right and we handle all advertised products.

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(2934). Q. Tomes Auto Service? A. Archer and Crawford?

Q. Archer and Pulaski. A. I sold the man his first water bucket when he built that building.

Q. That is— A. That goes years back, 27 years ago.

Q. That is a leased station? A. I think he is dead now, deceased. His brother has it.

Q. The station is a leased station? A. I think they own the property. I don't know if they lease it to you or not?

Q. You say you have known that for a long time? A. Known what?

Q. You have known that station? A. That is correct?

Q. That is Tomes station? A. T-o-m-e-s.

Q. I ask you if you do not know that that station publicly advertises by well-lettered and readable signs, Cooper tires and Auto-Lite? A. I am not familiar with what he is advertising today, (2935) because our business is two percent of what it previously was years back.

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(2939) *By Mr. Royall:*

Q. Do you know the Archer filling station at 3040 South Archer? A. Thirty?

Q. 3040 South Archer. A. You just submitted a name previously that was 3030 Archer. I believe it is the same company.

Q. This is South Archer. A. That is South Archer, too. 3030 Archer is your Texaco and Texaco gas distributor, Matt. That is his address.

Q. What is his name? A. Matt—he leases to his son. I think now it is his son-in-law; 3030 Archer. 3040 is the same thing to my knowledge.

Q. One is 3030 and the other is 3040. A. It is the same man.

Q. Same man? A. Same man.

Q. Two stations? A. It is only one station.

Q. It is a leased station, the one at 3040, isn't it? A. He has his bulk truck pull out of 3030 and he has the gas station on the corner.

Q. The one at 3040 is a leased station? A. That is right. I think your Texaco distributor owns (2940) the ground.

Q. Haven't you been selling them for a period of ten years, antifreeze, Pyroil, Rislone, Lubite, brake fluid, auto polish, auto bulbs, house fuses, gas nozzles, tire chains, C.D. 2 Alimite, car wash, rubber plugs, AC filters, brake shoe, tire patch kits and Gates fan belts? Those are the

items which you sell? A. Some of the items, our sales are getting less and less, due to the fact of no fault of ours.

Q. You have been selling them though for ten years, haven't you? A. It is getting down to maybe $75 a year. We were getting much more business. But due to the fact of not our fault we are not getting the business today.

Q. You have been selling them for ten years, haven't you? A. Yes, sir; been selling them for 15 years.

Q. Do you know Melvin Bowden? A. Melvin?

Q. At 67th and South Chicago? A. He is out of business. The sky highway has taken him out of business.

Q. That was a leased station? A. He owned the property himself. I don't know if he leased it to Texaco or not.

Q. And you sold him? (2941) A. Only in a pick-up basis, and we are limited due to our problem of not selling him or having the correct price or the right brands.

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Q. Mr. Joseph Novak, Jr.? A. Where is that? That sounds familiar.

Q. 74th and Morgan. A. At one time I sold that station myself but I am not able to sell them not because our price is not right and the brand is not right.

Q. But because you would not extend credit? A. Well, I don't know. That isn't a good reason not to sell a man. If a man has good enough credit then he should be tickled to death to pay cash. There is no objection to (2942) that. If a man can save 15 percent paying cash, I should think he would want to pay cash. If you give me 1 percent and I will pay cash, extra.

Q. Is that a leased station? A. I am not familiar with it.

Q. Harold Puetz? A. That is 1836 West 63rd?

Q. 63rd and Honore. A. That is right. I sold his uncle. He was my first customer when he worked for a Shell gas station, and this Harold is his nephew.

Q. Is that a leased station? A. I believe it is.

Q. Mr. Edelson, you were asked what your annual sales are. And you said they were over $250,000. It is over $300,000, isn't it?

Mr. Dias: Your Honor, I object. This man doesn't feel free to mention his annual sales. I don't see that it is relevant.

Hearing Examiner Kolb: Objection overruled.

A. I am not applying for credit so I don't have to make a financial report.

By Mr. Royall:

Q. The Court said you should answer the question. A. Yes, we do.

(2943) Q. And you sell over 350,000, don't you? A. That is right.

Q. And you sell over 400,000? A. If it is a contest, yes.

Q. How much do you sell? A. I think that is a personal question.

Q. Yes, sir, but I asked you. A. I will answer that question if I could just say that our sales—

Mr. Royall: Your Honor, I object to that.

Hearing Examiner Kolb: Give it approximately.

The Witness: We do over half a million dollars worth of business.

By Mr. Royall:

Q. I believe you also testified that today your gasoline business was 40 percent of your sales, did you not? A. It is less than that.

Q. Didn't you testify to that in this Court? A. Approximately. It is less than that. It was greater.

Q. I am coming to that. You said that it was 40 percent or approximately that, didn't you? A. Somewhere in those figures.

Q. In other words, your sales to service stations at the present time are over $200,000? A. Possibly. That is peanuts to what we could do.

(2944) Q. How much did you sell, your gross sales, in 1952? Less than $150,000, didn't you? A. Our gross sales?

Q. Yes. In 1952, four years ago. A. Our sales?

Q. Yes. A. Who arrived at that figure?

Q. I am asking you. A. No.

Q. What was it, approximately? A. We did much more than that.

Q. How much? A. Much more than that.

Q. Tell me approximately. A. I think that is a personal question.

Q. I asked you, what was it, approximately, in 1952? A. Our sales in 1952?

Q. Gross sales? A. They were greater with gas stations in 1952 than—

Q. I didn't ask that. I asked gross sales. A. It was over a half million dollars, I believe.

Q. You mean it was the same then as now? A. No, sir.

Q. How much has it increased? A. I don't think it has any—

(2945) Hearing Examiner Kolb: Answer the question, if it has or has not increased, and if so what percentage.

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Hearing Examiner Kolb: Forget about the gas station business for a minute. You were asked whether or not your sales increased since 1952.

The Witness: Our business is greater today than it was then.

Hearing Examiner Kolb: By what percentage?

The Witness: I haven't got that.

Hearing Examiner Kolb: Approximately?

The Witness: I don't know.

Hearing Examiner Kolb: 100,000? 200,000?

The Witness: I just can't give you an honest (2946) answer. I can't give you an accurate answer.

By Mr. Royall:

Q. You know it has increased $150,000, don't you? A. It has increased?

Q. Within five years it has increased that much? A. I can't give you an honest answer. I mean I can't give you a correct answer.

Q. Can you give us approximately the amount? A. Approximately. I think—I don't know, anywhere from 10 to 20 percent difference in our sales; 25 percent, somewhere in there. We have records on that.

Q. Did you state that your service station gas sales were now about only one-fourth of what they were in 1952? A. They are much less than they were in 1952.

Q. How much less? A. A greater amount.

Q. You said 25 percent of that, didn't you? A. I think our gas sales today are only anywhere from 25 to 40 percent of what they previously were.

Q. You said 25 percent? A. Somewhere around there, using round figures.

Q. Twenty-five percent? A. Somewhere around there.

* * *

Arthur Edelson, for Commission—Redirect

(2948) *Cross-examination by Mr. Barton*:

Q. Mr. Edelson, you are familiar with Ed Bekall, at 2634 West 63rd? A. 2634? That is Talbot, 63rd and Talbot? Yes.

Q. They are a customer of yours? A. Very little.

Q. They are a customer, though? A. I don't think they bought $10 worth in the past year.

Q. And you are familiar with Betz and Betz, Conoco, 419 East 83rd? A. Yes, we are.

(2949) Q. And they are a customer of yours? A. Yes.

* * *

Redirect examination by Mr. Dias:

* * *

Q. My question, Mr. Edelson: Do any of those stations which were named by respondents' counsel purchase your batteries? Do you remember? A. A great many gas stations, especially we will include his, will buy batteries from any distributor because of the fact when the bulk plant or their supplier, like Goodrich, or where the supplier is closed after five or five-thirty, they will have to make a pickup to accommodate their customer. So naturally they will buy batteries from someone else. But more on a fill-in basis.

(2950) Q. You stated that you took on additional lines. What do you mean by that? What additional lines did you take on? A. Like every company when your sales decrease, you add more advertised lines. You bring in different products in the picture.

Q. You were talking of additional products? A. Products that we have. And we go into a different outlet, outlets to sell, when we have pressure from other outlets.

Q. Do you recall the station of John Benson, 79th and Paxton, that you were asked about on cross-examination? A. Yes.

Q. Do you know what kind of station that is? A. I think that has two pits if I am not mistaken. It is on the northwest corner of 79th and—

Q. Is it a leased or contract station? A. I believe it is a leased station. He hasn't been there too long; about ten months.

Q. Ten months? A. I believe so. He mentioned that previously. I believe he is right on that.

Q. Were you able to sell him when he first opened? A. Just a fill-in afterwards.

Q. That was— A. A limited amount.

(2951) Q. What is your experience with new operators, Mr. Edelson? A. When Texaco Oil Company opens up a new gas station, such as 8600 South—

Mr. Royall: Your Honor, we object to the question.

Hearing Examiner Kolb: Overruled.

A. (continuing) When Texaco opens up a gas station, a new gas station, they have a set package of equipment, supplies, and orders taken by the Texaco representative. And if it is a South Side station that order is placed through two of Texaco combination Goodrich distributors on Texaco's request.

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(2952) Hearing Examiner Kolb: Do you know this to be a fact, Mr. Edelson?

The Witness: Yes, sir.

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By Mr. Dias:

Q. Mr. Edelson, I will ask you if the station at 3030 South Archer—I believe the name given was Minarcin—is (2953) the same as the station later mentioned to you as the Archer Filling Station at 3040 South Archer? A. I think there is a little confusion there with your address.

Q. I am reading the addresses that were given to you. A. That gas station there is on a corner, and upstairs is an apartment. And a man that owns this ground and who also is a gasoline distributor, whose name is Matt—I can't pronounce his last name—he pulls his truck there. It is right along the Texaco plant. It is this side of the bridge. And I think that that dual address is the same thing because there is only three doors. You couldn't have two gas stations within four street numbers, houses, because it just doesn't—your drives, your frontage on a gas station is, say, 75 or 100 foot frontage.

So if you had 3030, 3032, 3034, that would be 100 feet and would only leave 25 feet so there couldn't be another gas station there. So I think they are both the same people. I think that that address, there are two conflicting addresses, and they belong to one another.

Mr. Dias: That is all, your Honor.

Recross-examination by Mr. Royall:

Q. Mr. Edelson, you were not present at the time the Texas stations are opened, are you? (2954) A. Well, usually when we see a gas station that is put up, and it gets the glass on the door and the windows, our men are instructed to put a book with J. E. Auto Supply name on the door on a card and try to locate the builder, or try to find out who the operator is going to be. That is the first foot in the door, to find the man who is going to run it. That is the way we start off with a new station.

Q. But you are not present when that station operator makes his original arrangements of any kind, are you? A. We are not there exactly, but we try to beat the Texaco Oil Company to the punch.

Q. But you are not there at the time the arrangements are made, the original arrangements? A. No, sir, we are not there.

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By Mr. Royall:

Q. In connection with the addresses 3030 and 3040, isn't it a fact that you sold one of them as a service station and the other as a distributor? A. I have nothing to sell the distributor. He handles Texaco oil and gas. He delivers on a truck.

(2955) Q. I ask you if you did not sell to one of them as a distributor? A. The man who owns, the distributor of the oil company, at one time he operated the gas station himself. He operated it. And I sold him originally when he first started out.

Q. One final question: Of the hundred Texas service stations, approximately, that you said you were familiar with, if 56 of them do not buy Auto-Lite batteries? A. I am not able to give you that account but if it is a company-owned I believe it is all fill-in.

Mr. Royall: That is all I care to ask him.

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Jim Abernethy, for Commission—Direct

(2956) JIM ABERNETHY was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your name and address, Mr. Abernethy? A. Jim Abernethy, Roselle, Illinois.

Q. And your business address? A. 6415 Bosworth; Berry Tire.

Q. For whom do you work? A. Berry Tire.

Q. How long have you been with Berry? A. Eleven years.

Q. In what capacity? A. Salesman.

Q. Are you a full-time employee? A. Yes, sir.

Q. Will you please state the territory that you cover for Berry? (2957) A. On the east it would be the limits of Chicago; west, Crystal Lake; on the north, Wheeling; and on the south it would be Higgins Road—no, Wheaton. I go as far as Wheaton and Glen Ellyn.

Q. In the course of your business do you attempt to sell all the products of the Berry Tire Company? A. That is right.

Q. Are there any Texaco and Conoco stations in your trade area or sales area? A. Yes.

Q. Can you give us some idea of the number of Texaco stations? A. Well, I would just be guessing there. I sell six of them. I do business with six, or have done.

Q. You do business with about six? A. Yes.

* * *

Q. You sell to six Texaco stations? Have you ever called on more than six? A. Yes.

(2958) Q. Do you know how many others you have called upon? A. Well, not too many. I haven't had too much success calling on them.

Q. Within the last year how many have you called upon? A. I wouldn't—a couple I would say.

Q. Couple more than the six? A. That is right.

Q. Then you were not able to sell to them? A. That's right.

Q. These six Texaco stations that purchase from you, what products do they buy? A. Tires, batteries, spark plugs, automobile accessories—sealed beams and so forth.

Q. Your full line, in other words? A. That is right.

Q. Each of the six buy your full line? A. No.

Q. Of the six, how many buy your full line? A. I would say three.

Q. Three of the six buy your full line? A. Yes.

Q. Are those— A. That is at the present time.

Q. Has that condition been so over the past year or two years? (2959) A. No. I have done a little better than that. It is in the past year that I have lost some of that business.

Q. Which business was it that you lost? The three that you are selling now or the other three of the six that you are not selling the full line? A. Bill's Texaco, and Glenview.

Q. In other words, the three that you are selling the full line to, is it your testimony that they are not buying as much of your full line? A. No, I wouldn't say that. These are not company leased stations.

Q. They are not, you say? A. No. I mean where the lease isn't direct. That is my observation of it.

Q. Then it is your testimony that it is the other three of the six you sell to that you have lost business? A. That is right.

Q. What do you sell to those other three, if anything? A. Prestone, take-off tires.

Q. Will you describe take-off tires? A. In other words, a new car, where a customer wants white sidewalls, we make a deal with the car dealer. We take off the original equipment, black tires, and furnish them whites. In other words, we take in the black tires and we call them take-offs.

(2960) Q. You started to mention Bill's Texaco. Do they purchase from you? A. I haven't had any business out of them, no, in I would say 90 days.

Q. Is that unusual, a 90-day period? A. Well, we were just pushed out of there.

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By Mr. Dias:

Q. Prior to that period what were you selling there? A. Tires, batteries, recaps, and some accessories.

Q. How recently were you able to sell them the full line? A. Up until about 90 days ago.

Q. How long had you been selling them that full line? A. I would say a couple of years; that is roughly.

Q. How often do you call on your accounts? A. Most of them about once a week.

Q. Do you still call on Bill's Texaco once a week? A. No. My calls are not as frequent.

Q. When did you start cutting down on your number of calls? (2961) A. After he made a deal with Goodrich direct.

Q. Can you cite any other instance similar to Bill's Texaco? A. Well, it has been my experience, in any of these new company-owned setups, I don't know, there is a fear there someplace, they just say they can't handle anything but the company line. And I haven't had too much success selling them. So I haven't spent too much time with new company-owned setups.

Mr. Royall: Your Honor, object.

Hearing Examiner Kolb: Reference to the word "fear" will be stricken.

Is that what you want?

Mr. Royall: Yes, sir. And also the answer is not responsive. That is the principal thing.

Hearing Examiner Kolb: I will overrule that. I will strike the word "fear".

By Mr. Dias:

Q. Which of the three stations buy your products? A. Allen's Service Station, in Glen Ellyn.

Q. And the other two? A. Cumberland Service Station, DesPlaines; and—

Q. And the next one? A. Alberding; Park Ridge. And I do some business with Busse Texaco Station.

Q. You say you do some business with Busse? (2962) A. That is right.

Q. How much business do you do with Busse? A. I have sold him some Prestone and some take-off tires.

Q. Allen's Service, is that a leased or contract station? A. Contract station.

Q. How about Cumberland? A. That is a contract station.

Q. How about Alberding? A. That is contract station, to my knowledge.

Q. What about Busse? A. Busse is a leased.

Q. Have you ever sold anything else to Busse, other than this Prestone and— A. I used to sell him some tires. I sold him a jag of Dunlops about two years ago, 50 or 60 of them.

Q. How long ago? A. About a year ago last May; somewhere in that period.

Q. Were they all take-offs? A. No, those were new.

Q. New Dunlops? A. Yes, we had a special on Dunlops in our 5-ply.

Q. Those are four stations. There are two others. Can you give us some information about the other two? I am sorry, that is five. There is one other. You gave us Bill's, Allen— A. L&L, Arlington Heights.

(2963) Q. What has been your experience with L&L? Do you sell them? A. They buy a line.

Q. The full line? A. Yes, that is a contract station.

Q. These stations that buy your full line, do they stock them openly? A. Yes, that is right.

Q. Do they advertise them? A. I would say so.

Q. In and about the station? A. Yes.

Q. Do each of these stations buy your batteries? A. There was four of them buying batteries.

Q. Four of the six do buy your batteries? A. They did. I used to sell Bill's Texaco batteries, but I don't anymore.

Q. How about Allen's Service? A. I sell him the line.

Q. You sell them now? A. Yes.

Q. And the same is true of Cumberland? A. No. That is tires and accessories in Cumberland. I never did sell him batteries.

Q. How about Alberding? A. Batteries and tires and accessories.

(2964) Q. Do you look for new stations in your sales territory, Mr. Abernethy? A. Not too seriously. I am not a kid anymore.

Mr. Dias: That is all.

Cross-examination by Mr. Royall:

Q. Mr. Abernethy, I believe you say you called on eight stations and sell six of them? A. Yes.

Q. That is eight Texas stations? A. Yes.

Q. You stated about some of these stations being not leased. I am not suggesting that you are stating anything you don't think is correct but may I ask you to give fur-

ther consideration to it. Isn't it a fact that the Allen station is a leased station? A. That I couldn't tell you. It might be.

Q. And isn't it a fact that the Alberding station is a leased station? A. Well, there is a lease in there. I thought there was a lease through a different party than Texaco. I wouldn't be an authority on that.

Q. And that same thing would be true on the Busse station? That is a leased station?

Mr. Dias: He testified to that.

(2965) The Witness: Yes, sir. I didn't think Alberding—

(2966) *By Mr. Royall:*

Q. There are two that I can't identify here. One of them is Cumberland. What is the Cumberland station? A. It is on Northwest Highway.

Q. Is there any other name? A. No. It is a Busse, too. It is a brother to this Busse that is up in Mount Prospect.

Q. That would be your leased station too, wouldn't it? A. Not direct. They own—his mother owns the property.

Q. What is the address? A. Cumberland. Des Plaines, Illinois.

Q. In that case the mother of the operator owns the land? A. That is what I understand.

Q. And leases it to Texas, and Texas leases it back? A. It could be.

Q. That is a leased station, but the point you make is that the mother owns the land.

Let me ask you about the L&L station. Can you identify that? A. That is in Arlington Heights. It is a little station. L&L. They buy through one of your jobbers, I think, they get their supply.

Q. Supplies? A. I mean their gasoline through one of your jobbers?

Q. It wouldn't be a direct sale of Texas gasoline? (2967) A. I don't think so. It has your identification, Texaco identification.

Q. You say these stations stock the non-sponsored goods openly in most cases, and sometimes they have signs? A. On some of them. Not all of them.

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(2969) IRVING M. CHANENSON was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

(2970) *Direct examination by Mr. Boyd*:

Q. Please state your full name. A. Irving Chanenson.

Q. Do you have a middle initial? A. Yes, I do. "M."

Q. What business are you connected with? A. Chanenson Tire and Supply.

Q. Where is it located and what is your relationship with it? A. The business is located at 1851 East 95th Street, and I am an equal partner. My brother and I are partners.

Q. Is that the only place of business, that one location? Or do you have any others? A. Yes, it is. The only location.

Q. What is the nature of that business? A. We are wholesale distributors of automotive supplies and equipment. We have been in business as a partnership since 1949. The business began at the end of 1946 as an individual proprietorship, of which I was the individual proprietor.

Q. Does the firm sell tires, batteries and accessories? A. Yes sir, it does.

Q. In addition to those items, what else does it sell? A. general description of the products sold. A. Actually, we sell everything that the service station (2971) or sells except gasoline.

Q. What brand of tires do you sell? A. We carry the four major brands.

Q. And they are? A. Goodyear, Firestone, U. S. Royal, and Goodrich.

Q. And batteries? A. Batteries, we carry Exide and Delco and Am-Plus—A-m-P-l-u-s.

Q. As to accessories, what line of spark plugs? A. We carry Champion, AC, and Auto-Lite.

Q. Oil filters?. A. We carry Fram, Purolator, AC, and a comparatively unknown brand called Apco.

Q. Fan belts and radiator hoses? A. We carry Gates fan belts and Voit radiator hoses.

Q. Would you supply for us some of the other products that you say you sell to service stations? A. We carry equipment—

Q. What kind of equipment? A. Wheel balancers, for example, of which we have Alemite, Stuart-Warner, Hunter, and the Hemmeter.

We carry motor analyzing equipment. King, for example, is the chief line we carry there. Motor analyzers, distributor testers and so on.

We carry compressors and service station jacks and (2972) transmission jacks of various kinds, that is the automobile type jacks and those for transmission use, various tire tools and so on.

Q. How about battery chargers? A. Battery chargers, we carry the King and Associated and Blitz.

Q. Mr. Chanenson, what is the trading area of your firm? Geographically speaking? A. It is largely the south side of Chicago in a 30-mile suburban radius. Beyond that I would like to make an additional qualifying statement.

About half of our business is sales to sub-jobbers or wagon jobbers, as they are sometimes known. They are actually small independent jobbers. If the policies the various companies have affect them, it would in turn, by reflection, affect us. And as a consequence it would enlarge the trading area to include all of metropolitan Chicago and a suburban radius of some 30 miles surrounding that.

Mr. Barton: I move to strike the part of the witness' answer having to do with the companies, as not responsive to the question, your Honor, which is "what is your trading area."

Hearing Examiner Kolb: He has explained extensive trading areas to take in the wagon-jobbers so-called. I will let the answer stand.

(2973) *By Mr. Boyd:*

Q. In addition to sub-jobbers that you sell to, Mr. Chanenson, what are the other classes of customers? A. We have three outside salesmen of our own who call on the service stations and the garages and the parts stores. That would account for, say, 50 percent to the sub-jobber, 45 percent to the dealer—

Q. Service station? A. Service station, and the car agency. And about five percent on what you might call industrial discount and off-the-street business and so on.

Q. Could you give us, Mr. Chanenson, approximately what the volume of business has been for each year 1952 through 1956? A. In 1952 about $250,000. In 1953, about $350,000. In 1954, about $400,000. In 1955 and in 1956, about $600,000.

Q. How many service stations would you say—and that is of all kinds of service stations—are doing business in your trading area? Do you have any idea along that line?

A. I would say that it would be probably 4,000 stations in that area.

Q. Do you have any idea about the number of Texaco and Conoco—give them to us separately—in the area in which you trade or sell? A. Considering the trading area in the more limited definition this time, based on the stations upon which our own salesmen (2974) call, I would say that there are probably perhaps 100 Texaco stations. Incidentally, in answer to your first question, when I gave you the figure of 4,000, it was based on a mailing piece that we sent out at one time, and probably included garages and service stations and so on. I don't know to what degree that would be accurate. I would approximate the number of Texaco stations as being perhaps 100. And the Conoco stations perhaps 35.

Q. Of the approximately 100 Texaco stations in your trading area, Mr. Chanenson, could you tell us how many you do business with? A. I would approximate the number of active accounts as being about 10 percent of that total. Perhaps about ten stations.

Q. And what is the nature of the business that you do with those stations? A. I would say it would be divided into three parts. They are full prospects for equipment, and we have successfully sold them wheel balancers and motor analyzing equipment and so on.

They are also full prospects for the class of items that might be called novelty or new items, carded merchandise like a new type of holder for a package of cigarettes that might come on a card and so on that fastens to the windshield visor, something of that general nature.

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(2975) *By Mr. Boyd:*

Q. What is the third category? A. The second category, as a matter of fact, since I showed the first one for which they are full prospects, they are partial prospects for various TBA items like oil filters and spark plugs if the price is sufficiently favorable, and which in some cases they will lose its identity when it gets on the shelf and not be completely distinctive as in the case of the third class for which there are no prospects.

Q. What are they? A. There I refer specifically to batteries; something which is very closely allied to the third class would be tires. Tires and batteries are in the class which is either impossible or extremely difficult to sell. I might subdivide the tire (2976) category a little further in saying that in some instances where it is known to the station that the acquisition costs from us on an identical product would be less, and they have a particular sale for the item, that they may order it from us.

In the case of tires, for example, say they have an order for a set of Lifesaver tires. They might order it from us and put it on the customer's car and that might be done without the knowledge of their salesmen and so on.

In the case of batteries, since the distinctive brand "Goodrich" which they are required to stock, or Firestone, as the case may be, is not available to us, we of course do not consider them prospects in that third category at all.

Mr. Barton: I move to strike the "required stock".

Mr. Royall: I move to strike the entire answer.

Hearing Examiner Kolb: Motions to strike will be denied.

Mr. Royall: Your Honor, on the additional ground—not trying to argue this— it is full of conclusions.

Hearing Examiner Kolb: I understood that when you made your objection.

By Mr. Boyd:

Q. Mr. Chanenson, the figure you gave me is that you were selling about 10 at the present time. What has been the situation prior to this time as to the number of Texaco stations (2977) that you sold to? Have you ever been more successful than this? A. Existing conditions, as far as supply and demand are concerned, have resulted in my being more successful in selling Texaco stations at the outset, when I first went into business, when there was a pronounced scarcity of tires, and as a consequence even Texaco stations were glad to get tires from whatever source they could get them.

And in the case of Conoco, until a couple of years ago the Conoco service stations were interested in selling gasoline only and it was not until a couple of years ago that the picture changes when they took an active interest in TBA products, with certain resultant policies along that line which affected our sales.

* * *

By Mr. Boyd:

Q. What brand of TBA is Conoco now interested in? A. I believe it is Goodrich, sir.

Q. Do your salesmen solicit Texaco stations in your trading area? In other words, what efforts are made by you presently to sell? (2978) A. We have, as I indicated, a very full line of automotive supplies and equipment. Our salesmen call on these stations. There is a continual culling process of salesmen who would meet with a continual lack of success with particular types of stations, which would very logically confine his activities to greener fields

until he came across an item which he felt might meet with a favorable response in those stations.

We have, for example, a new item of equipment called the Dumont oscillograph, an item which sells to the dealer for $2,705. It is a motor analyzer which is very new and very rapid. Texaco stations would be considered on a completely fresh basis as a prospect for that item.

Q. What about tires and batteries?

Mr. Royall: Wait a minute. We move to strike that answer because of the conclusion stated therein.

Hearing Examiner Kolb: Motion denied.

By Mr. Boyd:

Q. Why do you consider Texaco outlets for all of them prospects for the item you just mentioned?

Mr. Royall: Objection.

A. Anyone is a prospect unless there are factors to the contrary. Until you approach a man and point out the merits of the product and how it will benefit him and so on, you can't conclude that he is not a prospect.

Q. What is the situation on tires and batteries? (2979)

A. In connection with batteries, certain specific brands are the only kind that most of the Texaco stations can carry. Since we cannot supply those, having tried, we make no particular attempt to sell them batteries any longer.

Q. What is that—

Mr. Royall: Wait a minute. We move to strike that. How can he tell what they can buy? That is purely hearsay and conclusion. We ask your Honor that that be stricken.

Hearing Examiner Kolb: The motion will be denied.

A. May I—

By Mr. Boyd:

Q. How do you know it is Goodrich? A. May I refer to a specific—

Mr. Royall: Wait a minute. What is the question?

Mr. Boyd: He said it was Goodrich, and you were making some point of the fact as to how he would know it is Goodrich. That is what I was trying to establish, how he knew.

Mr. Barton: I didn't hear him say Goodrich.

By Mr. Boyd:

Q. What batteries did you say Texas stations had, Mr. Chanenson? A. Largely Goodrich. I believe it is Firestone in some cases.

Q. In those cases how do you know it is Goodrich and Firestone they have? A. Well, I believe that I could quote verbatim from a very recent conversation that I had with a service station—

(2980) Q. What station is it? A. I believe it is Bernie's Texaco.

Q. Where is it located? A. I believe it is at 7001 South Western, Bernie's Texaco Service.

Q. When was this? A. This conversation occurred during the month of December.

Q. What happened?

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

A. I spoke with Bernie and indicated to him that we had sold him a wheel balancer and that from time to time we sell him various small items, but we had not been successful in selling him batteries, that we appreciated the busi-

ness we got from him but could we consider him a prospect for batteries? And he said, "No, you can't. I did have one Exide battery once." To quote him in the vernacular: "When my salesman saw it he just about flipped."

I said, "What difference does it make to you what your salesman thinks? It is a free country. You can buy. We don't ask that anybody in government or anybody else do our selling for us. If you feel that an Exide battery is a better buy than any other brand we would like to have you feel that you have the right to buy it."

He said, "Yes, but I have just a one-year lease (2981) and what are you going to do?" That was his exact quotation.

Mr. Royall: We move to strike that answer. That gets into the question of second-step hearsay. He is quoting a dealer on what a third party said to him.

We move that that answer be stricken.

Hearing Examiner Kolb: Read the answer, please.

(Answer read.)

(2982) Mr. Royall: May I add another objection? That embraces an argument and opinions, which is an additional objection.

Hearing Examiner Kolb: I think it is proper. I will overrule the objection.

Mr. Royall: Your Honor, on the basis of that answer which as I recall it was in response to a question of why he assumed the two previous answers, and since it is disclosed it has come from double hearsay, we move that the two preceding answers—I again move that they be stricken.

Hearing Examiner Kolb: The motion will be denied.

By Mr. Boyd:

Q. Mr. Chanenson, what about a Texaco station at 95th and Yates? Have you made efforts to sell them?

Mr. Barton: I object to that, your Honor.

Mr. Royall: Objection.

Hearing Examiner Kolb: What is the basis of the objection?

Mr. Barton: He is leading. The witness is his witness.

Hearing Examiner Kolb: He is pointing out a particular station. It is proper to do that rather than go all around the road trying to find it. The objection will be overruled.

By Mr. Boyd:

Q. Do you have the question? (2983) A. Yes. As a matter of fact, we made more than a usual amount of effort to sell this particular station. And if I am allowed to explain why we were unsuccessful despite it, it would tend to indicate that normal factors of more favorable price have here proven unsuccessful because of other reasons that would rule price out as a factor in buying.

Q. Give me the name of the station.

Mr. Royall: Wait a minute. We certainly move to strike that. That is an argument.

Mr. Barton: It is a speech.

Hearing Examiner Kolb: Read the answer.

(Answer read.)

Hearing Examiner Kolb: I will overrule the objection.

By Mr. Boyd:

Q. What other reason do you have reference to?

Mr. Royall: Objection.
Hearing Examiner Kolb: Overruled.

A. Adherence to company policy.

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(2984) Q. Where did you get this information?

Mr. Royall: Objection.
Hearing Examiner Kolb: Overruled.
Mr. Royall: Second hearsay, your Honor.

A. This was direct conversation with the service station owner.

By Mr. Boyd:

Q. What is the name of this station? A. I cannot tell you accurately. It is the Texaco Service Station at 9[illegible]th and Yates. I could supply the information later if it is required.

Q. Tell us something about the efforts you made to sell this station? A. I approached this service station owner. I pointed out that we were located a block away from him, and that as a product of our method of operation there might be times when a customer of his might become a customer of mine, or that a price quotation might be sought from him and from me simultaneously, and that in an effort to preserve his good will that I wanted to make it possible for him to compete with me, and that I would grant him particularly favorable prices as a result. He told me that he was obliged to buy from Gardner and Kinsley, that is, he was obliged to buy all his supplies (2985) from Gardner and Kinsley, and that regardless of any prices that I could

offer or anything else, I should not consider him as a prospect.

Mr. Royall: Motion to strike.

Mr. Barton: I join in that.

Hearing Examiner Kolb: Motion denied.

By Mr. Boyd:

Q. Mr. Chanenson, with respect to Conoco stations, can you give us some specific instances of efforts to sell, and results?

Mr. Royall: Your Honor, we have a running exception to Conoco, I believe. That comes within the court's ruling.

Hearing Examiner Kolb: Running exception to what?

Mr. Royal: Any questions about Conoco.

Hearing Examiner Kolb: That is covered by our agreement.

The Witness: May I proceed?

By Mr. Boyd:

Q. Yes. A. I have in mind two particular service stations, both in Indiana.

Q. Where? A. One is called Borne's Conoco Service. It is on Calumet Avenue. The exact address—

Q. In what city? (2986) A. In the City of Hammond.

Q. Tell us about that one before you go to the next. A. There is a fellow who was among my first customers and who, over a number of years, was an excellent tire and battery account until a couple of years ago when, I say again, the Conoco Company took an active interest in the sale of TBA items. Previously their only policy was to sell essentially gasoline and they left the rest of it up to the judgment of the service station owner.

Mr. Royall: Your Honor, we move to strike on the additional ground that the latter part of his statement, which is not in response to the question and is purely a historical statement.

Hearing Examiner Kolb: The motion will be denied.

By Mr. Boyd:

Q. What TBA is in that station now. Tires and batteries? A. I believe it to be Goodrich.

Q. Will you tell us about the other Conoco station? A. In the case of Nick's Conoco, it was the same situation. In addition to many other supplies, he would purchase tires and batteries from us. That business is now going to the approved distributor, Goodrich distributor, in the area. It begins with a "G". Niemic and Gerlacky. It is spelled G-e-r-l-a-c-k-y.

Q. As I understand, you formerly sold successfully to these (2987) stations tires and batteries? A. That is true.

Q. Mr. Chanenson, do you consider the tires, batteries and accessories that you sell to be competitive merchandise to that sold by the Goodrich Company? A. Entirely so, yes.

Q. Mr. Chanenson, have any new Texaco stations opened, to your knowledge, recently in your area? Trading area? A. Yes, they have.

Q. Have you made efforts to sell those stations? New stations opened? A. Not in particular because a certain portion of the equipment—

Mr. Barton: Your Honor, that—

Hearing Examiner Kolb: Let him answer the question and then I will strike it if necessary.

By Mr. Boyd:

Q. Go ahead. A. A portion of the equipment that goes into those new stations become part of our business indirectly through an approved Goodrich distributor. I mean it is additional business that we enjoy.

Q. Who is that? A. That is the Lambie Company. Warrick of Lambie. He is a Goodrich distributor. For some of these stations he gets (2988) his Coat's Iron and Tire Man, a machine for changing tires, and the jack, and a fairly sizable amount of the original equipment that goes into a station comes to us from Warrick Lambie on a jobber-subjobber relationship.

Q. But as to tires and batteries, what is the situation?

Hearing Examiner Kolb: Wait a minute.

A. No batteries at all.

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By Mr. Boyd:

Q. What about tires? You mentioned batteries? A. Tires can be divided into two categories, whether they stock them, having purchased them from us, or whether they buy (2989) them for a specific sale. For a specific sale I would say we occasionally sell tires to a Texaco station. On a stocking basis, I would say that we never do.

Q. Mr. Chanenson, do you know what if any relationship exists between the Texas Company and the Goodrich Company with respect to TBA?

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A. Yes.

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(2991) *By Mr. Boyd*:

Q. What did the questionnaire ask for?

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A. The questionnaire desired to ascertain the quantity by brand and type of TBA material in the broader sense that was purchased by this specific station.

By Mr. Boyd:

Q. Did the request for the information give any reason for making the request? A. I do not recall with extreme accuracy. I have a personal conclusion but that may not be acceptable.

By Mr. Boyd:

Q. Have any operators of Texaco or Conoco stations ever indicated to you why they handled Goodrich?

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A. Yes, they have.

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(2993) *Cross examination by Mr. Barton*:

Q. Mr. Chanenson, I believe you started in business in 1945? A. The end of 1946.

Q. At that time your business was in the basement of your home, was it? A. That is true.

Q. Your operations were limited somewhat to the area in which you lived at that time? A. Yes. To a very large degree it consisted of places where our salesmen now call.

Q. Where was your home at that time? A. At 9601 South Merrill.

Q. And you started out as your own salesman? A. Yes.

Q. With a truck? A. With a passenger car originally.

Q. As you went around to the various service stations? A. That is correct.

Q. At that time what did you have? A. From the very outset it was tools and extension cords and things like that. Small items of equipment a service (2994) station needed.

Q. And your business has progressed from that basement of your home in 1946 through several buildings since then hasn't it? A. Yes. We presently occupy our—

Q. Where was the next place of business after the basement of your home? A. To the garage in the rear.

Q. How long were you in the garage in the rear of the home? A. About three years.

Q. That was until 1950, about? A. Yes.

Q. Where was your next place of business? A. To a small store at 79th and South Chicago, right alongside the railroad track.

Q. How long were you in the small store on— A. We were there about three months.

Q. That was in 1950? A. Yes.

Q. Where was your next place of business? A. Then we moved to a store and a half at 87th and South Chicago.

Q. And with relation to the space that you had in this new store, how much more space was there? (2995) A. About five times as much.

Q. Five times as much? A. Yes.

Q. That was three months after you got the first store? A. Yes.

Q. How long did you stay in the second store? A. We were there for about a year and a half, I believe. Then we moved to—

Q. That was to 1951, sir? Is that right? A. Yes, I believe so.

Q. Then you moved where? A. To a double store, later to become a triple store, at 96th and Jeffrey.

Q. That was how much larger than the previous place? A. At the outset it was about twice as large.

Q. Then you added another— A. Then we took a store adjacent to that.

Q. So it was three times as large? A. Yes, I would say so.

Q. That was in 1951 that you did that? A. I believe it was in December 1951 that we moved to 96th and Jeffrey.

Q. How long did you stay at 96th and Jeffrey? A. Until December of 1954.

Q. That is when you built your new building? (2996) A. That's right.

Q. Where did you build the new building? A. 1851 East 95th Street. 95th and Bennett.

Q. This was a new building which you had built for you? A. Yes.

Q. How large is it? A. It is, I would say, about two and a half times as large as our previous location.

Q. How many square feet, would you say? A. It is 11,000 square feet, including the storage area. 11,000 square feet.

Q. That is about 20,000 times as large as that basement you had in 1956, isn't it? A. Yes, that is true.

Q. Of course as your area of your store has grown you have added personnel in your business; haven't you? A. That is true.

Q. You started out in 1946 with just yourself? A. Yes.

Q. When did you add your first salesman? A. When we were on South Chicago Avenue.

Q. How many salesmen do you have now? A. We have three, but the thing which is mostly responsible for our increase in volume has been the additional sub-jobbers to whom we sell. The people who operate as we used to operate.

(2997) Q. You got a salesman in 1949. You added a salesman in 1949 to your operation, in addition to yourself, is that right? A. My brother became my partner; yes.

Q. Your brother was the first additional salesman? A. Yes.

Q. Then your partnership moved from building to building as your business progressed and you added a salesman from time to time until at the present time you have three? A. That's true.

Q. And your business was so successful in connection with your own selling that you developed the idea of selling to sub-jobbers who were in the same position as you were back in 1946, 1947, or so. Is that right? A. Yes.

Q. You started those sales to sub-jobbers at what time? A. Extremely limited contact with sub-jobbers took place when we moved to the very first store. We really didn't begin to do business with them until we moved to 87th and South Chicago Avenue.

Q. And that was in 1951 or '52? A. That is essentially correct.

Q. From that time until today you kept adding additional sub-jobbers, haven't you? A. That is correct.

Q. So that today you have how many sub-jobbers? (2998) A. About 35.

Q. And they do business all around the Chicago area? A. Yes.

Q. Principally in areas I take it where you don't call; is that right? A. It is actually interwoven in and around us to an appreciable degree. There is mutual respect for each other's customers.

Q. So you don't take theirs, and they don't take yours? A. Essentially that is so.

Q. I take it that from time to time as your business has developed you have added new products which you have carried? A. Yes.

Q. For example, you didn't handle tires at all when you were operating out of your basement? A. No.

Q. You never really had been very heavy in the tire business, had you? A. No.

Q. Compared to the rest of your business. A. I would say—No, that would not be entirely accurate. I have to qualify that. Tires and batteries both were particularly significant toward the latter part of the time when I myself was on the road. I had not only an Army (2999) ambulance as a truck but a trailer that I used to haul with the ambulance. I used to move perhaps a hundred tires a day.

Q. That is when you were on the road out of your basement? A. No, out of my garage.

Q. How many employees do you have in your store now? A. About 11.

Q. You have 11 inside employees? A. Total personnel I would say is 11. You could say 13 people altogether.

Q. Do you mean including you and your brother? A. Yes, and including the outside salesman.

Q. The assets of your business, I take it, when you were in the basement your assets were rather small. A. That's true.

Q. And today they have grown to in excess of a quarter million dollars, haven't they? A. Well, between us and the bank the building is in our name and so on. Income and expenditure are not to be confused. We have fairly sizable assets. We also have some sizable obligations.

Q. Do you mean you have a mortgage on your new building? A. That is true.

Q. Your customers, your direct customers now, as distinguished from your jobber customers, are divided among service stations and garages and new car agencies? Is that (3000) right? A. Yes, sir.

Q. Are there any other general types of customers? A. Not to say—not those that the salesmen call upon. The only other two classifications would be the sub-jobbers, and they are house accounts, and the people that come into the store who buy on a semi-retail basis or industrial discount.

Q. You do a retail business or commercial business through your store? A. To a limited extent. I would say less than five percent of our business is in that category. Of course we are not on a heavily travelled location that would be productive of foot traffic.

Q. How many garages do you sell to? A. I can't tell you with accuracy. There again it is a comparatively limited number. Our chief customers are the service stations.

Q. How about new car dealers? A. Perhaps 15.

Q. And you have four or five hundred service station customers? A. I would say about 300.

Q. And they are located all throughout the Chicago area and Indiana, I take it? A. Yes. The nucleus of each salesman's territory is the (3001) territory that we developed, my brother and I, when we were on the road, and they have been dropped or added to as time went on.

Q. As you moved your business from your basement through these other buildings to your present site, you spent more and more time in your office running the business? A. That is true.

Q. So that today you don't get out in the field very much? A. That's true.

Q. And you haven't for several years? A. That's very true.

Q. You handle Delco batteries? A. Yes.

Q. And Exide batteries? A. Yes.

Q. And Cooper tires? A. No, we do not carry them.

Q. How about Volta batteries? A. Yes, we carry some.

Q. Who makes the Volta batteries? A. That is made by the Volta Battery Company on 87th Street. I think it is 1000 East 87th Street, in Chicago, quite close to the store.

Q. It is not a very well known battery? A. It is one of the less well known brands. That's right.

(3002) Q. In the course of building up your business you have retained a substantial amount of profit in the business in order to build it up? A. Yes.

Q. And what were your 1955 sales? A. I believe it was about $600,000.

Q. And your 1956 sales have grown proportionately? A. Well, in this particular case, during this last year, they have been essentially the same.

Q. So that you roughly have come from sales of several thousand dollars in your first year to $600,000 in 1956? A. Yes.

Q. In a ten-year period? A. That's true.

Q. Of course, Mr. Chanenson, you have never been present at the time a sales presentation was made by a B. F. Goodrich territorial manager or the salesman of Lambie Company to the Texaco service station operator, have you? A. No, I was not present.

Q. And you don't know the type of advantages which they explained to the dealer would inure by handling the B. F. Goodrich line of tires and batteries.

Mr. Boyd: Object to the question. He said he wasn't present and he couldn't answer the question.

Hearing Examiner Kolb: The objection will be (3003) overruled.

A. Some of the advantages are actually self-evident. I would be the last to deny that there were not advantages.

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(3004) Q. A large number of other competitors in the Chicago area trying to sell the same service stations that you sell? A. Yes, that is also true.

Q. You are listed in the telephone directory as an automotive supply and parts manufacturer and wholesaler, aren't you? That is your listing? A. Yes. It is under that classification. Of course manufacturer is not applicable.

Q. I realize that. That is predominantly a wholesale (3005) classification? A. Yes, that is true.

Q. And there are 700 such houses in the Chicago telephone directory, aren't there? A. Yes. I haven't ascertained the number but there are a great many.

Q. That is a reasonable estimate, isn't it? A. Yes.

Q. And of course all of those seven are active to a more or less degree in canvassing the same service stations that you have been developing and canvassing for the past ten years. Is that right? A. I would agree with that.

Q. And of course in any kind of a business where there were so many of you canvassing the same service stations, somebody will get the business and somebody won't. Is that right? A. There would be a qualified answer on it.

Q. Isn't that true? A. Obviously someone will get the business, yes.

Q. And when you started selling in 1946 there were undoubtedly other people selling to some of the stations where you are now selling? A. That is true. We had to make a place for ourselves.

Q. And you made a very good place for yourselves? A. Yes.

(3006) Q. You have made a very good place for yourself in a number of service stations, haven't you? A. Yes.

Q. You have in that connection done it by handling standard brand items which you have been able to sell the service station on the advantages of handling that standard

brand item, haven't you? A. That is right. As a matter of fact, we have a policy involving giving customers what they want and influencing them where we can't. In other words, there is a purpose in carrying a multiplicity of brands. If he carries Fram filters or Goodrich tires we want to give him what he wants unless we can convince him that he should carry some other brand. But if he insists that he wants a particular brand, either we can supply it or we cannot. If we cannot because there is a captive market, then that leaves us out of the picture.

Q. Mr. Chanenson, it is just good business, and I suppose you do try to sell every service station everything that they need? A. Yes. We—

Q. There are a number of service stations with whom you do business who do buy all of their products from you, which they resell in your lines? A. I would say that—I would not take exception to that. That would be true.

(3067) Mr. Barton: That is all.

Cross-examination by Mr. Royall:

Q. Mr. Chanenson, you recounted a conversation with Mr. Bernie, I believe, did you not? A. Yes, I did.

Q. When and where was that conversation? A. The conversation took place over the telephone.

Q. When? A. In December.

Q. Of this year? A. Yes.

Q. You mean last December? A. Yes, December 1956.

Q. Did you personally talk to him? A. Yes, I did.

Q. Who is your salesman who covers that? A. Oscar Vincent.

Q. Is that the only time you talked to Bernie? A. I believe it was, yes.

Q. How long before that conversation had the representatives of the FTC been to see you about this matter, or you talked to them? A. This was on the same day.

Q. The same day? A. Yes.

(3008) Q. Did you call anybody else that day? A. Yes. I called—

Q. Do you remember the names of them? A. I called one chap in Harvey.

Q. Do you remember any others? A. Spindler's Texaco.

Q. Any others? A. I called Joe and Earl's Texaco, just around the corner from us.

Q. Any other? A. No, I do not believe so.

Q. Was anybody present at the time you made that call? A. Yes. Mr. Boyd was present.

Q. Who? A. Mr. Boyd, from the Federal Trade Commission, was present. And I told him the results of my call after they were completed.

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(3009) *By Mr. Royall:*

Q. Have you also a list of the stations which your subjobbers sell? A. No. I have just a vague, general idea of where they travel. But the people that are their customers and so on, it would obviously be information that they would like to keep to themselves.

Q. You have no information about— (3010) A. No. It is only occasionally—

Q. You have no knowledge of what Texas companies they sell, do you? A. No, I do not have such information.

Q. So the list that you have will merely include those that are sold direct? A. Yes.

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(3013) *Redirect examination by Mr. Boyd*:

Q. Mr. Chanenson, you mentioned in response to I believe Mr. Royall, that a number of the service stations bought the entire line of TBA merchandise from you. Are there any Texaco stations that do that? A. I do not believe so.

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(3014) CARL H. OLSEN was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name and business address? A. Carl H. Olsen, 6415 North Bosworth.

Q. By whom are you employed? A. Berry Tire Company.

Q. How long have you been with them? A. Approximately a year and a half.

Q. And in what capacity? A. As a salesman.

Q. What territory do you cover? A. I cover everything in the City south of Grand Avenue and west of Kedzie Avenue, including all the southwest suburbs.

Q. Are there any Texaco stations in your sales area? A. Yes, sir, there are.

Q. Do you have any idea of how many there are? A. There must be 100 to 150.

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(3015) Q. Of these 100 to 150 Texaco stations, how many do you contact? A. I might contact roughly about 15.

Q. Do you call on the same 15 regularly? A. Regularly, yes, sir.

Q. Do you call on any of the others at any time? A. I have from time to time but I haven't been able to sell any of them.

Q. About how many would you say? A. Roughly I may have called on a total of 35 or 40.

Q. Of the 15 that you call on regularly, 15 Texaco stations, are you able to sell them any TBA products? A. I sell them a few.

Q. Each of the 15 you sell a few? A. Each of the few I may sell them some TBA stuff and others that may not be included as a TBA item, such as recapping and vulcanizing.

Q. And is that true with each of the 15 you sell, you sell a little to each one? Is that correct? A. That is correct.

Q. Can you give me any idea of your volume of each one? A. The volume with most of them may not run over a couple of hundred dollars a year.

Q. A couple of hundred a year? A. That's right.

(3016) Q. You mentioned that you do recap and other type business. What in the tire, battery and accessory line do you actually sell them? A. I might sell about three out of those tires and batteries—tires, no batteries.

Q. These three that buy tires, do they buy them for stock or for fill-in? A. They buy them as they get calls for them from customers. They do not stock them.

Q. Are these tires take-offs or regulars? A. There have been take-offs and Dunlops, both.

Q. How about batteries? Do you sell any of them batteries? A. I sold one Texaco station batteries once, and never was able to sell him again.

Q. Do you know why? A. Because he said his salesman—

Mr. Royall: Objection.

Hearing Examiner Kolb: See what the answer is. Go ahead with your answer.

A. Because he said his salesman gave him a hard time afterwards. So I was never able to sell them again.

Mr. Royall: Move to strike, your Honor. It is double hearsay.

Hearing Examiner Kolb: I don't know where.

Mr. Royall: He is telling what his salesman said.

(3017) Hearing Examiner Kolb: He told him that the salesman raised a racket so he quit.

Objection overruled.

By Mr. Dias:

Q. Is that the only station where you were ever able to sell any batteries of the 15 that you called on?

Mr. Barton: I object to the form of the question, the "able" part.

Hearing Examiner Kolb: Read the question.

(Question read.)

Hearing Examiner Kolb: Overruled.

The Witness: I believe I sold one battery to one Texaco station.

By Mr. Dias:

Q. One battery? A. One battery.

Q. Have you ever called on a newly opened Texaco station? A. Yes, I have.

Q. Have you been able to sell them any TBA? A. No, sir.

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(3018) *By Mr. Dias:*

Q. How about the one that bought the one battery and you were never able to sell again? A. The name of the station was Russ' Texaco.

Q. Will you give us some idea of when that took place?

Mr. Barton: And where it is?

(3019) A. 6930 West Cermak, Berwyn, Illinois. It is approximately five months ago I would say.

By Mr. Dias:

Q. Have you ever been able to sell that station tires? A. I have sold him tires as he got orders from customers. Never for stock.

Q. Do you know why he doesn't buy for stock?

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

A. Frankly, he just doesn't want to stock them because he didn't want to get in trouble with the Texaco Company.

By Mr. Dias:

Q. Did he tell you that? A. Yes, sir.

Mr. Royall: Move to strike.

Hearing Examiner Kolb: Establish when the conversation took place.

By Mr. Dias:

Q. Will you give us an idea? A. Approximately ten months ago.

Mr. Royall: Move to strike the answer as to those questions, your Honor.

Hearing Examiner Kolb: The motion to strike will be denied.

(3020) *By Mr. Dias:*

Q. What about accessories, Mr. Olsen? Are you able to sell any accessories to Texas stations?

Mr. Barton: Object again to the use of the word "able".

Hearing Examiner Kolb: Leave it out since he is objecting to it.

Mr. Dias: There is nothing sinister about it.

By Mr. Dias:

Q. Can you sell accessories?

Mr. Barton: Objection.

Mr. Royall: Object.

Hearing Examiner Kolb: Have you sold accessories?

The Witness: I have sold some things that Texaco Company possible does not handle.

By Mr. Dias:

Q. Such as? A. The produce Rislone, for one thing.

Q. What is that? A. That is an oil additive.

Q. Do you sell that on a stock basis? A. Yes, sir.

Q. Can you name some other products? A. Prestone antifreeze.

Q. Are there any others? (3021) A. There might be odds and ends of chemicals, such as radiator sealer, radiator conditioner, and so forth.

Q. Are all those products stocked in the stations? A. Three cans of this, four cans of that, and so forth.

Mr. Dias: That is all, your Honor.

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Cross-examination by Mr. Royall:

Q. Will you give us the names of the 15 regular customers, Texas Company customers? A. There is Russ' Texaco, Eddie and Stan.

Q. Can you give us the approximate address? A. Eddie and Stan is 400 West Madison Street, Oak Park. John's Texaco, 1201 South Fifth Avenue, Maywood. Raymond's Texaco, 22nd and North Avenue, Melrose Park. Jack and Eddy's Texaco, 6000 West 63rd Street, Chicago. Offhand I can't think of any others right now.

(3023) *By Mr. Royall:*

Q. In addition to the trade name, if you know the name of the person it would help us find him more quickly.

Hearing Examiner Kolb: He was requested to give the list.

A. I gave you Russ Texaco, Eddie and Stan, and John's.

By Mr. Royall:

Q. Raymond's? A. Bob Raymond's Texaco, I believe I gave you that. Jack and Eddy's Texaco.

Q. Do you have the full name? A. No, sir, I don't. Most of these stations that I call on just go by their first names. They usually have a name over the door.

Pete's Texaco—

Mr. Barton: Where are they?

The Witness: I believe I gave you the address on these. Jack and Eddy's, 6000 West 63rd Street.

Pete's Texaco, I don't have the last name. That is Butterfield and Route 83, Elmhurst.

(3024) Cole Brothers Texaco, 2205 South Manheim Road, Westchester.

Don Pepich, Cass and Naperville Road, Westmount.

C. & E Texaco, Wolf and Butterfield, Hillside.

Garfield Texaco, 1536 West Garfield.

M & M Texaco, Villa Park.

Tripp Service, 1st & Lake, Maywood.

And that's it.

By Mr. Royall:

Q. In the case of Russ Koskie—is that it? A. Russ—R-u-s-s.

Q. I believe you sold them Dunlop tires, Auto-Lite batteries, and additives. A. I sold him one battery.

Q. You sold him Dunlop tires? A. Yes, sir.

Q. Did you offer him a dry-charge battery when you sold him that? A. Yes, sir.

Q. Will you give another thought? Didn't you tell him you didn't have a dry-charge battery? A. No, sir.

Q. In the case of J. Saskin—he is one of those you gave? A. John Saskin. Yes, sir.

(3025) Mr. Dias: Which is that?

The Witness: I listed that as John's Service Station. His last name is Sasgen, or Saskin.

By Mr. Royall:

Q. Berry Tire Company sell him Goodyear tires; have sold him for three years? A. Who? How come we didn't?

Q. Did you? A. I don't believe I ever sold him a Goodrich tire.

Q. Goodyear tire. A. Or Goodyear tire. No, sir.

Q. The company sold him some, didn't it? A. Which company?

Q. Berry Tire Company. A. Not to my knowledge, since I have been working with Berry Tire Company.

Q. Sir? A. Not since I have been with Berry Tire Company.

Q. You didn't know about it prior to that time? A. No, sir.

Q. You have been with them a year and a half? A. Yes.

Q. You don't know about it prior to that time.

Which of these ones that you mentioned did you sell tires to? A. I have sold tires to Russ Texaco, John's Texaco, (3026) Raymond's, Jack and Eddy's, Cole Brothers, and M & M Texaco.

Q. I believe you made the statement, in answer to one of the questions by counsel for the Government, that certain stations you went to wouldn't buy products competitive with the Goodrich products. Is that right? A. That's right.

Q. Now I will ask you if you did not sell one of the products you sold—mentioned you sold—Rislone, which is competitive with MDC. A. MDC?

Q. Yes. A. I am not familiar with that product, sir.

Q. The other, Rislone, is an additive. A. Yes, sir.

Q. Oil additive? A. Yes.

Q. And the other line has a competitive oil additive? A. There are several competitive oil additives.

Q. I mean the Goodrich line has a competitive oil additive. A. I believe it has, sir.

Q. And you know also that these stations handle their competitive lines, many of them, such as Prestone? A. Yes, sir.

Q. And they have Texas PT? A. Yes, sir, they do.

(3027) Q. Did you speak of the M & M station? A. Yes, sir.

Q. Don't you know that they also carry a competitive product, Universal Batteries, and stock it? A. At one time they did.

Q. I ask you if you don't know they do it now. A. I know they don't handle the Universal Battery right now.

Q. Would you recognize that station? A. I believe I would.

Q. Is this a correct photograph of it?

Mr. Dias: I object.

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(3028) Hearing Examiner Kolb: You can ask the witness if that is the picture of the station as it appears today, if he knows.

(The document referred to was marked Respondents' Exhibit 11 for identification.)

Hearing Examiner Kolb: When was the last time you saw that station?

The Witness: It must be about a week ago today.

By Mr. Royall:

Q. Is that a picture of the station?

Hearing Examiner Kolb: Is that the condition it was in at the time you saw it?

The Witness: That's right.

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(3029) *By Mr. Royall:*

Q. I will ask you if you don't know now that they stock Universal Batteries.

Mr. Dias: I object. The sign on the window doesn't mean anything. He has already testified that he had them at one time.

By Mr. Royall:

Q. I ask you if you don't know now that they stock Universal Batteries. A. They—

Hearing Examiner Kolb: Did they have Universal Batteries there the last time you were there?

The Witness: They do not have Universal Batteries now.

By Mr. Royall:

Q. Did you call on the Feldhaus station? A. I don't believe so.

Q. Isn't that in the territory you cover? A. It may be.

Q. Have you ever seen the station? A. I don't recollect, sir.

Q. Do you know where 16th and Lombard is? (3030) A. Yes, I do.

Q. Do you know— A. I wish to retract the one statement. I believe I do recollect, I do recognize that name now. I called on them possibly once or twice.

Q. I ask you if you don't know that that station at the time of your call there had a full line of Delco Batteries. A. Yes, sir, they did.

Q. I ask you in your calls around the territory if you called on Spraatz, at 2332 Greenbay Road. A. That is not my territory, sir.

Q. That is in Evanston? A. That is not my territory.

Q. Are you familiar with that station? A. No, sir, I am not.

Q. I will ask you if in your calls on Texaco stations if you did not encounter a number which stocked Goodyear tires. A. Offhand I will say I don't ever recall seeing a Goodyear Tire in any Texaco station.

Q. I will ask you if you didn't contact a number that had Dunlop tires. A. There are none of my stations that stock any Dunlop tires.

Q. I didn't ask you that. I said the stations that you contacted, visited. Not those you sold. (3031) A. To the best of my knowledge there is no Texaco station that I have either called on or sold that stock any Dunlop tires.

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(3034) *Redirect examination by Mr. Dias:*

Q. You sold tires to John's, Bob Raymond, Bob and Eddy's, Cole Brothers, M&M, Texas. What brand tires? Dunlop? A. I would say a mixture of Dunlop and take-off tires.

Q. If I enumerate these stations can you go down the list (3035) and tell me which one?

John's, do you know what you sold him? A. John's, I believe I sold him some Dunlop tires and some seconds. Both from Dunlop and some off-brand tire.

Q. How many and when? A. Three weeks ago I sold him two second tires in an off-brand tire.

Q. And Dunlop, how many and when? A. I would say during the year 1956 I sold him a hundred dollars worth of tires that was tops.

Q. How much do your tires cost? A. Well, specifically, a 6.70 by 15 blackwall tube-tire tire will cost the dealer $14.29.

Q. That is the cheapest tire you have? A. Cheapest Dunlop.

Q. What is the most expensive tire you carry? A. We carry nylon tires which carry a list price, just guessing, for a 6.70, roughly around $40, I would say.

Q. So that if this were the cheapest tire you had, you sold a total of seven during 1956, roughly? Is that correct? A. Approximately.

Q. How about Bob Raymond? What did you sell him? A. The overall business, including everything, for 1956, I would say wouldn't have gone over $250.

(3036) Q. What kind of tires were they? A. They would be Dunlop tires in his case. That would be Dunlop tires and including recaps, snow tires.

Q. The total amount of that would be what? A. $250 overall.

Q. How about accessories? A. That is including accessories.

Q. So your total sales of TBA to Bob Raymond was $250? A. Approximately.

Q. Do you have any idea how many tires you sold to him? A. Ten or twelve tires tops.

Q. Would that be in one order? A. No, sir, spread over a period of a year.

Q. How about John's? Were those tires bought in one order or spread over? A. Spread over.

Q. What is the story on Jack and Eddy's? A. Jack and Eddy's, I have sold them quite a few tires. The exact figure may be $400 worth of tires over a period of a year.

Q. Which year? A. 1956.

Q. What kind of tires? A. Mostly all Dunlops. There may have been a few take-offs mixed in.

(3037) Q. Does that $00 figure represent tire sales or is that full TBA? A. That is full TBA.

Q. Do you sell him any batteries? A. No, sir.

Q. You do sell him accessories? A. Some spark plugs.

Q. Anything else? A. That is all I can recall selling him.

Q. Do you recall what his largest purchase of Dunlop tires was? A. At one time possibly a set of tires which would amount to around $80 to $100.

Q. A set would be four tires? A. Four.

Q. Is that the largest order you have ever sold to him in tires? A. Yes, sir.

Q. How about Cole Brothers? A. I would say possibly the case runs about the same as Jack and Eddy's.

Q. That is about $400 for the year? A. Approximately.

Q. And that $400 represents sales of tires, batteries and accessories? Does he buy batteries? (3038) A. No, sir.

Q. What was the largest order he ever placed for tires? A. At one time four tires at one time.

Q. How about M&M? A. M&M as far as tires go has been mostly a recap tire business. There may have been a few take-offs sold to him.

Q. Do you recall selling any new Dunlops to him? A. Offhand I can't say I have ever sold him any Dunlop tires.

Q. Can you give me some idea of your sales to him of the Berry TBA products? A. $500.

Q. Does he buy accessories, too? A. During the course of a year I might have sold him some odds and ends. I can't recall specifically what items. Maybe some tire patches or something of that nature.

Q. How about batteries? Did you sell any of those to him? A. I may have sold him one or two batteries.

Q. Incidentally, what is your brand of battery? A. Auto-Lite.

Q. Do you handle any other brand of batteries besides Auto-Lite? A. We handle a rebuilt battery which is strictly used for the used car trade.

Q. Do you sell Delco batteries? (3039) A. No, sir.

Mr. Dias: That is all.

Recross examination by Mr. Barton:

Q. How many service stations are in the area which you handle? A. Pardon?

Q. How many service stations are in the area? A. I wouldn't hazard a guess. In my territory?

Q. Several thousand? A. I wouldn't even hazard a guess. The way they are putting them up now you would think they were going out of style. I haven't the slightest idea. Several thousand I would say is a conservative estimate.

Q. How many do you sell to? A. I have approximately 125 customers.

Q. What was your total volume last year in sales? A. Fifty to seventy thousand dollars.

Q. $50,000? A. That is right.

Q. That is of tires, batteries and accessories? A. That is right.

Q. As well as recapping and the other things that you sell? A. That is right.

Mr. Barton: That is all.

(3040) Mr. Dias: I have nothing further.

Hearing Examiner Kolb: That is all.

(Witness excused.)

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(3041) JOHN O'KEEFE was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Boyd:

Q. Please state your full name, business connection, and position. A. John O'Keefe, Chanenson Tire and Supply Company.

Q. What is your position? A. Salesman.

Q. How long have you been salesman with Chanenson? A. About one year.

Q. Had you been in the sales end of tires, batteries and accessories business prior to that time? A. Not previous to my employment with Chanenson.

Q. What products of Chanenson do you sell? A. Miscellaneous supplies, waxes, polishes, tires, batteries, accessories and so forth.

Q. What is your sales area, your sales territory? A. Part of the week—I would say a day and a half, I work the northwest suburbs of Chicago. That would take in Elgin, Roselle, Itasca, Wood Dale and Bensonville. The rest of the time I would say a three to five mile radius of our store.

(3042) Q. And that is located where? A. At 1851 East 95th Street.

Q. What classes of customers do you call on? A. Service stations only.

Q. How many Texaco outlets, Texaco stations, would you say are in your sales territory? A. In my sales territory I would judge roughly 35 stations.

Q. How many of those stations do you sell? A. Five.

Q. What efforts have been made to sell the others? A. When I first became employed at Chanenson I endeavored to sell the full line that we carry to all the stations. Not all at one time, but if I had a day or two, a little extra time, I would call on a new account, be it Texaco or otherwise.

Q. The five that you are selling now, what products are involved in the sales that you make? A. I sell them occasional equipment, maybe some sealed beams, some waxes, polishes, things strictly in the chemical lines.

Q. What about tires and batteries? A. I have never sold any tires or batteries to any of the five Texaco stations that I call on now.

Q. What about the other 30 that are in the territory? A. I can't specifically say. I have never sold them any tires or batteries.

(3043) Q. When you made that effort, when you first took over the territory, did you endeavor to do so then? A. Yes, sir.

Mr. Barton: Object.
Mr. Royall: Objection.
Hearing Examiner Kolb: Overruled.

A. Yes, sir, I did.

By Mr. Boyd:

Q. What tire and battery lines do those stations carry when you see them? A. The tires and batteries that I saw displayed in the majority of Texaco stations were B. F. Goodrich tires and B. F. Goodrich batteries.

Q. What about these five that you call on that you sell? A. Of those five, four stock B. F. Goodrich tires and B. F. Goodrich batteries.

Q. How about the fifth? A. He is an independent and doesn't really stock any. He has three or four of various makes, manufacturers.

Q. When you say an independent, what do you mean by that? A. He owns the property and the station.

Q. Can you tell us the name of that station as well as the other four? A. Could I tell you the name?

Q. And the location? (3044) A. That station would be called Midway Service, at Route 53 and Route 20.

Q. Where abouts? A. Roselle, Illinois.

Q. And the other four? A. The other four are Joe and Earl's Texaco Service, at 89th and Stoney Island; Fleetway Service, at 85th and Stoney Island; North End Super Service, at Liberty and Dundee Streets in Elgin.

Q. Elgin, Illinois? A. Elgin, Illinois. And Stonier Texaco.

Q. Where is that located? A. At 97th and Cicero, approximately. I forget whether it is 97th or 98th Street.

Q. Of these five that you have just named, where you make sales, do you endeavor to sell them tires and batteries? A. Not any more.

Q. Why not? A. Well, when I first—

Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

A. When I first went into these stations I asked them about getting some of their tire and battery business and they said at the time, not each of them, it amounted to that, that their source of supply, their present source of supply, was (3045) satisfactory to them, and that they didn't care to stock any of the tires or batteries that I had to sell.

Q. And what was the tire that they stocked? What brands? A. Goodrich tires and batteries?

Q. And they said the source of supply. Was there any indication of what that was?

Mr. Royall: Objection.

Hearing Examiner Kolb: The objection will be overruled.

A. No. I just happened to know who they were, being in that vicinity.

By Mr. Boyd:

Q. Who were they? A. Gardner and Kinsley, and W. H. Lambie.

Q. Mr. O'Keefe, how many Conoco stations would you say are in your sales territory? A. Fifteen or 20.

Q. Do you sell any of them? A. No.

Q. How long have you had the sales territory you now have? A. Approximately a year. Since I began working there.

Q. Did it at one time include any other area? A. Yes. For a period of about four months I went into East Chicago, Indiana, and Hammond, Indiana.

Q. Did you call on any Conoco stations there? (3046) A. I called on two Conoco stations.

Q. Who were they? A. Nick's Conoco, in East Chicago, and Osborn in Hammond.

Q. Did you sell them anything? A. Yes. I sold them some waxes, polishes, plugs.

Q. What about tires and batteries? A. No, I didn't.

Q. What tires and batteries, what line were they carrying? A. B. F. Goodrich and I believe one had some Firestone. And I forget which one.

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(3046) *Cross-examination by Mr. Royall:*

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(3049) Q. How many stations do you sell all together? A. Approximately 80.

Q. And in the territory that you cover, are there 800 or 1,000, or 1500 stations? A. There might very well be.

Q. Is it your best judgment there are about 1500? A. There could be. In my specific area?

Q. In the area that you travel? A. I wouldn't say there are that many.

Q. Maybe a thousand? A. Maybe a thousand.

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Francis Dwyer, for Commission—Direct

(3055) FRANCIS DWYER was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name and business address, Mr. Dwyer? A. Francis Dwyer, 6415 North Bosworth.

Q. You are a salesman for the Berry Tire Company? A. That is right.

Q. How long have you been with Berry Tire Company? A. A little over 30 years.

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Q. Will you tell us the territory that you cover for the Berry Tire? A. From Lawrence Avenue north to Highwood, and from the Lake west covering Skokie, and Martin Road.

Q. Do you attempt to sell the full line of the Berry Tire Company? You don't specialize in any items? (3056) A. Well, we specialize in about eight items; eight or nine items.

Q. Who specializes? A. I specialize.

Q. What are those eight items? A. Roughly speaking I would say it was tires, recapping, tubes and truck tires and so on, and batteries, antifreeze. That is our main source of income—my main source of income.

Q. Do you sell any accessories, any of Berry accessories, or don't you bother with accessories? A. We sell quite a bit of Penray and Prestone radiator chemicals.

Q. In your sales territory are there any Texaco stations? A. Oh, I imagine there are about twenty. I couldn't say. Roughly. Roughly that is about 20.

Q. Are there any Conoco stations? A. Not very many. Conoco is not too much of a factor.

Q. Do you call on any of those 20 Texaco stations regularly? A. Yes, I do.

Q. How many of them? A. About six or seven.

Q. Have you ever called on all of them at any time? A. Oh, yes.

Q. Can you tell me roughly when? (3057) A. I stop in about once a month on stations that I do not get regular business from, to solicit recapping and vulcanizing.

Q. Do you attempt to sell them anything else in your line? A. Oh, yes.

Q. What, for example, do you try to sell them? A. Take-off tires, when we have them.

Q. Do you try to sell them Dunlop? A. Dunlop tires, Auto-Lite batteries, Prestone, take-off tires.

Q. Your full line, in other words? A. That is right.

Q. Out of the 20 you call on 6 or 7 regularly. Why is it you don't call on the remainder?

Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

A. The reason I do not call on the others regularly, if I make 20 calls a day I have to produce so much business in order to live. I found in the majority of Texaco stations that I cannot get any business and make it worth while to call on them regularly.

Mr. Royall: Motion to strike.

Hearing Examiner Kolb: Objection overruled.

By Mr. Dias:

Q. Of these 6 or 7 that you sell regularly, what products do they buy? (3058) A. Fill-in orders at the end of the year on Prestone, recapping and vulcanizing, and take-off tires; special buys.

Q. Do any of them buy your Dunlop tires? A. Well, I would say that I got one of them that bought very regularly for quite awhile and then ceased to buy about the middle of June.

Q. Of what year? A. Last year.

Q. Who is that? A. Swifty's Texaco. I have another one, Bob's Service Station, at Winnetka.

Q. Returning to Swifty, have you ever sold to him on a regular basis? A. Oh, yes, for a number of years.

Q. Can you recall the largest annual volume of that station? A. Well, the best I can figure from our office records, in 1954, on tires and tubes and take-off tires, it was about 5,000—I think it was $5,038 in 1954; in 1955 it was $4200; in 1956, up to July 1, it was $2250; and since July 1 to January 1, he bought two truck tires for $48, small truck tires.

Q. Have you been calling on him regularly since July of 1956? A. I call on him. He lives within a mile of my house.

Q. How often do you call on him? (3059) A. I see him at least once a week. In fact, I buy my gas from him pretty regular.

* * *

(3060) Q. You mentioned Bob's. Could you give us his address? A. I am not sure, but I think it is about 190 Greenbay Road in Winnetka. The southern end of Winnetka.

Q. Do you have any sales figures on that station? A. In about '53 and '54 it ran—in '53 it ran around $3,500 and then progressively was less. Two years ago the sales went down to less than a thousand dollars.

Q. Do you have any figures on 1955? A. I would say about $800.

Q. How about 1956? A. About the same.

Q. What products do you sell to Bob's? A. Take-off tires.

Q. And batteries? A. Very few.

Q. Do you recall any purchase, or the number of purchases of batteries that he ever made? A. No, I don't. He is just fill-in orders here and there.

Q. How about Swifty on batteries? Do you ever sell him? A. None whatsoever. Well, I will take that back. I (3061) probably sold him last year. I think he bought four batteries one time from me, and then he bought I think maybe batteries all together last year.

Q. Who? A. Swifty.

Q. You sell regularly, you stated, to an additional four or five. Can you name those stations? A. A lot of it is recapping and vulcanizing. You see there has been so much changeover, mortality rate in the gas stations is about 25 percent a year, and there is an awful lot of stations and they are changing operators. There is a continuous sale of stations all the time, changing around. So it is pretty hard to say that I sold them regularly. But I would say this, that we do the vast majority of recapping and vulcanizing up in that territory of all the stations. So whether you would call recapping and vulcanizing regularly a sale, I would say yes. That would entail pretty near most of them.

Q. Do you sell those other stations any batteries or accessories? A. No, I do not.

Q. Dunlop tires? A. No.

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(3062) *By Mr. Dias:*

Q. You cited Swifty's and Bob's as instances of loss of business. Are there any others? A. No, I wouldn't cite any others.

Q. Do you call on newly-opened Texaco or Conoco stations? A. Conoco I do not. Texaco, there isn't too many new ones being opened all the time. They are changing hands. I call on them as fast as I can. But usually a Goodrich dealer is there before me.

Q. Who is the Goodrich dealer? A. Biltmore Tire calls on most of the accounts in my territory.

Q. Does Biltmore sell to any other customers in your area? A. Other than Texaco he is no competition.

* * *

(3063) *By Mr. Dias:*

Q. Do you have any other competitors in that area? A. In what way do you mean? Goodrich tires?

Q. No. Any other competitors in your sales area. A. There are all kinds of competitors in any sales area.

Q. Are there other jobbers or distributors up that way? A. Oh, yes. Jobbers and distributors cover from time to time the whole city, the whole county. In fact, a number of counties.

Q. How do your batteries compare with the Goodrich and Firestone batteries? A. Goodrich are not manufacturers of batteries. Or Goodyear are not manufacturers. They are nothing but jobbers themselves of batteries. They are made for them by somebody else. Auto-Lite and Delco are standard equipment batteries as a whole. Practically all automobiles. There are a few other batteries in DeSoto cars and so on. So in my estimation there is no batteries on the market that are as easily sold as Auto-Lite or Delco. Price-wise they are very competitive.

Q. You have cited all the instances of loss of sale that you can recall, have you? A. Yes, I would say so. That is with the Texas Company and Goodrich.

(3064) Q. In regard to Swifty's, do you know what TBA products he carries? A. Yes, he carries Delco batteries, and he carries the rest of the line. I think it is mostly Goodrich.

Q. What about Bob's? A. Bob carries—his line is Firestone.

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Cross-examination by Mr. Barton:

Q. Mr. Dwyer, how many service stations are there in the area which you cover? A. I never counted them.

Q. How many would you say? A. I imagine there are —how many are there in the City?

Q. Some witnesses have estimated more than 4,000. A. I imagine it would be in the neighborhood of a few hundred.

Q. How many? A. A few hundred.

Q. In your whole area? A. Yes.

Q. How many customers do you have in that area? A. I have approximately—I call on about 165.

Q. Is it your testimony that you call on most of the dealers— A. I imagine there are more than a few hundred. There are (3065) probably six or seven hundred stations maybe. I have no definite idea.

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Q. You sell recapping generally to all the customers on whom you call? A. Yes.

Q. And you call on these hundred or 125 dealers whom you serve regularly and sell them recapping? That is true, isn't it? A. Yes.

Q. How often do you call on them? A. Some accounts I call on maybe every two or three months. Some accounts I call on maybe every month. Some accounts I call on

every week. And some of them I see more than once a week. There is no set time. It depends. On Standard Oil, for example, I call on them sometimes once every three months.

Q. Most of these stations that you call on are handling tires other than Dunlop tires? A. That's right.

Q. Most of these stations that you call on to sell recapping (3066) you do not sell Dunlop tires to regularly? A. That's right.

Q. Who does Swifty buy his Delco batteries from, do you know? A. I am not sure whether it is Evanston Auto or McNally.

Q. Who are the competitors of yours in that area in the sale of batteries, I take it. A. That's right. They are a jobbing house and they are within a mile of his place of business. And he does a lot of mechanical work and he is picking up parts all the time so it is convenient for him to pick up his batteries and parts from a house that is less than a mile away.

Q. I take it that these 125 customers whom you— A. I have more than that. About 160 I think I said.

Q. You have about 160 customers? A. Yes. That is, listed as regular customers.

* * *

(3067) Q. Along that line, some of them buy more than others, some go up and some go down? A. No. They are pretty steady.

Q. Does your volume stay about the same? A. Just about.

Q. About the same. A. Yes. In one respect, yes, in another respect, no. The volume this year is about the same as it was last year. Maybe a little bit less. But the unit sales are less. That is due to the increase in price of tires and due to Federal excise tax increase.

Q. That has a great effect on it? A. Oh, yes. When a tax goes up from $1.12 to $1.74, that is quite a difference in a small tire.

Q. There are changes in dealers, changes in the way the station does business, and that has some effect on the whole thing. With a change of dealer he may have a different preference. A. I didn't get that.

Q. If the fellow who runs the station changes, he may have a different preference? (3068) A. Yes. If a new dealer comes in then that is another problem.

Q. You were asked a question about what lines were carried by one or two of these stations. I believe it was Swifty's and Bob's. That is, other than your lines. How did you determine that? By what you saw in the place of business? Or the signs he carried? A. No. I never go by signs. Signs might have been put up 20 years ago and never taken down. That doesn't indicate he has the merchandise on hand.

Q. But you can tell from the stock he carries, couldn't you? A. I know what the dealers carry because—

Q. You go there and see it? A. That's right.

Q. That is what I mean. You go there and see it? A. Yes.

Q. Let me ask you about one or two of your stations, your Texas stations.

Westmore Service. You have been dealing with them for a long time. A. Westmore Service own their own lease.

Q. You have been dealing with them for a long time? A. I would say over 20 years. They own their own lease. That is entirely different. There are three different types (3069) of Texaco leases.

Q. How long have you been dealing with Sam and Jack Lipshultz? A. Sam and Jack Lipshluts, that is another station. They buy gas from Adam Miller.

Q. Is that Texaco Gas? A. They have their own lease and they own their own building and they buy from a Texaco jobber.

Q. I asked you how long you have dealing with them? A. I would say 25 years or more.

Q. How long have you been dealing with—you told about Swifty's, I believe.

How about Paul Spraatz? A. They own their own lease and their own building.

Q. How long have you been dealing with them? A. I would say 15 years.

Q. Do you know what products they carry? A. Right now? At the present time they carry Auto-Lite batteries and they do not stock tires. They pick them up as they need them. The only item that they stock is my Prestone and Auto-Lite batteries and they pick up Dunlop tires.

Q. As a matter of fact, aren't you wrong about Spraatz? Isn't his a third-party lease and not an owned-station? A. Paul Spraatz and Mrs. Johnson and a brother—I don't remember what his name is—they own the property and they own their own lease.

(3070) Q. They lease the property from Texas Company, don't they? A. No, they do not.

Q. Are you certain about that? A. I am pretty positive. They have been in the furniture business and the expressing business for 50 years I guess.

* * *

(3071) *Redirect examination by Mr. Dias:*

Q. During the course of your cross-examination you mentioned there were three types of leases. Do you know what they are? A. If I own a property and I lease from Texas Company, or I buy gas from Texas Company, usually there is an extra cent or cent and a half or half a cent

rebate, additional rebate. That is where the owner leases the station. And then there is other property where I own the property & . . I lease to Texas Company. And then there have been instances of where I own the property and I lease to Texas Company, Texas Company leases back to me, and then I lease to an individual.

There are a lot of "screwy" setup deals.

Q. Is there any difference in your ability to sell any of those stations? A. Well, he mentioned Westmore Service station. * * * He buys where and from whom he wishes to buy. There is all the difference in the world.

* * *

(3072) Q. Do you find it easier to sell to a contract station than to a lease station?

Mr. Barton: Objection.
Mr. Royall: Objection.
Hearing Examiner Kolb: Overruled.

A. It is much easier to sell—do you mean by contract station where a man—

By Mr. Dias:

Q. Owns the property. A. There is all the difference in the world; definitely much easier.

Q. Why is that? A. Because he—

Mr. Royall: Objection.
Hearing Examiner Kolb: Overruled.

A. Because he likes to—he is independent and he likes to decide for himself whether he wants to handle Goodrich (3073) batteries, Delco batteries, or Auto-Lite batteries, or whatever make of battery he sees fit to handle. It is his judgment. On tire, it is a matter of, in our case, where

we handle Dunlop tires, we went into the Dunlop tire business many years ago with the great thought in mind of using the whitewall Dunlop as a change-over from car dealers. We are actually handlers of Goodyear, Goodrich, Firestone, Dunlop and U. S. Tires. Because by putting the whitewall Dunlop tires on U. S. automobiles we get off Firestone, Goodyear, Goodrich and others.

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Q. What do you base your references to pressure on?

(3074) Mr. Royall: Objection.
Hearing Examiner Kolb: Overruled.

A. Pressure is a term that is pretty hard to define. Texas Company will have a very nice salesman who calls on the customers and the customers like him pretty well. With reference to Biltmore tire, in many cases I have found that the Biltmore salesman and the Texas salesman call on a dealer together. If that isn't pressure I don't know what is. That is one instance of it.

By Mr. Dias:

Q. Can you cite other instances?

Mr. Royall: Objection.
Hearing Examiner Kolb: Overruled.

A. If a station changes hands, it is always in my territory a Texaco station I am talking about, it is always a Biltmore man that is there right under the gun. Or if a new station opens up there is always a Biltmore man there first. I would call that cooperation with the Texas Company and Biltmore, or Goodrich Rubber Company, and also they designate that in the case of Bob's Service Station, sometime ago, when George Suffert—I think was the name of

the Texas District State Manager—who definitely used pressure from the word "go."

Mr. Royall: Your Honor, we object to that as purely hearsay.

(3075) Mr. Dias: We don't know whether it is hearsay.

Mr. Royall: He couldn't know.

Mr. Dias: Why couldn't he?

Mr. Royall: Let me ask him a qualifying question. Were you present at the time?

Mr. Dias: I object to the interruption. You will have cross-examination.

Mr. Royall: I move to strike, your Honor.

Hearing Examiner Kolb: Explain the knowledge that you have with reference to the last matter you spoke of.

The Witness: The dealer told me that Mr. Suffert told him he had to handle either Firestone or Goodrich products or he would cancel his lease, and his lease was cancelled for nine months.

Mr. Royall: Move to strike on the ground of double hearsay, your Honor.

Hearing Examiner Kolb: I will deny the motion to strike.

By Mr. Dias:

Q. Do you know of any other instances? When did that particular instance take place? A. That happened about two years ago. And Bob told me at the time that he said, "All right, I will buy my Goodrich tires from Bablum." He said, "No, buy them from Biltmore. It is a matter of bookkeeping, keeping track of the sales (3076) on Goodrich tires."

Bob turned around and said, "All, right, I will buy take-off tires from the Berry Tire Company." No objection. I handle Goodrich take-off tires. We sell them from 10 to 15 to 20 percent less than they can buy regular Goodrich tires from.

Mr. Royall: Motion to strike on the grounds of double hearsay.

Hearing Examiner Kolb: Was that the conversation when you were present?

The Witness: That is the conversation.

Hearing Examiner Kolb: With the owner?

The Witness: With the owner.

Mr. Royall: We object on the grounds that what the owner told him of what someone else said is hearsay.

Hearing Examiner Kolb: Objection overruled.

The Witness: So the result is that he now handles Firestone tires instead of Goodrich.

Mr. Royall: Objection. Move to strike.

Hearing Examiner Kolb: Overruled.

By Mr. Dias:

Q. Can you cite any other specific instances? A. Andy's Texaco told me definitely, about 5550 North Ashland, that he definitely was supposed to buy from Biltmore Tire.

(3077) Mr. Royall: Motion to strike, your Honor, on the grounds of hearsay.

Hearing Examiner Kolb: Denied.

By Mr. Dias:

Q. Did he say when he told him that? A. About a year ago.

Mr. Royall: Objection.
Hearing Examiner Kolb: Overruled.
Mr. Royall: Motion to strike.
Hearing Examiner Kolb: Denied.

By Mr. Dias:

Q. Did you have any records or do you know what his purchases were at any time? A. His buying is very little He carries no new tires in stock. It is strictly a pickup business. The only merchandise he carries in stock is batteries, and previously for a number of years he handled my Auto-Lite batteries and he is now handling nothing but Goodrich batteries.

Mr. Dias: That is all, your Honor.

Recross examination by Mr. Royall:

Q. What was the name of the dealer you mentioned whose lease was cancelled for nine months? A. Mr. Suffert of Texas Company cancelled that lease about two years ago. The dealer's name was Bob Stern—Bob's (3078) Texaco Station.

Mr. Royall: We move to strike the part where he said they cancelled that. I just asked him the name of the dealer. He repeated the statement about what Mr. Suffert said.

* * *

Theodore H. Shiff, Jr., for Commission—Direct

THEODORE H. SHIFF, JR. was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name and business address for the record? A. Theodore H. Shiff, Jr. I work for the Berry Tire Company at 6415 North Bosworth, in Chicago.

Q. How long have you been with Berry, Mr. Shiff? A. Two months short of two years.

Q. What territory do you cover for Berry? (3079) A. From Roosevelt Road to Lawrence Avenue, and from Lake Michigan to Austin.

Q. What type customers do you sell to? A. Car dealers, gas stations, garages; that is all.

Q. Among the gas stations are there any Texaco dealers? A. Yes, sir.

Q. Can you give us some idea of the number? A. That I sell to?

Q. First, how many Texaco stations are in your trade area? A. I would say that there are ten or twelve Texaco stations that are company stations.

Q. What do you mean by company stations? A. Well, there are a few Texaco stations in my area that are controlled or that the operators lease from Texaco jobbers.

Q. Are there other types? A. Oh, yes. The direct company operations where the operator leases directly from the Texaco Company.

Q. How many in all are there? A. I would say that there are about 15 in all.

Q. In your territory? A. Yes, sir.

* * *

(3080) Q. Do you attempt to sell to all of the Texaco stations? A. Do I attempt to?

Q. Yes. Do you call on all of the Texaco stations? A. Not all; no, sir.

Q. How many do you call on? A. I call on about ten, some regularly and some only occasionally.

Q. How many do you call on regularly? A. About five.

Q. You call on five out of about 15, is that correct? A. Yes, sir.

Q. Why do you not call on the others regularly?

Mr. Royall: Objection.

A. Because they tell me that they can't give me any business because the company won't allow them to.

Mr. Royall: Motion to strike, your Honor. We objected first. I don't know whether your Honor ruled on it.

Hearing Examiner Kolb: The objection will be overruled. The motion to strike will be denied.

By Mr. Dias:

Q. Of the five that you regularly sell, what type products do they buy? A. Prestone—now, are you referring here to the company stations or to the ones that are operating through this Texaco jobber?

(3081) Q. First I am talking about any Texaco station that you may sell to. What do you sell them? A. I sell them Auto-Lite batteries. I sell them Prestone. I sell them Dunlop tires, inner tubes, possibly.

Q. Any accessories? A. Some, not to any great extent.

Q. Can you give me the names of those stations that purchase the Auto-Lite batteries and Dunlop tires? A. Again do you want me to distinguish between the company—

Q. No. Just give me the name of the station that purchases Auto-Lite batteries. A. Auto-Part, Incorporated, at 1415 Irving Park Road; Al's Texaco, 4635 Milwaukee; Dick's Texaco, 5739 Belmont. Those three purchase Auto-Lite batteries from me. But all three of those are operated by the Adam Miller Company which is a Texaco jobber.

Q. Do they also buy Dunlop tires? A. Auto-Part and Al's Texaco have on occasion bought Dunlop tires.

Q. Who are the other two stations that you sell to? A. Actually, there are three others that are company stations. One is Peterson Service Station at 17—in the 1700 block on Irving Park, and Al Feller Texaco, in the 2800 block on Irving Park; and Howard's Texaco at Elston and Lawrence.

(3082) Q. What products do Peterson's buy? A. Peterson tells me that he can buy nothing except vulcanizing and recapping from me because he is not allowed to buy anything else.

Mr. Royall: Motion to strike, your Honor, both on the ground it is not responsive and because it contains double hearsay.

Hearing Examiner Kolb: Motion denied.

By Mr. Dias:

Q. What does Al Feller buy? A. Al Feller buys—the year before last he bought Prestone from me, and in 1956 he gave me an order for Prestone in the early fall, and when I delivered the Prestone in the early part of November he turned it down and said that he couldn't handle Prestone, that he wasn't permitted to handle Prestone.

Mr. Royall: Motion to strike, your Honor, both on the ground that it is not responsive to the question and because it contains double hearsay.

Hearing Examiner Kolb: Motion denied.

(3083) *By Mr. Dias:*

Q. Howard's Texaco? What do they purchase? A. Howard's Texaco purchases recapped tires from me and vulcanizing and recapping on tires that he supplies me with.

I did deliver some Prestone to him.

Q. When? A. I did deliver some Prestone to him this fall. He has only been there about less than a year.

Q. Can you tell us what the TBA line is that Peterson's carry? What sort of tires, what brand tires and batteries do they carry, if you know. A. I can't truthfully say, but if you want an opinion—

Q. No. A. I can't truthfully say that.

Q. What does Al Feller carry in the way of tires and batteries? A. Al Feller carries Goodrich batteries.

Q. Does he stock tires? A. So few that he could hardly be called a stocking dealer.

Q. How about Howard's Texaco? A. Howard's Texaco stocks Goodrich tires.

Q. And batteries? Do you know what kind of batteries he carries? A. I would be guessing.

Q. Do you know whether or not Peterson's is a leased or an (3084) independently owned station? A. Peterson's is a leased station.

Q. How about Al Fellers? A. Al Feller is a leased station.

Q. Howard's Texaco? A. Howard's Texaco is a leased station.

Q. Have you ever solicited new Texaco station business, or stations where a new operator just moved in? A. Yes.

Q. Were you able to sell to them? A. No. The only thing I was ever able to sell to them, and the only thing that I usually would solicit in a station of that type, would

be recapping and vulcanizing, because those are the things that do not conflict; the dealer feels that those do not conflict with anything that—

Mr. Royall: I move to strike that answer as not being responsive and being a conclusion.

The Witness: I can't answer that any other way.

Mr. Royall: And hearsay.

Hearing Examiner Kolb: The motion to strike will be denied.

By Mr. Dias:

Q. Do you know who the Goodrich supplier is in your territory? A. Biltmore Tire Company.

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(3085) *Cross-examination by Mr. Royall:*

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Q. You spoke of a new station approached where you sold only a few items. What was the name of that station? A. I didn't specify any particular station.

Q. Can you give the name of any station, new station? A. Yes, sir. Howard's Texaco was one, Elston and Lawrence.

Q. Are there other Texaco stations other than the ones you named to whom you sell? A. Yes. I sell Bob's Texaco. I can't give you the exact (3086) address. I should say about 4200 Elston Avenue. I sell him vulcanizing and recapping.

Q. I didn't ask you what you sell. I just wanted the names. A. Bob's Texaco. To the best of my recollection he is about 4200 Elston.

Q. Do you sell Motor Court? A. Motor Court?

Q. 1415 Irving Park. A. That is Auto Port—

Q. Auto Port? A. Yes, sir.

Q. Do you sell Al Grabek? A. Yes, sir.

Q. Do you know any others that you sell? A. I stated the ones that I sold.

Q. I mean any others that haven't been mentioned. Do you recall any others? A. I can't think of any others.

Mr. Royall: That is all I have.

* * *

(3087) *Redirect examination by Mr. Dias*:

Q. You mentioned Bob's Texaco. I don't believe you mentioned that one before. What do you sell them? A. I don't actually call on that account. He calls in. I have called on him and he told me there was no use calling on him. So he calls in and places an order for the truck to pick up vulcanizing and recapping. That is all I sell him.

* * *

(3088) JAMES L. DOSS was thereupon recalled as a witness for the Commission, and, having heretofore been duly sworn, testified as follows:

Further redirect examination by Mr. Dias:

Q. Mr. Doss, will you give us a little information about Omaha? Is that part of this division? A. Omaha is located in the territory over which I have supervision.

* * *

(3089) Q. I note there are three different types of salesmen listed—resale, merchandising, and general. I believe we have the definition of a resale and a general sale. What is a merchandising sale? A. You have a definition from me on merchandising and general.

Q. Then the other is missing. A. Resale is missing.

James L. Doss, Recalled, for Commission—Redirect

Q. What is the definition of resale. A. Prior to January 1, 1954, all salesmen were classified as resale salesmen. We did not have two different types. The duties of the resale salesman prior that date would parallel closely the duties outlined for the merchandising and general salesman today, other than the fact that the merchandising salesman does not have any accounts other than dealer accounts in his assigned list.

Q. And those dealer accounts may be leased or contract stations? A. That is correct.

Q. Is there any further explanation? A. No.

Q. I asked you about Omaha. You say that is in your territory. I assume Lincoln is, too. A. Yes.

(3090) Q. Do the activities of Omaha and Lincoln differ in any respect from those of the Chicago area? A. No.

Q. I believe there are some items that you have covering Omaha, a number of Texaco outlets. Are you going to read them in or do you have a document there? A. I have a memorandum on the number of outlets in the Omaha-Lincoln area.

Q. First tell us the number of Texaco outlets in Omaha and then Lincoln, or if you have them combined state so. A. These are grouped together, Lincoln and Omaha.

Q. They are grouped together? A. Yes.

Q. Is that considered one sales area? A. For all practical purposes it is. However, we have a bulk plant in Omaha and a bulk plant in Lincoln. But the salesman and zone manager in the Omaha bulk plant covers the Lincoln area.

Q. That is zone manager and salesmen or man? Do you have more than one salesman? A. We have more than one salesman.

James L. Doss, Recalled, for Commission—Redirect

Q. Before we get off that: Is that the only bulk plant that you have? Just one bulk plant each in Omaha and Lincoln? A. That's right.

Q. Are these company owned? (3091) A. They are company owned.

Q. Now the number of Texaco outlets in the area? A. These are divided between class "C," "D," and "E" accounts. We have no other classifications.

Q. You have no consignees? A. Not in this area. In 1952 we had 45 "C" accounts; 17 "D" accounts; and 2 "E" accounts.

In 1953 we had 48 "C" accounts; 17 "D" accounts; and 2 "E" accounts.

In 1954 we had 53 "C" accounts; 19 "D" accounts; and 2 "E" accounts.

In 1955 we had 57 "C" accounts; 19 "D" accounts; and 2 "E" accounts.

In 1956 we had 59 "C" accounts; 19 "D" accounts; and 2 "E" accounts.

There might be a few accounts that are not classified.

Q. You don't know how many there would be? A. I would not know how many.

Q. There may be some.

Now do you have figures showing the number of each nominated to Goodrich and Firestone? A. Yes.

Q. Goodrich first. A. Beginning with the year 1954. Our records are not available for the years 1952 or 1953. Beginning with which (3092) company?

Q. Goodrich. A. In 1954 ten accounts were nominated to and approved by Goodrich. This is the total number of accounts not nominated that particular year.

Q. Wait a minute. Would you say that again? What is the explanation? A. In 1954 there were a total of ten outlets approved by Goodrich.

Q. Nominated and approved? Is that right? A. That's right.

Q. Do you have a breakdown as to whether they are "C" or "D" accounts? A. No. This is grouped.

Q. That is ten in all. In 1955? A. Thirteen. And in 1956, 15.

In 1954 a total of 56 accounts assigned to Firestone. In 1955 a total of 59. In 1956 a total of 60.

Q. You say assigned to Firestone? Is that correct? A. Well, nominated to and approved by. That is what it means.

Q. Do you have the numbers of each buying Goodrich or Firestone? Tires, tubes, batteries, et cetera. A. Yes, I do.

In 1954 we had three accounts buying Goodrich exclusively; (3093) in 1955 we had five buying Goodrich exclusively; and in 1956 we had seven buying Goodrich exclusively.

Q. May I have the 1955 figure again? A. Five.

Q. And seven in 1956? A. Seven in 1956.

Mr. Royall: Let me say this to you, Mr. Dias: I think he read the wrong column on that. I have the paper before me. Could I direct that to you?

Mr. Dias: Yes.

Mr. Royall: He read line 4 instead of 5, on the number buying Goodrich exclusively.

The Witness: I would like to change that.

By Mr. Dias:

Q. Go ahead. A. The number buying—there were no accounts buying Firestone or Goodrich exclusively in any of the years given.

Q. That is 1954, '55 and '56? A. That is correct. I read the wrong line the first time. In 1954 we had 8

accounts buying Goodrich and other merchandise except Firestone.

In 1955 we had 8 accounts buying Goodrich and other merchandise except Firestone.

The same number for 1956—8.

Q. Do you have figures for Firestone? (3094) A. In 1954 we had 52 accounts buying Firestone and other merchandise except Goodrich.

In 1955 we had 53 accounts buying Firestone and other goods except Goodrich.

In 1956 we had 53 accounts buying Firestone and other merchandise except Goodrich.

Q. I believe you have a list of the names of the salesmen in Omaha? A. Yes, sir.

(Discussion off the record.)

The Witness: In 1954 we had three accounts buying both Goodrich and Firestone and other merchandise.

In 1955 we had five accounts buying both Goodrich and Firestone and other TBA goods.

In 1956 we had seven accounts buying both Goodrich and Firestone and other TBA goods.

By Mr. Dias:

Q. In checking those figures, in 1956 there were 15 nominated to Goodrich? A. Right.

Q. Plus 60 to Firestone. A. Right.

Q. That is a total of 75 in the area? Is that correct? A. Seventy-five accounts nominated to and approved by Firestone and Goodrich together.

(3095) Q. In 1956 there were 7 buying both. There were 8 buying Goodrich and other. And 53 buying Firestone and others.

Mr. Barton: That is not quite correct.

The Witness: Where you said buying Goodrich and others you should have added "except Firestone."

By Mr. Dias:

Q. All I am interested in is the sum. I come up with a total of 68 as against the 75. Is that significant of the sum not buying? A. That probably is—

Q. Do you have any figures on that? A. We have no record of the accounts that are not buying. We don't receive any information on that.

Q. On the number of Texaco outlets in Omaha and Lincoln, as I understand it, there are 59 plus 19 plus 2, or a total of 80 Texaco outlets. Is that correct? A. That is correct. There are probably a few others that are not classified.

Q. What type would they be? A. They would be the small service station or garage that would not be considered a potential TBA merchant.

Q. And therefore not nominated? A. Yes.

Q. The man in charge of your bulk plant is known as the zone manager? (3096) A. We have an agent at the bulk plant who is an operating man who has jurisdiction over the truck operation and general plant maintenance.

Q. Who is it that is primarily responsible for the operation of the bulk plant? Isn't that the zone manager? A. He has supervision over that, yes.

Q. And who is that? A. Omaha? M. E. Burgess.

Q. Is there a separate man for Lincoln? A. The same man covers the Lincoln area.

Mr. Dias: That is all.

James L. Doss, Recalled, for Commission—Recross

Further cross-examination by Mr. Royall:

Q. Mr. Doss, when you referred in answer to Mr. Dias' question to others buying TBA were you referring to items of TBA that are competitive with the Goodrich or Firestone items as the case may be? A. That's right.

Q. That is true in Chicago?

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(3097) Q. The same situation exists both in Chicago and Omaha and Lincoln? A. That is true.

Q. As to the same—the same situation exists as to the class of items of other makes, is that right? A. When we—

Q. They are competitive? A. When we say "other TBA" we mean TBA purchased from other sources, which TBA is in competition with the Goodrich and Firestone TBA.

Q. You were asked by Mr. Dias whether the procedures which you described in Chicago were equally applicable to Lincoln, and I think you replied yes. That includes, does it not, the instructions that were given as to the independence of the dealers and the right of choice of the dealers—

Mr. Dias: I object.

By Mr. Royall:

Q. (continuing)—in all three towns? A. Yes, sir.

Hearing Examiner Kolb: Objection overruled.

By Mr. Royall:

Q. That was I believe—that is one of the procedures described by you and Mr. Knight in testimony here? A. We did describe that.

(3098) Q. Including the contacts with the salesmen and from the salesmen to the dealers? A. In the administration of the policy?

Q. No. The procedures, the documents as to independence. A. Yes, sir.

Mr. Royall: That is all.

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(3100) Mr. Dias: It is stipulated between counsel for respondent and counsel supporting the complaint that the witness Francis Dwyer knew that Mr. Suffert had died approximately three months ago.

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RAYMOND P. JENNINGS was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Boyd:

Q. Mr. Jennings, will you give us your full name, please? A. Raymond P. Jennings.

Q. What company are you connected with? A. Jennings Auto Supply.

Q. Where is that located? A. 8408 South Morgan Street. That is my home, too.

Q. Do you own that business yourself? A. Yes, sir.

Q. How long have you been in it? A. Since January 1948.

Q. What kind of business is it? A. Tires and batteries primarily to service stations, garages, and automobile dealers. A couple of those are fleet accounts.

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(3101) *By Mr. Boyd:*

Q. What brand of tires and batteries do you sell? A. Goodyear tires and Volta batteries.

Q. Are those the brands that you have handled ever since you have been in business? A. That is right.

Q. Mr. Jennings, what is your trading area, the area in which you sell, in other words? A. The far southwest side of Chicago from, say, about 69th and south and Cottage Grove Avenue west, and Blue Island, Illinois. Blue Island is a suburb.

Q. How many people do you people employ in your business? A. None.

Q. You are the only one? A. That is right.

Q. How many service stations of all kinds would you say are in that area in which you do business? A. I could only guess, but there must be—

Q. Your best guess? A. Several hundred.

Q. Do you have any idea of how many Texaco stations are in there? A. Just another guess.

(3102) Mr. Royall: We object to a guess.

By Mr. Boyd:

Q. What class of customers do you do business with? A. Service stations, garages, automobile dealers, used car lots.

Q. What is your present annual volume of business? What was it in 1956? A. About $22,000.

Q. And in 1955? A. About the same.

Q. And prior to that time what would you say? In 1954? A. I think it was a little better in 1954; not a great variation.

Q. Do you do business with any Texaco stations? A. Yes, sir.

Q. Could you tell us which ones they are? A. I have an account called Supple Brothers.

Q. Where is that located? A. 9900 Vincennes.

Q. And what kind of business do you do with them? A. Batteries only. Do you mean what do I sell him?

Q. Yes. A. Batteries.

Q. Can you give us any idea of the amount of business you do with him? (3103) A. Probably a hundred batteries a year.

Q. Do you know whether that is a leased station or— A. No, that is an independent station.

Q. Independent Texaco station? A. Yes.

Q. Do you sell him anything else? A. Just occasionally. Just once—he handles Firestone tires—once in awhile if he wants Goodyear he will call me but not very often.

Q. Can you tell us some of the other stations, Texas stations, that you do business with? A. I have one at 87th and Loomis which I have had for—he has been fairly active for the last few months, six months perhaps.

Q. What is the name of that? A. Chuck's Texaco Service Station.

Q. When did you first sell Chuck's? A. About two years ago.

Q. What did you sell him? A. I didn't actually sell him. I consigned him a stock of batteries. He was fairly new, a fairly new operator at that time. I gave him some batteries on consignment, partly to get the account and partly to help him.

Q. Did he continue to sell batteries from that time? Just what happened? (3104) A. No, there was interruption. I went in there one day and my batteries were moved out of the office and there were some other batteries there.

Q. Where were your batteries? A. I asked him and he told me that he had to put them in the back and hide them; cover them up, which he had done.

Q. Did you see them?

Mr. Royall: Wait a minute. Move to strike, your Honor, on the basis of opinion; all hearsay, double hearsay; all double hearsay.

Hearing Examiner Kolb: The motion to strike is denied.

By Mr. Boyd:

Q. Did you see the batteries in the back room? A. Yes, I did.

Q. Did he have any other batteries on display? A. Yes, sir. In the office he had some other batteries.

Q. What were they? A. Goodrich.

Q. Do you still sell him? A. Yes, I am selling him again now.

Q. What has been the situation since then? Would you bring us up to date from that time to the present?

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(3105) A. I was out of there for perhaps a year and then he called me and wanted a battery. Little by little I think I have regained his battery business. He told me that he had some differences with the Goodrich suppliers.

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By Mr. Boyd:

Q. Do you know who his suppliers are? A. Gardner & Kienzle.

Q. Just Yes or No, do you know? A. Yes.

Q. Who are they? A. Gardner & Kienzle, and Warrick H. Lambie.

Q. When did you start getting back in to selling him some Volta batteries? A. I think early Fall.

Q. What year? A. 1956.

Q. Does he openly carry these batteries now? (3106) A. Yes, he does.

Q. Do you sell a station at 80th and Racine, a Texas station? A. Once or twice a year, I would say; very rarely.

Q. Incidentally, referring back to Chuck's Station, is that a lessee station or an independent, do you know? A. That is a lessee.

Q. And as to the one at 80th and Racine, what do you sell him? A. A battery occasionally, one or two or three a year.

Q. Does he carry any other batteries that you know of? A. No. He has nothing in stock.

Q. Have you ever sold a Texas service station at 7001 South Western Avenue? A. I did, yes.

Q. When did you see him? A. Up until 1952; about the middle of 1952.

Q. Who ran the station then? A. Jim Coglianese.

Q. Do you know whether it was an independent or lessee station? A. Jim Coglianese owned the property, as I understand it; leased it to the Texas Company on a master lease; and then they sublet it to him as an operator and he ran the station.

Q. How long had you sold him up to 1952. (3107) A. About four or four and a half years.

Q. What did you sell him? A. Batteries and tires.

Q. What happened in 1952? A. He retired from business I think for reasons of health, and the Texas Company sublet the station to another operator.

Q. Do you know who that was? A. McWhinney.

Q. Have you sold McWhinney? A. No.

Q. What has been the situation? A. Nothing.

Q. Did you endeavor to sell him? A. Yes, I tried. Coglianese, being the former operator, introduced me to

McWhinney. He told me, "I think I can keep this account for you. I will take you over and talk to McWhinney", and he did. McWhinney seemed agreeable. He was terribly busy. He had just opened up that day. He said, "Can you come back in a week and we will talk about putting in some batteries on display?" And I said I would be glad to.

Mr. Royall: Objection.

Hearing Examiner Kolb: Are you finished?

The Witness: No. I went back in a week to see McWhinney and he wouldn't talk to me. He said there was (3108) a man there from Texaco or Goodrich and he didn't want them to know that he was talking to me. He met me outside the door. There was somebody inside. He said, "Don't come in."

* * * *

By Mr. Boyd:

Q. Did you go back after that to see McWhinney? A. I made one or two other attempts after that but I didn't sell him anything.

Q. Did McWhinney—do you know what he started stocking after that, or what he had in stock or sold? (3109) A. I really don't know.

Q. What about new Texas stations opening up, Mr. Jennings? Have you made any efforts to sell them? A. I have made occasional attempts, especially if they are close to me where I think perhaps I can do them some good on a weekend or something when they couldn't get service. But it has been quite fruitless.

Q. Has there been one in your vicinity recently? A. Yes. Within the last year there was one about three blocks from my home.

Q. Where is that located? A. 8500 South Racine.

Q. Is this a new station? A. Yes, it was new.

Q. Did you go in to see the man, the operator? A. Yes, I talked to the operators and they told me that they couldn't buy from me. They said, "We have to handle Goodrich. You know how it is."

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(3110) Q. Do you know what they have on hand or are selling? A. Goodrich.

Q. Batteries and tires? A. I think the tires, too. I didn't look at the tires.

Q. Are these the accounts that you have given me the only ones that you sell, the Texaco accounts? A. I think that is right, yes. I can't think of another one now.

Q. There are other Texaco stations in your territory? A. Oh, yes.

Q. You don't call on them? A. No. It hasn't been profitable.

Q. Why? A. Well, I—

Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

A. I could make a lot of calls and do very little business.

By Mr. Boyd:

Q. Has that been your experience? A. That has been my experience.

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(3113) FRANK A. BRUSEK was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Boyd:

Q. Mr. Brusek, will you give us your full name and business connection? A. Frank A. Brusek. Proprietor and President of Motor and Axle Parts Service, Incorporated.

Q. Where is your business located? A. 7711 South Ashland Avenue, Chicago.

Q. Is that the only place of business, or do you have another? A. In the City of Chicago, yes.

Q. Do you have some other place outside of Chicago? A. Indiana. An affiliation in Indiana.

Q. Where is that? A. 650 South State Street, Hammond.

Q. What type business is that, your business in Chicago? A. Engaged in the distribution of automotive service parts.

Q. What does that include? A. It embraces anything that is used in the automotive, (3114) truck or car, and engines, consisting of pistons, piston rings, valves, guides, springs, bearings, fan belts, radiator hoses, spark plugs, oil filters, gears, transmissions, clutches, clutch parts.

Q. What about batteries? A. Batteries. We have various and sundry articles used in the reconditioning and refinishing of bodies.

Q. Do you sell tires? A. No, sir.

Q. How long have you been in this business? A. Thirty-two years.

Q. What brand of batteries do you sell? A. At the present time?

Q. Yes. A. Volta.

Q. How long has that been true? A. Since we have handled Volta?

Q. Yes. A. This is now the third year.

Q. Did you handle something else prior to that? A. Willard.

Q. What about spark plugs? What brand? A. AC.

Q. Oil filters? A. AC.

(3115) Q. Fan Belts? A. Gates.

Q. Radiator hoses? A. Gates.

Q. What is the trading area of your firm? A. That we embrace?

Q. Yes, sir. A. 47th Street on the North, the Lake on the east, City limits on the west, City limits on the south.

Q. How many salesmen do you employ? A. Three.

Q. Are these outside salesmen? A. Outside.

Q. With what classes of customers does your firm do business? A. Automotive repair shops, automotive service stations, industrial accounts, automotive car dealer and truck dealer.

Q. You said automotive service stations. Do you mean — A. Filling stations, if you use the term.

Q. Could you give us an idea, since 1952, what the annual volume of business of the firm has been, approximately, each year? A. Since 1952?

Q. Yes, sir. A. We fluctuated between $375,000 and $400,000 since 1952.

Q. What has been the situation with respect to service
(3116) station business? What percentage of your business today is service station business? A. That is rather a difficult question to answer, Mr. Boyd, in that it fluctuates likewise. Many service stations whom we enjoyed previously, with business such as fan belts, radiator hoses, spark plugs, filters, batteries, have changed their mode of distribution and purchasing habits and many of them have gone into repair business of which we are now enjoying

their business, such as replacement of mufflers, brake linings, things of that nature. So in giving you a percentage of what business we do with them today, I would say we have lost anywhere from 25 to 33 and a third percent of the volume we previously enjoyed.

Q. Has it been a particular type produce that that business has been lost on? Product or products? A. I would say that confines itself particularly to batteries and fan belts, spark plugs, oil filters, aeceptable items that are generally distributed by a service station and consumed and used by them.

Q. Mr. Brusek, how many service stations of all types, of different oil companies—in other words, total—how many would you say are in your trading area? A. That is almost like asking how many beans are in a pot. I could give you a rough estimate of the whole situation. I would say 400 to 450.

(3117) Q. What about the number of Texaco stations in that area? A. Frankly, Mr. Boyd, I have never pinpointed them down to that particular classification, as to whether they distributed this, that, or the other thing. But as a guess I would say probably 15 or 20 percent of that volume.

Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

By Mr. Boyd:

Q. Did you say 15 or 20 percent? A. I would say that. That is strictly a guess on my part. I have nothing to substantiate that.

Mr. Royall: I move that answer be stricken.

Hearing Examiner Kolb: Read the answer.

(Answer read.)

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Boyd:

Q. Mr. Brusek, does your firm sell any batteries, spark plugs, fan belts, radiator hoses or oil filters to Texaco stations today? A. On an exclusive basis do you mean?

Q. No, I mean do they sell them in any manner? A. Oh, yes. I would say occasionally we sell them.

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(3118) *By Mr. Boyd:*

Q. What is the basis on which you sell those items to Texaco service stations, that is, spark plugs, filters, radiator hose and batteries when you do sell? A. You are speaking of basis. How do you mean that?

Q. Do they buy and stock those items?

Mr. Barton: Objection.

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

A. Yes, they openly buy them and stock them. In some instances they use them immediately, immediate consumption rather than put them on the shelves because it probably may not be the brand they have been carrying, or that nature.

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(3119) *By Mr. Boyd:*

Q. How many Texas stations purchase those items from you today? A. Mr. Boyd, that is a difficult question to answer. Without referring to invoices and going over that thing it would be strictly a guess on my part if I told you any amount at all.

Q. Do you know of any regular purchasers, Texaco purchasers?

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A. No, Mr. Boyd, it would be a difficult thing for me to give you a sincere and honest and frank answer.

Q. Does the firm sell its other, other than batteries and spark plugs, oil filters, fan belts and radiator hose, to Texas stations? A. Oh, yes.

Q. Is there any difference between your ability to sell those items to the Texas stations and the ability to sell batteries, spark plugs, oil filters, fan belts and radiator hose?

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A. Yes, there is a distinct difference because that is a consumer item that he uses immediately for installation in the car he has in for repair.

(3120) *By Mr. Boyd:*

Q. What is? A. Muffler, tail pipes; clutch parts, brake parts.

Q. Why does that make a difference as compared to the other five items?

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A. The other five items are generally accepted as stock-in items, and are universally used in various types and models of cars, where brake parts and muffler parts are more or less specific to that particular car, consequently not readily stocked.

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(3121) *By Mr. Boyd:*

Q. Are you saying, Mr. Brusek, that you can sell the items of spark plugs, oil filters, fan belts, radiator hose and batteries with equal facility to Texas stations as you can these repair parts that you sell? A. No, sir, I can't

say that, because in many instances some of these stations have restrictions placed upon them.

Q. What kind? A. By whom I don't know.

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(3125) Q. Do your salesmen make efforts today to sell to Texaco service stations, that is, these competitive items, spark plugs and so forth? A. Oh, yes, yes.

Q. What is the result of those efforts? A. We just don't get the business.

Q. Are these efforts made regularly? A. Yes, at regular intervals they are.

Q. How regular? A. Well, the salesmen generally cover their territory within a two-week period.

Q. Do you consider those five items—the batteries you sell, spark plugs, oil filters, fan belts and radiator hose—to be competitive with the items sold by Texaco stations? A. Do I consider them sold? Yes, sir.

Q. Competitive? A. Yes, sir.

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(3126) HENRY TRAUSCHT was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Boyd:

Q. Mr. Trauscht, will you give your full name and business connection? A. Henry Trauscht. I am secretary, general manager, and partner in the Evanston Auto Company.

Q. Where is that located? A. 23 Dempster Street, Evanston.

Q. Does the place have any other place or places of business? A. Yes, sir. It operates in Highland Park under the trade name of Highland Park Auto Parts.

Q. What is the address there? A. 1900 North First Street, Highland Park Illinois.

In Waukegan it is Lake County Auto Parts, 903 Belvedere Street.

In Libertyville it is Lake County Auto Parts, at 109 West Church Street.

Q. How long has the firm been in business? A. The firm was taken over by my associate and myself in 1938. However, it has operated as a corporation since 1919.

Q. What is the nature of the business of the firm? (3127) A. Wholesalers of automotive parts, equipment, and supplies.

Q. Does that include batteries? A. Yes, sir.

Q. Spark plugs? A. Yes, sir.

Q. Oil filters? A. Yes, sir.

Q. Fan belts? A. Yes, sir.

Q. Radiator hose? A. Yes, sir.

Q. Will you tell us the brands of those items that you sell? A. We sell AC spark plugs, AC and Fram oil filter elements, Delco batteries, Gates rubber products, which include fan belts and hose. Does that cover it?

Q. Yes, sir.

What is the geographical trading area of the firm, including that store and the three other stores that you mentioned? A. Approximately from Howard Street—the Chicago/Evanston line—to Waukegan, just directly north of Waukegan, west to Fox Lake, that is on a line west of Waukegan; and there is an area west of Lake Bluff that we do not take in, however we extend into Libertyville and out of Highland Park we take in Wheeling.

(3128) Out of Evanston as far west as Morton Grove. That is Morton Grove, Skokie, Glenview, and those towns.

Q. What is the class of customers with whom the firm does business? A. We sell industrial accounts, car deal-

ers, fleet operators, gasoline service stations and car dealers.

Q. How many salesmen do you employ? A. Four.

Q. What percentage of the business would you say is service stations? A. Upwards of 50 percent.

Q. Could you give us some idea of what the annual volume of business is? A. This is in an open hearing. I would rather not answer that question.

Q. Could you give us an approximation?

Hearing Examiner Kolb: Make it approximate.

The Witness: It is a little less than a million dollars volume per year.

Q. How many service stations would you say are in the area in which you operate? A. Several hundred; 150 to 200.

Q. Could you give us some idea of the number of Texas stations that you know of in the area? A. Does that question include the independent operator?

(3129) Q. Yes; all kinds, leased and other. A. I would say around 45.

Q. How many of those stations, Texaco stations, do you sell batteries, spark plugs, oil filters, fan belts and radiator hose? A. I would like to refer to my notes, if I may.

Q. Will you tell us what those notes are? A. When I received a subpoena for this hearing I had a survey made by our salesmen of the Texas accounts, that is the accounts who handle Texaco products that they call on. And I have those surveys with me as well as a summary of the surveys that I made yesterday.

Q. Will you get it out, please? Would you tell us the basis of the information included and sought in the survey? A. The best way I can do that would be to read the questions and answers that I put on there, if you want to take that time.

Mr. Boyd: I believe we better have it marked for identification so we will know what we are talking about.

Your Honor, I ask that there be marked for identification as Commission Exhibit 148-A through Z-1 the papers I hold in my hand which are entitled "Survey, Texaco Service Stations Only," listing a number of questions.

(The documents referred to were marked Commission's Exhibits for identification 148-A through Z-1.)

(3130) *By Mr. Boyd*:

Q. Mr. Trauscht, who compiled this questionnaire used in this survey? A. I did.

Q. Who made the survey? A. Four salesmen that we employ.

Q. When was it done? A. Within the past 30 days.

Q. Whose idea was it to prepare it? A. It was mine.

Q. And this reflects the results of the questions asked and the answers received, is that right? A. Yes, sir.

Q. And it indicates the names of the places contacted? A. Yes, sir.

Mr. Boyd: Your Honor, I offer in evidence Commission's Exhibit 148-A through Z-1.

* * *

(3131) Q. Mr. Trauscht, how were the stations selected that reflect the information contained in that survey? A. I visit our branch stores several times a month. After I had these forms made up on one of those visits I left them at the store with instructions to the store manager to have their salesman contact the Texas accounts

in their territory that they called on. Of course being headquartered at Evanston it was a simple matter to give instructions to our salesmen in Evanston to do it. Frankly, I thought it was a pretty good idea—naturally we always think our own ideas are good—to prove something that I know of course exists in our industry with all leased stations, regardless of (3132) whether Texaco or who it is.

Mr. Royall: We move to strike a part of his answer as not being really responsive.

Hearing Examiner Kolb: The motion to strike is denied.

By Mr. Boyd:

Q. Was the information contained on the survey obtained from the operators of the stations? A. Oh, yes; yes, sir.

Q. The top sheet, who prepared that? The summarization? A. I did.

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(3133) (The document heretofore marked Commission's Exhibit 148-A through Z-1 for identification, was received in evidence.)

By Mr. Boyd:

Q. Mr. Trauscht, how many of the stations that are listed—I believe there are 26—do you know whether they are leased stations or independent stations? A. Twenty-three of them are leased and three are independent.

Q. Could you tell us the three that are independent? A. May I first of all state what my concept of an independent station is?

Q. Yes, sir. I wish you would. A. In my opinion an independent station is one that does not lease from the Texas Company. The three that come in that category are Swifty's Texaco Service—that is in Evanston; Mayday Brothers, likewise in Evanston; and the Everett Garage, in West Lake Forest.

By Mr. Boyd:

Q. Mr. Trauscht, I hand you Commission Exhibit 148-A. Under the category where it has two columns, Yes, and No, under Yes it says 3, and under that 4, and the word "part." Will you explain what that means? A. "3" means that in the first answer here, do we sell (3134) this account spark plugs, there is a "three" above where it says part four. "Three" means that we sell them all of their plugs.

Part, and then four, means that there are four of them that we sell part of their spark plug requirements.

Q. In other words, the four is in addition to the three? A. Yes, sir.

Q. Is that true for the other answers where similar type information is reflected? A. Yes, sir.

Q. Do the individual sheets in support of that summary show the ones where you sell part to? Or where you sell all to? A. Yes, sir.

Q. Mr. Trauscht, has your firm ever enjoyed any more success in selling Texaco service stations than it does today? A. Yes, sir.

Q. Can you tell us when that was? A. I am thinking particularly of permanent-type antifreeze. Of course we handle Prestone, and at one time they were the only producers of a permanent-type antifreeze. It is prior to the time that the patents expired. If a service station wished to handle a permanent-type antifreeze there was no other

they could buy. And of course we enjoyed a lot of business with all of the service stations with Prestone (3135) antifreeze.

Q. Including Texaco? A. Including Texaco; yes, sir.

Q. What about on batteries and spark plugs? A. No, I can't remember in the last 15 years except during the war period, and after the war when merchandise was hard to get we never enjoyed any more business from them than we do presently.

Q. Can you sell to them during the emergency period? A. Oh, yes.

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(3138) Q. On the three Texaco stations that you sell —Swifty's, Mayday, and Everett Garage, do they openly sell your merchandise, display it? A. Yes, sir.

Mr. Boyd: That concludes the direct.

Cross-examination by Mr. Royall:

Q. Mr. Trauscht, I believe there are a few other stations besides those in these papers which you also sell, are there not? A. Some other Texaco stations?

Q. Yes. A. It wouldn't surprise me. Yes, I think there perhaps may be.

Q. Who selected the stations to which this questionnaire was sent? A. I left it to the men, as I explained to Mr. Boyd.

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(3139) *By Mr. Royall:*

Q. I believe you stated that your volume is in the neighborhood of a million dollars. A. I said less than a million dollars.

Q. That meant that it was not very substantially less, did it? A. Some less.

Q. Didn't you say that about a little over a year ago your sales were a little less than $750,000? A. Where was that, sir, if I may ask?

Q. Didn't you state that in a hearing of some kind? A. Yes, I think I perhaps said—made that statement before the Senate Small Business Committee in Washington. That was for 1955. We are now talking about 1956. Our business increased.

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(3141) *Redirect examination by Mr. Boyd:*

Q. I have one question to ask you, Mr. Trauscht. Have you been contacted by the Commission, someone from the Commission other than me, before the day you say you drove me to the station in the rain? A. No, sir.

Q. Do you know Mr. Sam Stewart of the Chicago office? A. Yes, I do know him.

Q. You don't have any recollection of him having talked to you? A. I had a visit from him, but it seems to me that is much more than a year ago when he was in.

Q. You do recall a visit from him? A. Yes. And if I may make a statement here, I have talked so much about these things with all kinds of corporations in (3142) our business, that my memory could be a little hazy. He may have talked to me about it and I don't recall.

Mr. Boyd: That concludes the redirect.

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Mr. Boyd: Yesterday, when Mr. Chanenson was testifying it was requested by Mr. Royall that he supply us the names of the Texas stations with whom he was doing business. I added to the request, and

I believe it was agreeable, that he would also indicate the nature of the products that were being sold through those stations.

At noon I contacted Mr. Chanenson by telephone and he told me that Mr. O'Keefe had given the names in the course of his testimony of about five or six of the Texaco outlets with whom the firm did business, and that in addition to those five the following were others that he did business with, and they are: Supple Brothers, 99th and Vincennes. According to Mr. Chanenson, equipment, no batteries, and tires occasionally on a fill-in basis.

The next one was Bill and Gene, at 99th and Halsted, and he said that was equipment—wheel balancer.

Next is Bernies, 70th and Western, and that was wheel balancer and novelty items.

And Ben's, at 169th and Columbia, and that is Hammond, Indiana.

(3143) The next-on that it says, "miscellaneous—hot patches, sealed beams."

The next one is Ray Johnson, at 103rd and Normal. And the other was Madden's, at 79th and Yates. He said he picks up tires there occasionally.

This information he told me over the 'phone he obtained from his other salesman, Mr. Oscar Vincent. And that is everything that he gave me on the 'phone. And I would add that these, he said, are the only open accounts—he sells to on an open account basis. That is it.

Mr. Royall: Thank you.

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(3153) M. E. BURGESS was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Dias:

Q. Please state your full name and position for the record? A. M. E. Burgess, zone manager for zone 15, Texas Company, Denver Division.

Q. Zone 15? A. Yes, sir.

Q. Are you stationed here in Omaha, Mr. Burgess? (3154) A. Yes, sir.

Q. Will you outline your duties for us? A. Well, it is broad. I interpret the policies and the instructions of the Texas Company as given to me by Denver Division office. I take care of the company's interests in this zone as they relate to sales, distribution, merchandising, real estate, collections, credits, and accounting.

Q. Do you have anything to do with TBA? A. TBA as regards merchandising, yes, sir.

Q. What do you mean by that? Just the selling of it? A. No, sir. It is part of my job to see that the dealers in the Omaha area are successful service station operators, and to be successful they have to have a complete line to offer their customers, which would include TBA merchandise.

Q. That is the full Goodrich line? A. Any TBA line.

Q. You mentioned the Denver Division office. Will you just describe your place in the organization, that is, this Omaha region? How does that fit into the picture? A. I work directly under a state manager who is also headquartered in Omaha. Then his immediate superior will be the Division office in Denver.

Q. How does Mr. Doss figure into the picture? A. Mr. Doss is regional manager for the central territory of the

Texas Company, which includes as a part, Denver Division.

(3155) Q. How long have you been with the Texas Company? A. Approximately 26 years.

Q. In your present position? A. I have been a zone manager in Omaha for approximately four years.

Q. How much of your time is spent on TBA work? Can you give us some estimate of that? A. Do you mean the overall program, merchandising TBA?

Q. Yes. A. Approximately ten or fifteen percent.

Q. Who else in this particular area works in connection with TBA?—A. I have three salesmen assigned to my zone. I am of course responsible for their activities.

Q. Are they primarily concerned with the promotion of TBA? A. They are primarily concerned with the successful operation of service station outlets. That is, the two merchandising salesmen.

Q. What about the third one? A. The third man is a general salesman and he sells petroleum products to all classes of trade, consumers, garage accounts, new car dealers, service stations.

Q. And he is a general salesman? A. He is called a general salesman; yes, sir.

(3156) Q. Can you give us some idea of how much time is devoted to TBA by the two merchandising salesmen? A. I would say approximately ten to fifteen percent.

Q. And by the general salesman? A. It would be less. Maybe around ten.

Q. Less? A. Under ten.

Q. Less than ten? A. Yes, less than ten.

Q. Five percent, perhaps? A. Between five and ten; yes, sir.

Q. Who else in your office here, works in connection with TBA solely? A. There is no one assigned to zone 15.

* * *

Q. Do the rubber companies report to your office the sales of TBA products, that is, the purchases by the Texaco stations within your zone? (3157) A. No, sir, the rubber companies don't report anything to my office.

Q. Where do they report? A. I assume they report to Denver.

Q. Do you know? A. I do know. They report to Denver.

Q. They do report to Denver? A. Yes, sir.

Q. So that you do not get any information as to the purchases of TBA by the stations, Texaco station in your area? A. I receive a report from the Denver Division office that has those figures. I also receive a report from my salesmen, compiled from information secured from the service agent dealer as to the total TBA sales made by that dealer every month. That is all sales of TBA merchandise.

Q. Regardless of brand? A. Right. It is TBA. It doesn't make any difference, the brand.

Q. How are those reports broken down? A. Each salesman has a defined territory with so many stations assigned to him. And each salesman reports at the end of the month the total gasoline purchases, lubricating oil purchases, and TBA purchases for his service stations.

Q. And on those reports of TBA purchases do they show a breakdown as to brands on TBA at all? (3158) A. No, sir, it is not important in that respect. It is total TBA sales made by the dealer, taken from his—or given to us from his records.

Q. Isn't it a fact that there are more Texaco stations in Omaha selling Firestone TBA than Goodrich? A. Yes, there are more Texaco stations in Omaha selling Firestone than there are Goodrich.

Q. Don't you have any idea of the amount of TBA sold, of the Firestone TBA sold? A. In dollars and cents?

Q. Yes. A. No, sir.

Q. Or products? A. No, sir.

Q. You don't keep those records here? A. You asked me if I knew. I have the record available. I don't know offhand the total.

Q. You mean you don't know only because you haven't looked at the record? A. Right.

Q. But you do get a report of some sort? A. Right.

Q. And that does show a breakdown of the various purchases, is that correct? The purchases of Firestone, the purchases of Goodrich? (3159) A. Yes, sir.

Q. Do you have those readily available? A. By readily available do you mean here, with me? No, sir.

Q. Not here in the room. In the office? A. Yes, sir, I have them in my office.

Q. Am I right in this: Do you get a monthly report or semi-annual report on purchases? A. Get a monthly report of sponsored tire company products. And that is in addition to my salesman's report of total TBA.

Q. And that report comes out of the Denver Division office, is that correct? A. Yes, sir.

Q. When you get that report out of the Denver Division office isn't it summarized for you? A. Totalized?

Q. Yes. A. It is totalized; yes, sir.

Q. Is it totalized by product? Tires, batteries, and then accessories? A. Yes, sir.

Q. Is it also totalized or itemized by individual stations? A. Yes, sir.

Q. Did you say that you received these reports monthly? A. That is in the Division office from my salesmen?

Q. From the Division office first. (3160) A. Yes, sir, I receive those monthly.

Q. In what form are they here? A. It is an IBM form. It is a form out from the running of IBM cards, I should say.

Q. It is not a series of holes. It is printed information? A. Right.

(3161) Q. How long is one of those reports usually? One page, two pages, ten pages? A. I couldn't say. Several pages.

Q. So that if you wanted to note the purchases for any given station over a year's time, you would only have to look at the previous 12 reports that you received. Is that correct? A. That wouldn't include total TBA, no, sir.

Q. It would not? A. No, sir.

Q. If they give you a monthly summary, and if they show the names of the stations— A. That would show what they purchased from Firestone and Goodrich.

Q. So by adding the total shown on each of these 12 reports—one a month—12 months, each report would show the amount purchased by each station? A. Yes, sir.

Q. Then it would be a simple matter of addition, would it not, to determine how much each station purchased over a year's time? A. Yes, it would be a simple matter of addition. The information is not necessary to me in the operation of my zone.

Q. I appreciate that. But you do have that readily available. (3162) A. I have it available.

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Q. Did you say you had three salesmen in all? (3163) A. Yes, sir.

Q. What do these salesmen do to assist Goodrich and Firestone in the sale of TBA products of those respective companies? A. It is not necessarily they assist Goodrich and Firestone. They assist the dealers assigned to them in the merchandising of TBA products.

Q. Do they recommend that the dealer buy something other than Goodrich and Firestone? A. They primarily recommend that the dealer buy either Goodrich or Firestone.

Q. So that is one way that they assist in the promotion of the sale of Goodrich or Firestone, is that correct? They recommend those two brands? A. That is an assistance, sure, because of distribution and supply and advertising a national brand.

Q. What else do they do for them? A. What do they do for the dealer?

Q. No. What do they do for Goodrich and Firestone? A. Well, indirectly it helps Goodrich and Firestone because they assist the dealer in preparing his station to display TBA products; they offer him the help of teaching him how to sell TBA products; they help him with the display of his merchandise in the office; they incorporate, if they can, they suggest the use of an inventory control system so that the (3164) dealer's TBA inventory doesn't become bulky and unwieldy and thus result in financial loss because of over-stocking.

Q. Does the Texas Company make any recommendations as to where advertising will go in the station? Do they do it in this area? A. Where advertising will go?

Q. Yes. Advertising of TBA products? A. No, sir. We suggest that the dealer prominently display any advertising that would help sell any of our products or any TBA he might be handling.

Q. Are the dealers restricted to window banners or signs? A. The dealers are not restricted, sir.

Q. What about these large signs—I have seen Goodrich and Firestone, for example. Who hangs those? Does the rubber company hang them or does Texas hang them? A. No, I believe—in fact, I know both companies have a

sign wagon or someone who goes around and puts up the sign.

Q. When you say both companies, you mean Goodrich and Firestone? A. Yes, sir.

Q. So that the rubber company hangs their own sign? A. In most cases, yes, sir.

Q. Are there any cases where Texas does it? A. No, sir. Sometimes the dealer requests a sign from a certain company and he places the sign.

(3165) Q. What does your office do when you open a new Texaco station or change operators in a station? A. Regarding what?

Q. In regard to notifying Firestone or Goodrich of the impending opening of a new station or appointment of a new operator. A. Well, in an initial interview with the prospective dealer we recommend the use of either Firestone or Goodrich, a nationally advertised company.

Then if the dealer feels that he would like to carry those lines we then call the tire company he selects and arrange an appointment. Or we tell the dealer the man to see and then we call the company and tell them this man is apparently interested in your products and we suggest the tire company contact him.

Q. During the time of that initial contact is the representative of either Goodrich or Firestone present? A. No, sir. See, this is the original interview, where one of my salesmen bring a man to me after—can I explain it?

Q. Yes. A. The salesman makes the first contact with the dealer-applicant. If he is satisfied the man would make a good service station operator, a good businessman, and an attribute to the community, and that he has sufficient finances, and that he himself would want that man operating the station, (3166) then they come to me for sometimes the final interview.

Q. Do you sometimes have two, three, or more applicants for a station? A. No, not any more. It is tougher now. It is tough to get dealer-operators, in this particular area. I don't know how it is in other areas.

Q. How long has that been the situation? A. I would say since Continental Can moved in here, about three years ago, and other industries followed.

Q. After you have had your first interview with the applicant, at which time you recommend Goodrich or Firestone, and he makes a choice, then does a rubber representative accompany your salesman to meet the operator? A. Accompany our salesman?

Q. Yes. One of your salesmen—does the salesman accompany the rubber company salesman? A. It could happen.

Q. As a matter of fact, doesn't it usually happen? A. No, sir.

Q. Isn't it a matter of courtesy to bring a stranger in to meet a friend? A. It might be a matter of courtesy, but it doesn't happen that way one way more than it does the other way, I would say.

Q. Do you notify each of the rubber companies or one of them that prospectively there will be a new station at such (3167) and such location? A. In conversation the information is given to them. Actually, apparently the rubber company salesmen are on the ball enough that they know, too, when a station is going up. And generally they call and we discuss the matter. Or if I happen to meet the man I would say "We are going to put a station up at so and so."

Q. When you say meet the man, you mean the Goodrich or Firestone representative? A. Yes, sir.

Q. Are you in charge of the bulk plant? Is that within your jurisdiction? A. It is within my supervision. We

have a bulk plant agent. That is an operating part of the Texas Company. It covers distribution and supply. That agent—I am responsible for the bulk plant through him.

Q. These three salesmen that you mentioned, are they the same three salesmen who work out of the bulk plant? A. Yes, sir. I would like to clear up a point on the bulk plant. In my particular area I have two company-owned bulk plants other than Omaha that are operated by consignees.

Q. Where are they? A. Fremont and West Point. Of course, my only activity there is to supervise the company properties.

Q. They are Texaco owned bulk plants operated by consignees? (3168) A. Yes, sir. They are independent businessmen, as are our dealers. But because they are in company-owned properties, then I have to watch over the property.

Q. Are they in the TBA business, too? A. In what way, sir?

Q. Do they handle—consignees handle TBA products, do they not? A. These two do not.

Q. They do not? A. No, sir.

Q. I have heard it said that this area operates a little differently than Chicago. Is that so? Do you know whether or not that is so? A. I can't tell you, sir, because I have no way of knowing how Chicago operates. It is a different division. We all have the same policies. I can see no reason why we wouldn't operate the same as far as the policies are concerned.

Q. Are you responsible for the performance of these three salesmen? A. Yes, sir.

Q. And do you have sales meetings from time to time? A. We have informal sales meetings about once a week. Every Saturday morning.

Q. What is the purpose of the sales meeting? A. Well, to discuss any letters of policy that come to us (3169) during the week, or letters of instruction concerning their particular job, or they present any problems that they might have incurred during the week that they have been able to hold over until Saturday, and we discuss those problems.

Q. Anything else? A. Well, if I have been successful or through the real estate department we have been successful in signing a new location for a service station, that information is generally given to the salesmen so that they can make preparations to begin hunting for a dealer if it is in their respective area.

Q. Is that the normal method of obtaining a new dealer. Are they that hard to find? A. I have had a brand new station closed since the 23rd of November because we couldn't find a dealer. And it is still closed today. We have done everything that we can. Apparently we haven't, because we don't have a dealer.

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(3170) Q. Do your salesmen work on any sort of a bonus arrangement? A. They secure, or they can qualify for a bonus every six months on lubricating products only. That is, oils and greases. Then the merchandising salesman can secure a bonus on gasoline sales.

Q. How about yourself? Do you get a bonus of any type on overall sales? A. I work on the same thing as the general salesman, on lubricating oils and greases only, not on gasoline.

Q. And TBA? A. There are no bonuses paid on TBA.

Q. How do you rate your salesmen's performances? A. This through-put report that I get gives me a pretty good indication of what the man is doing so far as the

record is concerned. And I make visits with him to his station to see how he talks with the dealer, approaches a dealer, and see if there are any things at the station that he has overlooked in the way of housekeeping, cleanliness, service to the customers, service on the island.

Q. What is this through-put? A. Through-put is the amount of product that goes through a station in a certain period.

Q. And the salesman reports on those items together with housekeeping problems? (3171) A. No. The through-put report to me covers only gasoline sales, oil sales, grease sales, and total TBA sales.

Q. On those total TBA sales, do they show a breakdown of sponsored products and non-sponsored products? A. No, sir. That is the total TBA sales made by the dealer, taken from his books.

Q. These reports come from the dealers? A. They come from information from the dealers. We go to a dealer and we ask him, in order to help us help you, would you maintain a record of your total sales of gasoline, lubricating oil, greases, and total TBA, and have that information available for us at the end of the month?

Q. And they make such monthly reports to your salesmen? A. It is no report. The salesman goes around and asks have you got those figures, and most dealers will give them to us.

Q. Do they write them up or recite the figures? A. They just recite the figures off of their books apparently.

Q. What does the salesman do with the figures? A. He puts them on a list with other stations in his area and turns them over to me, yes sir.

Q. What do you do with them? A. I look at the report and see if we have had increases or decreases at that particular station?

Q. Do you forward them to the division headquarters? (3172) A. The original of the report goes to the division headquarters. I only have a copy.

Q. In the event a salesman's sales are not up to par, what you consider par, what do you do then? Take petroleum. How do you base your quota for the year, for example? A. On petroleum?

Q. Yes. A. The Denver division office establishes at the beginning of the year the objective, percentage of increase that they feel we ought to shoot for.

Q. Is that usually higher than the preceding year? A. Yes. We couldn't progress if we didn't have it higher.

Q. And the same is true with lubricating products? A. Yes, sir.

Q. And TBA products? A. Yes, sir.

Q. When the salesman fails to meet the standards that have been made—did you say the division office is the one that sets these so-called standards, the quotas? A. For salaried personnel, yes, sir. For all other personnel they establish their own objectives.

Q. What are your duties in regard to seeing that they maintain or attain those quotas as they have been set? A. Actually, I have the same percentage of increase to shoot against, so it is to my interest that my salesmen perform (3173) in such a manner that they make their increases and then I can make my increases.

* * *

(3174) Q. Getting back to the salesmen, what do you do to spur them on to meet their quotas so that you will meet your quota? A. Well, in these informal sales meetings we discuss methods of merchandising, methods of helping a dealer sell more. If a man is having a hard time making his objectives in lubricating oils and grease and

gasoline, I go through his through-put report and find out where his bigger losses are, and ask him what he is doing to correct that condition, and try to help him to correct the condition.

(3175) Q. Do the salesmen sometimes have dealer meetings? A. The salesmen, yes, sir.

Q. Station operator meetings? A. Yes, sir.

Q. How often do they have them? A. They try to have them every 60 to 90 days.

Q. Where are they usually held? A. Previous to the time we built the new bulk plant in Carter Lake, we held them in hotel rooms, generally the Rome Hotel.

Q. Can you give me some idea of what those meetings consisted of? Were all Texas station operators invited to that? A. All in that man's particular area.

Q. All these individual salesmen run their own meetings? A. Yes, sir.

Q. Do each of the salesmen run such meetings? A. Yes, sir.

Q. So that every 60 to 90 days there are about 3 such meetings? A. I should qualify that. The general salesman generally works his meeting in with one of the other merchandising salesmen.

Q. So it is a combined meeting then? A. Yes, sir.

Q. What is the main purpose of the meeting with the Texas (3176) operators? A. The main purpose of course is to improve sales by whatever help our division office furnished us in the way of educational films, product films, product information, possibly new campaigns that are coming up like the spring change-over campaign in the spring, the fall change-over campaign in the fall. We show them the banners and the pamphlets that we are going to issue to them to put up at their station or give out to their customers.

Q. So that is the result, is it, of your discussing quotas with the salesmen in order to spur sales, meet quotas, and they in turn talk to the station operators, and the station operators then get at the public somehow? A. Yes. But I don't think our salesmen tell our dealers the objective that they have. We ask the dealer to set his own objective in sales because we feel that any man in the sales organization, whether he be a dealer, a salesman or a zone manager, should have something to shoot for.

Q. But if you can convince the operator that he should be energetic, and he is, that certainly accrues to the benefit of the salesman and in turn to your benefit. A. Sure.

Q. And right on up? A. Yes.

Q. Suppose the salesman, despite all your encouragement, (3177) fails to meet his quota. What happens then to the salesman? A. That has happened, and nothing has happened to the salesman.

Q. Do you mean that you just go on carrying dead weight on the rolls? A. No. We are able to improve his position to the extent that it is not a problem.

Q. You improve that with every salesman? A. Well, I personally haven't recommended that any salesman under me be fired?

Q. Have they all made their quotas? Is that the reason? A. They have made a good share of their quotas and proved to me that they are energetic enough and trying hard to complete the program.

Q. Isn't it possible that possibly the objective might have been set too high? Would that feature enter into it? A. Sometimes I think all of our objectives are too high.

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(3178) Q. Does the salesman make any reports to you about the activities or appearances at a station? A. Only where that might be a matter of me approving budget

expenditure for improvement of the physical properties to relieve that situation.

Q. To relieve what situation? A. Well, the situation you described that might be improper. I am not sure that I understand your question.

Q. Improper probably was the wrong word. The point I am trying to make is, do these salesmen act as a sort of supervisor over the station. Texaco expects a station to observe a certain standard of cleanliness, conduct, and so on. Is that correct? A. We feel that good housekeeping, good records, good business management, good hours of operation, are necessary to the success of any service station.

Q. Surely. And you do not personally go around and look under every nook and cranny in a station or observe every station. You depend on your salesmen for the information. A. Primarily I make periodic inspection trips. I shouldn't say inspection. All I am doing is going in with the salesman to see how he acts in front of the dealer. At the same time if I see anything that I feel is not good business at the (3179) station, I don't make a point of it at the station. When we get back to the bulk plant we discuss that.

Q. But you have, I am sure, released operators. A. Released?

Q. Yes, That is, recommended that their lease not be renewed, or cancelled them out at the end of the term. A. I sure wouldn't now on account of the dealer shortage. But in my experience in this area, I know of only two leases that have been cancelled, and they were not for the reasons you have described.

Q. What were the reasons? A. One was for proven dishonesty of the dealer in dealing with his customers. The other was because of financial failure of the dealer.

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(3180) Q. What are your salesmen's responsibilities in so far as stations are concerned? A. The prime responsibility of the salesman so far as stations are concerned is to see that that station succeeds.

Q. Do your salesmen report things that go on about the station that do not meet with their approval? A. I would like for you to qualify it. But may I offer this.

Q. Surely. A. At one particular station we were having trouble apparently with hot-rodding, boys pulling into the station and the hot-rod artists, and the neighborhood was complaining. That (3181) matter was brought to my attention. Is that what you would like to know?

Q. Yes. That type of thing. My point was that the salesman was the one who brought it to your attention. A. Yes, sir. In that particular case the neighbor brought it to my attention, too.

Q. Does the salesman have authority or does he ever recommend the promotion, so to speak, of a station operator? In other words, from one spot to another, because it might be a choicer location? A. A change?

Q. Yes. A. We encourage that. We encourage the salesman to always be aware of the potentialities of a station. If a man is in a one-bay station and he is financially capable of and we feel could successfully operate a two-bay station or a highway account or a bigger station, we encourage that.

Q. Can a salesman do the reverse? In other words, if there is an operator in a good, beautiful station and he doesn't think the operator is conducting the business properly, could he recommend that he be put in a smaller station? A. He could. It would occur to me that that would occur only where the man's finances were not large enough to take care of the station that you speak of. We try to take care of the dealer and put him in a particular line

where his (3182) finances would allow him to operate freely.

Q. Does a salesman recommend certain improvements about stations? A. To me?

Q. Yes. A. Yes, sir.

Q. Is it at that time that you go around with the salesman to verify the fact that it is needed? A. That is one of the times. If a salesman came in to me and said, "This station needs an additional lift," I would surely get there just as quick as I could to investigate for myself.

Q. Or black-topping possibly? A. Yes.

Q. Or a paint job? A. We generally leave that up to a salesman. They can tell when a station needs to be painted.

Q. They can order the job on their own authority? A. They can tell me that they are going to have this particular station painted, and approximately the cost. So I can check and see if I have enough budget to handle that.

Mr. Dias: I believe that is all.

Cross-examination by Mr. Lorenzen:

Q. Mr. Burgess, you testified that these merchandise (3183) salesmen spent about 10 or 15 percent of their time in connection with some phase of TBA, and the general salesmen between 5 and 10 percent of their time. Does that have any relation to the fact that the merchandise salesman is assigned primarily to service stations and the general salesman handles also other accounts which don't deal in TBA? A. Yes, sir.

Q. You testified that one of your duties in this position had to do with interpreting the policies as given you by the Denver office. I just want to get that cleared up a little bit, your use of the word "interpret."

Do you mean that you pass those policies along to others? A. Well, in matters of policy my salesmen prob-

ably received a copy of that policy, too. We gather together and review the policy so that there is no misunderstanding.

Q. And do you have anything to do with passing the substance of the policy in so far as it doesn't concern purely the internal operations of your company to the gentlemen who are the dealers and operate service stations for the company? A. Well, I would do that primarily in my final interview, the final interview of the dealer-applicant, yes, sir.

Q. And you do at that time tell him about the company's policy? A. Yes, sir. I attempt to in every case.

Q. Do you tell him anything about TBA? (3184) A. Not as such. I tell him that he is an independent businessman, and as an independent businessman should consider himself the sole manager responsible for that station.

Q. Was that one of the policies which was sent down to you from the Denver office? A. Yes, sir, that has come to me as a policy.

Mr. Lorenzen: I ask to have these four documents marked for identification, please.

The first is a letter dated June 9, 1946, from C. H. Dodson, addressed to State managers, zone representatives, representatives dealer-service, representative dealer-training, lubricating engineers, salesmen-industrial, salesmen-resale, bulk stations, salaried agents, Denver division.

Hearing Examiner Kolb: That may be marked Respondent's Exhibit 14-A, B, and C.

(The document referred to was marked Respondent's Exhibit 14-A, B, and C for identification.)

Mr. Lorenzen: The next document I ask to have marked is entitled, on page 1, "Denver, Colorado, January 14, 1952, Circular Letter Number 355, ad-

dressed to State managers, Denver division," with copies to dealers' service representatives, lubrication engineers, salesmen-industrial, salesmen-resale, and bulk plant agents. Physically annexed to this document is a letter dated January 3, 1952, from the Chicago office, entitled "Circular Letter Number 355." This letter (3185). is dispatched to the division managers.

Hearing Examiner Kolb: That will be marked as Respondents' Exhibits 15-A to E.

(The document referred to was marked Respondents' Exhibits 15-A through E for identification.)

(3186) Mr. Lorenzen: The next document is entitled "Denver, January 7, 1954, Circular Letter No. 389," addressed to station managers, zone managers, Denver Division, with copies to dealers, service representatives, lubrication engineers, all salesmen, and bulk plant agents.

Hearing Examiner Kolb: That will be marked Respondents' Exhibit 16-A to E.

(The document referred to was marked Respondents' Exhibit 16-A to E for identification.)

Mr. Lorenzen: The last one of the set is dated Denver, December 12, 1955, addressed to zone managers, representatives' dealer training, dealer service representatives, merchandising salesmen, general salesmen.

Annexed to it is a two-page printed document entitled "Texas Company TBA Program."

Hearing Examiner Kolb: That may be marked Respondents' Exhibit 17-A, B, and C.

(The document referred to was marked Respondents' Exhibit 17-A, B, and C for identification.)

M. E. Burgess, for Commission—Cross

By Mr. Lorenzen:

Q. Mr. Burgess, I show you a document which has been marked Respondents' Exhibit 14-A for identification and ask you whether that is a document which you received in the course of your employment by the Texas Company? A. Yes, sir.

(3187) Q. And at that time you were a salesman and not a zone manager? A. That is right.

* * *

Q. I show you a document which has been marked Exhibit 16-A through E for identification and ask you whether you received that document and, if so, in what capacity? A. I received this document as a zone manager in Omaha.

Q. I show you now a document which has been marked 17-A through 17-C for identification and ask you whether you (3188) received that document, and if so in what capacity? A. This is the Texas Company's TBA policy. I received this as zone manager and I carry this in my sales development book, as do all salesmen.

Q. Do these documents, 14 through 17, and the various pages marked in each, constitute a part of the policies of the Texas Company which you told Mr. Dias on direct examination it was your duty to carry out? A. Yes, sir.

Q. And have you carried out those policies to the best of your ability? A. Yes, sir, I believe I have.

Q. You testified that there was no one assigned to Omaha who had to do specifically with TBA. Just let me ask you, so we will get this cleared up: There is a chap up there in Denver who has to do with TBA and he sometimes comes down here to help you. Isn't that so? A. Yes, that is right.

Q. What is his name? A. D. B. Underhill.

Q. What is his title? A. I hate to appear dumb but I can't tell you his title.

Mr. Dias: TBA representative?

By Mr. Lorenzen:

Q. Would it be TBA representative? (3189) A. We are glad of his help, I want to assure him.

Q. He does come down here and help you at times about this situation? A. Yes, sir.

Q. I want to go a little more into this salesman's through-put report, particularly so far as it concerns TBA. As I understand it, that report has on it only the total sales or through-put of TBA in the station? A. Yes, sir.

Q. It isn't broken down to show how much Firestone, how much Goodrich, or how much Goodyear, or how much Sidle Company or how much Anderson's Company, anything like that? A. No, sir.

Q. It has just a total figure. A. A total of the TBA sales through that station for that month.

Q. Let me ask you this: Are those figures at cost to the dealer or are they what the dealer tells you he sold the merchandise for? A. They are his sales figures because they come directly from his adding machine tape or business records.

Q. The IBM records which you get from the Denver Division showing sales on which commission is paid are the cost to the dealer and not his sales price of that merchandise, is that right? (3190) A. Yes, sir.

Q. So that those figures are not comparable? A. They are not comparable anyway because the station sells a considerable amount of TBA.

Q. Do you mean in addition to the sponsored line? A. Yes, sir.

Q. And you know that of your own knowledge? A. Yes, sir.

Q. And you have known that right along? A. Yes, sir.

Q. And the dealers about whom you have known that have not been cancelled by you, have they? A. I have already testified, sir, I have only recommended cancelling two leases.

Q. Have you ever recommended the cancellation of a dealer about whom you have known that he has sold TBA other than the sponsored line? A. No, sir.

(Discussion off the record.)

* * *

(3191) Q. Among other efforts you make to obtain dealers you do advertise in the newspapers? A. We advertise in the Omaha World Herald. That is not too successful, and we only do it for this reason primarily: That station, that newspaper has such wide circulation throughout the area surrounding us that I feel we could pick up prospects in small towns. We hunt for our dealers here.

Q. On these objectives which the Denver Division sets, I take it over the course of the years sometimes you make them and sometimes you are below them and sometimes you may even do better? A. Yes, sir.

Q. You testified that you made visits with your salesmen and you said that you noted how they acted in front of the dealer. Do you recall that testimony? A. Yes, sir.

Q. In that connection will you let me know whether in your experience as a zone manager here, in connection with these calls which you have made with your salesmen to the dealers, (3192) you have ever observed any salesmen taking exception to or making any threats to one of the dealers as a result of his TBA activities? A. I don't believe so; no, sir.

Q. Do you know? A. I would know. I don't remember it ever happening.

Q. As far as you know that has never happened? A. That is right.

Q. You testified in some detail about the type of help—not help, exactly, but improvements that you made to stations, like the paint job and black top job and how a dealer might need another hoist. Do you recall testifying about that? A. Yes, sir.

Q. Does your recommendation as to whether or not these improvements are made to the station depend in any way upon the TBA habits of the particular dealer who is at that time operating the station? A. No, sir. My recommendation would be on the basis of gasoline gallonage.

Q. Solely? A. Well, if the man needed a new hoist I would have to show the Denver Division that he had sold more oils and greases than a station with one hoist would ordinarily sell.

Q. So it depends in that case upon the oils and greases? (3193) A. Yes, sir, gasoline oils and greases.

Q. Except for gasoline oils and greases does it depend upon the dealer's TBA habits at all? A. TBA habits in connection with the addition of a hoist, we pay no attention to it. The only time the TBA could come in is if we were going to put in a second hoist, we want to be sure we put in a free-wheel, if they are a roll-on hoist, because it is easier to change tires on a free-wheel hoist rather than roll-on.

Q. You mean indirectly if you gave him that kind of hoist he would be able to sell somebody's TBA better? A. That is right.

Mr. Lorenzen: That is all that I have.

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Redirect examination by Mr. Dias:

Q. You mentioned that Underhill, the TBA representative, renders some help on your TBA sales? A. Yes, sir.

Q. How much help does he give you? A. How much help?

Q. Yes. How often do you have him over? A. I don't have him over. He is assigned by somebody else. (3194) He just comes into my territory whenever somebody sends him here. I suppose if I had a problem I could write to Denver and ask for him. But that hasn't occurred.

Q. Does he just sort of patrol around various sections of the division?

Mr. Lorenzen: I object to that.

By Mr. Dias:

Q. Does he sort of free-lance around? A. He covers the Denver Division which includes five states and a part of another—four states and a part of another.

Q. He is assigned to no place in particular? He just goes from here to there? A. He headquarters in Denver and goes from here to there.

Q. Does he spend all his time on the road? A. I couldn't say that.

Q. When he is working in your territory do you know about it? A. Sometimes I do. If I am in town I know about it. Sometimes I return to my headquarters point and find that he has been here and gone.

Q. You sometimes find out that he has been here and you were in town and didn't know about it? Does that sometimes happen, too? A. If it happened I wouldn't know about it.

Q. Had you heard about it later? That is not quite as foolish as it sounds. (3195) A. I didn't mean to make fun of the question.

Q. Have you ever been in town and later got word that he was in town or in your area the same time that you were in your office and you still didn't know about it? That is my question. A. I can say it might have happened; yes, sir.

Q. I did forget to ask before: Who is your state manager? A. Mr. F. F. Collman.

Q. Do you know the name of the Lincoln zone manager? A. The present zone manager is George C. Holtorf.

Q. You say "present". He has been in that position only a short time? A. I believe he came in there September or October of last year; yes, sir.

Q. You said that your salesmen have never made any threats to these station operators in your presence. Have they ever done any persuading in your presence? A. How do you mean, persuading?

Q. Have they atempted to sell TBA products, Goodrich or Firestone? That is promote the sale of? A. They have attempted to sell the dealer on the fact that he must be in the TBA business to make a success of that particular station.

Q. Is TBA important to a station operator? A. Frankly, sir, I don't believe a station could long (3196) survive without TBA sales.

Q. Then your statement that TBA habits have no bearing on improvements isn't quite accurate, is it? In other words, if a dealer weren't handling any TBA products you wouldn't be apt to make an improvement on the station, or recommend them? A. I have painted some grocery store accounts that handle gasoline and oil only.

Q. But those are unusual type stations, aren't they? They are not gasoline stations in the true sense of the word? A. No.

Q. I am talking about a regular gasoline station, as we know them, generally speaking. If he does not handle any TBA, are you apt to recommend improvements on that type station? A. Any kind of TBA?

Q. Yes. A. I have no station that doesn't handle some kind of TBA, to my knowledge, other than the grocery store account that you have ruled out.

Q. Then your statement is inaccurate, that TBA habits have some bearing on improvements?

Mr. Lorenzen: I think in its context, Mr. Dias, that question was asked in connection with whether he bought Firestone or Goodrich or from Sidle or Anderson or from (3197) some other supplier.

Mr. Dias: Same context as my question. I said any TBA. I am not talking about sponsored.

Mr. Lorenzen: That is right, but I think that was not his answer in its context. His answer said it didn't make any difference from whom they bought their TBA as to whether they got the paint job or the extra hoist or the blacktop.

Mr. Dias: I thought I copied the answer verbatim.

Mr. Lorenzen: You can ask him.

The Witness: If you can read it back I will tell you. But I can tell you now it doesn't make any difference whether a dealer is handling sponsored or unsponsored TBA products. That has no bearing on whether he gets his station painted or any improvements that might be within my budget.

By Mr. Dias:

Q. But you do agree that he should handle some sort in order to make a living? A. Yes, sir.

Q. Do you have any idea of what this TBA representative does when he goes to your territory? A. Well, I be-

lieve he goes to the local offices of the tire companies for some reason. I know that he contacts my salesmen if I am out of town and asks them if they have any problems concerning the merchandising of tires, batteries, (3198) and accessories. I know that he offers his services to me for the same purpose if I feel I have any problems concerning the sale of TBA products, merchandising and display.

Q. Does he make scheduled appearances in your territory? A. Not to my knowledge. They might be scheduled to him, but they are not to me.

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Recross examination by Mr. Lorenzen:

Q. Have you ever had a report that while Mr. Underhill was in town and you didn't know about it ahead of time, or while he was here, that he had any conversation with any salesman or dealer which was contrary to the policies of the Texas Company as you understood them? A. I have had no such report; no, sir.

Mr. Lorenzen: That is all.

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(3200) GLEN CRAMER was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name and business address for the record? A. Glen Cramer, 1621 "M" Street, Lincoln, Nebraska.

Q. And the name of your employer? A. Sidle Company.

Q. What is your position in the Sidle's company? A. Salesman.

Q. How long have you been a salesman for Sidle's? A. About four years.

Q. Will you describe the territory that you cover for Sidle? A. The city territory in the town of Lincoln.

Q. Will you describe briefly the brand, specify the brand of tires that you sell for Sidle? (3201) A. Siberling tires.

Q. And batteries? A. Delco batteries.

Q. And a few of the more common accessories such as filters? A. We carry AC and Fram filters.

Q. Radiator hose and belts? A. Belts, Gates.

Q. Spark plugs? A. AC.

Q. Do you carry a full line of accessories in addition to those that we specified? A. Yes, we do.

Q. What other products do you carry? A. We carry all Perfect Circle rings and Prestone anti-freeze, Kendall oil, and all hard parts concerning cars.

Q. Can you give us an idea of a few of the items that are considered hard parts? A. Well, like your pistons and rings and connecting rod bearings, transmission parts, clutches.

Q. How do you designate mufflers? A. That is more an accessory.

Q. Shock absorbers? A. Shock absorbers.

Q. Do you carry both of those? A. Yes, sir, we do.

(3202) Q. Are there any Texaco and Conoco stations in your sales area? A. Yes, there are.

Q. Can you give us some idea of the number of Texaco stations? A. Four.

Q. Can you give me some idea of the number of Conoco stations? A. Six of them.

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(3203) *By Mr. Dias:*

Q. Do you solicit the business of the four Texaco stations? A. Yes, I do.

Q. Do you sell them any products? A. Some, yes.

Q. What type products? A. We sell them mufflers and tail pipes, some filters, and maybe a few ignition points as they need them.

Q. How many do you sell to? Two? A. No, four.

Q. You sold to all four. Do you sell any of them batteries? A. No.

Q. Do you sell any of them tires? A. No, sir.

Q. Of the six Conoco stations in your area, do you call on any of those? A. Yes, sir.

Q. How many do you call on? A. Four of them.

Q. Have you ever called on all six? A. Yes, sir.

Q. What happened to the other two? A. Well, one is just due to financial status, and one is due to, oh, he is more interested in I think possibly the cafe business he has adjoining.

(3204) Q. You mean they are not interested in TBA? A. No.

Q. Of those four that you sell to, do any of those stations buy your TBA products? A. Just as they need them.

Q. What products do they buy? A. They buy mufflers and tail pipes, ignition points, a few spark plugs, occasionally stop-leak for specific calls—radiator stop-leak.

Q. Do you handle any oil additives or oil products? A. Yes, sir.

Q. Which brand? A. We have Rislone, Casite.

Q. Those are additives? A. Yes.

Q. Did you handle any oils? A. Kendall oil.

Q. Do you sell any of those items to the Texaco stations? A. Yes, we sell a little Rislone, one or two buy some Rislone.

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(3206) Q. Returning to the Conoco stations, Mr. Cramer, do you sell any of them any tires? A. No, sir.

Q. Do you sell any of them batteries? A. No, sir.

Q Of the four Conoco stations, how many buy regularly? A. Three of them.

Q. How often did you make your rounds? A. Weekly.

Q. And of the four Texaco stations, how many buy regularly? A. About two of them.

Q. And do you call on those weekly, also? A. Yes, sir.

Q. The two that do not buy regularly, how often do they buy? Can you give us some idea? A. Well, it varies, depending on how much business they are doing. If they happen to want something immediately for a car that they are working on right then, they buy only when they need something at the time.

(3207) Q. And their purchases at that time, what do they consist of? A. It would be points or possibly a muffler or tail pipe.

Q. Can you give us some idea of the volume of sales to the four Texaco stations? A. Not unless—

Q. In the past year. A. I would estimate it about $200 per month for the four.

Q. Total for the four? A. Yes.

Q. Does that represent normal sales to those stations? Were your sales ever higher to those stations? A. No, they haven't been since I have been in the territory.

Q. In reference to the Conoco stations, can you give us some idea of your monthly volume of sales to the four that you sell to? A. It would run just about the same.

Q. Does that represenf a decline or an increase in business? A. That represents a decline.

Q. When did you sell them more products, or a greater volume? A. In 1955.

Q. Do you have some idea of what your monthly volume was then? A. Close to almost $500 a month.

(3208) Q. Over how long a period would you say that was so? A. I would say for approximately two years before. I can hardly recall.

* * *

Cross-examination by Mr. Barton:

Q. Mr. Cramer, Sidle is not the only seller of automotive parts and accessories in the Lincoln area, is it? A. No, sir.

Q. Ben's Auto Parts is a competitor of yours in that area? A. Yes, sir.

Q. And Hinkeljoy's hardware is a competitor? A. Yes, sir.

Q. And L. J. Messer Company is a competitor? A. Yes, sir.

Q. And F. D. Silson Sales Company is a competitor? A. Yes, sir.

Q. And Carl A. Anderson, Inc., is a competitor? A. Yes, sir.

Q. And Moore's Central Supply is a competitive jobber, isn't it? You don't run into them, I take it. A. No, sir. I don't think so.

Q. And Clover Auto Supply? A. Yes, sir.

(3209) Q. You run into all of these in your area competing with you in selling to these stations, don't you? A. Yes, sir. That's right.

Mr. Barton: That is all.

(3210) *Cross-examination by Mr. Lorenzen:*

Q. Will you give us the name of the four Texaco stations in Lincoln to whom you sell? A. Harris Texaco.

Q. What is the location? A. 11th and "J." Harris Eseuler is his full name—E-s-e-u-l-e-r.

Q. That is one of them? A. That is one of them.

Q. You have some more? A. That's right.

Q. Will you give us the names of the others? A. Larry O'Brien, who doesn't buy too much from me. He is at Tenth and South.

And what used to be Eckhart Texaco but has changed hands now and I can't think of the man's last name now. It is at 13th and "F" Streets.

Q. Charles Sterner, would that be the name? Also Martin Texaco.

Q. Is that at 10th and "L"? A. That's right.

Q. And some other salesman also functions— A. In the City.

Q. (Continuing) —in the City? A. That's right.

(3211) Q. You heard Mr. Barton ask you for the names of your competitors. Of course, you don't know how much each of these stations buys from some of these other companies— A. No, sir.

Q. (Continuing) —that Mr. Barton mentioned.

Mr. Dias: I object. There is no testimony that they buy from them.

Mr. Lorenzen: He said he didn't know.

Hearing Examiner Kolb: Objection overruled. The answer may stand.

By Mr. Lorenzen:

Q. You said you didn't know? A. I don't know.

* * *

(3212) *Redirect examination by Mr. Dias:*

Q. Do you know who Judah Distributor is? A. Yes, sir.

Q. Will you tell us what it is? A. He is the B. F. Goodrich distributor and also has been in business for sometime in the wholesale trade.

Q. In addition to those companies that were named on cross-examination as being competitors, do you also compete with Judah Distributing Company? A. Yes, sir.

Mr. Dias: That is all.

* * *

(3213) CLIFFORD BACKENCAMP was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name and business address for the record? A. Clifford Backencamp, 1621 "N" Street, Lincoln, Nebraska.

Q. By whom are you employed? A. Sidle's Company.

Q. In what capacity? A. Salesman.

Q. How long have you been so employed? A. A year and a half.

Q. What is your territory, Mr. Backencamp? A. All of the east part inside the City limits of Lincoln.

Q. Are there any Texaco and Conoco stations in your sales area? A. Yes, there are.

Q. Will you tell us how many Texaco there are? A. There are—as far as I call on, there are 9 Texaco.

Q. Are there more in the City? In your sales territory, rather? A. Not that I could say right now.

(3214) Q. You call on 9 Texaco, is that correct? A. Yes.

Q. Do you call on them regularly? A. I call on 8 of them regularly.

Q. And the ninth? A. It is a new station. It doesn't pay me to call.

Q. When did that station open? A. It has been opened for a few months now.

Q. Did you try to sell to it when it first opened? A. Yes.

Q. With what result? A. Well, I didn't sell hardly anything except one case of stop-leak that we have, mostly known as.

* * *

Q. Did you sell them any tires? A. No.

Q. Did you sell them any batteries? A. No.

Q. What products were they handling? A. Firestone tires and Firestone batteries.

* * *

(3215) Q. The 8 that you sell regularly, Mr. Backencamp, do you sell them any tires? A. No.

Q. Do you sell them any batteries? A. With the exception of two, there are two of them that I sell batteries to once in a while.

Q. Can you name those two? A. Watts' Texaco and College View Texaco.

Q. How many batteries have you sold to Watts' Texaco in the last year? A. That is—I know of two.

Q. And the College View station? A. Three that I know of there.

Q. Both of those figures were for the year 1956, is that correct? A. For 1956.

Q. How about tires? Do you sell either of those two—you said you don't sell any of them tires? A. No.

* * *

(3216) Q. What brand batteries, if any, do these two stations carry? A. College View Texaco carries Firestone.

Q. And Watts' Texaco? A. Watts' Texaco carries Exide.

Q. On the other five stations that you sell regularly—or is it 6—what products do they buy? A. They buy Fire-

stone tires, Firestone batteries, and part of them, and in part on some of the rest of them, they carry Firestone filters, but some of them also carry other brands.

Q. Is that the situation in regard to those other six that you sell to? A. Some of them, yes.

Q. Can you specify which ones? A. Conover Texaco, at 63rd and Havlock, is strictly Firestone tires, Firestone batteries, Firestone filters, and a number of their shelf items.

Q. What type products do you sell to them? Do you sell to them at all. A. Conover, for instance, I sell stop-leak, radiator cleaner, wheel weights, some AC plugs, and that is about the size of it.

(3217) Q. Can you name the next Texaco station? A. Matthews Texaco, 2304 North 48th.

Q. What do they carry? A. He carries Firestone tires, Firestone batteries, Firestone filters, with the exception of three numbers which he carries in AC.

Q. Do you sell him those? A. I sell him those. That is split between two of us. I sell him part of the time and the other jobber sells him the rest of the time.

Q. Will you explain what you mean by three numbers? A. He carries three numbers of General Motors cars because of customers demanding the type that came on their car.

Q. I don't know anything about this. What do the numbers indicate? A size? A. It indicates a certain size for a certain car.

Q. Do you sell that station anything else? A. I sell him wheel weights, stop-leak, thermostats, and wash mitts—car wash, plus those that I have mentioned before.

Q. Can you name another Texaco station? A. Brown's Texaco is the one I mentioned awhile ago at 53rd or 54th and "O" that I don't call on regularly.

Q. And the next one? A. The next one would be Knudson's Texaco. And that is at (3218) 40th and "A" Streets.

Q. You do not sell him tires. Do you sell him batteries? A. I don't sell him batteries. I don't sell him tires.

Q. What brand do they carry? A. Firestone batteries and Firestone tires.

Q. And accessories? A. They have all the different products in accessories from different jobbers.

Q. What do you sell to him? A. I sell him AC filters, they carry Firestone, AC, and Purolator.

Q. Do you sell them anything else? A. I sell them stop-leak and light bulbs and those AC filters and wheel weights and tube repair material, and points.

Q. What is the next Texaco station that you can name? A. Lyle's Texaco.

Q. Do they buy your tires and batteries? A. No.

Q. Whose tires and batteries do they buy? A. Firestone tires, Firestone batteries.

Q. And accessories? A. They have some of all of them. They have it pretty well scattered out.

Q. What do you sell to them? (3219) A. I sell them a few shelf items like waxes and polishes and stop-leak, and a few hard parts which include water pumps and generators, rebuilt generators and armatures.

Q. Do you have an address on that? A. 33rd and "A".

Q. Can you think of any other Texaco stations? Do you think there are any more in your area? A. Well, there is one at 40th and South that I don't call on. The boys that own it aren't there. Their dad is running it. It is not very substantial.

Q. That will do it.

On Conoco, what are your experiences in connection with Conoco stations? How many are in your territory? A. I think it is 9. I might be mistaken.

Q. How many do you call on? A. Eight. I think it is 8. If it is nine in the territory, I call on 8.

Q. Why is that? A. I have one of them that's just strictly Conoco because of a tie-up with the Company.

Q. Which company? A. With B. F. Goodrich and Continental.

Q. Of those 8, it would be better if you named them. A. Glenn's Conoco, 33rd and Cornhusker.

Q. Next? (3220) A. Do you want both leased and otherwise?

Q. Yes. Any type. A. Krutsinger Conoco, 27th and Holdridge.

Q. Before you go on, what is Glenn's? A leased station? A. That is a leased station.

Q. And Krutsinger? A. That is an independent.

Q. The next Conoco? A. Rhoden's Conoco, 48th and Adams.

Q. Is that leased or independent? A. Leased.

Q. Next? A. Red Wing Service, 48th and "O". That is an independent.

Fleet Wing Service, 5745 "O" Street. That is an independent.

Q. Next? A. Smiley's Conoco, South and Normal.

Q. Is he an independent? A. No, leased.

Q. Next?

Mr. Lorenzen: You asked that question so fast; I don't like to butt into this Conoco thing because I have nothing to do with it, but I do object to the question particularly as to the distinction between leased and independent, because as far as Texas Company certainly goes, everybody (3221) is independent. The policy letters say so and there is no evidence to the contrary. Sometimes we get to using "handles" in these proceedings and they stick even though there is no factual basis for it.

I think once described, a relationship, a legal relationship which is different from leased, I don't think the handle "independent" ought to be attached to it. I would object to the form of the question if it uses that phraseology, even though I do it with hesitancy because I don't want to get into this Conoco thing at all.

Mr. Dias: The only reason I do it is because no one seems to know what a contract station is. I was sidetracked into independent because no one seems to know what a—

Hearing Examiner Kolb: I will overrule the objection. I suggest when you complete the examination you find out from the witness what he means by an independent station.

Mr. Dias: All right.

By Mr. Dias:

Q. That is six. A. The last one was Smiley's Conoco. Mel's Conoco, at 39th and South. That is the one I don't call on.

And then there is Beighley's—I think.

Q. And the address? A. 56th and South.

Q. And the next station? (3222) A. Widick Conoco, at 27th—wait a minute. I can give you that one, too. That is at 27th and Vine.

And Connie's, 27th and "R".

Q. Is that all? A. I think that is it.

Q. What do you understand a leased station to be? A. A leased station is one that is owned or leased from some individual by the oil company, and then re-leased to the man that is running the station.

Q. And your idea of an independent station? A. My idea of an independent station is one that is owned by an

individual and either run by him or somebody that he hires himself and they buy a certain brand of gasoline or oil—gasoline to run through a certain kind of pump. And they can change, could change to another kind if they wanted to.

Q. As to Connie's, is that a station that is owned by an individual or is that a leased station? A. That is a leased station.

Q. And Widick? A. Leased station.

Q. Beighley's? A. Leased.

Q. Starting at the top, Glenn's, do you sell them tires—do you sell any of these people tires, batteries and accessories? (3223) A. I sell Red Wing and Fleet Wing tires.

Q. How many? Can you give us some idea of your volume of business in tires with those two? A. Better on number of tires than a dollar volume.

Q. All right. A. Fleet Wing will run approximately five to ten tires a month.

Red Wing possible two to four tires a month.

Q. Over how long a period has that been the case? A. That has been on an average ever since I have been on the territory.

Q. Are they the only two; or do you sell to others, too? A. That is the only two I sell tires to.

Q. Do you sell any batteries to these stations? A. To the same two stations I sell batteries, plus Krutsinger. I sell batteries to Krutsinger.

Q. Can you give us some idea of the volume there? Red Wing and Fleet Wing and Krutsinger? A. Krutsinger, I probably average a battery a month.

Q. And Fleet Wing? A. Fleet Wing will run about possibly five batteries a month on an average.

Q. Is that Fleet Wing or Red Wing? A. Fleet Wing.

Q. What about Red Wing? (3224) A. Red Wing will run three batteries a month.

Q. Of those Conoco stations that you named, are they the only three that buy any tires, batteries—tires or batteries from you? A. Yes.

Q. Do you sell accessories to all the others? A. Well, yes.

Q. What type accessories, generally speaking? A. Wheel seals and certain products, waxes, polishes, that go on the shelves, for retail, and possible wheel weights, stop-leak, tire repair material. Some of them car washes.

Q. Those stations, other than Red Wing, Fleet Wing and Krutsinger, what brand tires and batteries do they handle? A. They have Goodrich tires, and Goodrich batteries.

Q. Are there any exceptions that you know of, other than those three that you mentioned? A. Krutsinger has Goodyear tires.

Q. You sell batteries to Krutsinger, you sell tires and batteries to Red Wing, and Fleet Wing. Without regard to those three stations, of the others that you mentioned are there any among those that buy—what brand tires and batteries do they buy? A. Goodrich.

Q. All of the others? A. Yes.

(3225) Q. How about accessories? Do you have any idea? A. Most of them handle—all the Conoco stations, of course, handle Fram.

Q. Fram filters? A. Filters.

Q. Do you know who the Goodrich distributor is in your sales territory? A. Judah Distributing Company.

Q. Do you know whether or not Judah is the only Goodrich distributor in your territory? A. I don't know for sure. I think he is.

Q. You don't know? A. I don't know.

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Cross-examination by Mr. Barton:

Q. How many service stations are there in your area? A. I wouldn't want to just pin down an exact figure. Do you want an approximate number?

Q. How many do you call on? A. I call on a total number of accounts, I have 100 accounts—101. I would have to separate them to say just for sure. I have never separated them to pin down to the exact number of stations that I call on.

Q. Do you mean you call on other than service stations? (3226) A. Yes.

Q. What other types of customers? A. Garages.

Q. And would you call on 50 percent of the accounts, service stations and garages in your area, or would it be a higher percentage? A. It would be higher than that.

Q. What would be your estimate of the percentage? A. Of the garages and service stations in my territory?

Q. That's right. A. I call on approximately, I would say 85 percent at least.

Q. So it would be about 125 service stations and garages in your area and you call on 101 of them, is that right? A. Yes. I probably call on a little better percentage than that, then.

* * *

Q. Those 101 accounts that you call on, you don't sell all of them tires, do you? (3227) A. No. Some of them don't carry tires, either.

Q. You don't sell even a majority of them tires, do you? A. Because most of—the biggest percentage in the places I call on are filling stations, and most of them—and the biggest percentage of those are leased, and that is why I don't sell them tires.

Q. Most of them don't handle Siberling tires? A. No.

Q. The Siberling tire is distributed by Sidle's, is it, throughout a very wide area here? A. Yes.

Q. Sidle's is the exclusive distributor of Siberling tires in a four or three state area? A. Yes.

(3228) Q. In your sales territory you are competing in selling to these Texas and Conoco service stations as well as the other customers with Ben's Auto Parts, aren't you? A. Yes.

Q. And with Hinkle-Joyce? A. Yes.

Q. And L. J. Messer? A. Yes.

Q. Who by and large sell the same products you sell, I take it? A. Yes. On the same order products.

Q. Different types perhaps but the— A. The same category.

Q. Same category and different brands? A. That is right.

Q. And the F. B. Wilson Sales Company? A. Yes.

Q. And Carl Anderson? A. Yes.

Q. And Judah? A. Yes.

Q. And Moore's Central Supply? A. I don't know.

Q. You don't know them, either? A. No.

(3229) Q. And Clover Auto Supply? A. Yes.

Q. Are there any others that I haven't named that call on customers along with you? A. Well, I think that pretty well covers most of them.

Q. That is enough, I take it. A. That is a great plenty, yes.

Q. And of course all of them are getting some business out of these retail service stations along with you, aren't they? A. In some stations, yes.

Q. The ones you don't get it in they get it, I suppose? A. Yes.

Q. And where you don't get it they do? A. Each one doesn't buy from too many different jobbers because it gets to be too much of a load to try to keep track of it.

Q. What do you mean it gets too much of a load? A. These guys can't afford to have secretaries and offices to take care of their bookkeeping, so they just simply file it.

Q. Do you mean the service station attendant doesn't have a complete bookkeeping system, so perforce he has to buy from a limited number of suppliers?

Mr. Dias: I object. We have gone beyond direct examination.

(3230) Hearing Examiner Kolb: I believe not. I will overrule the objection.

The Witness: Would you state the question?

By Mr. Barton:

Q. It has been your experience that the service station attendant doesn't have a secretarial staff or an office, and it is necessary for him to somewhat limit his suppliers?

Mr. Dias: I object, your Honor, that is a conclusion of counsel.

Mr. Barton: That was the same question.

Mr. Dias: Not quite, I believe.

Hearing Examiner Kolb: I will let the witness answer.

A. Well, they buy from approximately—most of the guys won't buy from over five or six jobbers.

By Mr. Barton:

Q. And I suppose there are variations even among them on the number? A. It could be, yes.

Mr. Barton: That is all that I have.

By Mr. Lorenzen:

Q. Do you know, of all the Texas stations that you call on, the kind that are leased, when you talked about Conoco. Are they all the leased type station?

Do you want the names? (3231) A. Yes.

Q. Richard Brown, 53rd and "O"? A. Yes.

Q. Don L. Bryam, 48th and Calvert? A. Yes.

Q. F. E. Watt's, 44th and "O"? A. Yes.

Q. And the station you said the father was operating, Heidtbrink? A. Yes.

Q. And Knudson? A. Yes.

Q. And Matthews? A. Yes.

Q. And Sterner—Charles Sterner? A. That is not in my territory.

Q. Did you say you sold him? 13th and "F"? A. No, that is Mr. Cramer.

Q. Lyle Ullstrom? A. Yes.

Q. Do you think that covers them all? A. Yes.

Q. They are all leased? A. Yes.

Q. You said I think that Mr. Watts had Exide batteries. (3232) Is that right? A. Yes.

Q. And you know that because you see them I suppose when you go to call on him? A. I have seen them.

Q. They are on public display with a little stand in front of his station, aren't they? A. The times I have seen them they are along the east wall in his office.

Q. In his office? A. Yes, on the inside.

Q. With one of those stands that has the name "Exide" on it? I guess the battery company gives it to him. Is that it? A. That I couldn't say.

Q. But it was one of those stands? Battery stands? A. They were on a stand.

Q. There is no doubt that they were Exide? You saw that? A. I saw the Exide on the batteries themselves.

Q. In his office? A. Yes.

Q. And by his office you mean the same thing as the sales room? A. Sales room.

Q. The same thing?

(3233) Q. You also testified that quite a few of these people you said bought some accessories from you, and then you said also from all others. I suppose you meant five or six of your competitors? A. I suppose, yes. I don't know which ones and how many each one buys from. But I know that they have bought from other jobbers.

Q. And I suppose among other ways you know that because you see the particular brand name of the merchandise on the shelves when you go in? A. Well, yes.

Q. That would be the easiest way to find out? A. Some of the items on the shelves for retail purposes.

Q. And you associate those with the distributors which are some of the companies called to your attention by Mr. Barton? A. Yes.

Q. And you know who distributes what, so when you see the item you just figure out these fellows must buy from my competitor, is that correct? A. Yes, on a few items.

Q. That is about the way you figure it out? A. Yes.

Q. Would it refresh your recollection any if I suggested to you that you have been selling Siberling tires to Mr. Don L. Bryam at 48th and Calvert? (3234) A. He might have went down to the store and picked some up.

Q. He might? A. Yes, I didn't sell them to him.

Q. And that might also be the case with a few of these others? They might have gone to the store to pick them up? A. That could be.

Q. And you wouldn't know about it? A. I would like to clarify myself there. Once in awhile one of those operators, they do not carry them, they do not have any sign up that they carry them, but they do have customers come in

and ask for them, so they might run down to the store and pick them up.

Q. And when the customers ask for them they come down and get them? A. Yes.

Q. I suppose you are pretty familiar with the Siberling tires, seeing as how you sell them?, Wouldn't you agree with me that general customer acceptance of those tires is down to about one percent of the total market? Just about in that neighborhood? A. That might be if you covered what I refer to as the entire nation or something like that, overall picture of the whole. But as far as our own territory I might say that there was a little difference in that.

Q. You fellows are pretty good salesmen? (3235) A. We think so.

Q. In your experience have you sometimes been maybe too good salesmen and then you have to take some of the merchandise back from somebody who couldn't afford to pay for them? A. I suppose that has happened, yes.

Q. That has happened at times? A. Yes.

Q. Then you have had to, I guess they call it, repossess them? A. I have been pretty lucky so far.

Q. But it has happened in your organization, that you had to do that? A. That is right.

Q. That is because the fellow got over-stocked? A. Yes.

Q. Dollar-wise would you say you did as well or a little better than your fellow salesman, Glen Cramer, who testified, as to how many dollars worth he sold to the four Texaco stations to whom he sold? Would you say you did a little better than he did, maybe? A. On the Texaco stations I would say that my volume hasn't changed any in a year and a half.

Q. He said that, too, and I think he said he sold an average of about $200 a month for the four stations to whom he sold? (3236) A. That would be $50 a month per

station. I would say that that would be awfully close to it, an average of my eight or whatever it was.

Q. That would be pretty close to yours over the average of the year, to all the eight stations. And of course you don't know how much in dollars those stations bought from your other competitors such as the Anderson Company, the Wilson Company, and these other companies that have been mentioned to you? A. No.

Q. You know about the fact that these Texaco stations are leased stations from what? General gossip or conversation in the trade? Or did you look it up or something like that? A. Just mostly the way the fellows who own the stations or run the stations tell you.

Q. You got it from being told? A. Yes.

Q. And you have known that in connection with these stations except the two new ones for a long time, at least as long as you have been in there selling? How long have you been in there? A year and a half? A. A year and a half, approximately.

Q. You have known it substantially throughout that whole time? A. Yes.

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(3237) *Redirect examination by Mr. Dias:*

Q. You were asked several questions about stocking of these brands other than Goodrich and Firestone. Do those stations, Texaco or Conoco stations, have signs or posters in the windows or signs outside, on or about the stations, advertising products other than Goodrich or Firestone? A. Not outside the stations or on the outside of the windows.

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Clifford Backencamp, for Commission—Recross, Redirect

Recross examination by Mr. Lorenzen:

Q. On the inside of the stations they display them in whatever kind of a case the company furnishes them, don't they? I mean the Gates fan belts, they give the dealers a nice-looking sort of a rack with the Gates name on top, and you hang all your belts on there with numbers on them. (3238) Don't you do that? A. Yes, that is inside the station.

Q. That is inside the station? A. Yes.

Q. And a lot of the other products come in, I guess they all come in some kind of boxes with brand names on them, don't they? A. With brand name on them.

Q. And those brand names are displayed inside the stations? A. Some of the products, yes.

Q. I mean there may be some that have no brand names, but those that have it, have it. Let me ask you this: physically is there enough room in the window of one of these filling stations to put up a big poster for every product that these people sell? A. Probably not for all of them, no.

Q. It wouldn't look very nice all cluttered up, either, would it, from the point of view of salesmanship? A. Of course they all work on the same principle, on putting something in the window. They change it from time to time.

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(3239) *Redirect examination by Mr. Dias:*

Q. You were asked whether or not you had ever seen one of these station windows big enough to carry all ads of suppliers? Have you ever seen one that wasn't big enough to carry several ads other than Goodrich or Firestone? (3240) A. You said now that—

Q. Have you ever seen a station, a gas station window, that wasn't large enough to carry more than one ad on it? A. They are mostly large enough to carry more than one ad.

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(3240) GLEN CRAMER was recalled as a witness for the Commission, and, previously having been duly sworn, was further examined and testified as follows:

Direct examination:

Hearing Examiner Kolb: The record will show (3241) Mr. Cramer recalled for further examination, direct examination.

By Mr. Dias:

Q. Will you name the Texaco stations that you sell? A. Name them?

Q. Yes. A. Harris Texaco, 11th and J; Martin Texaco, 10th and L; Chuck Stoner, 13th and F; and the other one I have in my car. It is very rare that he buys anything. It is Larry O'Brien, 10th and South.

Q. Can you tell us what brand tires and batteries those four Texaco stations handle? A. Carry Firestone tires and Firestone batteries.

Q. All four? A. Yes, sir.

Q. Will you name the Conoco stations that you sell to? A. Millard's Conoco, 17th and VanDorn; Peterson Conoco, 17th and M Streets; and Whitey Conoco, 12th and L; Bill Malone's Conoco, 14th and South. He doesn't buy much anymore. And two more I can't think of. Dufoe Conoco, 10th and High. I have another one but I can't think of the name.

Glen Cramer, Recalled, for Commission—Cross

Q. Those five, what brand tires and batteries do they sell? A. B. F. Goodrich tires and batteries.

Q. And the sixth one whose name you can't remember? A. He has the same, B. F. Goodrich.

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(3243) *Cross-examination by Mr. Lorenzen:*

Q. Let's confine ourselves for a moment to something like that, then. Do you ever get in to have a look at Mr. O'Brien's (3244) place of business and see what kind of tires and batteries he has got standing around in his sales room? A. Yes.

Q. And among others they advertise, the brand name is there, on display racks, of Inland tires and Delco batteries. Is that right? A. I haven't been in very recently. There might be at times. I couldn't say.

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(3245) Q. Do you know who sells the Delco batteries and Inland tires in Lincoln? A. We sell Delco batteries, and F. T. Wilson's, also.

Q. F. T. Wilson sells them. Do you happen to know whether in this particular case Mr. O'Brien is a very close personal friend of a salesman by the name of Tracy, I think it is, who represents Wilson and makes regular calls on this chap?

Mr. Dias: How would this witness know that?

Mr. Lorenzen: He is trying to sell this account. He probably knows.

Hearing Examiner Kolb: Ask if he knows.

(3246) The Witness: I know that he calls on them. I know he knows Mr. Tracy but I don't know the relationship.

By Mr. Lorenzen:

Q. You are not sure of the extent to which he buys from him? A. No.

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(3247) VADEN L. O'MARA was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name and business address for the record? A. Vaden L. O'Mara; Carl A. Anderson, Incorporated, Lincoln, Nebraska.

Q. What kind of a business is run by Carl A. Anderson, Inc.? (3248) A. Automotive supplies.

Q. What is your position with that company? A. Salesman.

Q. How long have you been a salesman? A. One year.

Q. What territory do you cover? A. I call on some service stations in Lincoln. Most of my territory is country territory out of town.

Q. What type business do you solicit out of town? A. Mostly independent garages, car dealers, implement dealers.

Q. Service stations? A. Very few.

Q. Do you work on a salary or commission? A. Both.

Q. Are there any Texaco or Conoco stations in your area? A. Yes.

Q. How many Texaco stations are there? A. In town I would estimate between 25 and 30.

Q. Twenty-five to thirty Texaco? A. I would estimate. Out of town I would hesitate to say because I don't call on any.

Q. You don't call on those out of town? A. No.

Q. How many Conoco in your sales area? (3249) A. I would estimate approximately the same.

Q. Twenty-five to thirty? A. Yes.

Q. Are any of these Conoco stations out of town? A. No, I don't believe I call on Conoco stations.

Q. How many of the Texaco stations do you solicit regularly? A. Three.

Q. Do you call on any of the others occasionally? A. I have in the past.

Q. How long ago? A. Approximately from three to six months.

Q. And how many of them did you call on? A. The previous times that I have been out, I would estimate approximately 15.

Q. Why don't you call on them anymore?

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(3250) A. Except for the case of three that on, they really haven't proved to be profitable for me and for my company.

Q. In what way? A. If you aren't selling them any merchandise, it isn't profitable for yourself or for your company.

Q. Were you selling them merchandise? A. Very little, if any.

Q. Of these three that you call on regularly, what type products do you sell them? A. Most of it amounts to ignition, ignition parts, electric parts, carburetors.

Q. Can you name those three Texaco stations? A. Jerry Adams' Texaco—now wait a minute, pardon me. Bob Marten's Texaco.

Mr. Lorenzen: Could we have the address too?

The Witness: Tenth and "L".

By Mr. Dias:

Q. What else? A. Knudson's Texaco, 40th and "A"; Heidtbrink Texaco, 40th and South.

Q. Does your company handle tires? A. No.

Q. How about batteries? (3251) A. Yes.

Q. What brand batteries? A. Auto-Lite.

Q. What brand filters? A. Purolator.

Q. Fan belts? A. Dayton fan belts.

Q. How about hose? A. Radiator hose would be Dayton also.

Q. Spark plugs? A. Auto-Lite spark plugs.

Q. What other type product does your company handle, if any? A. What other type?

Q. Yes. A. Mostly specialized lines, brakes, ignition, carburetion.

Q. How about shock absorbers? A. Shock absorbers.

Q. Mufflers? A. No mufflers.

Q. Tail pipes? A. No.

Q. What products do you sell to Bob Marten's Texaco? A. Ignition parts, spark plugs, some shock absorbers in there.

(3252) Q. Is that all? A. Consistently I would say that would be it.

Q. And Knudson? A. Spark plugs, ignition, fan belts, Auto-Lite batteries.

Q. You do have Auto-Lite batteries? A. Yes.

Q. How many have you sold him? A. I would estimate between 25 and 30 batteries since I have been calling on him.

Q. That is one year? A. Yes.

Q. Heidtbrink? A. Consistently, Purolator would be about the size of it.

Q. Purolator? A. Oil filters.

Q. Anything else? A. Fan belts.

Q. Have you ever tried to sell Marten any batteries? A. Yes, I have.

Q. What brand battery does he carry? A. Firestone.

Q. Sir? A. Firestone.

Q. Have you ever tried to sell Heidtbrink any batteries? A. Yes, I believe I have approached him.

(3253) Q. Did he buy any? A. No, sir.

Q. What brand battery does he carry? A. Firestone.

Q. How many of those Conoco stations do you solicit regularly? A. Two.

Q. Will you name those, please? A. Rhoden Conoco, 48th and I believe it is Adams; and Beighley's Conoco, 56th and South Street.

Q. Have you called on any of the others? A. Yes, in the past I have.

Q. About how many of them? A. Approximately from 10 to 15.

Q. Were you able to sell them anything?

Mr. Barton: Object.

Hearing Examiner Kolb: Objection overruled.

A. Not consistently, no.

By Mr. Dias:

Q. Did they buy anything at all? A. From time to time. But not enough to warrant calling on them consistently.

Q. What type product did you sell to Whoden? A. Ignition, brakes, fuel pump, fittings. Consistently that would be about it.

(3254) Q. Have you ever tried to sell him batteries? A. Yes.

Q. What brand battery do they carry? A. B. F. Goodrich.

Q. What do you sell to Beighley? A. Ignition, carburetion, brakes. That would be just about it.

Q. Have you ever tried to sell them any batteries? A. Yes.

Q. What brand battery do they stock? A. B. F. Goodrich.

Q. Do they carry any other? A. No.

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Cross examination by Mr. Lorenzen:

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(3255) Q. This Anderson Company, its principal line is what you would call automotive parts, like parts used with carburetors and electrical repairs, that sort of thing? A. Primarily, yes.

Q. That is its principal line? A. Yes.

Q. And you sell that line, too? A. Yes. That is the line we represent. That's right.

Q. That is the big bulk of your sales, I suppose, in that line? A. Yes.

Q. And you sell that to garages and other places that repair automobiles? A. Right.

Q. In so far as one of these service stations is in the business of repairing automobiles, they have need for that type of parts, too, and then you sell it to them? A. Right.

Q. And the service stations that don't repair anything wouldn't use that particular type of parts? A. Right.

Q. You said that in addition to these particular kinds of parts, which are called automotive parts, you also sell a limited line of accessories, and that consists of spark (3256) plugs, as I understand it, fan belts, filters? A. Right.

Q. And some batteries? A. Yes.

Q. Is that substantially the line? A. Well, our primary line, right.

Q. Then you testified that you called on 15 of these Texas stations? A. Well, from time to time I have, yes.

Q. Some of them a long time in between? A. Right.

Q. By the way, as to your estimate of the number of Texas stations in the City of Omaha, that was just an estimate you gave us. A. That was in Lincoln.

Q. You hadn't counted them. A. I have never said I counted them.

Q. You wouldn't disagree if the company said they had about 20 Texaco stations; that that might be the correct figure? A. It might be.

Q. Does anybody else from the Anderson Company call on dealers in Lincoln? Texaco dealers? A. Yes.

Q. So that somebody else would be taking some of them and you would take some of them? (3257) A. Right.

Q. You said that you have sold some of this Anderson line to three of the Texaco stations. A. What was that?

Q. You sold some or a part of this Anderson line of automotive goods and accessories to three Texaco stations, and you gave us the names. A. That's right.

Q. You didn't sell any part of the line to other Texaco stations? I mean as a regular proposition? A. No, sir.

Q. That goes for the entire line with its automotive parts and what not? A. Right.

Q. Among the stations that you called on tell me was the one at 48th and Calvert, Don L. Bryam station, was that one you called on? A. What is the name?

Q. I don't know the trade name. It is at 48th and Calvert. I think the chap who operates it is called Bryam —B-r-y-a-m. Is that College View? A. At one time I did, yes.

Q. That is one of those to whom you didn't sell? A. That's right.

Q. Is Richard G. Brown's station at 53rd and "O" another one? (3258) A. I don't believe I have ever solicited him.

Q. You have never called on that one at all.

Is Mr. Essler's, at 11th and "J," is that one that you called on and didn't sell? A. I don't believe I have called on him. Possibly I have.

Q. You don't remember that one either? A. No.

Q. Heidtbrink, that is the station that the preceding witness—I think you were in the courtroom—testified that the old man was operating the station and not the two boys. A. That is correct.

Q. That is the station? A. Yes.

Q. He is buying just a limited amount of TBA from anybody? A. That's right.

Q. Donald R. Knudson at 40th and "A"? A. Right.

Q. He is one you called on and did sell to? A. That's right.

Q. And your sales to him last year were in the neighborhood of maybe $1,200? A. I would estimate approximately that.

Q. How about Robert A. Martens, 10th and "L"? He is one that you said you sold to, too? A. Right.

(3259) Q. Isaac Matthews? Do you call on him, at 2304 East 48th Street? A. That would be North 48th, but I did.

Q. He is one that you didn't sell to? A. Right.

Q. How about L. W. O'Brien? Did you call on him. He is at 10th and South. A. I have.

Q. You didn't sell him? A. No.

Q. Charles Sterner, at 13th and "F." A. No. 13th and "F," I believe is a new operator there.

Q. Lyle Ullstrom, 33rd and "A"? Did you call on him? A. No.

Q. How about Eddy Watts? A. I have.

Q. You didn't sell him? A. No.

Q. You don't know the extent to which these people buy fan belts or spark plugs or batteries or other items from other suppliers, other competing suppliers? You haven't any knowledge of that? A. No.

Q. Mr. Knudson is the one you said you sold your Auto-Lite batteries? (3260) A. Yes.

Q. And he keeps those on his shelf in his sales room with Texaco Motor oil and Tungsol lamps and AC filters and that sort of thing, is that right? A. He possibly did at one time.

Q. On these Texaco dealers to whom you didn't sell, you said you hadn't called on them very many times in your three years that you have been with this company. A. That's right.

Q. Just a few times?

Mr. Dias: How many years?

The Witness: One year that I have been out calling.

By Mr. Lorenzen:

Q. Just one year? A. That's right.

Q. Then on most of these fellows you have only had a chance to call about once, on the ones that you haven't sold? A. No, I have called on them more than once.

Q. You think you have? A. Yes.

Q. How many accounts do you have? A. That would be hard to estimate.

Q. About a hundred? A. Over a period of a year? No, not a hundred.

Q. You don't have as many as a hundred accounts on whom you (3261) are supposed to call? A. You mean the number of accounts?

Q. Yes. A. Yes, counting out of towns, yes.

Q. Total accounts? A. Yes.

Q. More than a hundred maybe? A. Probably more than a hundred?

Q. About how many do you think? A. Around 100, some place. Possibly a few more.

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(3262) *Cross-examination by Mr. Barton:*

Q. How many service stations and other garages and other types of outlets that use your products are located in your area? A. Actually use our products, probably quite a few.

Q. Pardon? A. There would be quite a few.

Q. Several hundred? At least? A. Right.

Q. You call on how many of them regularly? A. That would be probably a little over a hundred of them.

(3263) Q. Would you say you called on about 15 percent of the possible accounts regularly? A. Approximately I would say yes.

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(3264) Q. Your line is essentially a repair ignition and carburetor repair line, isn't it? A. Except for oil filters and spark plugs and batteries, yes.

Q. Which is a sort of side-line to your business? A. No, I wouldn't say it is a sideline.

Q. It is a part of your line? A. Right.

Q. And these places that you don't call on, are they engaged in the car repair business? A. Well, I would say the bulk of them probably aren't.

Q. L. J. Messer is a competitor of yours? A. Yes.

Q. He has representatives in the field who call on the same stations that you call on? A. As far as I know they are, yes.

(3265) Q. And how about Clover Auto Supplies? Do they have representatives in the field calling on the same stations and customers? A. They have representatives out, yes.

Q. Selling in general the same line you are selling? That is the same line you are selling? Different brands, but the same line? A. Yes.

Q. How about Hinkle and Joyce? Do they have people out in the field, salesmen calling on the same accounts? A. I understand they do. I have never run into the fellows.

Q. You don't know who if at all these competitors are selling to in these stations that you are selling to or not? A. Will you repeat that?

Q. You don't know which if any of these competitors are selling to the particular stations to which you sell or those to which you are not selling? A. That is correct.

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KENNETH L. O'MARA was called as a witness for the Commission and, having first been duly sworn, was examined and testified as follows:

(3266) *Direct examination by Mr. Dias*:

Q. Will you state your full name for the record? A. Kenneth L. O'Mara.

Q. Will you state your business address? A. Carl Anderson, Inc., 1637 P Street, Lincoln.

Q. What position do you hold with the Anderson Company? A. Salesman.

Q. What is your sales territory? A. Lincoln and a small territory at the edge of town.

Q. How long have you been with them? A. Since 1940. Sixteen years plus.

Q. Do you work on salary or commission? A. Commission.

Q. Do you sell or attempt to sell the full Anderson line? A. Yes.

Q. Can you tell us the number of Texaco stations in your sales area? A. Well, my territory is divided. I call them three Texaco stations.

Q. What class of customers did you call on? A. About 80 percent fleets. That is roughly.

Q. And the other 20 percent? A. A few filling stations, which is about seven, and then I have a small territory at the edge of town.

(3267) What is in the small territory? What type? A. General trade. Garages.

Q. You say seven stations are all you call on? Seven? A. Yes.

Q. How many Conoco stations are in your sales area? A. I call on one Conoco and I don't believe it is a regular Conoco. I believe he is independent and handles Conoco products. Fleetwing Service, about 56th and O. I believe he is an independent.

Q. Those three Texaco stations, are they all that are in your territory? A. Sir?

Q. Are those all the Texaco stations in your territory? A. That is in my territory. I have only so many and that is it.

Q. Is that one Conoco station all that is in your territory? A. Yes, sir. All that is assigned to me.

Q. Do you sell to these three Texaco stations? A. Yes, sir.

Q. Do you call on them regularly? A. Yes, sir.

Q. What do you sell them? A. Do you want the names?

Q. Yes. (3268) A. Conover Texaco. That is 6300 Havelock Avenue. I have an ignition cabinet, I sell him

brake parts, I sell him Rislone, a few wiper blades. I believe that is roughly about it.

Q. And the next?

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A. Jerry Adams Texaco. That is 10th and R.

Q. What do you sell to Adams? A. I sell him ignition and Purolator filter elements, wiper blades, Rislone, and radiator hose. And a little Zerex, which is an antifreeze.

Q. I think there is a third station. A. Lyle's Texaco, 33rd and A.

Q. What do you sell him? A. A few carburetor parts. We have a carburetor school at our place and we sell him carburetor parts.

Q. Any other products? A. I have sold him some sealed beams, and a little Zerex, too.

Q. And the one Conoco station? (3269) A. That is Fleetwing Service. I believe that is at 56th and O.

Q. And you sell him? A. A little Zerex, a few sealed beams, wiper blades, brake fluid.

Q. Have you tried selling any of those stations batteries? A. Yes. I have approached Conover on batteries, and Jerry Adams on batteries.

Q. Were you able to sell them any? A. No, sir.

Q. At any time? A. No, sir.

Q. Do they handle batteries? A. Yes.

Q. What brand do they carry? A. Firestone.

Q. Did you ever try to sell Lyle's any batteries? A. No, sir.

Q. Have you ever tried to sell Fleetwing batteries? A. Yes.

Q. And you sold them none? A. I sold him three about two years ago, and haven't sold him any since.

Q. What brand batteries does he carry? A. Delco. That was Fleetwing?

(3270) Q. Yes. A. Yes.

Q. Mr. O'Mara, do you know whether or not the Conover station is a leased station? A. I believe his father owns the building and I believe Texaco leases the building from his father. I believe that is the way it is. I believe that he leases from Texaco again.

Q. What about Jerry Adams? A. I believe he could be called a lessee.

Mr. Dias: That is all.

Cross-examination by Mr. Lorenzen:

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Q. This Adams chap who buys from you, he has bought from you for several years, hasn't he? A. Yes, sir.

Q. And would you say his volume was somewhere in the neighborhod of $2,000 a year? A. I would roughly say $125 a month, yes. That (3271) would be—

Q. About $1800? A. That is pretty close. $1500 or $1600, I would say, roughly.

Q. And Conover about $3,000, in that neighborhood? A. That is possible. If I was going to guess, I would say $2400, something like that.

Q. It might be a little more? A. It is possible.

Q. What kind of filters, oil filters, did you sell to Mr. Adams? A. Purolator.

Q. And he stocks quite a few of those? A. Yes, sir.

Q. And keeps them on a shelf with his other filters? A. Yes, sir.

Q. They come in a box that says Purolator on them? A. Right.

Q. Do you sell Modac fan belts? A. No, sir.

Q. Somebody else does? A. Yes.

Q. I suppose you have seen those up there in Mr. Lyle Ullstrom's station? A. Yes.

(3272) Q. He has them hanging on a rack with the sleeve Modac on them? A. Yes.

Q. What kind of wiper blades do you sell? A. Trico.

Q. Under those Madoc fan belts Mr. Ullstrom keeps that nice little cabinet you gave him with the Trico windshield washer service? A. Wiper blades. He keeps that inside, I believe.

Q. That's right. You usually hang the fan belts inside too, don't you? A. Yes.

* * *

(3273) Q. Is that the display of the Ullstrom station about which heretofore you have testified, as of the last time you were there when you had a look at it? A. I would say this one when I set the display up, or when he set it up, it was on the inside office. It wasn't under the—underneath the fan belts. Wait a minute; (3274) this is inside. That is hoses on the outside. Yes, that is right.

Q. That is the display as you saw it? A. Right. I was thinking of the hoses on the outer lube.

Q. Do you have any other salesmen beside you two O'Maras who call on some of these dealers in Texaco stations in Lincoln? A. Do you mean do we have any competitors calling on them? No.

Q. No. Of your own company. A. No, I believe we are the only ones who call on stations from our company.

Q. Are there some stations that are office accounts on which neither one of you have the good fortune of getting a commission? A. My territory is limited. I mean they specify that I call on these eight, or rather seven stations, and I call on them and that is it.

Q. You wouldn't know anything about the station of Mr. Duane Ellison, at 17th and South? A. I am sorry. I missed him. I do call on him.

Q. You did miss him? A. Yes.

Q. It will happen, especially when you are testifying from memory like that. You have been selling him for maybe (3275) five years? A. About. Well, I have called on him approximately two and a half years.

Q. And you have been selling him since that time? A. Yes.

Q. His volume is about the same as Adams, in the neighborhood of— A. About $125 a month.

Q. About $1800?

(No response.)

Mr. Lorenzen: That is all.

By Mr. Barton:

Q. Did you say you had a carburetor school? A. Yes, sir.

Q. You would bring the station operators and other customers into this school to teach them how to repair and utilize your carburetors in their repair work? A. Yes, sir.

Q. Of course you found that was useful in connection with your sales efforts. A. Yes, sir.

Q. There was a tendency on the part of the station operators when they had learned their trade, so to speak, in your school, to favor you with their business I take it? A. Yes, sir.

(3276) Q. And in connection with Fleetwing Service, I think you testified that he had Auto-Lite batteries? A. Delco.

Q. Which he bought from Sidle? A. Someone else. We don't have Delco. Either Sidle or Wilson.

Q. Was that the reason you couldn't sell him your brand? A. Basically, yes.

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Redirect examination by Mr. Dias:

Q. You were asked about the Adams account on cross examination, Mr. O'Mara. Do you sell Adams any anti-freeze? A. I sell him ordinarily a future order in the Fall.

Q. Does he stock it openly?

Mr. Lorenzen: I object to that characterization.

By Mr. Dias:

Q. Does he stock it on the shelves in the storeroom? A. He stocks it in the storeroom.

Q. In the storeroom? A. Yes.

Q. Where is it stored? Where is the storeroom? A. Next to the lube room. In other words, you have your front show room and then you have your lube room and then you have this office or storeroom. It is an office and (3277) storeroom.

Q. Is it a place where the public generally can go? A. I would say No.

Q. Have you ever tried to sell him batteries? A. Yes, sir.

Q. Has he given you any reason why he wouldn't buy batteries? A. No. He just said he would think it over, something to that effect, but he never buys them.

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Kenneth L. O'Mara, for Commission—Recross

D. B. Underhill, for Commission—Direct

Recross examination by Mr. Lorenzen:

Q. Do you sell this Mr. Adams, about whom you were just asked, Tungsol? A. Yes, sir.

Q. Auto lamps? A. Sealed beams and bulbs.

Q. And something called Tungsol vision-aid headlamps? A. They are headlamps, sealed beams. They are all the same.

Q. Do you remember all the same—do you remember does he have that display of Tungsol auto lamps in his sales room right over a map of the city of Lincoln, which he has in there, too, and also a picture of his children? A. Yes, he has a picture of his children.

(3278) Q. Do you remember on the shelf right above that he has this display of Tungsol lamps? A. Right.

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(3280) D. B. UNDERHILL was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Dias:

Q. Please state your full name and address? A. D. B. Underhill.

Q. And your position with the Texaco Company? A. I am the TBA representative.

Q. For what area or district? A. For the Denver division.

Q. How long have you served in that capacity? A. I was appointed to that assignment on December 14, 1954.

Q. Where is your home office? Is it in Denver? A. Denver.

Q. You work out of Denver, is that correct? A. That is correct.

Q. What are your duties? A. That is going to be difficult to define. Would you like me to describe the job?

Q. Yes. A. I think we should start with our personnel. I work with (3281) both classes of salesmen, all our salesmen, the zone managers and the station managers. And then our suppliers I work with their district personnel, with their territory managers, their stores, and store salesmen, and try to coordinate the programs and projects and aims of both.

Q. Let me interrupt.

Suppliers—district personnel and stores and store salesmen? You are talking about the supplier stores? A. The suppliers.

Q. For example, a Goodrich store or Firestone store? A. That is right.

Q. Go ahead. A. I attend our Texas Company meetings and then carry the information and the programs to the suppliers' people. I attend their meetings and meet with them and carry their information to our people in the field.

And then I work with the dealers.

Q. Station operators? A. Our station operators. And in working with the station operators possibly we should start with that inventory guide because stock control is most important to the success of the station operator. It has many ramifications. It can save the dealer a lot of money. It will keep his stock at a minimum so that he will have enough stock not to miss sales without being overstocked, and the use of that Guide (3282) will do that, a proper application of it. It will eliminate his losses, losses due to carelessness, losses due to external theft and outside pilferage. It will save him a lot of money.

And it embraces displays, particularly in the accessory field since the average dealer in the total volume of his TBA accessories will be 50 percent or more. So it becomes

important to have the right displays, to have the impulse items displayed in the proper places so that they will sell themselves.

It embraces many things, even down to the man's bookkeeping. Since, for example, tires are a big ticket item, it is important that he not overextend himself creditwise. It is important that he have a credit control system.

Those things we work with them on. Displays of tires and tire sales, special promotions, advertising. Those things we deal with.

Q. Do you talk to the dealers themselves and encourage them to observe the recommendations set out in the Inventory Guide? A. Yes, sir, I do. Normally whenever it is possible I would go into one of our stations with our salesman or our zone manager or whoever works with that particular account. Sometimes that is possible; sometimes it isn't.

Q. Would that also include the rubber company representative? (3283) A. At times.

Q. Go ahead. I hope you don't mind my interrupting. A. No. I am just a little bit lost right now with my trend of thought.

Advertising would include our advertising and if the man happened to be buying either Goodrich or Firestone it would include their advertising programs and promotions. And we would talk about solicitation and tire spotting up and down the streets and in parking lots and the supermarket parking lots.

Q. What do you mean by that? Check to see what is on the card? Is that the idea? A. That is correct. Just walk by the car and see if he has a need for tires and if he has, either leave the advertising in the car or on the car or follow up that and check to see who the vehicle belongs to, and follow up with the individual either by phone or personally.

At one time or another quite frequently we not only talk about these things but we get out and actually do these things. I become involved in it primarily from the standpoint of educating both the dealer and our personnel who are working with him, figuring that he in turn, our personnel, our man, will carry it farther with the other dealers who might need such programs and procedures.

Q. In connection with advertising, do you ever engage in (3284) any cooperative advertising with the stations? A. The rubber companies do quite a bit of that. Our company doesn't. Frankly, I was thinking of advertising in the sense that the dealer needs to do advertising.

Q. Newspaper or radio? A. Newspapers, radio, direct mail; many different methods. We go into such things as circle service, not only from the standpoint of theory but in actual practice.

Q. What is that circle service? A. Circle service is the procedure of approaching the car and the customer and working around the car in such a manner as to reveal the motorist's needs, whatever he might need would show up in that type of servicing. It has been a program of ours, I guess, ever since there was a Texas Company. And it works. It sells merchandise.

Q. May we refer back a minute to the inventory guide? Do you have any idea of the cost of an original basic stock? Take a station just freshly opened. As I remember, there are three different recommendations, depending on the size of the station? A. That is correct.

Q. A new man would go in. I assume he would start with Recommendation No. 1. That's the smaller of the two lines, is that correct? A. That might possibly be correct. It could be any of the three.

(3285) I don't believe that you could put your finger on any particular dollar valuation of a needed stock. Those are recommendations only and as an example in I believe

the current books that they use I don't believe the 14-inch tires, for example, show up in there. And many other items the same. And of course there are lots of changes in the automotive field so that there is going to be a constant change in items and sizes and types and the book itself wouldn't keep up with that.

Q. The real point of my question though is this: In sponsoring the Goodrich and Firestone line do you recommend to the dealer that it will be to his advantage to take one of those lines, that is, the basic stock that is recommended? A. Oh, definitely. I would recommend whichever one of the two that he preferred. However, it wouldn't stop there. If he had a preference in some other direction it wouldn't be frowned on.

Q. I am talking about the type items. Certainly your experience has indicated that you can tell him that he needed so many filters and so on? A. Yes.

Q. It would be a good idea to start off with that? A. I could make a recommendation as could possibly anyone in our organization or in the supplier's organization. It would be a matter of combining the dealer's experience and (3286) the rubber company's experience which would be reflected in those recommendations. If the man asked advice about a particular number of items I would make my best estimate.

Q. How about the stations when they first open up, aren't they usually pretty well equipped with TBA products? A. I would say that they would have to be well-stocked in order to be successful. The station has to look like it is in business in order for it to attract new customers to come in.

Q. The idea of just opening up a gas station and peddling gas and oil, and wait until you have enough money to buy TBA is a thing of the past? A. That is a thing of

the past. I can give a good example of that in this way: A dealer just selling gasoline let's say in a given marketing area might make four cents a gallon. That would be his average net return, not on gasoline but on total volume of business it would average out that much per gallon throughput.

The dealer doing a well-balanced TBA business could increase that net return per gallon to say 14 cents or greater. Do I make myself clear on that?

Q. I assume that is on the basis of so many pennry returns per sale of TBA along with your gas sales? A. That is right.

Q. Do you meet with new or prospective station operators? (3287) A. I have. Normally, I wouldn't. It would be just happenstance. If I happened to be in any particular bulk plant or bulk plant office when the man just wandered in for an appointment we will say with the salesman or the zone manager, if I were there normally he would invite me to sit down and sit in on the discussion.

Q. Are you a sort of trouble-shooter in your capacity as a TBA representative? A. Yes, that could be claimed, too.

Q. You travel throughout your division, as I understand it? A. Four and a half state.

Q. Do you make regular rounds? A. No.

Q. How do you determine when you go out? A. It would—the project would largely determine it, or any program that might be going into effect, or some need, or some request from someone, which happens.

Q. What type request or need would you respond to? A. I can give you a concrete example. In one area several of the dealers were thinking of some unusual promotion, tire sale, and wanted some help. I went over there and worked it out with the dealers and with our salesman.

Q. Do you remember what kind of tires they were? A. Yes. As a matter of fact, I can think of it. Some were (3288) Firestone and some were Goodrich. And it was more or less a joint promotion. However, if it would clarify it any—

Q. No.

Mr. Lorenzen: Let him finish.

The Witness: I carried on a very similar promotion, spent better than three days on it, and it was entirely Goodyear.

By Mr. Dias:

Q. What else? A. I have just about run out on that answer.

Q. Is it very often that you run that sort of program for Goodyear? A. No. Of course not. You would have to be requested. We wouldn't probably solicit it. But if we were asked, we would be very agreeable to doing it.

Q. Can you give us some other idea? Are there any other type things that you do in traveling around the field? A. I think probably, and due to the large area, the bulk of the work has to do with our personnel and with also the supplier's personnel.

Q. Do you ever attend these salesmen's meetings? A. Yes. Very often. Any time I am in the area where they are holding a meeting, they almost always would invite me to attend.

Q. Are there rubber company representatives there at that (3289) time? A. It depends on the type of meeting. For example, our larger spring dealer meetings and so on there are always representatives of both rubber companies.

Q. Do you have anybody working with you as a TBA representative? Do you have anybody else working with you? Do you have a staff? A. No. We do have at our Denver office a TBA clerk who handles the bookkeeping, so to speak, the records.

Q. Who else in that? That would be a home field office? A. That is correct. The division office. We have a TBA clerk and that is a full-time job with him, working on records and correspondence and that sort of thing. I assume that possibly my superior, assistant division manager, sales promotion. And possibly you could count him in as quite a proportion of his time and his clerical help his secretary and stenographer and some of the other clerks would help out at times.

Q. That would certainly be on a minor basis, wouldn't it? A. Frankly, I can't say. I am out on the road and in the field so much of the time that I don't have an accurate picture of all the things that transpire in the office.

Q. As far as you know, though, there is only one full-time TBA person assigned in the division, that is, whose duties concern only TBA, and that is the TBA clerk? (3290) A. That is right. The rest of it of course there are a myriad of accounting people that formulate those records, along with many others, also.

Q. You mentioned that accessory sales represented 50 percent of your TBA sales. Is that your testimony? A. Fifty percent or greater with the average dealer. There are large tire dealers of course where that wouldn't apply. But the average small dealer that would be 50 to 60 percent of his total TBA volume, the accessory and the business.

Q. How did you arrive at that figure? A. Normally, experience. However, I believe that industry information would probably come pretty close to it. I can't quote any

particular statistics. As I say, that is primarily experience from working with a lot of dealers.

Q. What industry statistics do you refer to? A. I am thinking in terms possibly of petroleum marketers or some such group of information gathering people. As I say, I haven't seen figures that would come to any particular percentage figure. That is my own personal estimate. But I believe that you have our profit computer. I believe our new one for this year will come close to that. And I haven't had an opportunity to examine it. But I believe it will.

Q. You mentioned that this new profit computer would arrive at somewhat close to that figure? A. I think it will.

(3291) Q. Who makes that up? A. Petroleum Marketers.

Q. Petroleum Marketers. A. Yes.

Q. Do you have any idea of what they base their figures on? A. Surveys.

Q. Have you seen those surveys? A. I don't know how they handle them at all. They are used, they are known as a reliable source of information and used widely by many firms.

Q. What accessories would be included among them? A. Fan belts, radiator hose, filter cartridges, light bulbs and sealed beams, chrome, glass, polishes, washes, chemicals, chains, many items.

Q. How about things like mufflers and exhausts? A. I think that that could be included. That is somewhat doubtful. Some of those items can be classified as parts, or they can be classified as accessories. It depends on who is looking at it and why.

Mr. Dias: That is all.

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D. B. Underhill, for Commission—Cross

(3292) *Cross-examination by Mr. Barton:*

Q. I think you indicated something about Circle Service and said that it works and sells merchandise. I would like to know a little bit more about that, how it works and how it sells merchandise. (3293) A. The attendant serving the car approaches the car from the lefthand or driver's side. As he takes the order he cleans that half of the windshield. Then he goes back to the gas tank to fill the order. As he goes so he glances at the tires. As he works his way around the car he glances at the rest of the tires as he cleans the glass. It brings him under the hood where he checks the oil. He at that same time would check the battery and note the condition of the battery cable. He would reach in and turn the fan belt, to see if it were cracked or damaged. He would squeeze the radiator hose to see if it was in good condition, and that the connections were tight, that there were no leaks and so on.

It is amazing what one will find that is needed by the motorist, and it is probably the best method for learning those things when the man draws it to the attention of the motorist and makes the sale.

Mr. Barton: That is all I have.

Cross-examination by Mr. Lorenzen:

Q. Has the average new dealer who gets in as far as you have any experience in that connection has experience with the type of merchandising that you are talking about? A. Quite often not. Sometimes the man might be an experienced dealer. But the odds are that he can use and wants lots of help and training.

Q. Does the Texas Company afford him that type of help and (3294) training? A. Yes. Very definitely.

Mr. Lorenzen: That is all.

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William E. McDaniel, for Commission—Direct

WILLIAM E. McDANIEL was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name and business address? A. William E. McDaniel, B. F. Goodrich Company, Omaha, Nebraska.

Q. And your title, please? A. District manager.

Q. How long have you been district manager? A. Since November, 1952.

Q. What territory is in your district? A. All of the State of Nebraska, with the exception of the Pan Handle, 17 counties in the southern part of South Dakota, all of the State of Iowa, with the exception of two northern tiers of counties, and the western tier of counties in (3295) Illinois.

Q. Can you define the Pan Handle, please? A. That is that section of Nebraska in the northwest section, northwest corner. It falls in our Denver district.

Q. Will you state what your duties are, please? A. I am responsible for the administration of the company's policies as they apply to sales, operating and credits.

Q. Are you in charge of TBA programs, too, or is that within your jurisdiction? A. Yes, it is.

Q. Specifically or generally? A. Generally.

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(3301) Q. Do you report to the Conoco Oil Company out of your office? That is, report the purchases of the Conoco stations to the Conoco Oil Company? A. From our office we do not; no, sir.

Q. Which Goodrich of the Goodrich offices makes that type report? A. The report actually comes from the sup-

ply point as to the purchases of individual Conoco or Texaco accounts. It (3302) is forwarded to our zone accounting office in Kansas City.

Q. Rather than through your office? A. That's right.

Q. So that you have no formal record of the number of stations in this city? A. I do, by report that is sent back to me from zone accounting, which indicates the purchases of the individual stations. It would be just a matter of adding them up.

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(3305) *By Mr. Dias*:

Q. Do you or any of your personnel from this office attend dealer meetings with the oil company representatives? A. Representatives and dealers?

Q. Yes. A. Yes, we do.

Q. Who does that? A. In some cases I would be in attendance. However territory managers and wholesale supervisor, other staff (3306) people, they attend whenever they are invited and whenever they can.

Q. Do you or your personnel look for new station business without waiting for word from Texaco, for example? A. Very definitely.

Q. Without waiting for word from Conoco? A. Yes, sir.

Q. Isn't it true that you normally get a lead on those new stations or new outlets from the Texas people or Conoco people? A. At times we do, and at times we determine who the operator might be ourselves from investigation in the field and then contact the oil company and ask them whether or not we have the right information on the operator that is about to be selected.

(3307) Q. Generally speaking, don't they notify you? Doesn't it happen more generally than not that you receive your first notice from the oil company? A. I think

it is a sort of mutual thing. If the territory manager is doing his job he will certainly see a new service station being constructed in his territory. We feel that even before the signs go on the station that we would like to have him know who is putting up that service station. So I don't think I could say that we hear from the oil company more times than we might dig the information out ourselves. I think it is just a combination of both.

Q. I am referring now only to Texaco and Conoco oil stations. Your answer is the same? A. Yes.

Q. What about this difficulty that Texas has in finding an operator? In other words, can you ferret out the operator before Texaco does? A. Not necessarily. We have at times been of some assistance. We have referred individuals that we might feel would make a good operator to the Texaco or Conoco people for their investigation and scrutiny. How many times those selections are made I couldn't tell you. But we like to work with them, do work with them, and would help them in any way to find a satisfactory outlet.

Q. On those occasions then when you do receive notice of (3308) the opening of a new station, or the appointment of a new operator, how do you receive that notification? A. Usually word of mouth or by phone. Most times it would be from the salesman, the oil company salesman to our salesman or to our supply point.

Q. And you receive that information before the operator opens his doors. Is that right? A. Usually, when we get it that way, yes. That is in the case of a brand new station.

Q. Doesn't the same thing happen when there is an anticipated operator taking over a station? A. Well, as I know the oil companies and the way they like to conduct their business, on the basis of a take-over, they don't like

to shut the station down. So actually they could change operators—

Q. Without ever shutting the doors? A. Without the station ever closing.

Q. Then I will change the question. The minute a new operator moves in? A. That would be a little clearer; yes, sir.

Q. Do you know whether or not there are oil additives connected with that TBA program? A. In our line?

Q. As an approved item, yes? A. Yes, there is.

(3309) Q. Do you have a printed list of these items that are on the approved list of the accessories?

Mr. Barton: What do you mean by "approved list"?

Mr. Dias: Those that—

Mr. Barton: Those on which sales commissions are paid?

Mr. Dias: Yes.

A. We have a regular automotive accessory catalogue that is available to all classes of trade. I am sure that every item that is in this catalogue would be on the approved list. It is a matter of searching out each one. I can't think of any that wouldn't be.

By Mr. Dias:

Q. You understand what I mean by the approved list. Those items on which commission is paid to Texaco or Conoco?

Mr. Barton: Do you want a list—this is not the complete list but a list of the major items. If you want it I will read it into the record.

Mr. Dias: All right.

Mr. Barton: If there are any additions they can be added.

B. F. Goodrich tires, B. F. Goodrich batteries, Fram filters, Champion spark plugs, Trico and Anco wiper blades, Dil and Schraeder, the DuPont line of waxes, Simonize line of waxes, Macs and Johnsons, all of which are in the (3310) wax and polish line, the radiator chemical line of both DuPont and Warner.

Let me ask, what is that radiator chemical line?

The Witness: That would be radiator flush, stop leak, and rust inhibitor.

Mr. Barton: Stop-leak is a generic term, not a trade name?

The Witness: That is right.

Mr. Barton: B. F. Goodrich fan belts; radiator hose, B. F. Goodrich; seat covers, B. F. Goodrich, and Fulmer; gas and radiator caps, Stant Everseal; automotive bulbs, Westinghouse. They are called sealed beam?

The Witness: Sealed beam replacement bulbs.

Thermostats, which is Dole; B. F. Goodrich repair materials—what is that?

The Witness: Tire repair materials, tube repair kits, boots, patches of various sizes.

Mr. Barton: The Yankee line of mirrors—rear view mirror and side view mirror; Fufftex twin floor mats; the oil additives in the casite, Hastings and Pyroil lines; rail back flashlights and batteries, and anti-freeze of two permanent types—Peak and B. F. Goodrich, and an alcohol base Norway; battery cables, Auto-Lite.

As I understand it, there may be other items which are not on this list.

(3311) The Witness: There are little chrome gadget items such as fender guards and things of that nature. You certainly hit the bulk of them there.

By Mr. Dias:

Q. I don't think it is on there. How about station equipment—spark plug cleaners, battery chargers and supplies? A. We sell battery chargers, but that is about the only item.

Q. And are they on the approved list? A. No, they are not.

Mr. Barton: What is that?

The Witness: Battery chargers.

Mr. Barton: And camelback, when used for recapping, is on the commission list, is it not, under the contract?

The Witness: I am sure it is.

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(3312) Q. In the Omaha and Lincoln area do the salesmen of your designated supply points also call on Texaco and Conoco stations? A. Yes, they do.

Q. Do Goodrich home—do you have a staff of salesmen here, too? Assigned to your office? A. Yes, we have ten salesmen.

Q. Do they call on these Texaco and Conoco stations? A. Occasionally.

Q. That is not on their regular sale route? A. No. Not in that sense of the word. Our salesman calls on the direct purchaser from us.

Q. Give us an example. What type? A. Any account that we sell, that the Goodrich Company sells on a direct basis, which we carry on our books and make a shipment

out of our warehouse here or the Kansas City master warehouse. The type dealer that you are referring to (3313) in the case of a majority of the Texaco and Conoco accounts is what we class as associate dealers and they are serviced by a supply point. And the supply point does the delivering, carries the credit and so forth.

(3314) Q. But occasionally your salesmen go out and assist the salesmen of the supply point? A. Very definitely.

Q. Did you describe for us the territory manager? A. I don't know that I have.

Q. Would you do that, please? A. The territory manager is responsible for the sale of B. F. Goodrich products in a prescribed area. He calls on all classes of trade within that area. He works on a firm quota basis and continually strives to increase and improve the company's business within the area and exceed the quota assigned him.

Q. Does he work with the oil companies in any way? A. He very definitely does, yes.

Q. Is he primarily concerned with oil companies? A. Not primarily.

Q. That is one of his duties? A. Yes, sir.

Q. How about the wholesale supervisor? Didn't you say that he was primarily concerned with TBA? A. He is primarily concerned with all wholesale activities, of which certainly the sale of TBA would be a very important part. However, he is in charge of the territory managers and he supervises their activities and the sale of TBA to all classes of trade.

(3315) Q. I think you did tell us there were ten territory managers. A. That's right.

Mr. Barton: I think you may be confused. The salesmen and the territorial managers are the same people.

William E. McDaniel, for Commission—Cross

Victor L. Toft, for Commission—Direct

Mr. Dias: They are?

The Witness: The salesman is the territorial manager.

Mr. Dias: That is all.

Cross-examination by Mr. Barton:

Q. Mr. McDaniel, Judah Distributing Company and Chris Beck Tire Company, and Automotive Supplies, Inc., are your supply points for Conoco and Texaco stations in this area. They are independent distributors just like Sidle Company except they are smaller than Sidle Company. A. That's right.

Mr. Barton: That is all.

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(3320) VICTOR L. TOFT was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name and business address for the record? A. Victor L. Toft, 73rd and Pacific, Omaha.

Q. And that is Sidles' Company? A. That is correct.

Q. How long have you been with Sidles? A. Since 1929.

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(3321) Q. What type operation is Sidles, Mr. Toft? A. It is a distributing organization which is divided into three divisions, one of which handles the distribution of automotive parts, supplies, garage equipment.

The second division would be household appliances of all kinds; and the third division handles heating and air conditioning.

Q. In the automotive division do you handle tires, batteries and accessories? A. Yes, we do.

Q. What brand tires do you handle? A. Siberling.

Q. Batteries? A. Delco.

Q. And among some of the more popular accessories, filters? A. Fram and AC filters; Gates rubber products.

(3322) Q. How about windshield wiper equipment? A. Anco.

Q. Do you also handle repair parts? A. Yes, parts of all descriptions for trucks, buses, tractors, passenger cars. We handle Thompson products in engine and chassis parts, Perfect Circle piston rings, Walker Manufacturing Company mufflers and tail pipes, Gates rubber products, Raybestos brake lining, things of that sort.

Q. What type customer do you sell to in the automotive field? A. Every type that handles automotive products, whether that be a car dealer, garage, service station.

Q. Does the company sell equipment of any type? Automotive? A. Every type of equipment that is used in a car dealership, garage, service station, we sell.

* * *

(3323) Q. Can you state the amount of annual volume of business in the automotive end of your business, Sidles' business, from 1952 to 1956? (3324) A. Do you mean by years?

Q. Yes, sir. A. You are referring to the automotive division?

Q. Just the automotive division. A. The figures I will give you are those which pertain to the wholly-owned operations, and not the subsidiaries.

Q. That would exclude those five listed at the bottom of the exhibit? A. That is correct.

In 1952, $8,781,000; 1953, $8,702,000; 1954, $8,150,000; 1955, $8,700,000; 1956, $8,500,000.

* * *

Q. Do you consider that a decline in business over 1955 and '56?

* * *

(3325) A. I would consider that a decline in view of the fact that the vehicle registration in the State of Nebraska since 1952 has increased by 45 percent, according to published figures.

* * *

Q. Do you employ salesmen? A. Yes.

Q. Outside salesmen? A. Yes.

Q. Can you tell me how many you have? A. We employ 77 salesmen in the automotive division.

Q. How are they— A. And 13 additional salesmen in the subsidiary automotive branches.

Q. How are they compensated? Salary or commission? A. Drawing account and commission.

(3326) Q. In the automotive line are you carrying the same line that you carried in 1952, in types of products? A. Are you referring to all products?

Q. No, in the automotive, and types of products? A. There have been very few changes. There have been some.

Q. Such as? A. Well, we have added quite a few lines such as glass, which we have added within the last year, power motors, which we added in about 1952 or 1953. It was approximately 1952 that we switched from Century tires to Siberling. Other than that the lines we handle remained fairly constant.

Q. Are you today selling to the same type customer? A. Yes.

Q. Do you sell to a comparable number of customers of the various classifications that you mentioned? A. Yes.

Q. Can you give us a breakdown on that type of customer that you say you sell to, garages, service stations, industrial, I believe? A. Yes.

Q. Can you give us some idea of your volume of business with service stations? A. No, I am sorry I can't. We don't break it down in our auditing in that manner.

(3327) Q. Do your records show a decline in business to any type of station, or type of customer? A. Yes.

Q. Specific customers? A. There are many service station outlets to which our volume has declined since 1952, substantially.

Q. Can you cite some specific instances? A. Do you want these in detail?

Q. If you have them, yes. A. I might cite Frank Johnson Conoco Service at Columbus.

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A. In 1952 we did a total business with that account of $1,620 for the year. It declined in 1953 to $414; in 1954 to $349; in 1955 to $397; and to $243 in 1956. When we attempted to ascertain why that loss occurred we found that in 1952 he had purchased $374 worth of anti-freeze; and in 1956 only $39.

In 1952 he had purchased $294 worth of filters; in 1956 none.

In 1952 he purchased $271 in batteries; in 1956, none.

(3328) The TBA item type product he was no longer purchasing.

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(3329) Q. Do you have further instances? A. Yes. We sold an account at Beatrice, Nebraska, Edeals Conoco Service.

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(3331) The last four months' purchases during the time he operated the station were $1,407.

By Mr. Dias:

Q. What year is that? A. That was 1955, I believe. It was later taken over and the name changed to Schultz Conoco, and the next full year of purchases was $429. There again characteristically the oil filters, anti-freeze and Gates products is where the loss occurred.

Q. Who was the salesman in that instance? A. At the time—most of the time when it was Edeals' I believe it was handled by—we have changed salesmen down there a couple of times—I couldn't nail that down exactly as to names.

Q. And the next instance? A. Spark's Conoco, at Council Bluffs. The last full year of purchases for Spark's, when Sparks operated the station, was $3,267. That lease was terminated and it is now known as Gibson Conoco. The total purchases for the first year of that operation under the name of Gibson was $328.88.

Q. And the year on that? A. I am referring to the last year of operation under Gibson, which would be 1956. The tires and tubes to Sparks was $1,164. None after the lease was terminated.

Oil filters, $442 under Sparks, none after the (3332) lease was terminated and taken over by someone else.

Anti-freeze, $371.70; none after it was taken over by Gibson.

Batteries, $240.62; none after it was taken over by Gibson.

Rubber products, $82; none after it was taken over by Gibson.

Q. Again, will you tell me what the last full year of operation was of Sparks? A. $3,267.

Q. What year was it? 1955 or 1954? A. I am not sure because I had these figures prepared by the bookkeeping department. They just took the last year.

Q. Do your records show who the salesman was in that instance, the company salesman? A. O'Neill. Of those $326 in the year 1956, $319.50 of that was an air-conditioning unit. So the balance of all the other items would be $9.38.

Fay's Conoco, at Lincoln, in 1953 we did $608 worth of business with him. In 1954 we did $1,058. For the first eight months of 1955, $876.82. That lease was terminated and it is now known as Millards Conoco.

Q. Have you done any business with Millards? A. $227.91—let me put it this way: The last four months of 1955 it was $208.68. The full year of 1956 it was $372. (3333) Again the volume that is missing is oil filters, anti-freeze and those allied products.

Q. Do you know who the salesman was in that instance? A. That I believe was Cramer. The stations on which I have been giving you these figures are all leased stations. I have an example here of an independent type of operation.

Mr. Barton: Object.

By Mr. Dias:

Q. What do you mean by independent, Mr. Toft? A. A man who owns his own station and purchases Conoco products.

Q. Very well. Will you cite that instance? A. It is the Fleetwing Service at 5745 "O" Street, Lincoln, Nebraska. In 1952, $2,501; in 1953, $3,288; in 1954, $3,456; in 1955, $3,075; in 1956, $3,368.

Q. What type products does he purchase? A. He purchases all types of products.

• • •

Q. Your records show the same situation in regard to all (3334) leased and independently-owned stations?

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A. It is not a uniform pattern. We find that geographically as we get further out in the state, we don't have the same difficulty in selling TBA items to Conoco stations that we do near Lincoln and Omaha, Grand Island, and some of the bigger cities.

Q. Do your records show, however, that the pattern does follow into the larger cities?

Mr. Barton: Object.

Hearing Examiner Kolb: Objection overruled.

(3335) *By Mr. Dias:*

Q. For example, Omaha? A. There are exceptions.

Q. Do your records show—have you finished the specific instances? A. Yes.

Q. Do your records show what type TBA products those stations buy? A. Which ones?

Q. The Johnson, Edeal, Sparks, Fay's, Millard's. A. There are some of them who don't buy any, as pointed out.

Q. I mean other than your own. Do your records show whose products other than your own they are buying? A. Our records wouldn't show that.

Q. Do you know what brand TBA they buy? A. Logically they would be buying the products handled by B. F. Goodrich and their own jobbing outlets.

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Q. Do you have any instances of loss of sales to Texaco stations, Mr. Toft? A. Yes, we could recite examples of the same character as we have given here on Conoco.

(3336) Q. Are you prepared at this point to do that? A. I am not, because I didn't know until very recently that Texaco was involved in this matter.

* * *

Hearing Examiner Kolb: There is no evidence being introduced as to Texaco, as I understand it, at the present time. Is that right?

Are you through with the witness?

Mr. Dias: Yes, sir.

Hearing Examiner Kolb: Then there is no evidence.

* * *

(3337) *Cross-examination by Mr. Barton:*

* * *

Q. In the Omaha area you have a sizable number of competitors, do you not? A. That is correct.

Q. For example, Adolph's Auto Supply is a competitor of yours in the automotive field in this vicinity, isn't it? A. Yes, although I know very little about that account.

Q. And Al's Auto Supply sells to service stations in this area? A. That is correct.

Q. And Automotive Rubber Products Company sells to service stations in this area? A. I assume they do.

(3338) Q. You know they do? A. Not in every case.

Q. They don't sell to every service station as you do? A. That is right.

Q. And Bauer Supply is a competitor of yours? A. That is correct.

Q. And P. A. Clark Supply Company is a competitor of yours here? A. Right.

Q. And Jones Automotiye, Inc., is a competitor here? A. Right.

Q. In Omaha. And Color Supply Company is a competitor here? A. Yes.

Q. And Keuhn-Baymiller is a large competitor of yours here? A. Correct.

Q. And Midwest Distributing Company is a competitor of yours here? A. Yes.

Q. Morgan Wheel and Equipment Company is a competitor, and Nelson Auto Company is a competitor here? A. Yes.

Q. And the Omaha Rim and Wheel Company is a competitor? A. Yes.

(3339) Q. And Opie Brothers Auto Supply is a competitor? A. Right.

Q. And Paxton-Gallagher is a competitor selling to service stations here? A. Yes.

Q. And Storz Supply Company is a substantial competitor selling to service stations in competition to you? A. Right.

Q. And Carl A. Anderson is competitor of yours in this area as well as in Lincoln? A. Correct.

Q. And Thompson Distributing Company is a competitor of yours? A. Yes.

Q. And Automotive Supplies, Inc., is a competitor of yours? A. Correct.

Q. Much smaller than you are but a competitor? A. That is right.

Q. And the Milder Company is a competitor? A. To a degree.

* * *

(3340) Q. It is a fact that you have many more competitors in the automotive supply field in Omaha than you have in Grand Island, Nebraska? A. Yes, or anywhere else in the state.

Q. Hasn't there been a decrease in gasoline consumption (3341) in Nebraska in 1956 over 1955? A. That I wouldn't be aware of.

Mr. Dias: I object.

By Mr. Barton:

Q. You don't know about that? A. No.

* * *

(3342) Q. How about these accounts that you have been testifying about today? Are you familiar with each one of those? A. Not in every case personally, no.

Q. You told your bookkeeper to pick some figures off the ledger and you brought them in here, didn't you? A. That is correct.

Q. And with respect to Sparks' Conoco, at Council Bluffs, how much did you sell them in 1952? A. $3,267.21.

* * *

(3344) Q. In order for a service station to be a customer of yours for those products it has to be engaged in the general field of repair work, doesn't it? A. That is correct.

Q. It is much more likely that a service station owner is going to be engaged in the business of repairs if he has a station which is equipped for that purpose, isn't it? A. That is correct.

* * *

Edward G. Seidenglanz, for Commission—Direct

(3347) EDWARD G. SEIDENGLANZ was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name for the record? A. Edward G. Seidenglanz.

Q. And your business address? A. 7302 Pacific.

Q. By whom are you employed? A. Sidles Company.

Q. And in what capacity? A. Territory salesman.

Q. How long have you been so employed? A. Nine years.

Q. What is your sales territory? A. It starts at 31st and Farnum and goes west to 90th, and then goes south to Grover Street.

Q. Do you sell or attempt to sell the full Sidles line? A. Yes, sir.

Q. Are there any Texaco and Conoco stations in your territory? A. Yes.

Q. Can you give us some idea of the number of Texaco? A. I have six Texaco and three Conoco.

(3348) Q. How many of the Texaco stations do you solicit regularly? A. I would say four of them.

Q. How often do you call on them? A. Once a week.

Q. Have you ever called on the remaining two? A. Yes.

Q. How recently? A. About a month ago.

Q. And prior to that can you give us some idea when you called on them? A. I try to make those about once a month.

Q. Do you sell any products to those two? A. No. They have picked up some merchandise, however.

Q. Do you know why they do not buy from you?

Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

A. No.

By Mr. Dias:

Q. You do not? A. No, I do not.

Q. Of the four that you call on regularly, do you sell to those four? A. Yes.

Q. What do you sell to those stations? A. They buy some cartridges and some chemicals.

(3349) Q. Do they buy your tires? A. No.

Q. Batteries? A. No.

Q. Is that true of all four? A. Pretty much. The only way they will buy is if they have a quick sale for it and they pick it up.

Q. Can you name those four stations? A. One of them is R and H Texaco.

Q. Do you know the location? A. 75th and Pacific.

One of them is Carrel—C-a-r-r-e-l. He has gone out of business.

Q. And their location? A. 60th and Center.

Q. Can you recall another? A. Acamo—A-c-a-m-o.

Q. And their location? A. 13th and Deer Park Boulevard.

Another one is Stans Texaco. That is at 13th and Williams.

Q. Referring now to R and H Texaco, what do you sell to those people? A. He is one of those that comes down and picks up most of his merchandise because he is less than a block away from the store.

(3350) Q. Do you know what type products he picks up? A. Oh, he has picked up batteries, he has picked up some cartridges.

Q. Anything else? A. Shock absorbers and stuff like that.

Q. How about Carrel? A. Carrel is out of business. There is a new man in there now.

Q. When did Carrel go out of business? A. Carrel went out, I believe in December.

Q. 1956? A. Yes.

Q. Who is the new man? A. A fellow by the name of Ed Goldap—G-o-l-d-a-p.

Q. Do you sell to Goldap? A. I have been there, but he has picked up some merchandise. I never sold him as yet.

Q. Do you know what type merchandise he picks up? A. He has picked up some shock absorbers and some cartridges, too.

Q. What is a cartridge? A. That is an oil filter cartridge.

Q. Anything else that you can think of? A. No.

Q. How about Acamo? (3351) A. Mr. Acamo has ordered oil filter cartridges, shock absorbers, and some chemicals.

Q. And Stans? A. Oil filter cartridges, shock absorbers, chemicals, some equipment I have sold him.

Q. Some what? A. Equipment.

Q. What would that be? A. Tire tools and greasing equipment.

Q. Do you know what type tires and batteries these stations handle? A. Firestone.

Q. All of them? A. Acamo is Firestone, Stan was Firestone, Carrel was Firestone.

Q. How about Godlap, who took over? A. He was Firestone. And I believe R and H is Goodrich.

Q. Check me on this: R and H, Goodrich; Carrel, Acamo and Stans, Firestone? A. Right.

Q. And Goldap replaced Carrel.

Do these also handle the accessories or any of the accessories of Goodrich or Firestone? Do you know? A. As far as I know they carry the Firestone line.

Q. These stations that purchased your shocks, filters, (3352) batteries, did they stock them openly? A. All except Acamo. He had his cartridges in the back room.

Q. What about anti-freeze? Did you sell anti-freeze to any of those? A. I sold some anti-freeze to Stans.

Q. Can you tell us when? A. In November.

Q. 1956? A. 1956.

Q. Did he stock it openly? A. Yes, he did.

Q. Was it delivered on time? A. At the time he ordered it it was on a Tuesday. He told me to hold up delivery until Thursday because someone from the Texas Company was coming down.

Mr. Royall: Motion to strike, your Honor. What was the question?

(Question read.)

Mr. Royall: Motion to strike. It is not responsive. Also, it is double hearsay.

Hearing Examiner Kolb: The motion will be denied.

By Mr. Dias:

Q. Does that operator purchase filters and chemicals from you? (3353) A. Yes, he does.

Q. Does he stock them openly? A. Yes.

Q. On the filter sales to those stations, Mr. Seidenglanz, what brand filter did they purchase? A. Fram and AC both.

Q. Fram and AC? A. Yes.

Q. Is that true in each, as to R and H Texaco? A. Yes. He would buy Fram and he would buy some AC also.

Q. And Carrel? A. Carrel would buy AC.

Q. And Acamo? A. He would buy Fram.

Q. Stans? A. Stans would buy Fram.

Q. On these Conoco stations that you call on regularly, can you give us the addresses of those? A. Quinn Conoco—Q-u-i-n-n.

Q. Address? A. 75th and Pacific.

(3354) Q. Next? A. Bukachek—48th and 11th and Saddle Creek.

Mr. Barton: Three corners?

The Witness: Yes.

By Mr. Dias:

Q. And your third one? A. There is a new man who just went into the third one.

Q. How recently? A. Just this last part of December. Before that it was the Edwards Conoco.

Q. How long had you been calling on Edwards?

Mr. Barton: Where is it?

The Witness: He is on about—it would be about 38th and Center.

By Mr. Dias:

Q. And that changed hands in December 1956? A. Yes.

Q. How long had Edwards been there? A. Edwards had been there about a year and a half or so; since I have been on the territory.

Q. Are you in a different territory now? A. No. I was on the counter before I went out.

Q. I thought I understood you to say that you had been a salesman for nine years? A. No. I had been employed by Sidles nine years.

(3355) Q. And selling for how long? A. About a year.

Q. One year? A. A little over a year.

Q. Have you sold to Quinn Conoco? A. Yes, sir.

Q. Tell us what you sold him? A. Ignition parts, oil filter cartridges, shock absorbers, chemicals.

Mr. Barton: Do you mean radiator chemicals?

The Witness: Yes. And equipment, of course.

By Mr. Dias:

Q. Do you mean station tolls, et cetera? A. Yes.

Q. What brand filters do you sell him? A. Fram.

Q. Any AC? A. He has bought some AC.

Q. Can you give me any idea of the quantity of filter sales to Quinn? A. He picks up a lot of it so it is hard for me to say offhand.

Q. How about Bukachek? A. Bukacheck picks up most of his. I have sold him some equipment.

(3356) Q. Is that all you have sold him? A. Yes. He picks up most of his merchandise from the store.

Q. And Edwards? A. In the last four or five months of 1956 I didn't sell Edwards anything.

Q. Had you sold him previously? A. He had picked up, too, at the store.

Q. Do any of those three buy your tires or batteries on a pickup basis or otherwise? A. Yes.

Q. Which ones? A. I believe Quinn has picked up some, where he had customers who specified our tires.

Q. Any others? A. Not that I know of.

Q. Do you know what brand TBA those three stations carried? A. Quinn has Firestone.

Q. How about Bukachek? A. Bukachek, I believe, is Goodrich.

Q. Edwards? A. I don't know what Edwards has.

Q. How long have you been calling on Quinn? A. Seven months; since he opened.

Q. He opened seven months ago? (3357) A. I think it was around seven months ago.

Q. Did he openly start carrying Firestone when he opened? A. I believe he was Goodrich before that.

* * *

(3358) *Cross-examination by Mr. Barton:*

Q. Mr. Seidenglanz, you sold to Quinn the entire year 1956, is that correct? A. Yes, sir.

Q. And your volume with him was about $5,000, wasn't it? That is including the pickups and sales? A. Yes.

Q. And besides your selling to Quinn, Frost Industries, now Automotive Supplies, sold to Quinn? A. That is right.

Q. And Paul Davie and Sons sold to Quinn? A. Yes.

Q. And Auto Electric sold to Quinn? A. Yes.

Q. And Sample-Hart sold to Quinn? A. Yes.

Q. And Adolph's Auto Supply sold to Quinn? A. Yes.

(3359) Q. And Quinn's is a Conoco-leased station? A. Yes.

Q. So when you answered Mr. Dias' question about whose TBA was in Quinn's, you meant besides yours there was some Goodrich and some Firestone and some of these various other suppliers? A. Yes.

Q. In connection with Bukachek, you are aware of course that Adolph's Auto Supply is a very substantial supplier of that service station? A. Yes.

Q. And that Storz' Supply is also a substantial supplier? A. That is right.

Q. And of course Genuine Parts and Al's Auto Supplies sell there? A. Yes.

Q. And Frost Industries gets some of the business there, doesn't it? A. Yes.

* * *

Cross-examination by Mr. Lorenzen:

Q. Mr. Seidenglanz, Stan Coppock, that is Stan's Station? A. Yes.

Q. At 13th and Williams? A. Yes.

(3360) Q. And you sell, Sidles Company sells him about $1500 worth of merchandise in the course of a year? That is about right, isn't it? Somewhere in that neighborhood? A. Yes.

Q. I am not holding you to accurate figures but that is about it? A. Yes.

Q. And he also buys a little from the Anderson Company, one of your competitors? A. Yes.

Q. And do you have in mind any other than the Anderson Company from whom he also buys? A. I don't believe Stan bought too much.

Q. He is a kind of a small— A. He is not a big operator.

Q. Do you know the amount of Firestone he has is quite limited? Isn't it? A. He has Firestone belts and Firestone cartridges, in there and he has some of their chemicals.

Q. Belts, cartridges and chemicals? A. Yes.

Q. That is what he has from Firestone? A. Yes.

Q. And Peter Dall, 7502 Pacific, is he one of the others? A. That is one of the others.

(3361) Q. What name did you give him? You called him something else? A. That is under R and H.

Q. What would you say you sold to him? A little under $1500? A. He hasn't been in there too long. Previous to that that was Jack Kelly who was in that station.

Q. That station you sold about $1200? A. At the time Kelly was in there, yes.

* * *

Redirect examination by Mr. Dias:

Q. You stated that on sales to Quinn, that Frost also sells to them, Paul Davie, Sample, and several others. How do you know that is so? A. I have seen the Frost man in there.

Q. Have you seen the others in there? A. Paul Davie, no. I haven't seen Paul Davie in there.

Q. How about Samples? A. I have seen where he has picked up from Samples.

Q. Adolph's? A. The same way. I have seen him.

Q. Do you know what Quinn purchases from those companies? A. No, sir, I don't.

Q. Do they buy any tires or batteries from those companies, (3362) any of those companies?

* * *

The Witness: He has nothing but Firestone batteries in there now.

By Mr. Dias:

Q. How about tires? A. Firestone tires.

Q. And Bukacheck, have you seen those other distributors in there—Adolph's, Genuine Parts, Storz, Al's, Frost? A. No, but I have seen where they have picked up from him.

Q. Does Bukachek buy tires and batteries from those people? A. That I do not know.

Q. Do you know what Bukacheck does buy from those other suppliers? A. He picks up quite a few small items from Adolph's, such as emergency car parts.

Q. And Storz, do you know what he buys from Storz? A. He buys mufflers. I do know he buys mufflers from Storz.

Q. Storz sells tires? A. That is right.

(3363) Q. Do you know what brand? A. No, I don't.

Q. If I suggested that Storz sold Century, would that refresh your recollection? A. Yes, I believe they do.

Q. Have you ever seen any Century tires in Bukachek's? A. No, sir.

Q. You have not? A. I have not.

Q. Stan's purchase from Anderson. Do you know what they purchase from Anderson? A. No. He has run down to Anderson and picked up some carburetor parts.

Q. Does he buy any batteries from Anderson? A. Not that I know of.

Q. What brand tires—does Stan carry tires? A. He had some Firestones in there.

Q. How about batteries? Does he stock batteries? A. I think he had some Firestone batteries.

Q. When did R&H change hands? A. It was in November, I believe, 1956.

Q. Do you know who has taken over that station? A. Peter Dall, I believe is his name.

Q. Have you sold anything to him? A. He picks up from the store.

(3364) Q. Does he pick up any tires or batteries? A. No. He picked up I believe a battery on a rush deal that he had sold.

Q. You have been in the station, have you? A. Yes.

Q. What kind of tires does he carry? Does he carry any tires? A. I believe it is Firestone. I have never noticed. I believe it is Firestone.

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Recross examination by Mr. Barton:

Q. How many customers do you call on? A. All together?

Q. Yes. A. I would say 60.

Q. How many has Century tires? A. I don't know.

Q. You didn't see them in any of them? A. No.

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(3366) CARL A. NELSON was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name and business address? A. Carl A. Nelson, 623 South 16th Street, Omaha, Nebraska.

Q. Where are you employed? What is your company? A. Carl A. Anderson, Incorporated.

Q. State your position, please? A. President. President and General Manager.

Q. President and General Manager? A. Yes.

Q. How long have you been President and General Manager? A. Two and a half years.

Q. Were you with Anderson prior to that time? A. Yes, sir.

Q. How long? A. I have been with them 30 years.

Q. What other offices have you held in that company? A. Every job in the company, including janitor.

Q. What is the trading area of your company, Mr. Nelson? (3367) A. The State of Nebraska and western Iowa.

Q. Do you have any branch offices? A. I would give a qualified yes. We don't believe them branches. We operate each company as an independent unit.

Q. How many of those do you have? A. Is the question outright ownership? Wholly owned subsidiaries? Or is it companies that we may have invested capital in?

Q. Do they all operate under the name of Carl A. Anderson, Inc.? A. Only Omaha and Lincoln. And those are separate corporations.

Q. How many salesmen do you employ here in the local office? A. Localized—the question is the amount of salesmen we work in the local area?

Q. Yes. A. Or those who headquarter in Omaha?

Q. If there is a difference, what is the difference? A. We have five men that work the localized area, and we have four additional that headquarter in Omaha but don't work this vicinity.

Q. Where do they work? A. Up toward the Sioux City area, western Iowa. They work in the redistribution department.

Q. How are these five compensated, the five local? (3368) A. Drawing account with commission.

Q. What type customers do you sell to? A. Industrial, independent garages, car dealers, and service stations. And under industrial I would like to qualify that. Also fleet accounts.

Q. Do you have any idea of the volume of sales to each of those categories? A. A guess.

Q. Percentage-wise. A. I would say our fleet business is most likely in this localized area approximately 30 percent.

Q. And car dealers? A. Car dealers and independent garages would be somewhat around that same figure. Industrial business would be somewhat around 25 percent. And whatever is left over, I believe about 15 percent, would be service stations.

Q. Do you sell to all type service stations? A. We try to sell to all type service stations.

Q. Are there any that you are unsuccessful with?

* * *

(3369) A. We are successful in selling all types of accounts, specialized carburetion and electrical equipment. Does that answer the question?

By Mr. Dias:

Q. Not quite. What type products are you unsuccessful with? A. Well, we are not—

Mr. Royall: What is the question?

(Question read.)

Mr. Barton: Object to the form of the question.

Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

A. We are not too successful in selling batteries, anti-freeze, fan belts, spark plugs, radiator hose, to any company-controlled service station.

Mr. Royall: Motion to strike the answer, your Honor.

Hearing Examiner Kolb: Motion denied.

By Mr. Dias:

Q. What do you consider a company-controlled station?

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

A. Such as Texaco, Conoco, Phillips, Standard Oil, Mobil.

Q. All stations—

Mr. Royall: Motion to strike the answer.

Hearing Examiner Kolb: Denied.

(3370) *By Mr. Dias:*

Q. All type stations handling those gases? A. No.

Mr. Royall: Objection.

A. Those that are owned by the various companies.

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

By Mr. Dias:

Q. Can you give us your annual volume of sales, 1952 through 1956? A. May I give a qualified answer on that,

in that our overall volume of the corporation is somewhat—in the Omaha operation is right around $2,200,000. But our localized business is somewhat around $580,000.

Q. Is that an average figure or for one specific year? A. It would vary maybe. In the last few years it has gone up approximately 15 percent, on the overall basis.

Q. What brand batteries do you carry, Mr. Nelson? A. Auto-Lite.

Q. Anti-freeze? A. Zerone and Zerex—or Dupont, I guess is the company.

Q. Fan belts and radiator hose? A. Dayton.

Q. Chemicals? A. Currently I don't believe we handle chemicals.

(3371) Mr. Barton: Are you talking about radiator chemicals?

Mr. Dias: What is the difference?

Mr. Barton: Waxes.

By Mr. Dias:

Q. Do you handle any waxes and polishes? A. I am not positive, but I don't believe we do.

Q. How about radiator chemicals? A. I don't believe we handle any of those. We may, but I can't answer for sure.

Q. Do you also handle station equipment? A. Battery chargers only.

Q. How about spark plugs? A. Auto-Lite.

Q. Have your sales of Auto-Lite, DuPont, Dayton, and Auto-Lite plugs and batteries gone up 15 percent in the last several years? A. No.

Q. What has happened with those? A. Our volume is approximately the same. But the volume is in a different category. We sell more to fleets today than we sell to service stations by far.

Q. Why?

Mr. Barton: Object.
Mr. Royall: Object.
(3372) Hearing Examiner Kolb: Overruled.

By Mr. Dias:

Q. You may answer? A. Well, we can't sell them.

Mr. Royall: Motion to strike, your Honor.
Hearing Examiner Kolb: Denied.

By Mr. Dias:

Q. Do you know how many Texaco stations there are in your sales area, your local sales area? A. I do not.

Q. Do you know how many Conoco stations there are in your local sales area? A. I do not.

Q. Do you sell or attempt to sell to Texaco or Conoco stations? A. Yes. We attempt to sell every account possible.

Q. Will you cite some instances of your sales to Texaco stations? A. We have a few records—we have taken a few specific accounts. For instance, Dingers Service Station, 42nd and Center Streets. From 1952 to '56—in 1952 we sold them $295.14. Then it has gone down constantly to 1956, $8.09.

Q. The next one? A. Fontenelle Park Texaco. In 1949, $889.67. It has gone down in 1954 to $9.92.

(3373) Q. Can you give us the address of that? Fontenelle? A. 42nd and Ames Avenue. No sales beyond 1954.

13th and Deer Park Texaco, high in 1951 was $2,826.42. Low, 1954, $92.49.

Bill Brooks Texaco station; apparently we quit selling them in 1952. $156.26. In 1951 it was $555.60.

Mr. Lorenzen: Where is that located?
The Witness: 13th and Harrison.
Ernies Texaco, 45th and Lake.

By Mr. Dias:

Q. And the address? A. 45th and Lake. We started to sell them in 1951, $9.00 that year. It went up to, in 1954, $1,207. Then it started going back down. 1956, $117.92.

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Cross examination by Mr. Barton:

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(3374) Q. Your volume in Lincoln is around $450,000, isn't it? A. Yes.

Q. That is added of course to the volume of what you call the local area here in Omaha? A. No. Our total Omaha volume is about $2,200,000, something like that.

Q. What is included in that? A. Nothing but Omaha volume.

Q. Nothing but Omaha? A. That is right.

Q. And Lincoln is in addition to that? A. That is right.

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(3376) Q. Carl A. Anderson has a school for teaching service station operators and garage owners carburetion and electrical work, doesn't it? A. We have continuous schools, yes.

Q. Do you have a school operating all the time? A. Yes, sir.

Q. How does that work? I mean as a practical matter. Is it in a building in your main headquarters? A. It is in a separate building, across the street from our main headquarters.

Q. How many instructors are there? A. Qualified instructors, I believe we have five on the Omaha payroll.

Q. And how many students do you have in that school as a general rule? A. We graduated I think 20 of them—18 of them last night.

Q. How many do you—there are 18 usually in attendance? A. We try to maintain a class of approximately—I am not sure—of around 14 or 15 maximum class.

(3377) Q. Who are these students? A. Anyone interested in servicing automotive electrical equipment or carburetion equipment.

Q. And by and large they are either your customers or employees of your customers around the general area in which you operate? A. Yes, sir.

Q. I take it that that has been a very successful sales and promotional adjunct to your business, hasn't it? A. It was never started for that purpose.

Q. But it has been? A. We presume it helps.

Q. And the purpose for which it was started was to enable the people who didn't know how to do this work to learn to do it, wasn't it? A. The basic purpose of it was that the manufacturer that we represent in carburetion and electrical, if their equipment were to be accepted by the ultimate consumer we had to teach people how to properly care for it. And each year, with the modern advancement in automobiles, such as four barrel carburetors and other new gadgets, service personnel had to be trained.

* * *

(3378) Q. In connection with the carburetor and electrical items I take it that you call on all outlets that have a repair shop, or some kind of a use for that equipment, don't you? A. Yes.

* * *

(3379) *Cross-examination by Mr. Lorenzen:*

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Q. And in connection with your testimony you don't have any knowledge with respect to these specific stations such as whether in the case of Dinger, for example, the station was torn up for a part of the year while a new station was being built so that the chap couldn't sell any TBA, and you don't have any knowledge like that or any information like that in these records, do you? A. No, we do not.

Q. So that might be as far as you are concerned a reason for decrease and it might not? You don't know? A. We assume if a station were rebuilt within one or two or three years, I think the records indicate that it is a (3380) continued downward trend as far as business is concerned.

Q. You don't know whether the Dinger station low figure in 1956 was due to the fact that the station was only open a small part of the time? A. I could not say.

Q. You don't know that. And there is nothing on these records from which you are testifying which would indicate in any way why these stations or these particular people bought any more or less in any one year? Nothing in these records indicates that? A. No, sir.

Q. You yourself don't have any personal knowledge of the specific facts involved in connection with each one of these cases, do you? A. I do not have specific knowledge.

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(3382) Q. Let's go to Omaha, then. I want to call your attention to the station of Mr. C. R. Anderson, at 501 East Broadway. That would be in Council Bluffs, I guess. A. East Broadway, I assume it would be.

Q. That is Council Bluffs. Do you know anything about how much that station bought from you or the Sidles Company or other competitors who are not Firestone or Goodrich? A. I did not bring the records on that.

Q. And that would go for all of the stations in Omaha, that you didn't bring the records and you don't know about them with the exception of these four which you have here today? A. Yes, sir.

Q. And you don't have any separate recollection, if I should call your attention to one specific station, perhaps, of Bob Pitta—13th and Jackson. Do you know anything about how much he buys? A. No, but we give him an awful lot of business.

(3383) Q. So you think it would be natural that he gave you quite a little, too? A. I would assume so.

Q. And he is one of these company-owned and leased stations of the Texas Company, isn't he? A. Well, I am sure he services all of our automobiles, in Omaha.

Q. He services all? A. Yes, sir.

Q. And he is one of the company-owned and leased station operators for the Texas Company, isn't he? A. I didn't know that. I don't know.

Q. You didn't know that? A. No, sir.

Q. Then when you gave your answer to Mr. Dias about this company-owned leased station you didn't have this particular one in mind? A. I know him as an individual only.

Q. But you don't know the type of his station? A. Whether his station, or whether he owned the station, I did not know.

Q. And you wouldn't have that knowledge with respect to any one of these Texas stations to whom you sell that I asked you about? A. Those that I brought figures on I took the trouble to (3384) check.

Q. Only those four? A. That is the only thing that I checked personally.

Q. That is the extent of your personal knowledge about these Texaco stations? A. That is the extent of my factual knowledge.

Q. I assume that you didn't just go in your bookkeeping file and happen to come up with these four, did you? A. No, sir.

Q. You wanted to prove something and you asked your bookkeeper to come up with four Texaco stations where your sales had shown a decrease in the period covered by these years, is that right? A. I did not.

Q. You didn't ask her to do that? A. I didn't ask any specific. I was handed those yesterday morning.

Q. You don't know how it happens that these happen to show declining—I will withdraw that question. A. I think you had better.

Q. You were handed these by your bookkeeper yesterday morning? A. Yes, sir.

* * *

(3386) Q. Do you know whether last year your company sold its merchandise to approximately 20 or 25 Texaco stations in Omaha? A. I would not know, sir.

Q. You wouldn't know one way or another? A. No, sir.

Q. Your company records would show that? A. Yes, sir.

Q. You didn't check on that number before you came here to testify? A. I did not.

Q. Do you know to how many Phillips stations you sold in 1956? A. No, I do not.

Q. Or how many Mobil? A. No, I do not.

Q. How about the Standard Oil Company of Indiana? (3387) You didn't count how many you sold? A. No, sir.

Q. You didn't make that study in any case before you came here to testify? A. No, sir.

Q. And you don't have here with you the figures of the total amount of sales to the Texaco or Phillips or Conoco or Mobil gas or Standard stations? A. I don't believe we have ever broken it down. I don't think we would be in a position to furnish that information unless we had a re-audit of the business, and then we could tell you.

Q. Anyway, you don't have it and you didn't have it before you testified here? A. No, sir.

Q. You don't sell what is known as a complete line of TBA? A. Are tires included in TBA? Isn't tires part of TBA?

Q. Tires is the "T" of "TBA." You don't handle that? A. No, sir.

Q. And you handle that limited line of accessories that you testified about? A. I believe I admitted oil filter cartridges on my previous testimony.

Q. I believe you have those in fan belts and oil filter cartridges. You don't handle any line of waxes or polishes? (3388) A. To my knowledge, no.

Q. And you know enough from your general observation about these service stations that you are testifying about that they do include in their line in addition to what you sell, other types of accessories and tires? A. Yes, sir.

Q. Do you have any idea of the total number of service stations that you sell in Omaha? A. No, I do not.

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(3389) *Redirect examination by Mr. Dias:*

Q. Do you also have competitors from the Goodrich Company? A. We do not quite consider it competition.

Q. Is there a Goodrich distributor in town? A. Yes.

Q. Is he a competitor of yours? A. In a limited way.

Q. As to those items that you sell? A. That is right.

Q. In the TBA line. What about the school of teaching carburetion? When did you start that? A. 1931.

Q. You stated on cross-examination that you don't know that the company sells to 25 Texaco stations. Do you know whether or not those 25 stations buy anything from you?

Mr. Royall: Object. He said he didn't know anything about it.

A. There is only one thing I am sure of. We try to sell (3390) them. Whether we are successful or not I can't answer. In qualifying whether Goodrich is competition or not to us, we are not in the tire business and that is the major business, as we see it, of Goodrich.

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(3391) PAUL L. RENKEN was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name and business address? A. Paul L. Renken, 623 South 16th; Carl Anderson Company is the employer.

Q. How long have you been employed by Carl Anderson? A. Approximately 11 years.

Q. In what capacity? A. For the past five years as salesman. Prior to that receiving, shipping, parts managing, service parts managing, rather.

Q. As a salesman what is your sales territory? A. In Omaha proper everything south of Center Street, east and west to the river, and in outlying territory I go to Plattsmouth, Bellevue, Papillion, Ralston, Nebraska City, Murray, Union, Nehawka.

Q. What type customers do you sell to? A. Car dealers, independent garages, and service stations—filling stations.

Q. Can you tell us how many service stations you solicit? A. Over the whole picture you mean? All of them?

Q. Yes (3392) A. I don't have the figures exactly on that.

Q. Do you call on any Texaco or Conoco stations? A. Yes, sir.

Q. How many Texaco stations are in your sales area? Do you know that? A. Do you want it over just the City or over the rural?

Q. Wherever you sell. A. Included?

Q. Yes. A. It will run between 10 and 15 I would say.

Q. Do you know how many Conoco stations are in that territory? A. I don't have the figures available. I would say approximately ten.

Q. How many of the Texaco stations do you regularly call upon? A. Eight. Excuse me. In regularity, it depends. Some of them every week. I would say approximately five to six every week, and otherwise every two weeks.

Q. Have you called on all the Texaco stations in your area at any time? A. Yes. At one time or other I have.

Q. How long ago was that? A. Do you mean—

Q. Those that you are not calling on regularly now. (3393) A. I could give you the exact figure. About five or six probably that I am not calling on now.

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Q. Why not?

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

A. Where there was no—seemed to be no possibility of selling them enough to pay to stop, we stopped calling on them and concentrated our efforts otherwise.

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Q. Will you name these five or six that you call on every week? A. Acamo Texaco, 13th and Deer Park; R and R Texaco Service, at 3222 "Q" Street; Dingers Texaco Service, 42nd and Center; and Peer's Texaco Service, 42nd and Center; and then there is—

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(3394) Q. That is on Peers? A. Yes. That is Peers, 42nd and "L". And then there is Tex Service Station, at 4624 South 60th Street.

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Q. Referring to Acamo, what do you sell to that station? A. At present, or of late. I sell flashlight batteries, Harrison thermostats. That is to the best of my knowledge about it.

Q. How about R and R? A. R and R, I sell them ignition and carburetion parts, and I guess I have sold them some Shaler Rislone. That is all I can recall right now.

Q. What about Dingers? A. Dingers was out of business at 42nd and Center, of course, for awhile, but was down at 42nd and North Grover, a block north of Grover. 42nd and Valley.

(3395) Q. He changed locations? A. Yes. He was at 42nd and Valley while they were rebuilding the station at 42nd and Center.

I haven't sold him much of anything except, since he has been back at the station, thermostats, some small amount, and brake fluid. I think that is it.

Q. You say you have sold him those items since he has been at 42nd and Center? A. Yes.

Q. What did you sell him when he was at 42nd and Valley? A. At 42nd and Valley and at the station before the other station was torn down, I remember selling some DuPont products and some Purolators, a small number, and Harrison thermostats. That is about it.

Q. I am still not clear on Dingers. When you first started selling to him was he located at 42nd and Valley? A. And Center.

Q. 42nd and Center? A. Yes.

Q. Where did he move to then? A. 42nd and Valley while they were rebuilding the station at 42nd and Center.

Q. How long a period did that cover, that rebuilding? A. I don't remember for sure. I would say—I don't know exactly how long he was in business there.

(3396) Q. What about Peers? Did you sell to Peers? A. Yes, I sell to Peers?

Q. What type products? A. I sold some Zerone and Zerex. Not as much as formerly, I sold brake fluid and some Pennzoil.

Q. And to Tex, at 4624 South 60th? A. What I have sold him?

Q. Yes. A. I have sold him Weatherhead fittings and brake fluid. That is about it.

Q. Have you tried to sell him any batteries—at any of those stations? A. He was a battery customer of mine at one time. He bought quite a few Auto-Lite batteries. I would say about, it must have been about four years back. But none recently. None since then.

Q. Since when? About four years ago? A. About four years I would say.

Q. What type of batteries does he carry now? A. To be honest, I don't know what he does have. It is a smaller station. I don't know what he does have, to be honest with you.

Q. What battery does Peers carry? A. At one time he handled Grant batteries. I don't know what he has now. I have never sold him Auto-Lite batteries.

(3397) Q. How about Dingers? A. Dingers, he handles Firestone batteries.

Q. Have you ever tried to sell him your battery? A. Yes, in the past I have.

Q. Did he buy any at all? A. No, sir.

Q. How about R and R Texaco? A. They handle Firestone batteries.

Q. Have you tried to sell them batteries? A. Yes.

Q. How about Acamo? A. I think he handles Firestone batteries. I haven't sold him any Auto-Lite.

Q. Acamo, R and R, and Dingers, do they carry Firestone accessories, too? A. Yes, sir.

Q. How long has Acamo been at 13th and Deer Park? A. I don't know whether it is two or three years. He came after Zaloudek.

Q. Did you sell Zaloudek, the prior operator? A. Yes, sir.

Q. When did you first start selling Zaloudek? A. I think it was 1952.

Q. Can you tell us how much he purchased, and what items? A. He purchased batteries primarily, and Dayton hoses, and (3398) Harrison thermostats, and Auto-Lite plugs and DuPont radiator products. There are other items, too, but I can't remember right now.

Q. Do you have any record of his purchases during 1952? A. I have—maybe I should verify this. I don't remember for sure whether I started in—

Q. When did you start with him? A. In 1951 or '52, 1951 purchases were as high as, I remember Mr. Nelson gave $2,286.42, and then it dropped to $469 in 1952—$469.29.

In 1953, $795.62.

Then in 1954, $92.49.

Q. Is that his last year in business, do you know? A. Yes, I think it was there. I am not sure of it, but I think so.

Q. Do you know what he was purchasing in 1951? A. In 1951? Do you mean—

Q. What items? A. I think the items I mentioned prior, Auto-Lite batteries, Auto-Lite plugs, Harrison thermostats, DuPont products, Zerone, and Zerex.

Q. Did he buy the same products in 1952? Same type products? A. Yes, only not as much of them. Batteries, I think that is when he—I can't remember exactly when the transition was, when he changed from Auto-Lite batteries to Firestone. (3399) The figures show that it must have been about that time.

Q. Were you able to sell him any batteries in 1954?

Mr. Barton: I object to "able."

By Mr. Dias:

Q. Did you sell him any batteries in 1954? A. I don't think so. We probably took care of some by warranty. I remember something about that.

Q. When did he switch to Firestone, do you know? A. I should have those figures available but I don't. I don't know for sure, to say exactly.

Q. Do you know why he switched to Firestone?

Mr. Royall: Why what?

Mr. Dias: Why he switched to Firestone?

Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

A. Well, he kept telling me he was going to have to switch to Firestone and display the Firestone battery because he was instructed to do so.

By Mr. Dias:

Q. By whom?

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(3400) A. By Firestone.

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

The Witness: By the Firestone representative.

Mr. Royall: Move to strike on the ground it is clearly double hearsay.

Hearing Examiner Kolb: Motion to strike denied.

With whom did you have the conversation?

The Witness: Jim Zaloudek.

Hearing Examiner Kolb: About when was that?

The Witness: I should have figures on exactly when it was. It is hard to say what year.

Hearing Examiner Kolb: When with reference to the time he started handling Firestone batteries?

The Witness: Previous to the time he started handling Firestone batteries?

Hearing Examiner Kolb: About how long before?

The Witness: It went on for about a year I would say. I know I remembered him as I called on him and mentioned Auto-Lite. And he was buying Auto-Lite. He said "I am just going to have to switch over. I am going to have to display the Firestone battery," which he did, and our batteries were put in the back room.

(3401) Mr. Royall: Your Honor, I have an objection to those questions and a motion to strike that answer.

Hearing Examiner Kolb: Let the record show counsel has objected to all the questions asked by the Hearing Examiner. The objection is denied. Motion to strike all answers by the witness, and motion to strike denied.

Is there anything else?

By Mr. Dias:

Q. Do you know the Fontenelle Park Station at 42nd and Ames? A. No, sir, I do not. It is not in my territory.

Q. How about 13th and Deer Park? Is that Zaloudek? A. That is Zaloudek.

Q. Bill Brookes, 13th and Harrison? Is that in your territory? A. That is in my territory.

Q. Do you sell him anything? A. I don't know. No. I have called a few times since, but I don't sell him anything.

Q. Since when? A. Well, he was at 13th and Deer Park and then moved to Bellevue. I don't have the figures exactly when he moved to Bellevue either.

Q. Are you sure he was at 13th and Deer Park? A. Bill Brookes?

Q. Yes. (3402) A. No. Not Deer Park. That is Zaloudek. 13th and Harrison. I stand corrected.

Q. When did you start selling him? A. When I started on the territory. I think it was the latter part of 1951 or the first part of '52.

Q. What did you sell at that time. A. Trico and DuPont products, Harrison thermostats. That is all I can recall for sure that I can actually state.

Q. How long were you selling to him? 1952 or '51 to what time? A. What was that.

Q. How long were you selling to him? 1951 or '52 to when? When did you stop selling to him? A. I said before I don't remember just exactly when he quit and went to Bellevue. After he got in the new station at Bellevue I hardly sold him anything.

Q. Was he out of your territory then? A. No, sir. It was a new station and he didn't purchase products from us.

Q. Was he handling another brand of TBA in the new station? A. Most of his purchases, I think, as near as I know, were from Firestone.

Q. Did he handle Firestone tires? A. Yes, I am sure he did.

Q. Batteries? (3403) A. Yes.

Q. Accessories? A. Yes, I would say so.

Q. Did he own his own station? A. I don't know.

Q. Have you sold any anti-freeze to any of these stations? Acamo, R and R. Dingers, Peers, Tex, Bill Brookes? A. I have to Peers. But the rest of them I don't recall if I did. I don't think so.

Q. Have you had any situation similar to that Zaloudek situation?

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By Mr. Dias:

Q. Similar to any of the others? A. Well, along general lines, yes, but I don't have specific figures or anything other than—all I have figures on is Zaloudek, Dingers, and Bill Brookes.

Q. What sort of figures do you have on Brooks? Do you have sales figures? A. Yes, total sales.

Q. Which years? Do you have anything other than 1951 and '52? A. No, sir.

Q. What do you have for Dingers? Do you have 1953, '54 and (3404) '55? A. 1955 and then '56.

Q. What were your sales to Dinger in 1955? A. $64.96.

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Cross examination by Mr. Lorenzen:

Q. This station that you call Dingers, that is H. E. Johnson, is it? A. That's right.

Q. Dingers in the name he has on the station? A. That is a nickname.

Q. I think Mr. Dias asked you if you had some sales figures for him and you said you had 1955 and '56, and then you gave him 1955 and you didn't give him 1956.

Mr. Dias: We got those through—

By Mr. Lorenzen:

Q. Will you give us the 1956 figure? A. $8.09.

Q. Didn't he buy some charging equipment and brake fluid (3405) and matters of that kind that came to about $600 in 1956? Don't you know anything about that? A. Not that I know of, sir.

Q. You don't know anything about that? A. 1956? I don't think so. Not that I know of.

Q. Could he have gone and picked those up at the store and then— A. Just a minute, sir. He could have gone and picked something up at the store, but I don't think he bought any charging equipment in 1956.

Q. If he picks it up at the store, he doesn't buy it through you in those cases, does he? A. Well, no. If they pick up at the store I have no record of that, that's right.

Q. And the store does quite a substantial over-the-counter business with all kinds of people, doesn't it? A. Well, they do over-the-counter business, yes.

Q. And all the over-the-counter business that is done with anyone, is that what you call pick-up business? A. Yes, I guess that is what you would call it.

Q. That applies not peculiarly with you. Other salesmen's customers go into the store and pick-up things? A. That's right.

Q. It is a general custom in the business? A. Yes.

(3406) Mr. Dias: The whole business? I object.

Mr. Lorenzen: Yes, the whole business.

Mr. Dias: Whose business? His or the industry's?

Mr. Lorenzen: His company's business.

By Mr. Lorenzen:

Q. That is the way you answered it? A. You meant—to clarify it—that there is a possibility of anyone picking up.

Q. That's right. A. That is the way I meant it. There is a possibility of anybody picking up for cash. However, I might say this, as to the charger. That wouldn't be picked-up.

Q. That wouldn't be? A. No, sir.

Q. Not as a general proposition anyway. A. They still don't come and buy one of those for cash.

Q. Maybe he got this from a competitor. Do you know the extent to which these stations, about which you have testified, buy from competing companies such as Sidles or that long list of competitors that we have had at these hearings? Perhaps you have heard them recited here. A. Well, I don't have any specific items. I do know that competitors sell them. That is granted, yes.

Q. And among them are Sidles Company? A. Yes, I suppose.

(3407) Q. You said something about trying to sell batteries to this chap, Tex, at 60th and "L"? A. Yes.

Q. Would it refresh your recollection if I told you that the batteries he carries now are Delco? A. I believe I have seen some Delco there.

Q. At the Tex? A. I have seen some Delco batteries there. I can't say how many, but since you mention it, I do remember seeing them. What he has now, I don't know.

Q. In connection with Acamo, 13th and Deer Park, you don't know how much equipment he bought from Sidles during the time that you testified you sold him some Anderson merchandise? A. I wouldn't know.

Q. You wouldn't know what he bought from other of these suppliers? A. I wouldn't have any record of that.

Q. Would the same thing be true about Mr. Peers? You wouldn't know how much he bought from Sidles? A. No.

Q. Or from any of the other competitors? A. No.

Q. You testified a man named Brooks took over one of these stations. A. Yes.

(3408) Q. Do you remember that? A. Took over one?

Q. Didn't you say that he came in and substituted for someone else in one of these stations? A. I don't think—He didn't substitute, no. He changed from one station to the other.

Q. He is the fellow who went to Bellevue? A. That's right.

Q. And do you happen to know whether it isn't a fact that before he went into this filling station business he was a salesman for the Firestone distributor here? A. I believe I do recall hearing that, yes.

Q. Does this R and R Company have a—is that Linton and Riggs, at 33rd and "Q"? Is that the name of the people who operate that station, Ralph Linton? A. Ralph Linton and Ron Riggs, I think it is.

Q. That is the station that you had in mind? A. R and R.

Q. We had that listed as L and R. A. It is R and R.

Q. I wanted to be sure it is the same thing.

Do you have the sales figures with you as to the amount which that station buys from the Anderson Company? A. No, I don't have it.

Q. Would you say that it was somewhere in the neighborhood (3409) between 75 and a hundred dollars a month? A. It would hit that pretty close, I think, on ignition, yes.

Q. You also— A. I wouldn't know for sure. I don't have the exact figures.

Q. You also sell them, among other things, I think you testified, Rislone. A. Yes, I have sold them some Rislone.

Q. How many accounts do you call on? A. How many accounts all together?

Q. Yes. A. It would take a week-end's tabulation.

Q. I don't want the names. Just tell me about how many you have assigned to you that you call on with some regularity. A. I don't know.

Q. You have no idea? A hundred? A. It would be a guess.

Q. About 125? A. It would be a good guess. I suppose. I would think there would be that many, yes.

Q. You would think there would be that many? A. Not that many regular every week, but there are that many different accounts.

Q. Tell us the type of accounts of which those hundred would consist? A. I would classify that as car dealers and independent (3410) garages and service stations.

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Q. By the way, is the station at 24th and "G" in your territory? A. Yes.

Q. Harley Fisher, I think it is. Is that the name of the chap who operates that station? A. That was Frank's Texaco at one time wasn't it?

Q. Maybe that is what he called it. A. As I recall it.

Q. Did you happen to notice that he carried Delco batteries in that station? A. No. To be honest with you, I haven't stopped there for sometime.

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Cross-examination by Mr. Barton:

Q. When you were calling on Peers Texaco, and he was handling Grant batteries—is that right? A. As near as I recall it.

Q. And you tried to sell him your batteries, the Auto-Lite? A. I have talked to him about Auto-Lite batteries.

Q. Since he had Grant batteries he was not interested in (3411) handling yours, is that right? A. He has been a Grant dealer for some number of years.

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Redirect examination by Mr. Dias:

Q. Mr. Renken, do you get commissions on purchases that your customers make over the counter? Cash purchases? A. Yes. That has been customary.

Q. Do they just hand you a sum of money and say, "here are commissions," or do they tell you— A. It is figured, it has been figured overall, the whole territory. That's right. And we get our figures. We don't know exactly where it has come from when we get it. Does that answer your question?

Q. Yes. A. I didn't mean to be confusing.

Q. Tex, at 60th and "L", you said you had seen Delco in there. Have you ever seen Goodrich or Firestone batteries in that station? A. I can't say. I don't know.

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(3412) BERNARD F. KOSSEK was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name and business address, Mr. Kossek? A. Bernard F. Kossek, 1530—"N" Street, Lincoln, Nebraska.

Q. Will you state your place of employment? A. F. D. Wilson Sales Company.

Q. How long have you been with F. T. Wilson? A. Since 1939.

Except for a period in the Armed Forces during the war.

Q. What is your current position with the company? A. General Manager.

Q. And how long have you held that position? A. About between three and four years.

Q. Prior to that time? A. Prior to that I was Purchasing Agent and Office Manager.

• • •

(3413) Q. What type business is F. T. Wilson in? A. Wholesale of automotive parts, accessories, supplies and equipment.

Q. Do you handle tires? A. Yes, sir.

Q. And the brand name? A. Inland?

Q. Batteries? A. Delco.

Q. Can you name some of the more popular accessories? A. We handle Champion spark plugs, Purolator filters, Sealed Pour Rings, Auto-Lite ignition, Carter carburetors —parts, of course, Prestone anti-freeze.

Q. Do you handle repair parts? A. Repair parts, Sealed Power covers both parts and rings. I didn't specify. Both hard parts and rings.

Q. How about items such as mufflers and shocks? A. AP mufflers. There are several lines.

Q. What is the sales territory of your company? A. We cover the southeastern corner of Nebraska, roughly, 19 counties, and we cover from the Platte River—that is the Missouri River at the Platte—clear to highway 81, and south to the Kansas line, that section of the State.

Q. Do you employ salesmen? A. Yes.

(3414) Q. How many do you have? A. We have six.

Q. What class customer do you sell to? A. Car dealers, service stations, garages, some fleet accounts, if there are any, implement dealers, and a few hardware and accessory stores in some of the smaller towns.

Q. Among your service station customers are there any Texaco and Conoco stations? A. Yes, sir.

Q. Do you sell to any of them? A. Yes.

Q. Do you have any idea of the number of Texaco stations you sell to? A. Well, I would say roughly between—around 50, probably. Scattered all around, 50, because of the number of little towns that are in the southeastern part of the State. That is rough. It could be a little bit more or a little bit less.

Q. Do you know generally speaking the type product you sell to them? A. I think the main things we sell to them are our general supplies, mufflers, ignition parts, seat covers. And, of course, we sell a little spark plugs and maybe occasionally filters. We sell a little of those lines. The main things are made up of what I call miscellaneous supplies.

• • •

(3415) Q. Do you have any figures showing sales to Texaco accounts? A. I have copied some down for 1955 and '56.

• • •

Q. Will you give them by name and address? A. I don't have them down, but I can give you the addresses as I run them off. I know the addresses.

These are all in Lincoln. These are Texaco stations.

Duane Ellison, at 17th and South. Do you want the figures on each one as I give them?

Q. Yes. Do you have the figures broken down showing types of products purchased by the company? A. No. There is no way of breaking down individuals without going through a minute study of their invoices. Our records are kept as the accounts are posted, on a Cardex (3416) record, and we carry them by years and months on those, but it doesn't break down the individual purchases.

Mr. Lorenzen: Will you be giving them for two years?

The Witness: 1955 and '56.

Ellison bought $2,500 in 1955; $2,000 in 1956.

Then we have Larry O'Brien. He is at 10th and South.

• • •

The Witness: In 1955 he bought $5,040. In 1956, $6,400.

Then there is Watts Texaco, at 44th and "O." In 1955 he purchased $130. In 1956, $60.00.

Jerry Adams, 10th and R. He purchased $140.00 in 1955; $42.00 in 1956.

There is a Dick Brown, 53rd and "O." He was not in operation in 1955. I can't tell you. He opened up in 1956, sometime. He bought $20.00 in the time of 1956 that he was open for business.

There was a Byam—B-y-a-m—at 48th and Calvert, (3417) I believe it is. He came into this station sometime in 1956. He purchased $160.

Bob Martens, at 10th and "L." He bought $1,800 in 1955. $1440 in 1956.

There is Knudson. I believe there are two brothers but I don't have their names. They are at 40th and "A." Purchased $650 in 1955; $210 in 1956.

Logan—I don't know his first name—at 16th and "Q." $100 in 1955; $50.00 in 1956.

Jack Matthews, on North 48th, about the 2500 block. I can't give the cross street name. $860 in 1955; $850 in 1956.

There is a Heidtbrink. I don't know his first name. He is at 40th and South. He purchased $160 in 1955 and $150 in 1956.

Conover Texaco, at 63rd and Havelock Avenue. His purchases were $25.00 in 1955, $60.00 in 1956.

Kraft Service, roughly 900 North 16th. $302 in 1955; $706 in 1956.

There are several other Texaco service stations in town that we have never sold anything to so I didn't write them down.

By Mr. Dias:

Q. That constitutes— A. That constitutes all that we have sold anything to in (3418) two years.

Q. These plus the few you say that you— A. I would say there are two or three. I looked in the 'phone book and there are two or three names that we have never done any business with. I think they are fairly new stations, but I am not absolutely sure.

Q. Does that constitute all the Texaco stations? A. That is all the Texaco stations that we do any business with here in the City.

* * *

(3420) *By Mr. Dias:*

Q. Do you have some idea of the number of customers that (3421) you do business with? A. In our overall territory we must have in the neighborhood of 900 to a thousand accounts.

Q. Of all types? A. Of all types. That is everything, small and large.

Q. What do you consider as a small account? A. I am talking about a small account that may only buy maybe once a month. I would call a small account anything under $100 a year a small account.

The $900 and $1000 includes every type account, including the small ones, and there are quite a few in these small towns.

Q. Did you say that under $100 a month— A. Under $100 a year. A hundred dollars a month would be a pretty good account for a filling station. It wouldn't be an excellent account but it would be fairly good.

Q. Can you state what these sales consist of generally? A. The general sales pattern is for these service stations to have mufflers, and where they have a mechanic, shock absorbers, ignition, any motor parts like even carburetor repairs where there is a mechanic. Some stations have none. And they will buy seat covers or some type of floor mats and maybe windshield wiper blades. I am trying to think of all the different miscellaneous things.

Q. How about tires and batteries? (3422) A. Tires and batteries there probably are, out of the number I read you, there might be maybe four or five in there that have bought tires occasionally. But they buy them two at a time. This would indicate they were sold. They were not buying to stock. In other words, they were buying them on a hand to hand or mouth to mouth basis.

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Bernard F. Kossek, for Commission—Cross

Cross-examination by Mr. Barton:

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Q. That new remodeled station that was taken over by Whitney, you made approximately $1,500 sales the first year he was in there? (3423) A. Whatever that figure was.

Q. $1,455? A. Whatever the figure was. That is what we sold. This man was very hot, though, on seat covers. He must have sold the type that you can put on yourself. He sold an awful lot of them last summer.

Q. What kind of seat covers were those? A. They are what you call these turks and linen duster. He went very good on those. I don't know that he has a mechanic. I can't tell you. But that is one good item that they have sold. I would venture that he was our No. 1 account on that item.

Q. On seat covers? A. On seat covers.

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(3425) Q. Of those thousand accounts or so that you sell, how many of them are stocking Inland tires? A. It is hard to tell. I would say about maybe 30 to 35.

Q. Thirty or thirty-five? A. Yes.

Q. By and large— A. We only took this—we have had them before but we only actually became actively pushing tires in the summer, just last year. In other words, those 35 have all been signed since the middle of this last year.

Q. 1956? A. 1956.

Q. Prior to that time? A. Prior to that time we weren't on—there wasn't a proper cooperation, didn't have the proper setup to give us service or anything else so that we could afford to do any pushing. There was other merchandise that the salesmen could do better with.

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Cross-examination by Mr. Royall:

Q. Several of these stations buy Inland tires from Delco, do they not? (3426) A. Somewhat.

Q. Some of the Texas stations buy Delco and Inland tires? A. Probably there are several. There are probably several in both categories. I don't know about the Delco batteries so much. There are several I didn't specifically state. There were tires I was mentioning especially a minute ago.

Q. Maybe I can remind you of one or two of them. Don't you—isn't it a fact that Duane Ellison, you sell him Delco? A. If we do sell him Delco batteries it is very few. I would doubt that he stocks that.

Q. How about Knudson? You are not certain about that? A. I am not absolutely sure. The majority of his purchases, which run a little over $100 a month, he has a mechanic, and that stuff runs up. So that he couldn't put in many.

Q. He couldn't put many in there? A. He couldn't do much selling of Delco batteries.

Q. How about Knudson? A. I don't think we sell him any batteries. In fact, I am sure of it.

Q. What do you sell him? A. All we sell him is supplies. He will buy—his last order I think he bought some Trico blades.

Q. He bought Prestone? A. He could have bought a case, but chances are only one (3427) case at a time. All these stations occasionally will pick up a case of Prestone. That is not all of them but some of them will pick up a case. But they would only buy a case at a time. I don't think you will ever find a station on the list that would buy more than a case.

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Q. These figures that you gave, are there any sales that are not included for some reasons because they are cash sales? A. No. Cash sales in our method of handling them, all cash sales are also counted in as sales.

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(3431) CLARENCE E. CORNELL was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Boyd:

Q. Mr. Cornell, please state your full name for the record. A. Clarence E. Cornell.

Q. What is your present home address? A. 1710 South 48th Street, Lincoln, Nebraska.

Q. Have you been in the service station business? A. Yes, I have.

Q. And what gasoline did you sell, for what company? A. Continental Oil Company.

Q. When did you enter the business—what was your business with Continental Oil Company? A. I was lessee of a company-owned—Continental Oil Company service station at 48 Randolph Street in Lincoln, Nebraska.

Q. When did you become a lessee of that station? A. October 30, 1951.

Q. And you conducted there until when? A. February 4, 1956.

(3432) Q. Do you have with you copies of your leases? A. Yes, I have.

Q. May we have them please?

Mr. Royall: Your Honor, we have a continuing objection to this.

Hearing Examiner Kolb: Yes.

Mr. Boyd: Your Honor, I ask there be marked for identification as Commission's exhibit—

Hearing Examiner Kolb: 150.

Mr. Boyd: (continuing)—150, a document entitled, "Service Station Lease," and it's on the form of the Continental Oil Company and it is made out to Clarence E. Cornell, and it is dated from the 30th day of October, 1951, to the 30th day of October, 1952. And since that has information on both sides, I guess we ought to make that 150-A and B.

Mr. Royall: What is the date of that?

Mr. Barton: What is the date of 150-A and B?

Mr. Boyd: It's a one-year lease from the 30th day of October, 1951, to the 30th day of October, 1952.

Mr. Barton: Is there a date on it other than that?

Mr. Boyd: That is the only date I see on it.

Mr. Barton: All right.

Mr. Boyd: And as Commission's Exhibit 151-A and B, another copy of a lease form entitled, "Service Station Lease, and it is on the form of the Continental Oil Company. (3433) It is dated the 29th day of October, 1952. That is written in in pen and ink, and down on the other part for the term of the lease, it indicates it is from the 30th day of October, 1952, to the 30th day of October, 1953.

And as Commission's Exhibit 152, a document entitled, "Mutual Cancellation of Service Station Lease," and it is dated February 4, 1956, and is a form of the Continental Oil Company, and it is properly executed by someone with that company. I can't make out the name, but anyway, it is the Assistant Division Manager; and the lessee's name is Clarence E. Cornell. It is also witnessed by, F. D. Severs I believe it is.

Your Honor, I ask that those be marked for identification.

Hearing Examiner Kolb: They may be so marked.

(The documents referred to were marked Commission's Exhibits 150-A and B, 151-A and B, and 152, for identification.)

Mr. Barton: Could I see them?

Mr. Boyd: Certainly.

By Mr. Boyd:

Q. Handing you, Mr. Cornell, Commission's Exhibits 150-A and B, 151-A and B, and 152, are these the documents, particularly the two leases, you operated under when you were a lessee of this station. They are only the two, the other is (3434) a copy of the termination agreement. A. Yes, sir.

Mr. Boyd: Your Honor, I ask that these documents be received in evidence.

Mr. Barton: I object, your Honor, on the ground that there is—with respect to Conoco, I assume that is within the Commission's ruling, but I think I should preserve my objection.

Mr. Royall: I renew my objection.

Hearing Examiner Kolb: Objection overruled.

The documents will be received in evidence as Commission's Exhibits 150-A and B, 151-A and B, and 152, subject to a motion to strike by Texas Company.

By Mr. Boyd:

Q. Mr. Cornell, with whom at the Continental Oil Company did you negotiate the lease, Commission's Exhibit 151-A and B? A. Floyd C. Severs.

Q. And what is his position? A. At that time he was known as the City Manager.

Q. Did anyone else take part in those negotiations with Conoco? A. I believe both times they were brought out to me already signed by the Assistant Division Manager, Mr. Hayes.

(3435) *By Mr. Boyd:*

Q. With respect to the rental of the station on the first lease, how was that decided? A. I merely asked him what the rent was, and they said one cent a gallon. I accepted it on that basis. It was to be no bay rent or no set property rent. It was to be based on one cent a gallon of gasoline only. Then I asked them about future rentals, after the termination of the first lease. I was informed by the said Mr. Severs and Mr. Kiley Powell, who happened to be present, that there would be no increase in rent because it had been Conoco's policy over the past years not to increase rents. They had a policy not to increase rents and I had nothing to fear in the way of future rent increases.

Q. Commission Exhibit 151, I believe, indicates that the rental was a cent and a fourth a gallon?

Mr. Barton: I object. Exhibits show what they show. I see no point in having counsel testify as to what the exhibit shows.

Hearing Examiner Kolb: There seems to be some discrepancy between his agreement and the lease.

Mr. Barton: No, your Honor. The exhibit itself shows that the rental is a cent and a quarter a gallon.

By Mr. Boyd:

Q. Mr. Cornell, the first lease, which is Commission (3436) Exhibit 150, shows one cent a gallon rental, and you have testified about the assurance you received concerning no increase in rental. What circumstances occurred in connection with the increased rental which are reflected on Commission Exhibit 151?

Mr. Barton: Objection.

I object to the form of the question. It assumes there were some circumstances.

Hearing Examiner Kolb: The objection will be overruled.

A. As I remember, a few days before the first lease ran out, which would be in October 1952, a Conoco representative by the name of Eldon Jasa brought the second lease out for me to sign and it included this one fourth cent per gallon rent increase, which was a 25 percent increase in rent, and asked me to sign it for the ensuing year. I at first refused to do it and said that I had been assured that I wasn't going to have a future rental increase. They had told me that about a year before.

He said that he had no authority to argue over that phase of it. If I wanted the station I would have to sign the lease. And if I remember rightly, I waited a few days. And this also, if I remember rightly, Mr. Severs brought the lease out again and told me that they would have to have a cent and a quarter a gallon from now on because (3437) they had decided to raise rents on some of the newer stations in order to pay off some sort of investment that they had in them, and there was some discussion between he and myself, as I remember. I finally signed the lease in order to keep the station because, he gave me to understand, if I didn't sign the lease I would have to leave the station.

Q. When you became a Conoco lessee, did you stock and sell any tires, batteries, et cetera? A. Yes. I made a deal with the local distributor of U. S. Royal tires to take out a small stock of his tires and keep them in the station and display them and sell them as I could, which I did. I sold a few of those U. S. tires. And I took some Willard battery distributor and sold quite a few Willard batteries.

The rest of the line of TBA, general shelf items and chemicals and polishes and so forth, I bought from the local jobbers in Lincoln.

Q. Did you continue to handle those brands, that is the Willard batteries and U. S. tires, thereafter? A. If I may ask a question: thereafter, when?

Q. When you first went into the station, when you originally opened? A. Well, I sold that line of merchandise and of course the shelf items and TBA items that I got from the local distributors, on through the first year of my tenure in the station. (3438) It was in the winter of 1952 and 1953 that I was told by Conoco that they were taking on the B. F. Goodrich line and I would be expected to sell it from then on, such as tires, batteries, and accessories.

Q. What had your TBA volume been that first year, would you say, monthly or how ever you could give it to us? A. That was my first year in the station. I was building up a customer list and trying to get started. I imagine that I probably bought on the average around $200 a month or more. That would just be a rough estimate. I kept no records on it.

Q. Would you tell us from whom you purchased the Willard batteries? A. Judah Distributing Company.

Q. That is in Lincoln? A. That is at 16th and "N" Streets, in Lincoln.

Q. What about the—I believe you stated about U. S. tires? A. At that time the local distributor was Sidles U. S. Tires.

Q. What about your accessories? A. We have several parts and wholesale houses in Lincoln. Sidles Company, which is not exactly an affiliate of Sidles U. S. Tires; L. J. Messers, of the Wilson sales; Ben's Auto Parts, Carl A. Anderson, Inc. I bought from all of those people because they all sent salesmen out.

Q. You mentioned something about Goodrich and Conoco in (3439) late 1952. Did you take on the Goodrich line then? A. Yes, I took it on. I signed a Goodrich dealer agreement. They said that they wanted us all to sell Goodrich tires and batteries and accessories. I was a little slow there in signing up. I guess it was probably a month or so after the rest of them did.

Q. When you say "they wanted" you to, who do you mean? A. Continental Oil Company local officials.

Q. Tell us who these people are as you name them? A. Floyd Severs, Harold Hays, W. R. Fitzpatrick, and the city salesman who at that time was Duane Nantkes.

Q. And then did they indicate what items you were to carry? A. They indicated I was to carry the Goodrich line of tires, batteries and accessories, which includes shelf items and various chemicals and polishes, items that are listed in the Goodrich book, Goodrich sales and service book. And also indicated that I was to do away with the items that were not listed in that book.

Q. Was anything said by the Conoco people about the Willard batteries or U. S. tires?

Mr. Barton: Object as leading.

Hearing Examiner Kolb: Overruled.

A. Concerning the tires, I have put them around, that is, to satisfy the Conoco people, I put them around in the back room of the station up on a shelf, and tried to sell them, (3440) and displayed the Goodrich tires out front.

However, I left the Willard batteries right out front. I didn't take on the B. F. Goodrich batteries for quite awhile. Finally, I suppose it must have been a couple of months later, I took on a line of B. F. Goodrich batteries after much salesmanship and pressure from Conoco people.

I never did receive any pressure from Goodrich over it.

Q. Tell me about this pressure from Conoco that you mentioned. Just what happened? A. Well, when they would come out and see that I still had Willard batteries they would say that I was expected to throw those Willard batteries out and put in the Goodrich batteries. And so finally when I put in the Goodrich batteries I put them on one side of the room and had the Willard batteries on the other side of the room and that still didn't satisfy them.

Q. What happened? A. He kept asking me—

Q. Who? A. Loyal Severs and Harold Hays kept asking when I was going to throw out those Willard batteries and I told them I wasn't going to throw them out, I was going to keep them both. They said that they didn't make any money on Willard batteries and I wasn't supposed to keep them. And I said that I did make money on the batteries and I was going to keep them, (3441) that I would sell theirs alongside of them.

Q. Did you continue to handle the Willard batteries? A. I did for another month or so, and then finally I got rid of them. They kept wanting to take the Willard battery stand out and have it painted for me. They wanted to paint Goodrich on my Willard battery sign.

Q. Mr. Hays that you mentioned, do you know what his position is? A. Assistant division manager for the State of Nebraska.

Q. Continental Oil? A. Continental Oil.

Q. You mentioned putting the tires in the back. That was U. S. tires? A. That is right. I sold them down as much as I could.

Q. Did they request that? A. Well they requested generally that we sell or dispose otherwise of all of the TBA items that were not listed in the Goodrich TBA book, and get them out of the station as fast as we could. That also was to include shelf items such as unsponsored polish and unsponsored radiator chemicals and unsponsored fan belts and radiator hoses.

In the case of the fan belts, they sent out jackets, B. F. Goodrich jackets, and put them over the Gates fan belts that I had on display. And they brought out a Goodrich placard that fitted on to the Gates display stand. (3442) They had me put that on the Gates display stand. Then we covered up these Gates fan belts with B. F. Goodrich labels. And as we sold those down, we gradually replaced the fan belts with B. F. Goodrich fan belts.

Q. After you started handling the Goodrich line where did you obtain your supplies? A. At first we obtained what we could from the B. F. Goodrich store, 17th and O, at Lincoln, although they didn't carry the whole line. I can't recall just exactly how long that went on, probably five or six months.

Q. How did you happen to go to that B. F. Goodrich store? A. We were told to.

Q. By whom? A. Continental Oil Company officials.

Q. Name them again. A. W. R. Fitzpatrick—

Mr. Barton: I think that is in the record.

Mr. Boyd: I don't think Mr. Fitzpatrick is.

By Mr. Boyd:

Q. Who is he? A. He was the division manager for Continental Oil Company for four states.

Q. Do you know what those four states were? A. Nebraska, Iowa, North and South Dakota.

Q. For four months bought from the B. F. Goodrich store? (3443) A. That is, the articles we can obtain. They didn't carry the recommended oil filters. They didn't carry the fan belts or the radiator hose there because he didn't do that kind of work.

Q. This is a B. F. Goodrich store? A. Retail store; yes, sir.

Q. When did you get another source of supply? A. After that the Conoco and Goodrich people got together with Mr. Chris Beck and he was carrying Firestone products and Phillips petroleum, and they had him change over to Continental Oil Company petroleum products and B. F. Goodrich TBA. They set him up as a supplier and wholesale outlet. We were told to buy there and stay away from the store.

Q. How long did Chris Beck continue to be the supply source? A. He still is.

Q. After you took on the Goodrich line, was the station then identified with Goodrich products? A. Yes. The Goodrich people have a sign van that puts up metal signs on the lamps posts, and decal signs on all the windows.

Q. Were you asked where you wanted those signs? A. No.

Q. After you had your station identified with Goodrich signs and so forth, did you ever put up any other signs of other products that you didn't buy from Goodrich? (3444) A. From time to time I believe we would buy some oil additives, such as Rislone or Casite. They would probably be in a small display rack with a sign on them. Or if we had some Prestone or Zerex anti-freeze we would put that up in the window, and of course Conoco made us take those down.

Q. Who in Conoco? A. Harold W. Hays, Loyd Severs, Duane Nantkes.

Q. You say they made you take them down? How did they go about that? A. Of course they didn't use physical force but they would just keep telling us that the company didn't want those signs up, that it was the company policy not to have the signs up and we were expected to take them down if we wanted to get along with the company.

Q. In addition to tires, batteries and accessories, did you buy any other items from the Goodrich store—from Chris Beck? A. Of course the term "TBA" is a rather broad term—tires, batteries and accessories. Accessories in service station language are construed as fan belts, radiator hoses, shelf items such as polish, that is recommended polish, radiator chemicals, radiator additives. I think they had one or two lines of oil additives. They had light bulbs, sealed beams, small daylight bulbs, fuses, and just generally small shelf item products. Wiper blades, things of that sort, general (3445) car needs.

Q. Do you know what traffic builders are? A. Yes, sir, I know what traffic builders are.

Q. What are they? A. They are usually something that is put into a store or a station and then highly advertised in conjunction with an advertising program to bring people into the store or the station as it were. In our experience they have been seat cushions, low-priced floor mats, charcoal burners, picnic bags. I think they had ice pails, things of that sort. They were usually an item that we would buy for say 93 cents and sell for 98 cents.

Q. Did you sell those items? A. I sold quite a few of them. I think the last year I was in the station I refused to take them.

Q. From whom did you obtain them? A. We would get them from Goodrich through Chris Beck. But it was usually in conjunction with an advertising program where they were flyleafs, leaflets made up, or handbills to be distributed to customers in the neighborhood.

Q. By whom were these handbills, this advertising program— A. They would be printed up by some jobbing firm. I have no idea who. But they would be gotten by Goodrich and they would jointly carry Goodrich and Conoco items. We had to pay for the whole program.

(3446) Q. They did feature Conoco petroleum products? A. They featured Conoco petroleum products and usually mentioned washing and greasing, and then they would mention tires and batteries, and the various items we carried in the station.

Q. Did you ever have any discussions with representatives of Conoco about these traffic builders? A. Yes. The discussion would be along the lines that they were extremely hard to sell and hard to get rid of, and at the end of a given season we would find ourselves with quite a number of them still on hand that we would try to give away. We couldn't get rid of them any other way. We couldn't make any money on them.

Q. Did representatives of Conoco urge you to buy these items? A. Yes, they did. Very much. They urged us to buy those items. And at one time when I had fully made up my mind to refuse, there was a Conoco city salesman at that time named Rihn, and he said, "I want you to sign up for this advertising program or else." That is right after the half-dozenth time that I had refused him.

He said, "This is it. This is the last time I am going to ask you. Will you sign it or shall we go down and see Fitzpatrick." So I signed it.

Q. Do we have his full name? (3447) A. I believe it is Erwin, his first name.

Q. What is his position? A. He is merchandising manager. There was quite a shake-up there. They changed around a number of positions. There are no city sales manager anymore. The merchandise manager took his place.

Q. Merchandise manager for whom? A. Continental Oil Company. Locally.

Q. Do you know Mr. O. F. Splichal? A. Yes, I do.

Q. Who is he? A. He was assistant division manager for Continental Oil Company in charge of TBA for the four-state area that I have previously mentioned.

Q. Did you ever have discussions with him about TBA? A. Quite a number of times. He would accompany the Goodrich representative out to the station to see us about buying more TBA. At one time in particular he came out to see me when the Conoco salesman—

Q. Who is he? A. I think there were two in this particular case that I want to recite. It was Nantkes at Firestone and then Severs—told us that we were expected to put in 25 dry-charge batteries because I still had a half dozen wet batteries on hand and I told them that I was going to buy dry-charge batteries (3448) when I sold these wet batteries and got rid of them. And they kept after me to buy 25 dry-charge batteries and they couldn't get me sold. Finally, Splichal came out himself. He had the order all made out and told me to sign it. I refused to sign it. He said, "All the others are signing up for 25 dry-charge batteries and you are no exception." I told him I didn't need 25 dry-charge batteries because I had an adequate supply of batteries on hand and when I sold them out I would buy dry-charge batteries because I was in favor of that program but I wouldn't buy 25.

Q. What kind of batteries he wanted you to buy? The brand? A. The B. F. Goodrich dry-charge batteries.

Q. As best you can tell us, about when did that occur? A. If I recall, that must have been in the early spring of 1954.

Q. Was it about the time that these dry-charge batteries came on the market? A. Yes, about the time that these dry-charge batteries came on the market. There was quite

a program on to get everyone to take 25 batteries, among the smaller stations.

Q. Did you attend any dealers meetings, Mr. Cornell? A. Yes, sir, I attended all the dealers meetings.

Q. Were there any Goodrich representatives at those meetings? A. There were usually one or two Goodrich representatives (3449) at every Conoco meeting. That is after the Conoco-Goodrich alliance.

Q. Were there any other rubber company representatives at such meetings? A. None.

Q. Were there any discussions at the meetings about Goodrich products? A. There were usually discussions at the meetings about Goodrich products and how to sell TBA. I remember one particular meeting, one meeting in particular. Quite a large crowd attended and about the only meeting that I ever saw Mr. Fitzpatrick attend. He was there and asked for floor time. He got up and really started to give everybody a dressing down because they hadn't been loyal to Goodrich; they hadn't been loyal to Conoco. He stated that he as division manager was very much interested in the company making money, and the stockholders making money. He said that Conoco had quite a number of stockholders and that he considered stockholders the best friends that the company had, and that they were making a lousy five percent on their money, and the reason they weren't making any more was because us lessees were not loyal to the TBA program and were not buying all the TBA that we sold from the B. F. Goodrich outlets.

We were buying from other places in town that the company wasn't making any money on. He also stated that we (3450) were expected to deal exclusively with B. F. Goodrich outlets and that the trouble with most of us was that we were too intent upon making money for ourselves and not making any money for the company.

He said that if we would set our minds toward making money for the company, that we were bound to make money ourselves.

He also said that we were letting too many bastards—and he used this word "bastard" a number of times—there were too many bastards from "O" street that were coming in through our doors and selling us TBA merchandise, and from now on he expected absolute loyalty from the lessees in the Lincoln area, and to keep the bastards from "O" Street out of the stations, and to buy any TBA that we needed from the local B. F. Goodrich outlets. At that same meeting—

(3451) Q. Could you tell us about when that meeting was, as best you recall it? A. As best I recall that was in the early part of 1954.

Q. Go ahead. Can you tell us something else about that meeting? A. He kept his eyes on me in particular. I will never forget that as long as I live. He kept his eyes on me in particular and said that in his experience he has seen quite a number of petroleum retailers associations spring up, and that usually the man who started them found himself out of business, out of money, broke, and the friends that he thought were following him were really not following him after all; that he was usually some kind of a flag waver who would walk up and down the street carrying a flag over his shoulder and expect all the other area service men to follow him, and in reality the other service station men would see the light of day and follow the company policy.

He had seen these retailers' associations spring up all over the United States and he hadn't seen one of them that really had been successful yet, and he said the one that was getting locally started here in Lincoln would be no exception, and that the people who were getting it started

would soon find out their folly and would be coming back and wanting to get in and be a member of the team and follow the Conoco program.

(3452) That any one who joined the retailers' association was wasting his time, wasting his money, when he could be spending his time better selling the company's products through the station and not spending so much time trying to organize a petroleum retailers' association.

And he—I forget the words he used—but he labeled it a communist front.

Q. Is there a retail gasoline dealers association in Lincoln? A. There is a retail gasoline dealers association yet in Lincoln, but the ranks have dwindled due to oil company pressure.

Q. When did it come into existence? That is, this association? A. In the latter part of 1952, toward the fall. Myself and about 7 or 8 other fellows from as many different brand names of gasoline got together and formed the Lincoln Petroleum Retailers Association.

Q. You said something about being a member of the Conoco team. Did a representative of Conoco ever discuss that with you? A. Yes, sir.

Q. What did they say? A. Being a member of a team was to, of course, deal exclusively in Conoco products, deal exclusively in B. F. (3453) Goodrich products, also being a member of the team meant to keep your station open later than you usually had been.

They recommended keeping the stations open until 11:00 o'clock. And there were quite a number of boys closed at 9:00 or 10:00. Being a member of the team also meant that when there was a gasoline war started you were expected to go down immediately to the recommended price because there was usually some discussion by 'phone or somebody would come around in a car and say, "there is a gas war on, the price is 24.4, you are supposed to go down to

it." And they would even get signs painted up for us to put on our driveway.

Q. Who would? A. Continental Oil Company. Just generally following company directives meant being a member of the team.

Q. Did you receive that information from a representative of Conoco? A. That's right.

Q. One other question about the dealer meetings. How often were they held? A. They were supposed to be held every three months, but sometimes they skipped and we didn't have one for various reasons. I don't know why.

Q. Before Conoco took on the Goodrich line of TBA, featuring it at the stations, did they ever say anything to you about TBA? (3454) A. It was never mentioned. They would say this: That you shouldn't tie up all your money in tires and batteries. Don't spend too much money on it. Don't get yourself in a hole financially.

Q. Did the Conoco Oil Company have a credit card while you were lessee? A. When I first went into the Conoco station, the first lease of the Conoco station, they had a regular credit card which was similar to every other oil company credit card that I had ever seen, and I believe it was in 1953 that they changed to the International Business Machine credit checkbook system, and tried to get as many of the customers as possible to change to using that system. It was a very highly successful system and it is very convenient.

Q. Did the credit cards—excuse me. What date did they they change from the credit card to the other system? A. I think it was in the early part of 1953. The spring of 1953 if I remember rightly.

I think it was 1953.

Mr. Boyd: Your Honor, I ask that there be marked for identification as Commission Exhibit 153

a card entitled "Your personalized Conoco Credit checkbook." On the top line it has the name "Clarence Cornell." This is a perforated card. Since there is information on both sides we had better make it 153-A and B.

(3455) (The document referred to was marked Commission's Exhibit 153-A and B for identification.)

By Mr. Boyd:

Q. Mr. Cornell, handing you what has been marked for identification as Commission's Exhibit 153-A and B, is that one of the tickets from the new credit system that was adopted about 1953 that you told us about? A. No, that is not one of the tickets. That is not one of the usable tickets. That is the flyleaf that is in the front of each new book that the customer gets which describes the purpose of this credit checkbook, what it is used for, and mentioning the articles of various kinds that can be purchased with it.

Of course, it carries the customer's name and address. I imagine the perforation is for his identification in the machine.

Mr. Boyd: Your Honor, I offer in evidence Commission's Exhibit 153-A and B.

Mr. Barton: I have the same objection to that.

Mr. Royall: I understand our objection covers it, your Honor.

Hearing Examiner Kolb: The objection by both parties will be overruled, subject to motion to strike on the part of Texas.

(3456) (The document referred to, heretofore marked Commission's Exhibit 153-A and B for identification, was received in evidence.)

By Mr. Boyd:

Q. I hand you Commission's Exhibit 153-A and B and referring to the portion marked 153-B, I note that it states that it can be used to purchase Goodrich tires, batteries and so forth. A. That's right.

Q. Have those forms ever carried any other rubber company's designated TBA? In other words, would they be good for goods of that type? A. I never heard they did, and I heard we were not supposed to put any other brand name of tire, battery or accessory other than Goodrich sponsored on the credit checkbook.

I won't say for sure that we always followed that policy.

Q. How long did you continue to carry the Goodrich TBA line after you took it on? A. I carried the Goodrich TBA line right on through until the time that I was ejected from the station.

Q. Mr. Cornell, in addition to the TBA line, did you carry any other, say, outside or unsponsored items? TBA items that you did not obtain from the designated— A. Yes, I carried some oil additives that were not sponsored by Conoco or Goodrich, and carried some motor oils not sponsored (3457) by Conoco and you might say Goodrich. Do you want to know the names of them?

Q. Yes, sir. A. I carried Rislone, an oil additive. I carried the Alemite Company CD-2. And I carried Wynns friction proofing. I carried Miracle Power. There might have been another or two. I can't remember now. I carried Quaker State oil. I carried some Pennzoil. I carried some Royal Triton oil.

Q. Let's take Rislone. Did you openly display that in the station? A. Yes, I did.

Q. Was anything said about it? A. Quite a lot.

Q. By whom? A. Floyd Severs, Harold Hayes, W. R. Fitzpatrick.

Q. What did they say? A. Well, they said that I would get in trouble if I carried it because they didn't sponsor it. They didn't sell it and they didn't make any money on it. Also, it was a bad thing to sell to your customers because they had known it to ruin people's engines, and it was nothing but kerosene anyhow and it thinned out a perfectly good Conoco motor oil.

Q. What about CD-2, Wynns friction proofing? A. They said if you used Continental Oil Company's oil exclusively you would never need it. No sense in selling it.

(3458) Q. Did you display those items? A. I did. I displayed them quite a lot until there were so many objections raised to it that I finally had to put them around in the back room and put them in Continental Oil Company oil boxes to hide them.

Q. Is that the basis on which you continued to sell them? A. Yes. Once in awhile I would bring them around and put them on the shelf or maybe on one of the shelves in the back room and then some Continental Oil Company official would make quite an objection to it and I would put them back in a Continental Oil Company box again.

Of course, they wanted to throw them clear out, to get them out of there.

Q. Would that same be true of the other items, Miracle Power, Quaker State, Penzoil and Royal Triton? A. Quaker State raised quite a bone of contention.

Q. Tell us about it. A. Quaker State oil was not supposed to be on the station in any form, either hidden or otherwise. You were supposed to keep it completely off the premises, because we were supposed to sell Conoco and no other oil. In fact, I even hid a case of Quaker State in the trunk of my car, and one Conoco man opened the trunk of my car and found it.

Q. What did he do when he found it? A. Oh, he just made a little remark about it. "I see you (3459) are still selling Quaker State," and that is all he said.

Q. How about Pennzoil and Royal Triton? A. Royal Triton oil at that time was desired by a number of Buick owners because it made their engine run smoother, they claimed. They had a hydraulic valve lifter trouble and Royal Triton was supposed to help that. We had a number of Buick owners who asked for it. Demanded it, and said that we would get all of their lubrication and gasoline business if we would carry it, and so I did.

But when Conoco would see it on the shelf they would order us to throw it out or hide it. Sometimes they said to hide it and sometimes they would get a little angry and say to throw it out. One particular time I had in on my front shelf. That was after they raised my rent. When they raised the rent, after they promised me they would never raise the rent, then I went around to the back room and got all the Royal Triton, all the Quaker State, Rislone and Casite, brought it along and put it on the front shelf where everybody could see it.

That is when they physically moved it. They took it into their own hands and took it off the shelf and through it in a pile in the back room.

Q. Who did this? A. Elvin Jasa.

Q. Who is he again? (3460) A. He was at that time the City Salesman.

Q. Conoco? A. For Conoco.

Q. Did you ever give trading stamps? A. We gave trading stamps from I think it was about April, 1953, until August 1954.

Q. How did you come to give those out? A. We were told that we had to give stamps after Continental Oil Company made some sort of agreement with the local Com-

munity Stamp Company that started up in Lincoln. It was a local concern that produced community savings stamps. And Conoco began sponsoring these stamps and they held several meetings with the dealers over it. Of course, the stamp officials were there and told us how we would have quite a competitive advantage over other name brands in petroleum, and other stations, because we would be the only station that would be handling or giving, I should say, the community stamps.

There were quite a number of the lessees that I had talked to who were skeptical about the whole thing and didn't want to take on the stamps. But Conoco said that we all had to take on the stamps because they wanted to keep all of our stations uniform and they wanted all Conoco customers to be able to get community stamps at any Conoco station that they went to. And that we must give the community savings stamps.

Q. Did you take them on against your wishes? (3461) A. To be truthful, I was more or less passive. I took a wait and see attitude. And I took them on. I didn't offer too much resistance to them at all. I took them on to see if I could gain some competitive advantage. But when I woke up one morning and found the man across the street in a Sinclair station had the same stamps. And as I rode around from time to time every station had the same stamps except the ones who were giving the S & H green stamps.

This included Standard stations and some Texaco stations and the Phillips stations and the Skelly and Jacobs service and all the other name brands around Lincoln were giving savings stamps, so I couldn't see any competitive advantage.

Q. Were they given on everything you sold? A. We were told to give it on everything we sold by both the stamp company and Continental.

Q. Did that include TBA items? A. That included TBA items.

Q. What was the reason you signed that cancellation agreement and gave up the station? A. The reason I signed the cancellation agreement was because that I knew and was advised by my attorney that they could go to court and get me out anyhow.

The way it came about—do you want to know how it came about?

(3462) Q. Yes, sir. A. On September 30, 1955, I was making preparation to take about a ten-day vacation. I went over to the warehouse to buy some oil for the station to keep on hand. My brother-in-law was going to run the station for me and I had him with me. So as I was at the station one of the men there said, "Don't leave because Rihn is looking for you and wants to see you as soon as he can. He is running all over town looking for you.

"The first time he comes in I will tell him you are here."

I waited about ten minutes. He called me off into his car, in another part of the lot, and told me that he wanted me to sign a mutual cancellation agreement.

Q. He is the salesman for Conoco? A. He was the merchandise manager in charge of all the stations.

Q. Go ahead. A. I asked him why I should sign the cancellation agreement. He said there is no particular reason, just the fact that Conoco wants its station back and they want me out of it and I was to sign this cancellation agreement. I told him I was making preparation to go on a trip and I wasn't about to sign anything without the advice of an attorney, and I didn't have a chance to get in touch with an attorney then, and I was still going to take the trip and I wasn't going to (3463) sign.

Q. That was about 30 September 1955? A. That was the September 30, 1955.

Q. Then what happened? A. I went back to the station and told my brother-in-law to run it, that I was going to take a trip. I found out about, I guess it was 9:00 o'clock that night, after I had left the station, I left the station about 5:00 o'clock in the afternoon, that there was a special delivery letter came to the station and my help had received it.

I said I am not coming up there to read that letter. I want no part of it. I got in the car and we started on the trip.

When I got back, about ten days later, then I read the letter. It was a letter cancelling any lease agreement that then existed between Continental Oil Company and myself, and asking that I vacate the station within 30 days from September 30, which would be October 30.

When October 30 came, I just stayed. I didn't go anywhere. Then they served me with a—the Marshall served me with an eviction notice on October 30, giving me another 30 days to get out of the station. I was supposed to be out by November 30 then. So I still didn't go. I stayed right there. And—

Q. What happened after that? (3464) A. After that I was served again by a Marshall to appear in Municipal Court to answer charges as to why I was unlawfully occupying their premises without any legal right to be there, I guess. And so at that time my attorney went down to the court—I didn't even go—he went down to the court and just filed an answer to the charges and asked for a continuation. And so they couldn't get a trial date until January 24th, and I was supposed to be in Municipal Court on January 24, 1956, and we were all set to go to court that day and the day before, which was January 23, Loyd Severs and Irvin Rhin came out with what I call a watered down version of the cancellation agreement, and had me sign it.

The reason I didn't sign the original cancellation agreement was because my attorney had advised me that there was to be a clause in that cancellation agreement which said that I would never be able to act as a witness against Continental Oil Company in court, and that it would also state that they did not evict me from the station; that I asked to go of my own free will and accord.

He advised me that there would be a clause in there of that sort, and that is why I didn't sign it.

So when they finally gave me a cancellation agreement that had nothing of that sort in it, then I signed it. And they asked me if I would stay there for a week or ten days until they could find someone to buy the merchandise.

(3465) Up until this time they had refused to buy back any TBA or anything in the way of tools or equipment. They even refused to buy back the Continental Oil Company gasoline and oil that I had on hand, and I was supposed to dispose of it of my own volition. That is because I wouldn't sign the cancellation agreement that they had refused to buy back their own products.

So when I started to sell the stuff to other dealers we created a little furore and they came around and wanted to buy then.

(3466) Q. Mr. Cornell, did the TBA matter have anything to do with your lease cancellation?

Mr. Barton: I object.

Hearing Examiner Kolb: Objection overruled.

A. I believe it was relevant to this extent: that I had refused to sell the B. F. Goodrich-sponsored TBA entirely, and no other. I insisted on keeping some—I had somebody else's radiator hose, I think it was Thermoid's. And I didn't buy all of my filters from Goodrich. I had a few AC's on the shelf. And then when I didn't get quite the deal I wanted from the Goodrich outlet, which was Beck,

I bought the same brand filter, Fram, from Sidles Company. And of course they knew that I had always had an account at Sidles and Messers and Ben's Auto Parts and various wholesale houses. That part of it I believe is relevant as to the TBA part of it.

There were other reasons. The main reason I was thrown out of the station was because I refused to give the stamps. I threw out the stamps in 1954. The other reason was the fact that I was the first president of the Lincoln Retailers Association and was very instrumental in getting it organized. They told me that, that they would get me for starting an association.

W. R. Fitzpatrick made the statement that he would get me for starting the Association. I will swear to (3467) that.

By Mr. Boyd:

Q. This station that you operated, had anybody been in that station before you had it? A. No, sir. I was the first lessee. I opened it brand new.

Q. You said you carried some unsponsored items that you mentioned just a few moments ago. Did representatives of Conoco indicate that that was one of the reasons?

Mr. Barton: I object to that, your Honor. The witness has been very able to express himself on every possible subject and needs no leading from counsel.

Hearing Examiner Kolb: Read the question.

(Question read.)

Hearing Examiner Kolb: Objection sustained.

By Mr. Boyd:

Q. What reasons were given you by representatives of the Conoco Oil Company about the lease cancellation?

Mr. Barton: Object.

Hearing Examiner Kolb: The objection will be overruled.

A. Did you mean, sir, when the lease was not renewed in 1953, or when I was—

Q. Is that when it first came up for renewal? In other words, at the end of the second year? (3468) A. Yes, sir. October 1953 was when that lease would come up for renewal—and I have had two leases. I didn't get a lease at all. They just didn't bring one out and I wondered where it was. I asked Severs where it was and I asked Rihn where it was, and I asked Hays where it was, and I got no answer; none. I kept asking for a period of about two months when I was going to get a lease. Nobody would answer the question.

So when you could get one of those fellows by themselves, either one of the three—Severs, Rihn or Hayes—they would make this statement: that whenever you become a member of the Conoco team, when you decide to straighten up and fly right, you might get a lease.

Q. Then on September 30, 1955, when you were approached about vacating the station by signing this cancellation agreement, what reasons were given then?

Mr. Barton: If any.

By Mr. Boyd:

Q. If any. A. Simply that they had put up with me long enough, they were sick and tired of trying to make me become a member of the team, that I knew very well

why they wanted me out of there. Why should I ask them again and they wanted their property back under the law. All of those things were verbal. There is nothing written.

(3469) Mr. Boyd: That concludes the direct.

Mr. Royall: I have no questions, your Honor.

Cross-examination by Mr. Barton:

Q. You did very well in your sale of Goodrich TBA in the station, did you not? A. I would say that I did average; yes, sir.

Q. You sold several thousand dollars of tires, batteries and accessories? A. Over what period?

Q. Over an annual period, annually. A. Yes, I would say that I probably sold several thousand dollars over an annual period.

Q. That is each year that you were handling them? A. Yes.

Q. And you were very well satisfied with the B. F. Goodrich brand of tires and batteries, weren't you? A. As quality merchandise; yes, sir.

Q. I mean you expressed to your customers and to others your satisfaction with the B. F. Goodrich line during the time you were in the station? A. If you know anything about salesmanship at all, if you want to sell something you have to necessarily believe in it.

Q. That is right, and you believe in it? A. That is right.

(3470) Q. And the traffic builders that were utilized by you were used in connection with the direct mail program, were they not? A. That is true.

Q. And the system was that you would mail, or you would buy from the B. F. Goodrich distributor or the company, a direct mail program which would be a postcard with Conoco products, your products, your name on that card? A. That is right.

Q. And it would be mailed to your customers? A. Yes.

Q. Or prospective customers? A. Both.

Q. The idea of it was to get more traffic into your station so that they would buy more gasoline and more TBA? A. That is true.

Q. And the traffic builder was thought to be a means to get the customers to come in? A. That is true.

Q. Some of them worked and some didn't? A. Most of them didn't.

Q. In your case most of them didn't? A. Well, in most all cases most of them didn't.

Q. Did you have a charcoal burner? A. No, I didn't take that.

(3471) Q. Did you ever have any argument with any of your customers? A. Over what, sir?

Q. Anything.

Mr. Boyd: I object to that as being immaterial and irrelevant and not part of the direct examination.

Mr. Barton: Your Honor, the direct has covered an awfully broad field.

Hearing Examiner Kolb: The objection will be overruled.

A. I can't remember ever having a real argument with any customer.

By Mr. Barton:

Q. What do you mean by "real argument"? A. Well, you haven't told me yet what sort of argument I am having here with a customer. I don't quite understand.

Q. Did you ever have a disagreement with a customer in which you expressed yourself about the matter? A. About any matter?

Q. Yes. A. Or a particular matter.

Q. Any matter? A. I can't recall.

Q. You reserved all those for your confreres in the Conoco Company, I take it? (3472) A. I never started an argument with them, sir.

Q. Not even when they raised your rent by a quarter of a cent? A. Wouldn't it be a natural thing to protest?

Q. You didn't argue with them about that? A. I certainly did.

Q. And during the time that you were there isn't it a fact that the Conoco officials told you that they didn't think you were selling the amount of gasoline in that station that you should sell? A. They tell that to all their—

Q. Didn't tell you that? A. They certainly did.

Q. They told you that consistently while you were there? A. Yes, and all the others.

Q. You had a running argument with them during the time you were there, about your gallonage? A. Do you think my sales were any part of their business?

Q. Didn't you have that kind of argument with them? A. I certainly did.

Q. You went to Washington and saw Mr. Roosevelt about the Conoco Company? A. I never saw Mr. Roosevelt in my life.

Q. Didn't you see James Roosevelt? A. No, sir.

(3473) Q. Didn't you come back to Omaha and tell everybody that you did see him there? A. No, sir, I did not.

Mr. Boyd: Objection.

By Mr. Barton:

Q. Didn't you talk around Omaha that you were going to "get the Conoco Company?"

Mr. Boyd: Objection.

A. No, sir.

By Mr. Barton:

Q. You never said that? A. No, sir.

Hearing Examiner Kolb: Objection overruled.

By Mr. Barton:

Q. When did the Conoco Company hand you a cancellation agreement that had a clause in it that you were not to be a witness? A. They never did.

Q. They never did? A. They wouldn't show me the cancellation agreement that I was supposed to sign until I had made up my mind to sign it.

Q. But you know they had a cancellation agreement with such a clause in it? A. I am not 100 percent certain but I am advised that there is such a sort of thing, by my attorney.

Q. When did you form this association? (3474) A. A better way to state it would be when did we form that Association. That was in the—say we got started in the spring of 1953. We had made plans for it over the winter of 1952 and 1953.

Q. You went into the station on October 30, 1951? A. October 30, 1951.

Q. And you made plans with others to form the Association shortly after you went into the station? A. Well, I would say within a year after I went in, or maybe a little more than a year. I can't quite remember.

Q. Sometime after the rent was raised in October 1952? A. Well, let's say sometime after my rent was increased.

Q. And most of these things seem to occur sometime after your rent was increased, didn't they? A. Yes, sir.

Q. That was sort of a source of friction between you and the Conoco people? A. That was a sore spot.

Q. And it has continued to be a sore spot? A. Yes, sir.

Mr. Barton: I think that is all.

Redirect examination by Mr. Boyd:

Q. Mr. Cornell, what was the gallonage when you started that station? (3475) A. If I remember correctly, I can refer to my books at home, about five thousand gallons a month.

Q. You opened it new, didn't you? A. Yes. The first month was between four and five thousand gallons, as I recall.

Q. And after that what was the gallonage? A. It gradually increased every month until it got up to around 11,000 in the winter and between 13 and 14 in the summer, each summer, and I have had it do over 15,000.

Q. What was the gallonage on September 30,—at the end of the lease, October 30, 1953, what was the gallonage at that time, if you remember? A. I would imagine around 12,000 to 13,000 gallons. I would again have to refer to my records at home to be sure.

Q. What was it on September 30, 1955, when you were again approached to vacate the station? A. I think it was down to around ten, which I could attribute to the fact that I had given up the trading stamps which did decrease gallonage somewhat, but I ended up with more net profit on decreased gallonage.

Q. What was the gallonage when you finally left the station at the end of January or the first of February 1956? A. About 10,000 gallons a month.

Mr. Boyd: That is all.

Hearing Examiner Kolb: No further questions.

(3476) TED OLSEN was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Dias:

Q. Please state your full name for the record? A. Ted Olsen.

Q. By whom are you employed? A. Sidles Company.

Q. In what capacity? A. As a salesman.

Q. How long have you been so employed? A. For the last ten years.

Q. What is your sales territory, Mr. Olsen? A. From Dodge Street north, and east to 30th.

Q. Are there any Texaco and Conoco service stations in your trade area? A. Oh, yes. I think there are 15 Texaco and 7 or 8 Conoco.

(3477) Q. Of the Texaco, how many do you regularly solicit? A. Four.

Q. Do you call on the other eleven? A. No.

Q. Have you ever called on them? A. Yes, I have.

Q. How recently? A. Probably not for the last two years.

Q. Why did you give up?

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

By Mr. Dias:

Q. You may answer. A. Because I couldn't do any business with them.

Q. Of these four that you sell, what products do you sell to them? Can you name these Texaco stations? A. Can I name them?

Q. Yes, the four. A. I think so. Wager Texaco.

Mr. Lorenzen: Could you give the address, too?
The Witness: 1540 North Saddle Creek.

By Mr. Dias:

Q. What do you sell to Wager? A. Gates fan belts, AC spark plugs.

Q. Anything else? (3478) A. Thermostats.

Q. Do you sell them any tires? A. No tires.

Q. Batteries? A. No batteries.

Q. Anti-freeze? A. I think he has bought four or five cases of Prestone this year.

Q. Do you mean 1956? A. 1956 and 1957.

Q. This season? A. Yes.

Q. What tires and batteries does that station handle, if any? A. Goodrich.

Q. Both tires and batteries? A. Yes.

Q. Do they have any Goodrich accessories? A. Yes, chemicals that he buys from Goodrich.

Q. Is that an owned station? Does he operate and own that station? A. No, that is a leased station.

Q. What is the next Texaco station? A. Pearson.

Q. Spell that. (3479) A. P-e-a-r-s-o-n.

Q. And the address? A. 54th and Military.

Q. Before we go on with that one: Do you sell any filters to Wager's? A. No.

Q. Have you ever sold him any filters? A. I did when he first went in there.

Q. When was that? A. That has been about two years ago.

Q. How long— A. I sold him one or two shipments and that was it.

Q. When was that? A. When he first went into the station.

Q. That is when he bought them? A. Yes.

Q. Did he buy any more after that? A. No.

Q. Why? A. Well, he explained it to me, that he was under obligation by his—

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A. (continuing)—from his oil company, through his (3480) oil company.

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Q. You mentioned Pearsons, and the address. What do you sell to that station? A. Not very much. It is miscellaneous items mostly: polish, white sidewall cleaner, car soap, a tool now and then.

Q. Do you sell them any filters? A. No, I don't.

Q. Anti-freeze? A. No anti-freeze.

Q. Tires? A. No.

Q. Batteries? A. No. Occasionally some chemicals.

(3481) Q. Do they handle tires and batteries? A. Yes, and he handles Firestone brand.

Q. Of both tires and batteries? A. Yes.

Q. Does he own the station? A. No. I think it is leased. I am sure it is.

Q. What is the next station? A. Houlton, 41st and Dodge.

Q. What do they buy? Tires? A. No.

Q. Batteries? A. No. They don't buy tires or batteries.

Q. Filters? A. I sell him filters occasionally.

Q. What type? A. AC. Thermostats, some gaskets, some chemicals, and polish.

Q. Any anti-freeze? A. No.

Q. Do they carry tires and batteries at the station? A. Yes, they do.

Q. What brand? A. Firestone.

Q. Does he own the station? A. No. That is leased.

(3482) Q. Do you have another Texaco station? A. Whitney's Texaco, 70th and Dodge.

Q. Do you sell them? A. It is usually miscellaneous items. Shock absorbers, a few chemicals, occasionally sell him an AC filter.

Q. Any anti-freeze? A. No.

Q. Tires and batteries? A. No, sir.

Q. Do they handle them? A. Yes, they handle them.

Q. What brand? A. They handle Firestone.

Q. Does he own a station? A. No, he doesn't.

Q. Do they have any others that you sell to? A. No.

Q. Any others that you tried to sell to? A. I have tried to sell all the rest of them. I can't remember them all. There is Ray's Texaco, 30th and Pratt, and Jensen Brothers, at 72nd and Blondo.

Q. Any others that you can think of? A. Not offhand.

Q. When was the last time you tried to sell to Ray's? A. It has been over a year ago.

(3483) Q. Does he own the station? A. No, that is leased.

Q. Does he handle TBA? A. Yes.

Q. What brand? A. I am not sure, but I think Firestone.

Q. Jensen Brothers, when did you last try to sell them? A. Along in November.

Q. 1956? A. Yes.

Q. Do they own a station? A. No; that is a leased station.

Q. Do they handle TBA? A. Yes.

Q. What brand? A. I don't know. Frankly I don't remember. I believe it is Goodrich. I am not sure.

Q. You say you sell to seven Conoco, or there are seven in your territory? A. There are about seven.

Q. In your sales territory? A. Yes.

Q. Do you sell to any of them? A. About three—four.

Q. Can you name them? (3484) A. I call on four.

Q. Can you name the four? A. King Conoco, at 60th and Ames. They have another station at 42nd and Ames, under the same name. There is a Guildersleeve.

Q. Do you sell King Conoco anything? A. It is a new station. We sold them some equipment. And at one station, at 60th, I have a stock of thermostats in there and a stock of battery hold-downs, plastic battery hold-downs.

Q. That is at the 60th Street store? A. Yes.

Q. How about the 42nd Street store? A. I haven't sold them anything except battery charger, since they have been in there.

Q. Which is the one which has opened recently? A. 60th Street is a new station. Last fall, or last summer.

Q. Was it that station that you sold some equipment? A. Yes.

Q. And the thermostats and battery hold-downs? A. Yes.

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(3485) *By Mr. Dias:*

Q. What is the King Conoco? Is that a leased station? A. Yes.

Q. Are they carrying TBA? A. Yes.

Q. What brand? A. They did have Goodrich and recently they switched to Firestone.

Q. When was that? A. Within the last couple of weeks.

Q. When did you first call on that new station? Were they open for business when you called on them? A. Yes. They had just opened.

Q. And when they just opened were their TBA supplies in the station? (3486) A. Yes, sir.

Q. What brand were in there at that time? A. Goodrich was in there originally.

Q. What about the 42nd Street store? A. They have just recently taken that over, within the last month.

Q. Did you call on them when they first opened? A. Yes.

Q. Were you there the first day? A. No.

Q. How about the 60th and Ames Store? Were you there the first day it opened? A. Yes. I think I was.

Q. How about the 42nd and Ames store? When did you get there? A. It was the following week.

Q. A week later? A. Yes.

Q. What was in that station? A. At that time it was Goodrich. You are talking about TBA?

Q. Yes. A. It was Goodrich.

Q. The two stations for King, does that take care of two of the four that you call on? (3487) A. Yes, sir.

Q. What is the next Conoco? A. Bray's Conoco. He is at 204 North 30th.

Q. What did you sell Bray's? A. Ignition parts and thermostats.

Q. Tires? A. No.

Q. Batteries? A. That is about all I sell them.

Q. Does that station handle tires and batteries? A. Yes.

Q. What brand? A. Goodrich.

Q. Does Bray own the station? A. No. It is leased.

Q. Do you have another one, another Conoco station? A. Guildersleeve.

Q. Where are they located? A. 42nd and Nebraska Avenue.

Q. Do you sell anything to them? A. Not very much. But I call on him because he bought equipment from us when he first went in there. And he has bought a little stuff since.

Q. Such as? A. Mostly tools.

(3488) Q. Is that what you mean by "little stuff"? A. Yes.

Q. What is the equipment that you mentioned? A. They bought a jack and Battery Charger.

Q. Anti-freeze? A. No.

Q. Tires, batteries? A. No.

Q. Filters? A. No, sir.

Q. Does he carry tires, batteries, filters, anti-freeze? A. Yes, sir.

Q. What brand? A. It is—he has a Goodrich setup.

Q. Does Guildersleeve own the station? A. No. It is leased.

Q. Are there any other Conoco stations? A. Not that I call on, no, sir.

Q. May I suggest the name Babe's Conoco? Does that refresh your recollection? A. Babe is out of business now. I did call on him.

Q. When did you call on Babe? A. I think that has been two years ago. About two years ago since he left the station.

Q. Where are they located? (3489) A. 63rd and Military.

Q. What did you sell to him? A. I sold him most everything at first. Ignition cabinet, thermostats, Gates hose and fan belts.

Q. Batteries? A. Batteries? No, I don't think we ever sold him batteries. Or tires.

Q. When did he stop buying? A. I think the last six months he was there he quit buying. He had bought filters

from us but he stopped buying Fram filters. He left. I don't know why he left.

Q. Did he give you any reason for not buying your products? A. He said he was supposed to buy them from Frost.

Q. Who told him that? A. His salesman. The salesman who called on him.

Q. The Frost salesman? A. From Frost.

Q. What line did he handle? A. Fram.

Q. I mean— A. I had Fram with him, and he continued with Fram.

Q. Did he carry Firestone and—Did he carry tires and batteries? A. He did, yes. But I am not sure what brand he carried.

(3490) Q. Does your sales territory take in Beatrice? A. I was in Beatrice before I came to Omaha.

Q. How long ago was that? A. I went there in '46.

Q. How long did you stay? A. Until '54.

Q. Did you have any Texaco or Conoco accounts in Beatrice? A. I had three Conoco.

Q. Will you tell us about those? A. There were three there, and three that I called on. I sold all three of them. They were all three pretty good accounts. One of them sold Seiberling tires and Delco batteries up until '53, about the latter part of '53.

Q. Then what happened? A. He told me he had to sell Goodrich tires and Goodrich batteries, that I couldn't sell him those two products any more.

Q. Were you able to sell him thereafter? A. I sold him filters and a few other items for a while. But his account dropped I think every month after that.

Q. Do you know Edeal's Conoco in Beatrice? A. That is another one, George Edeal.

Q. That is the last name—E-d-e-a-l? A. Yes.

(3491) Q. Can you tell us about that station? A. He bought practically everything from us until in 1953. Then he told me that he had to patronize a jobber from Lincoln, Chris. He came down from a truck every week. He was expected to buy his filters and TBA items from him.

Q. What was that dealer's name that he had to buy from? A. I am not sure of his name. I think it was Chris.

Q. What products does he sell? A. He was selling Goodrich line.

Q. May I suggest the name Chris Beck? A. Beck; that is it.

Q. Do you have another station account there? A. The other station changed hands several times. I have forgotten. Weaver was one. There were two after that that he did business with, up until 1953. And some after that.

Q. What did you sell him prior to '53? A. Fram filters.

Q. Tires? A. Spark plugs, chemicals, batteries. No tires.

Q. And after 1953 what happened? A. I lost the Fram business, almost a hundred percent.

Q. To whom? A. And the spark plug business.

(3492) Q. To whom did you lose it? A. We still sell them some chemicals. To Goodrich—Chris Beck.

Q. Did Weaver carry Goodrich batteries? A. That change didn't take place until after Weaver had left. I sold Weaver nearly everything he bought. But the next fellow was in there.

Q. Did Weaver leave prior to '53? A. Yes.

Q. Who was in there when the change occurred in '53? A. I don't remember. I can't think of his name.

Q. Can you think of his address? A. It was South Sixth. I don't remember.

Q. South Sixth? A. Yes.

Q. In Beatrice. How far is Beatrice from Omaha? A. About 100 miles from Omaha. Forty miles from Lincoln.

Q. Babe's Conoco, is that owned or leased? A. It was a leased station. It wasn't a new station.

Q. How about Edeal's? A. That was a new station when he went into it.

Q. Leased? or owned? A. Leased.

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(3497) *Cross-examination by Mr. Lorenzen:*

Q. How about H. E. Smiley, 50th and Underwood? Is he in your territory? A. Yes, he is.

Q. Do you sell him a few things? (3498) A. He has a garage called Smiley's garage in the rear of his place. I sell him some garage items, some automotive parts, thermostats and Walker mufflers.

Q. And he is one of these leased Texaco stations where he sells his gasoline? A. The station is. But the garage is not leased. He owns that garage.

Q. It is part of the same operation, isn't it? A. Yes.

Q. How about Paul Steers, at 42nd and Hamilton? A. I do call on him occasionally.

Q. And you sell— A. Paul at one time was a very good customer.

Q. And now you still sell him Prestone, don't you? A. I have known him for years. I don't think I have sold him any Prestone for two years?

Q. You sold him about $240 worth of equipment or products of one kind or another within the last few months. A. In a year's time.

Q. The last few months. A. No.

Q. Within the year? A. Within the year possibly.

Q. Mr. Talmadge at 42nd and Ames? A. I don't call on him.

(3499) Q. You don't know him? A. I know him but I don't call on him.

Q. And Fred Tex, at 60th and "L"? A. That is not in my territory. That is south of Dodge.

Q. Too far south is it? How about 21st and Broadway? Is that in your territory? A. No.

Q. Mr. Wager—your sales to him have been in the neighborhood of about what? $1,200 during the year? A. I would say that is possible. I don't have any way of knowing exactly.

Q. That sounds not too far out of line to you. A. That's right.

Q. When did you have this conversation with Mr. Wager about cartridges, were they, for the oil filters? You testified about some conversation that you had with him. A. That's right.

Q. About when was that? A. It is shortly after he opened up there. I would say in the last year and a half. I think he has been there two years. It has been within the last year and a half.

Q. Can you place the conversation any more definitely than that? A. No, I don't think I can. I had no reason for trying to remember it.

(3500) Q. You think it took place sometime within the last year and a half? A. Yes.

Q. Mr. Wager buys Gates fan belts from you? A. Yes.

Q. And radiator hose, and AC spark plugs, among other things? A. Yes.

Q. You sell him these quite regularly, don't you? A. Yes, I do.

Q. Those fan belts are various sizes? A. He has a complete stock.

Q. Where do you keep fan belts? I don't know much about this business. Do you hang them up on a rack of some kind? A. That's right.

Q. And the manufacturers of the fan belt usually give you something to hang them on? Is that the way it works? A. They furnish the rack, yes.

Q. This chap Houlton, you sell him about the same amount as you do to Wager, don't you? In dollar volume it is about the same? A. It could be a little less, if anything.

Q. You think it might be a little less? A. I would guess that it would be.

Q. But you don't know that for sure either? A. No, sir.

(3501) Q. It might be about the same? A. I said I think it would be a little less.

Q. How about Mr. Leon Pearson? Would you say you sold him an average of about $50 a month of one thing or another? A. Well—

Q. Including Rislone. A. I would imagine that would be pretty close to correct.

Q. Mr. Pearson is in one of these leased stations, as is also Mr. Wager and Mr. Houlton. Is that correct? A. Yes.

Q. They are all in leased stations. In addition to that you know, don't you, that Mr. Pearson is the son-in-law of the Texas Company state manager? A. I know there is some connection. I didn't know what his capacity was.

Q. Mr. Whitney is at 70th and Dodge. And you sell him about $75.00 per month of items, don't you? In that neighborhood? A. I couldn't be too sure of that either. That seems like it's pretty high for his purchases.

Q. You sell him AC filters among other things, don't you? A. Occasionally.

Q. The $75.00, it is somewhere in that neighborhood. It may be less, you think, but you don't have any definite recollection of how much less? (3502) A. No, I haven't.

Q. Jensen Brothers. You sell to them too you said? A. I used to call on them, I said. I haven't called on them for a couple of months.

Q. You haven't called on them for a couple of months? A. No.

Q. What did you sell them before that? Kendall Motor Oil among other things? A. I think he bought one case of Kendall motor oil when he first went in there. He has it in the back room.

Q. This is when he first went in? A. He has it in the back room. He showed me where he had it in the back room. In a Havoline case.

Q. That is where he stores his supplies and has boxes of things? A. He dumped it into a Havoline case.

Q. He did? That wasn't a very nice thing to do, was it? A. I didn't like it.

Q. I didn't think Havoline would like it either.

Do you know how much any of these people on whom you call also buy from your other competitors, such as the Anderson Company? A. I am sure I couldn't tell you.

Q. You couldn't tell about that? A. I would have no way of knowing.

(3503) Q. In some instances do you know that they do buy from Anderson also? A. Yes.

Q. And there are about ten I think. We have had a list of competitors in this Omaha area with whom you compete in addition to the competition furnished by the suppliers of Goodrich and Firestone, isn't that about right? A. I think so.

Q. And those fellows have salesmen out beating the bushes, so to speak, too, in the same territory where you sell? A. Right.

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Cross-examination by Mr. Barton:

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(3506) Q. That is rather common, isn't it, these service stations, some of them who don't purchase very much will, when they are down to the store, pick up when you don't come around? A. If they go in there and pay cash, I have no way of knowing it.

Q. You get a sales commission on it because it is sold in your territory, but you don't know about the particular sale? A. I don't know about it unless it is charged. Unless it is an account—open account.

Q. But you still are paid a sales commission on that which is sold to somebody in your area? A. Yes.

Q. And that is quite a common occurrence, isn't it? For your customers to go down to the store, go to the store and purchase on the spot for sales they have? A. It is more so in other territories than mine, because I am further out. It is true downtown.

Q. The people make it a habit of going to the store and thus not tying up so much capital in their stock? A. Yes.

Q. That is what is known as a pickup? A. Yes.

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(3508) *Redirect examination by Mr. Dias:*

Q. You were asked about Paul Steers' station. You stated at one time they were good customers. What is the situation now? A. Right now we sell Paul ignition parts.

Q. What did you sell him? A. Before that we sold him about everything.

Q. Including tires? A. I was talking about the old days. Paul has been back there a long time.

(3509) Q. How many years? A. I am not sure of that. But it has been; I would imagine, at least 15 years.

Q. You only came up here in 1954? A. I lived here before that.

Q. How long ago was it? A. Before the war.

Q. Before the war? A. Yes.

Q. Which one? Korean or the World War II? A. World War II.

Q. Was it at that time that he was a good customer? A. Yes, sir.

Q. How long did he continue to be a good customer? A. I don't know when he quit being a good customer, because I left this territory. When I came back three years ago he wasn't buying much from us.

Q. What is he? A Texaco station? A. Yes, sir.

Q. Does he own his property? A. No, he doesn't.

Q. Talmadge—you don't know him but you call on him. You were asked about Talmadge. A. I know him, but don't call on him.

Q. Did you ever call on him? (3510) A. I called on him probably the first six months I was here.

Q. That was in 1954? A. 1954.

Q. Did you sell him anything at that time? A. Very very little. Didn't pay me to call on him.

Q. Is that why you gave up calling on him? A. Yes, sir.

Q. That is a Texaco station too? A. Yes, sir.

Q. Does he own the property? A. No, sir.

Q. Mr. Barton asked you about a series of competitors who were selling around to these various Conoco stations. I don't think I understood your answer.

Is it your answer that you knew there are competitors around? Was that it? Or did you say that you knew they were selling to these various Conoco stations? A. I don't recall. The question was did they have other salesmen calling on them. I knew that, yes.

Q. You knew they had other salesmen calling on them. Do you know whether or not they buy from those other salesmen? A. No, I don't.

Q. Do you know what Paul Steers is handling now in the line of TBA? (3511) A. Yes. He handles Goodrich.

Q. Tires and batteries? A. Tires and batteries.

Q. And Talmadge? Do you know what they handle? A. I think Goodrich.

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Recross examination by Mr. Lorenzen:

Q. Did you sell this fellow Steers before you went away? A. Yes. I knew him before I went away.

Q. He was a very good friend of yours? A. Good friend of mine and good customer of ours.

Q. Then when you left, just before the war, some other salesman of course took over that territory. Is that right? A. That's right.

Q. Then when you came back you found he wasn't buying as much from this company as he had before? A. That's right.

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AL SCOVILLE was called as a witness for the Commission and, having (3512) been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name and business address for the record? A. Al Scoville.

Q. Business address? A. 730 Pacific. Sidles Company.

Q. How long have you been employed by Sidles, Mr. Scoville? A. Eight years.

Q. In what capacity? A. Salesman.

Q. For the full eight years? A. For the last six years.

Q. Prior to that? A. Counter salesman.

Q. What is your sales territory? A. Omaha, south of Grover Street.

Q. Are there any Texaco stations in your sales area? A. There are four lessees.

Q. Is that the total stations in your area? A. Total Texaco stations?

Q. Yes. A. No, sir.

(3513) Q. How many are there in your area, if you know? A. There are six.

Q. How many do you call on? A. Four.

Q. Can you name them? A. The ones I call on?

Q. Yes. A. Bob Jackson's Texaco Service.

Q. And the address? A. 42nd and Valley.

George Peers, Texaco Service Station, on 42nd and L Streets.

Q. And the next one? A. Charlie Cox Texaco Service, 13th and Harrison.

Q. And the other one? A. Kress Texaco.

Q. Where are they located? A. Bellevue.

Q. Do you sell to Bob Jackson? A. Sold him equipment only. And he has picked up on several occasions emergency items and equipment pieces.

Q. Have you ever tried to sell him batteries and accessories or tires? A. I mentioned them. That is about as far as I got.

Q. Does he handle them at the station? Does he handle (3514) tires, batteries, accessories at the station? A. Yes, he does.

Q. What kind does he handle? A. Firestone.

Q. And George Peers? A. He is a new one. He owns his own station.

Q. He owns his own station? A. Yes.

Q. What do you sell him? A. Fan belts, thermostats, all the chemicals, hose clamps. All accessory and TBA items, along with other jobbers.

Q. Do you sell him any tires and batteries? A. No. He handles Firestone tires.

Q. What batteries? A. He handles Grant batteries.

Q. How about Charlie Cox? A. Charlie Cox I sell ignition parts and thermostats and fan belts.

Q. Fan belts? A. Yes, sir.

Q. Have you ever tried to sell him tires and batteries? A. Yes, sir. He sells Firestone.

Q. Does he own his own property? A. No. He is a lessee.

(3515) Q. How about Kress? A. Kress, I sell him a small amount of ignition. Very small.

Q. Anything else? A. He handled Kendall oil, and keeps it in Texaco boxes.

(3516) Q. Do any of those stations purchase your anti-freeze, Prestone or Peak? A. George Peers does.

Q. What does Kress—does handle tires and batteries? A. Yes.

Q. What brand? A. B. F. Goodrich.

Q. B. F. Goodrich? A. B. F. Goodrich.

Q. Does he own his property? A. He is a lessee.

Q. And you said there are six in the territory. Have you ever called on the other two? A. Tex Service Station, at 60th and L, and R&R Texaco, 33rd and Q. R&R has only been there about three months. The previous lessee was there only a short period of time. And the previous one to him, Holcomb, had been there about two years. I did a little business with him but mostly pickup items.

Q. How long has "Tex" been at 60th and L? A. Thirty-five years.

Q. Thirty-five years? A. He owns his own station.

Q. And R&R? A. He has been there about two or three months.

(3517) Q. Do you recall when the station opened? The day it opened? A. At 33rd and Q?,

Q, Yes. A. The station was there when I was on the territory.

Q. A new operator? A. There have been three lessees, since I have been here.

Q. How soon did you call on that station after the latest lessee had been there? A. I haven't called on it since Moss left there.

Q. How about Conoco stations? How many Conoco are in your territory? A. Four.

Q. Total of four in the territory? A. Yes.

Q. How many do you call on? A. Two.

Q. Do you sell anything to those two? A. Yes, sir.

Q. Will you name them? A. Dean's Conoco, at 42nd and L.

Q. What do you sell to them? A. Dean I sell ignition. He has about $30 worth of ignition.

Q. Anything else? (3518) Various equipment repairing supplies—service items—on which I make no profit. We don't make profit on equipment repairing.

Q. How about tires and batteries and anti-freeze? Do you sell him any of that? A. No, sir.

Q. Does he handle that type merchandise? A. Yes, he does. He said he would like to buy from me but said he couldn't.

Q. Said he can't? Why? A. He said the reason for it that he couldn't buy from me is that it would cause too much disturbance. That is the only reason he gave to me.

Q. What does he handle? A. B. F. Goodrich.

Q. Does he own his own station? A. He is a lessee.

Q. How about the other Conoco station? A. Nieto's Conoco station. Frank Nieto, 33rd and Q.

Q. What do you sell to them? A. He has a small ignition assortment and a small brake kit assortment, and Frank will pick up occasionally mufflers and other automotive parts, mostly that are not handled by Frost Battery and B. F. Goodrich.

Q. Have you ever sold him anything else? (3519) A. I used to sell him Gates fan belts. In 1953 I happened to make a call on the station. There was a Conoco man and B. F. Goodrich man in coveralls. I said, "Frank, what are those men doing?" He said, "They are supposedly cleaning up the station."

I had Gates belt racks up. They started tearing them off the board. Frank said, "What are you doing that for?" This Conoco man said, "We are just going to clean up your station a little bit."

He started resleeving the belts—they have a sleeve for merchandising—and Frank said, "Do I have to have B. F. Goodrich belts?" He said, "We will take care of it. We will put up these boards and from now on we will take care of your belts for you."

Q. Who were those men? A. Frank turned around to me and said, "Al, will you put your belts in these sleeves?" I said, "Whatever you wish." It is a sleeve—I think the sleeves for our belts—they don't have the same brand belts as advertised on the sleeve, and we have the same kind of sleeve.

It is a common practice when you resleeve belts that you put them in a sleeve that says "V Belt" or the brand belt that is in it.

Q. What sleeves were they putting on your belts? A. B. F. Goodrich.

(3520) Q. Do you know who those executives were? A. No, I don't, because the first time I had seen him was the last time I had seen him at that particular station.

Q. When did that occur? A. In the summer of 1953.

Q. Have you sold him belts since that time? A. The only belts we sell, some telephone company trucks in the service station. Some of those belts, we handle a very broad coverage of belts which are not handled by B. F. Goodrich jobber, and we pick those up occasionally.

Q. Does this Nieto carry tires and batteries, also? A. Yes.

Q. What brand? A. B. F. Goodrich.

Q. I take it he doesn't own the station? A. He is a lessee.

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Cross-examination by Mr. Barton:

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(3523) Q. How often have you called on Boyd's Conoco? A. That is now Frank's Conoco?

Q. Yes. A. I called on it when Boyd was there. He had a one-bay station. I would ask him if he wanted filters, like C-4 Frams or wiper blades, a small order. He said I had better save that for B. F. Goodrich. They don't like to express—

Q. As a matter of fact, he bought $500 from you last year, didn't he? A. Frank? From Boyd's Conoco? Yes.

Q. 24th and G. A. Boyd's Conoco. Of that $500, $300 of it was for a target machine that he had on a shooting range.

Q. And he bought from Storz' supply? A. He bought one buffer from Storz Supply.

Q. And he bought from Targay Auto Supply? A. All items that he didn't stock in his place of business.

Q. Do you mean he would pick them up as he needed them? A. Yes.

Q. Which is a common practice among service stations located in the downtown area? A. Yes, it is, because they haven't the facilities to stock.

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(3525) *Cross-examination by Mr. Lorentzen:*

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Q. Are you on more friendly terms with these Conoco dealers than you are with the Texas dealers? A. No, sir.

Q. It just happens that you had some information about where those others bought and you don't have it in the case of the Texas stations? Is that it? A. I have sold Bob Jackson a tire changer and some tire repair tools.

Q. Do you know that he gets his thermostats, his spark plugs, his filters from Targay or Jones Auto, which I guess is an affiliated company? A. He could very possibly. I don't know where he gets that. I have not been able to sell him some of that stuff.

Q. This R&R Company, do you know that they have a substantial volume of purchases from your competitor, the Anderson Company? A. Yes, they have an Anderson ignition assortment.

Q. And they also buy— A. Carburetion and stuff like that.

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(3526) Q. This chap Fred Tex. You said you couldn't sell him much of anything, didn't you? A. Fred Tex is not a lessee.

Q. That's right. You testified you couldn't sell him much of anything. I guess you can't according to these figures. A. No.

Q. He buys from Carl Anderson and Company? A. I have not called on Fred Tex.

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(3527) Q. Do you know that he buys from Carl Anderson and Company and Storz? A. He does buy from Storz Supply Company. Carl Anderson I don't know. Storz Supply is more parallel to us than Carl Anderson, Carl Anderson being an ignition and carburetion specialty house.

Q. That is what Carl Anderson is? A. Yes. Ignition and carburetion specialty house. They sell Rislone and Auto-Lite batteries. The only TBA items they sell.

Q. And you haven't been able to sell this fellow Tex anything, or do you sell him a little? A. He used to pick up on cash payments a little bit.

Q. And that is all? A. A very small amount.

(3528) Q. You sell Charlie Cox Gates fan belts and AC filters, and some kind of thermostats which your house sells? A. Yes. Ignition, Gates belts, and thermostats.

Q. And you have sold him those Gates belts over some time, haven't you? A. Yes, I have. Previously it was Brooks. When Brooks was a lessee it was Gates belts and—

Q. Cox took over from Brooks, came in as a new lessee and continued to handle Gates belts? A. Yes.

Q. And the same with the AC filters? A. He doesn't have AC filters. He has Fram and Firestone filters.

Q. Are you sure? A. He might have one or two. But his predominance is Firestone.

Q. And also Gates radiator hoses? A. Yes, he has Gates radiator hose.

Q. You sell him that? A. Storz Supply, they handle his hose. I take care of his belts.

Q. Storz Supply is another competitor of yours? A. Yes.

Q. How about the thermostats? Does he get those from you? A. Yes.

(3529) Q. And he has been getting those from you for sometime too? A. Yes, sir. He does.

Colloquy

Q. How about the Everseal gasoline and radiator caps? Does he get those from you? A. Yes, sir.

Q. And he has done that for sometime? A. For about four or five months. Yes, sir.

Q. He has just been in there about ten months? A. Yes, sir.

Mr. Lorenzen: That is all.

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Mr. Royall: Your Honor, this hearing has illustrated (3530) something we have said before, and right now it is right before our eyes and in our minds, and I want to make a request of the counsel for the government.

We find that in selecting witnesses for territories in these cases, particularly in Omaha, there are a considerable number of gaps that don't cover some of the larger purchasers—dealers who are purchasing goods from these and other companies. It would certainly facilitate this case in general, and prevent the possibility of having to come back at least to Omaha, if they would be willing to furnish us tomorrow the amounts of TBA purchased by the following Texas stations—

Mr. Dias: Before you go on, who is supposed to do this? Us?

Mr. Royall: You.

Hearing Examiner Kolb: Supply what?

Mr. Royall: From Sidles, Anderson, and the others that they have put on, the jobbers. The stations that we have in mind are the Virgil Allison station, at Waterloo, Nebraska; C. R. Anderson station, at 501 East Broadway, Council Bluffs; Frank Kerny station at 20th and "Q" Streets, Omaha.

Colloquy

Hearing Examiner Kolb: Those are all stations that haven't been discussed by any witnesses?

Mr. Royall: By any witnesses of the company.

Hearing Examiner Kolb: You can discuss that with (3531) Mr. Dias, what he wants to do. I wouldn't order him to do anything on that.

Mr. Royall: I haven't asked your Honor to order. I am making a request.

Hearing Examiner Kolb: Make your request to him, to Mr. Dias. Not to me. You are not requesting me to do anything?

Mr. Royall: No, sir.

Hearing Examiner Kolb: Then there is no use of me staying here.

Mr. Royall: Your Honor, I want it to appear on the record that we are requesting this in connection with the examination of these witnesses: Art Friedgen, 405 East Locust Street, Carter Lake, Iowa; Ed Hughes, 20th and Douglas Street, Omaha, Nebraska; Robert Lynch, 2nd and Vine Streets, Council Bluffs; Bob Piatt, 13th and Jackson, Omaha, Nebraska.

Those are the principal ones, your Honor. They would help.

Mr. Dias: Who are they?

Mr. Royall: They are Texas dealers that none of your witnesses you put on the stand, Sidles or others—

Mr. Dias: Have mentioned?

Mr. Royall: Not only have mentioned, they say they don't know anything about the quantities, and in many instances don't know anything about it. They brought up part of the (3532) records, just the records for the ones they wanted to testify about.

Mr. Dias: All right, you produce those.

Mr. Lorenzen: Couldn't we get the ledger cards for those accounts just as well as you got the hand-picked ones this morning, where the sales decreased? We would now like six others to make it fair. Couldn't you ask the same chap who produced those records to produce these?

Hearing Examiner Kolb: Doesn't your Texas Company man have that information?

Mr. Dias: Of course he does.

Mr. Royall: No, sir.

Mr. Dias: It is part of your rebuttal.

Mr. Royall: These are dealers, your Honor. These are dealers. Station dealers.

Mr. Lorenzen: These are estimates and incompetent.

Mr. Dias: Put your estimates in.

Mr. Lorenzen: The only way we can get it is to get the records from the people you have had testify. They bring in only a very small and unfair segment.

Hearing Examiner Kolb: There is no use encumbering the record with all that argument. I will call a recess.

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(3538) PERCY L. KANAGO was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Boyd:

Q. Mr. Kanago, will you give us your full name, please? A. Percy L. Kanago.

Q. With what company are you connected? A. Storz Supply Corporation.

Q. Where is it located? A. 2215 Hardy Street, Omaha.

Q. What is your position with the company? A. Sales Manager.

Q. How long have you been with the company? A. Since 1922.

Q. How long have you been sales manager? A. Sixteen years.

(3539) Q. Will you tell us what kind of business is Storz Supply Corporation engaged in? A. We are wholesale distributors of automotive replacement parts and equipment.

Q. What products do you sell? A. That covers several classifications, sir.

Q. What classes? A. Hard parts, that is engine parts, tires, batteries, fan belts, spark plugs, replacement items of motors, trucks, and passenger cars.

Q. Would you sell radiator chemicals? A. Oh, yes.

Q. How about waxes and polishes? A. Yes, indeed.

Q. Oil filters, fan belts, radiator or hose? A. Yes, sir.

Q. What brand tires do you handle? A. Century.

Q. What about batteries? A. Delco.

Q. Do you have any other brands? A. No other brands.

Q. How about spark plugs? A. Champion.

Q. And oil filters? (3540) A. We have two. Fram and Walker.

Q. Fan belts and radiator hose? A. Gates Rubber Company.

Q. Mr. Kanago, what is your trading area? The trading area of your corporation? A. Using Omaha as the center, it would be a radius of an average of 75 to 80 miles.

Q. What classes of customers are sold in that trade area? A. It would be new cars—

Q. That you do business with, in other words? A. New car dealers, independent garages, that is independent re-

pair shops, service stations—gasoline service stations, fleets, contractors. It could be classified as industrial, perhaps. I believe that will cover it.

Q. How many salesmen does the firm employ? A. Twelve.

Q. Could you tell us approximately what the annual volume of business was last year, 1956? A. I can't give you the exact figure. I would say it approximates a million and a half.

Q. What about 1955? A. That was about a million and three-quarters.

Q. And 1954? A. I am only hazarding a guess now, on 1954; not so good as 1955.

(3541) Q. Mr. Kanago, can you tell us about how many service stations, that is of all kinds, are in the Omaha area? A. Do you mean the greater—the area that we cover?

Q. I would like it both ways if you can tell us. I thought you might know about Omaha. A. Omaha, yes. That is right at 350. I believe the classification shows actually 340.

Q. What classification is that? A. Telephone directory survey, classified.

Q. With that number could you tell us what you would estimate the balance would be in the trading area in which you do business? A. I couldn't. I really couldn't.

Q. In other words, you know it just right in this vicinity? A. That is right.

Q. Do you have any idea how many Texaco stations are in the Omaha area? A. Thirty-one, according to the classification.

Q. That is the telephone book? A. In the telephone book.

Q. What about Conoco stations? A. Sixteen.

Q. Does your firm do any business with the Texaco stations in this area? A. Some.

(3542) Q. Can you tell us what kind of business they do with them? That is, the type of product you sell? A. I believe, sir, that I would rather—in that I am not actually contacting these people—I would rather that the representatives who actually contact them answer that question.

Q. Do you mean the salesmen? A. Yes, sir.

Q. Are the salesmen of your company instructed to solicit the Texas stations for business? A. Yes, indeed.

Q. What about Conoco stations? A. Yes, sir.

Q. Do they do so? A. Yes, sir.

Q. Mr. Kanago, you mentioned that you wanted the salesmen to testify about actual contacts with the stations. I wonder if you could tell us whether or not your firm sells tires to Texas stations? A. Do we sell tires?

Q. Yes, sir. Century tires? A. No, sir.

Q. What about the batteries? I believe it is Delco? A. Yes, sir.

Q. Do you sell batteries? A. The name is Delco.

(3543) Q. That is your brand? A. That is correct.

Q. Do you sell batteries to Texaco stations? A. If we do, it is * * * strictly on a pickup basis.

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Q. What would be the categories of products you sell to Texaco stations? A. I still would like to have our salesmen, who contact those accounts, answer that.

Q. What about Conoco stations? Do you sell tires to them? A. No.

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(3546) MANNIE O. HANSEN was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Boyd:

Q. Mr. Hansen, will you tell us what your full name is? A. Mannie O. Hansen.

Q. What is your business? A. I am a salesman for Storz Supply Corporation.

Q. How long have you been employed by Storz Supply Corporation? A. Twenty years.

Q. How long have you been a salesman? A. Six years.

Q. What is your sales area, Mr. Hansen? A. I cover Omaha and a radius of about 30 or 35 miles from Omaha.

Q. What classes of customers do you call on in that area? A. I call on service stations, garages, car dealers, fleets.

Q. You sell the products of the Storz Corporation? A. Yes, sir.

Mr. Royall: Had he finished his answer?

By Mr. Boyd:

Q. Did I interrupt you? (3547) A. No.

Q. Are there any Texaco stations in your sales area? A. In my sales area? Yes, there is.

Q. How many? A. On the territory that I cover there are 16, approximately 16.

Q. Do you solicit—do you do business with the 16? A. I do business with about 8 of the 16.

Q. What about the other 8? A. I don't solicit them regular enough, the other 8, due to the number of accounts I have to call on, and I can't possibly get around to see all the 16.

Q. Do you solicit them at all, the other 8? A. No.

Q. Have you ever done so? A. The other 8? No I haven't.

Q. You say you do business with 8 of them? A. That's right.

Q. Can you tell us who they are? A. Yes. I have the list. We have the Ed Schulte Texaco Service, at 61st and Military.

Q. What do you sell him? A. He buys quite a bit of merchandise, on mostly a pick-up basis from our store, which is right across the street from him. He buys some Victor gaskets, Harrison thermostats, Heet.

(3548) Q. What is that? A. That is gasoline anti-freeze to add to your gas to absorb the moisture in the tank.

Q. What else? A. He occasionally buys Gates belts, Gates mats, sealed beams.

Q. What brand of sealed beams? A. Ever Ready; Prestone, McQuay valves, Niehoff points and condensers, tubes.

Q. Tire tubes? A. Inner tubes. Yes.

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Q. We are interested in TBA products. A. He picks up some Delco batteries from us, some Corn Belt tubes.

Q. Is that the brand name, Corn Belt? A. Yes. Fram filters. I don't believe the rest of it would pertain, outside of Gates belts and Gates hoses and (3549) Weed chains.

Mr. Barton: Didn't you say radiator chemicals?

The Witness: Yes, anti-rust and water pump lubricant, made by Prestone.

Q. Is all of this pick up or part of it? A. Practically all of it is pick up.

Q. Does he pay cash for that or is that on a charge account? A. Some charge, and the bulk of it is cash.

Q. Could you give us some idea of what his volume would be a year, or a month? A. Well, yes. From January, 1956, to January, 1957, it approximately ran $510.

Q. Did you sell him any tires? A. On a pick up basis, yes.

Q. Do you have any idea of how many tires you sold him that year, 1956? A. It wouldn't be over two or four at the most.

Q. Batteries? A. Batteries.

Q. Do you have any idea of how many of those you sold him? A. I haven't any idea, no. It would be in the file, but I don't approximately know exactly the number of batteries he has purchased.

Q. Does he openly stock your tires? A. No, sir.

(3550) Q. How about batteries? A. No, sir.

Q. Does he have them in his station at all that you know of? A. No, not that I know of. He doesn't stock. Like I say, he doesn't stock any batteries. He gets them as his customers demand them.

Q. Do you know whether that is a leased station or independent station? A. Leased station.

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Q. What about the next one? A. Art's Texaco Service.

Q. Where is it located? A. 405 East Locus, Carter Lake, Iowa.

Q. What TBA products do you sell him? A. Tubes, Corn Belt tubes. Tubes, Heet, and he bought a set of Weed chains. That is about the extent of it.

Q. What has his volume been? A. The only thing I can tell us is from August through December 31, 1956, it was $153.

Q. 1956? A. Yes.

Q. These Corn Belt inner tubes, does he display those in
(3551) station? A. Right. Yes, sir.

Q. How many of them has he bought from you? Do you know? A. I would imagine about approximately 48, I would say.

Q. Do you know what tires he carries? What line of tires? A. Firestone.

Q. Batteries? A. Firestone.

Q. What kind of station is it? A. Texaco.

Q. Does he own the station? A. He owns the station.

Q. Going back for a moment to Mr. Schulte's station, at 61st and Military, does he carry tires in the station? A. Yes.

Q. Batteries? A. Yes.

Q. What line? A. Firestone.

Q. Both of them Firestone? A. Both Firestone, both tires and batteries.

Q. Now, the next station? A. That would be Eckberg and Bobbett, 86th and Dodge.

Q. What TBA products do you sell him? A. We sell him in TBA—we have sold him some Zerol, (3552) cooling system conditioner, Champion spark plugs, Trek anti-freeze, Prestone, Every Ready bulbs, one or two Gates belts, and two Fram cartridges.

Q. Over what period of time are you telling us about? A. January 1 through December 31, 1956.

Q. Did you finish the list? A. Well, as far as TBA items. We have Weed chains—he bought some Weed chains and CD-2 Alemite concentrate, some Hinson spring air cushions and some equipment.

Q. Have you sold him any tires? A. Tires?

Q. Yes. A. No, sir.

Q. Batteries? A. No, sir.

Q. Does he carry tires and batteries? A. Yes, sir.

Q. What line does he carry? A. Firestone.

Q. Both batteries and tires? A. Both tires and batteries, yes, sir.

Q. Does Firestone sell accessories? A. I believe they do, yes, sir.

Q. Do you know whether or not Ekberg and Bobbett buy Firestone accessories? (3553) A. Yes, sir.

Q. Do you know which ones he buys from Firestone? Accessories, that is? A. Practically all that they have, I believe.

Q. Do you have any idea about the volume of business of this one? A. That we do with him?

Q. Yes. Bobbett. A. From January 1 through December 31, it ran approximately $365.

Q. Do they own that station? A. I couldn't answer that for sure, whether he owns that or whether he leases it.

Q. Have you endeavored to sell tires and batteries to these three stations that we have gone through so far? A. Yes, sir.

Q. What reasons have been given—

Mr. Royall: Objection.

Hearing Examiner Kolb: Reasons, if any.

By Mr. Boyd:

Q. What reasons, if any, have been given?

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

A. Do you want it one by one or an over-all opinion?

(3554) *By Mr. Boyd:*

Q. Let's take it one by one. Ed Schulte first. A. There wasn't any particular statement issued why he wouldn't stock Century tires. There was no reason at all.

Q. He didn't give you any reason? A. No, he didn't.

Q. On that one, before you leave it: Does he have Firestone accessories? A. I believe he does, yes.

Q. Art's Texaco? A. Art's Texaco—

Q. Has any reason been given you there?

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

A. Yes. He stated that he didn't live—he wanted to stay with a nationally advertised brand, like Firestone—that is the reason he gave for not stocking Century. That is all I can tell you about that boy.

By Mr. Boyd:

Q. I may have misunderstood you. Did you mean he wanted to stay with Firestone? National brand? A. That is what I meant to say. Yes.

Ekberg and Bobbett told me that we couldn't sell him.

* * *

(3555) A. We couldn't sell him tires due to the fact that he can buy them a lot less at Firestone than he could through us.

Q. Does Art's Texaco, the second one you mentioned, carry Firestone accessories? A. Yes, sir.

Q. What about the next Texaco station? You gave two. A. We have three. I have one, Ted Carroll Texaco, at Valley, Nebraska.

Q. What do you sell him in TBA? A. We have sold him, I believe, four tires recently. We sell him Zerol cooling system sealer and conditioner; we sell him usually a case or two of Prestone a year; Ever Ready bulbs, chain adjusters, Ever Ready flashlights, Wagoner brake cylinder parts. That pretty well covers the TBA.

Q. How about batteries? Did you ever sell him batteries? A. No, sir.

Q. You don't endeavor to sell him any? A. No, sir.

Q. What about these tires? You say he bought four recently. Had he bought any before that? A. No, sir. The four he bought were mud and snow tires. Olympian mud and snow tires.

Q. Does he handle tires and batteries? A. Yes, sir.

Q. What brand? (3556) A. Firestone.

Q. Do you have any idea about the volume of that account last year? A. Well, I would judge approximately around $300.

Q. Does he own that station? A. He leases.

Q. Have you endeavored to sell him tires? A. Yes, sir.

Q. What reason, if any, did he give you for not buying?

Mr. Barton: Objection.

Mr. Royall: Objection. He said he bought them.

Hearing Examiner Kolb: Overruled.

By Mr. Boyd:

Q. Go ahead. A. Yes, I said he bought four mud and snow tires, that is correct. But as a stocking purpose, any quantity, no.

Q. I am not sure I got an answer to the last question, if he gave you any reason for not buying. You said he didn't carry any quantity on hand. Did he give you any reason?

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

A. No specific reason outside of the fact that he felt he was obligated to buy the bulk of his purchases through Firestone.

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Mannie O. Hansen, for Commission—Direct

(3557) *By Mr. Boyd:*

Q. The next station? A. The next station would be J and H Service, 90th and Maple Streets.

Q. What do you sell him on the TBA line? A. Delco battery, Fram filters, I sold him a couple of tires, Weed chains, Prestone, thermostats, Lubaidet, Zecol cooling system conditioner and sealer.

Q. This covers the year 1956? A. It covers April through December, yes sir.

Q. What was the volume, about? A. That ran approximately $783.

Q. How many batteries did you sell him? A. I couldn't offhand say how many batteries I did sell him.

Q. Does he openly carry the batteries in his station? Openly display them? A. I believe he buys those on a pick up basis. He doesn't stock too many Delco batteries in the station.

Q. Have you ever seen them on display there? That is, the Delco batteries? A. That is pretty hard to say, whether I have ever seen them on display.

Q. Does he openly stock Prestone? (3558) A. Yes. Incidentally, he is an individually owned station, I might add.

Q. Does he carry tires in stock, and batteries? A. Yes.

Q. What brand or brands? A. I don't know exactly what brand his tires are; it is not any of the "big four".

Q. How about batteries? A. Mostly Grant batteries.

Q. What about the next station that you sell to—Texaco. We have had five. A. There is Jensen Brothers Texaco.

Q. Where is he located? A. 1926 North Second.

Q. What TBA products have you sold him? A. I can't tell you that because all that he has purchased he has bought from the store, our store in Benson.

Q. How many places of business does Storz Supply Corporation have? A. All over?

Q. In the whole trading area? A. That we cover?

Q. Yes, sir. A. I believe it is ten branches. Eleven branches, including Benson. That would be the 11th one.

(3559) Q. That pick-up business that has been done by Jensen Brothers, is that cash or credit? A. Cash.

Q. Do you have any idea about the volume of business? A. I think I can probably give you an idea. September through November is $11.60.

Q. Is that 1956? A. Yes, sir.

Q. Does he own that station? A. I believe that is a leased station.

Q. Does he carry tires, batteries? A. I wouldn't know. Like I say, I never had solicited so I wouldn't be able to answer that question.

Q. What about the next station? A. Pearson Texaco—

Q. How do you spell that? A. P-e-a-r-s-o-n.

Q. Where is it located? A. 5401 Military.

Q. Did you solicit his business? A. Yes, sir.

Q. What did you sell him in the TBA line? A. In the TBA line we have sold him a couple of Delco batteries on adjustment. Mostly mufflers, tail pipes—Walker mufflers and tail pipes, fuel pumps—AC fuel pumps, Delco (3560) shock absorbers.

Q. Does he carry tires? A. Yes, sir.

Q. Batteries? A. Yes, sir.

Q. What line of tires? A. Firestone.

Q. What about batteries? A. Firestone.

Q. How about accessories? Firestone accessories? A. Yes, sir.

Q. Does he own that station? A. I believe that is a leased station.

Q. Have you endeavored to sell him tires and batteries? A. No, sir.

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Q. How about the next station, Mr. Hansen? A. That I sell?

Q. Yes. Texaco. A. There is Whitney's Texaco, 7051 Dodge Street.

(3561) Q. What TBA products do you sell him? A. I don't sell him any. That is another account that comes to the store and purchases. He has, however, picked-up some Champion plugs, in the TBA line, and ignition parts.

Q. Do you have any idea about the volume of that one? A. March through June it was $28.50.

Q. March to June, 1956? A. Right.

Q. Does he own the station? A. I believe that is a leased station.

Q. Does Whitney's carry tires and batteries? A. I can't answer that because I have never called on the man. All I can go by is what he picked up at the Benson store.

Q. Do you have any other Texaco accounts? A. I have several others on my territory that I don't solicit, yes.

Q. How many others are there? I think we have that you have gone through. A. There is possibly 8 or 9 more.

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(3562) *By Mr. Boyd:*

Q. How many Conoco stations are in your sales territory, Mr. Hansen? A. I would say approximately 8.

Q. How many do you sell? A. Well, regularly I sell two. We have sold approximately four or five out of the eight at one time or another.

Q. These two that you sell, will you tell us about them? A. One is in Arlington, Nebraska. That is Arlington Oil.

Mr. Royall: Your Honor, we have a standing objection to these.

Hearing Examiner Kolb: The record shows that.

A. At Arlington, Nebraska.

By Mr. Boyd:

Q. What do you sell him in the TBA line? A. Practically—I would sell him Delco batteries, Fram oil filters, Gates belts and hoses, Ever Ready bulbs, Lubaidet, AC fuel pumps, Walker mufflers and pipes, Niehoff ignition, Wagoner brake fluid, Victor gaskets, carbureters, and there is quite a few other items we sell.

Q. How about tires? A. Don't sell him any tires. No, sir.

Q. Does he own that station? A. He owns that station.

Q. What is the name of the Conoco station that you sell (3563) regularly? A. That is Jerry's Conoco Service.

Q. Where is this located? A. 7009 Military, it is now.

Q. This is in Omaha? A. Right. Omaha, Nebraska.

Q. Does he own that station? A. No, sir. He leases.

Q. What TBA products do you sell him? A. We have sold him some Champion spark plugs, some Zecol Carb-Aid, some Gates hose, Weed chains, Walker silencers.

Q. Is that a muffler? The silencer. A. The—a muffler, yes. Harrison thermostats, Victor gaskets, hose clamps—Edeal hose clamps—CD-2 Alemite, heater hose.

Q. Are you finished? A. I am trying to find a few more TBA, with the exception of this equipment here. That is about the extent of it, I believe. I thought that we sold him some filters, Fram filters, too, at one time.

Q. Your papers do not show that? A. Not without checking the records I wouldn't be sure, no sir.

Q. Does Jerry's carry tires? A. Yes, sir.

(3564) Q. What line? A. I believe it is Goodrich.

Q. How about batteries? A. I believe those are Goodrich.

Q. Does he carry Goodrich accessories? A. Some, yes.

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Lawrence B. Taylor, for Commission—Direct

By Mr. Boyd:

Q. I believe there are six other Conoco stations in your sales territory. A. I believe that is correct. Very close to that.

Q. Have you ever sold them? A. Yes, we have sold several of them a little merchandise. (3565) There again it is mostly they came to the store, mostly on a pick up basis.

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(3566) LAWRENCE B. TAYLOR was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Boyd:

Q. Will you please state your full name? A. Lawrence B. Taylor.

Q. What is your business, Mr. Taylor? A. I am the South Omaha branch manager and salesman who travels out of that particular territory.

Q. For what company? A. Storz Supply Corporation.

Q. How long have you held that position? A. I have been in South Omaha since 1943. But I worked for the firm before at another branch at Red Oak. Part-time I started in June 1938 and went on full-time in June 1941, I believe.

Q. Do you travel in this sales territory that you have at present? A. Yes.

Q. Could you define it a little more for us, geographically speaking? A. I travel everything south of Vinton Street, in South (3567) Omaha, south as far as Plattsmouth, and west as far as Ashton.

Q. How long have you been—I believe you said six years in this territory? A. No. I have been there since 1943, in South Omaha.

Q. What class of customers do you call on? A. I call on car dealers, independent dealers, fleets, a few contractors and service stations.

Q. Are there any Texaco stations in your sales area? A. Yes.

Q. How many? A. I believe there are nine.

Q. Do you sell any of them? A. Yes.

Q. How many? A. Approximately five.

Q. Let's take them one by one. What is the first one? A. I call on Cress Texaco in Bellevue.

Q. K-r-e-s-s? A. C-r-e-s-s.

Q. What TBA products do you sell him? A. I do not sell him any tires or batteries. I sell him mufflers, points, garage equipment; car washing soap, windshield wash tissue, towels, thermostats, points, condensers.

Q. Does that station carry tires and batteries? (3568) A. Yes.

Q. What line does it carry? A. Goodrich.

Q. Batteries, too? A. Yes.

Q. How about accessories? A. Yes, they have a full line.

Q. Goodrich? A. Yes.

Q. Does Mr. Cress own that station? A. No. He leases it.

Q. What is the next station? A. I call on R&R Texaco station at 33rd and Q, South Omaha.

Q. What do you sell them in TBA? A. No tires or batteries. I do sell him a tube now and then on a pickup basis. I sell him a lot of brake parts, mufflers, light bulbs, a few spark plugs, tube repair, tire repair material, and some equipment such as car washing soap, tire cleaner line. That is about the extent of it.

Q. Does that station carry tires and batteries? A. Yes.

Q. What line of tires? A. Firestone.

Q. Batteries? (3569) A. Firestone.

Q. Accessories? A. Yes.

Q. Firestone? A. Full line.

Q. Do you know whether the operator of that station owns it? A. No. He leases it.

Q. What is the next station? A. I call on Harley Fisher Texaco, 24th and G, South Omaha.

Q. What TBA products do you sell him? A. I sell him oil filters. That is the extent of it as far as TBA. Once in awhile a fan belt. I sell him—I sold him jacks, battery testing equipment, battery chargers.

Q. Does that station carry tires and batteries? A. Yes.

Q. What line of tires and batteries? A. Firestone.

Q. Does Mr. Fisher own that station? A. No. He leases it.

Q. The next station? A. George Peers, 42nd.

Q. P-e-e-r-'-s? A. Yes, 42nd and L.

Q. What do you sell him? (3570) A. I sell him spark plugs, mufflers, tail pipes, thermostats. Now and then a battery. If he doesn't happen to have one in his stock he buys one from me. I sell him fan belts and of course a line of garage equipment. If he is in the market for a jack or charger I usually get a chance to sell it to him.

Q. Does Mr. Peer carry tires, batteries and accessories? A. Yes.

Q. What line? A. He carries Firestone tires and Grant batteries.

Q. Does Mr. Peer own that station? A. Yes, he does.

Q. How about accessories? Do you know what line of those he carries? A. He carries the full line of accessories. He carries AC filters. He doesn't stay with any one particular brand of accessories. He takes what he feels is the best one and handles that one.

Q. That is four. You sell one more. What is the name of that? A. Fred Tex, on 60th and L.

Q. What products do you sell him on TBA? A. I sell him everything in the book from batteries. I don't sell him any tires. He doesn't sell tires. I sell him filters, fuel pumps, batteries, points, condensers, (3571) mufflers, tail pipes, clutches.

Q. Does Fred own that station? A. Yes, he does.

Q. What about the other four Texas stations in your area? A. I have one that was a brand new one, that was just opened. He was in business two months. They followed up this week.

Q. Where is it located? A. In Ralston.

Q. Nebraska? A. That is right.

Q. Do you know the name of it? A. Beaver Texaco.

Q. You say it was just opened two months? A. Two months. It folded up this week.

Q. Did you call on that station when it first opened? A. Yes, I did. I lived within five blocks of there and bought a lot of gas there. But he couldn't buy a thing from me. He wanted to stay strictly with TBA.

Q. What TBA did he have?

Mr. Royall: Wait a minute. Read that question and answer.

(Question and answer read.)

Mr. Royall: We move to strike the answer. It is not responsive.

(3572) Hearing Examiner Kolb: The motion to strike will be denied.

By Mr. Boyd:

Q. Do you know what line of TBA he had? A. Firestone.

Q. Mr. Taylor, as to Chris' Texaco Station, did you endeavor to sell tires and batteries and accessories to them? A. Yes.

Q. Was any reason given you for not selling him?

Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

A. He told me he had a contract with Frost and was to buy everything there that he could.

By Mr. Boyd:

Q. Do you know the full name of Frost? A. Frost Tire and Battery, I believe is what comes on the heading of their invoice.

Mr. Royall: Let me ask counsel a question. Is that the same one you asked about before—Cress?

Mr. Boyd: Yes, sir, Cress is the one I am asking about now.

Mr. Royall: Didn't you ask earlier about that?

Mr. Boyd: Yes, but I didn't ask this question.

By Mr. Boyd:

Q. Do you know the line of TBA that Frost sells? (3573) A. Yes.

Q. What is it? A. Goodrich.

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(3574) Q. When did you find out that Cress had a contract with Frost?

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

A. When he first opened the station and I made my first call upon him.

Q. Do you know when that was? A. That was about approximately October 1.

Q. What year? A. 1956.

Q. How soon did you call on Mr. Cress? Did you see him call on Mr. Cress? Did you see him before the station opened, or afterwards, or when? A. The first day he was opened.

Q. Did he have any stock of TBA in there then? A. They were in the process of putting it in when I called.

Q. What about R&R Texaco at 33rd and Q? Did you endeavor to sell tires, batteries and accessories to him? A. Yes.

Q. Did he give you any reason for not buying?

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

A. He told me he was tied up with Firestone and he was to buy his purchases from them.

(3575) Q. What about Harley Fisher? Did you endeavor to sell tires, batteries and accessories to him? A. Yes.

Q. What reason, if any, did he give you for not buying?

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

A. That he was just supposed to buy from Firestone.

Mr. Royall: Motion to strike.

Hearing Examiner Kolb: Are you saying what he told you? What did he say to you?

Mr. Royall: Objection.

The Witness: That he was supposed to purchase his products from Firestone.

Mr. Royall: Motion to strike.

Hearing Examiner Kolb: Objection to strike; motion to strike denied.

By Mr. Boyd:

Q. Do you know who handles Firestone here, Mr. Taylor? A. No, I don't. It is handled through the Firestone store, I know that. They have a store in South Omaha. They service out of there.

Q. What about Conoco stations? Do you sell them? A. I have three.

Q. How many in your area? A. Three, I believe.

(3576) Q. Three, and you sell three? A. No—well, we sell him some items. We don't sell him any amount.

Q. Tell us about each one of them. What is the first one? A. Frank Calta—

Q. How do you spell it? A. C-a-l-t-a.

Q. Where is he located? A. 24th and G.

Q. What did you sell him in tires, batteries and accessories? A. I do not sell him any tires or batteries. Now and then a tube. I sell him mufflers, tail pipes, thermostats, battery cables, car washing soap, tire gauges. Most of the items I sell him is because I am close and I have a truck that I can perform jack-rabbit service with, and he calls me up and we deliver immediately.

Q. Does Mr. Calta carry tires and batteries? A. Yes, he does.

Q. What line? A. Goodrich.

Q. Accessories, too? A. Yes.

Q. Does he open that station? A. He leases.

Q. Have you endeavored to sell him tires, batteries and (3577) accessories? A. Yes, I have.

Q. What, if any, reason did he give you for not buying? A. Their Conoco firm is tied up with Frost and he should make his purchases there if at all possible.

Mr Barton: Move to strike.

Hearing Examiner Kolb: Motion to strike denied.

By Mr. Boyd:

Q. Did he tell you this? A. Yes.

Q. What is the next Conoco station? A. Nieto—N-i-e-t-o.

Q. Where is he located? A. He is on 33rd and Q.

Q. What have you sold him? A. I personally haven't sold him anything. His purchases have been—when he runs into the store and picks it up, or calls us up we deliver.

Q. Do you have any idea what he buys or has been buying? A. Yes. I have called on him but I have never been able to sell him. He buys Goodrich.

Q. Tires, batteries and accessories? A. Yes.

Q. Does he own the station? A. No, he leases.

(3578) Q. What reason, if any, has he given for not buying from you tires and batteries? A. He didn't give me any reason at all.

Q. Do you have another Conoco station? A. Yes, we have Dean's.

Q. D-e-a-n-'-s Conoco? A. Yes.

Q. Where is he located? A. 42nd and L.

Q. Have you sold him any TBA? A. No.

Q. Does he have TBA in stock? A. Yes.

Q. What line? A. He handles mostly the Goodrich line.

Q. Does he own that station? A. No, he leases it.

Q. Have you endeavored to sell him? A. Yes, I have.

Q. What reason if any has he given for not buying?

Mr. Barton: Object.

Hearing Examiner Kolb: Overruled.

A. That Conoco had their own TBA and he preferred to stay with it.

I have since ceased calling on him because it was (3579) a waste of my time and his, too.

Percy L. Kanago, Recalled, for Commission—Cross

By Mr. Boyd:

Q. Are there any other Conoco stations? A. I have a new one.

Q. Where is he located? A. Sunshine Addition, 36th and Madison.

Q. Is that a street? A. It is an addition. At 36th and Madison.

Q. Do you know the name of it? A. Grims Sunshine Conoco.

Q. When you say "addition", do you mean a new street? A. It is a new area that started up with all new homes. They put this neighborhood Conoco in it.

Q. How long has he been in there? A. He opened up about the 20th of November.

Q. 1956? A. Yes.

Q. Have you sold him any TBA? A. The only thing I have sold him has been chains and some garage equipment.

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(3582) PERCY L. KANAGO was recalled as a witness for the Commission and, previously having been duly sworn, was further examined and testified as follows:

Hearing Examiner Kolb: Let the record show Mr. Kanago recalled for cross-examination.

Cross-examination by Mr. Royall:

Q. Mr. Kanago, there are in addition to your company a number of other wholesalers who cover the same territory, are there not? A. In our type of business.

Q. Yes, in your type of business? A. Yes, sir.

Q. As a matter of fact, as appears from the telephone book also, there are quite a number of them, aren't there? A. Yes, sir.

Q. Some of them large, some of them small, but all in all there are a great many people who call on the various (3583) service stations to try to sell them, are there not? A. Yes, sir.

Q. And some of the people who call on them of course do not succeed in selling them, is that correct?

Mr. Boyd: I object to that, your Honor, as not being within the witness' knowledge as to what other people do. He can testify as to what he does.

Hearing Examiner Kolb: The objection will be overruled.

Mr. Royall: I will withdraw that question, your Honor, pending another.

By Mr. Royall:

Q. You do know, do you not, sir, that the stations don't buy from all the wholesalers, don't you? You know that from your observation? A. I can assume that, sir.

Q. These gentlemen who work for you and who testified in this hearing did not mention all of the Texaco stations that you sell, did they? A. They mentioned I believe, sir, the Texaco stations that they actually contacted or those that were in their assigned areas.

Q. Yes, sir, but are there other areas not covered by these salesmen? A. Oh, indeed.

(3584) Q. Would you be kind enough to let me ask you some questions about some of the Texaco stations which you sell which were not covered by these witnesses? And would you give me your best information on it? A. If I can.

Q. I understand, if you can. Are you familiar with the fact that your company sells TBA items, including spark plugs and batteries, to John Crookham, at Main and Pearl at Council Bluffs, and sells in amounts running from $50

to $100 a month? Are you familiar with that? A. Counsel, I know that we sell the account. But for me to tell you exactly what we sell him and in what amounts, I couldn't.

Q. I am just asking what you do know. A. I recognize the account. But what we actually sell them, though, I can't.

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(3590) Q. Getting back to Ed Goldapp, at 60th and Center, who sells him? A. Our salesman's name who calls on him is Charles Benson.

Q. He is not here? A. He is not present.

Q. You do sell him merchandise? A. Some, yes.

Q. Don't you know that in that case he is also sold by Anderson and Sidles?

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The Witness: I can only assume that they do. I don't call on the account and have never seen their salesmen present.

By Mr. Royall:

Q. How about Weigle & Young Service Station, 964 South (3591) 48th Street? A. That is right.

Q. Who handles that? A. Contacted by our Mr. Benson.

Q. They buy from you also? A. Yes, sir.

Q. And they buy from other suppliers, do they not, too? A. Of course.

Q. They buy from Sidles and Anderson, do they not?

Mr. Boyd: Object, unless he knows.

A. I couldn't say sir. I don't know.

Percy L. Kanago, Recalled, for Commission—Cross

By Mr. Royall:

Q. You don't know whether they do or not? A. I don't know whether they do purchase from them.

Q. Do you know whether or not they buy from Adolph's Auto Supply Company? A. Yes, that I do know.

Q. And they buy also, do they not, from the Jones Auto Company? A. It is Jones Automotive. I do not know again whether or not he buys from them.

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(3592) Q. There are other accounts, are there not, that are not covered by these gentlemen who have been on the stand? A. Do you mean by that are there other Texaco or Conoco stations in the area that our whole organization covers? A. That is right.

Q. Yes. A. Yes, sir.

Q. Can you tell us offhand how many there are? A. No, sir, I couldn't.

Mr. Royall: That is all I care to ask you.

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Cross-examination by Mr. Barton:

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(3593) Q. What percentage of your business is pickup business in the store? A. That is a very good question. We would all like to know the answer to it.

Q. What roughly is it? Is it 50 percent of your volume? A. No, I would say that it probably would vary between 20 and 30 percent.

(3594) Q. And of course— A. Actual pickup over the counter.

Q. It is heavier among the service stations than it is among the garages and people like that? A. For the reason that there are probably more service stations than there are garages.

Q. Also the service stations are not all too well capitalized, so they don't carry a complete stock?

Mr. Boyd: Object to that.

Hearing Examiner Kolb: Objection overruled.

By Mr. Barton:

Q. Right? A. Call it a hand to mouth basis.

Q. Pardon? A. Call it a hand to mouth basis.

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(3597) MANNIE O. HANSEN was thereupon recalled as a witness, and, having been previously duly sworn, testified further as follows:

Cross examination by Mr. Royall:

Q. Mr. Hansen, you agree that there are a good many wholesalers around this territory, are there not? A. That's right, sir.

Q. And no one knows that better than another wholesaler. A. You are right, sir.

Q. Competition between them is pretty keen, isn't it? A. Very keen.

Q. You find, do you not, that in a great many stations, including those that you testified about, that in addition to these stations buying from you they buy from other local wholesalers, do you not? A. That is correct.

Q. And in many instances you have observed their products in the station, have you not? A. Right.

Q. Without going into great detail about it, I would like to ask you about a few that we have— A. All right, sir.

(3598) Q. (continuing) —from general information from the other witnesses previously heard in this hearing.

You know the Art's Texaco station, I believe you testified about that. A. Yes, sir, I testified about Art's Texaco.

Q. I believe they sell Siberling tires. A. Art's Texaco?

Q. Yes. A. They had Siberling tires at one time, yes.

Q. They buy from Sidles do they not? A. I would presume so. Handling Siberling tires I would imagine that is where they got them from.

Q. Also, they handle Delco, do they not? A. Alter that. They used to buy Delco.

Q. You have seen Delco in there? A. Yes, sir, I have seen Delco in there.

Q. Mr. Ekberg, is he the one who is related to the Firestone zone manager? A. I wouldn't know that, sir.

Q. You wouldn't know that? A. No.

Q. No, I believe he is an ex-Firestone manager, isn't he? A. I believe that was it. He used to have a Firestone store out in Benson. That is where I first got acquainted with him.

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(3600) Q. I believe you covered a witness named Ted Carroll, did you not? A. Ted Carroll, of Valley.

Q. Am I correct that he is in bad financial circumstances? A. He is not in the best financial circumstances.

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(3601) Q. You do know, do you not, that Pearson buys from Sidles do you not? A. I would assume that he would, yes. I know they call on the account. I am just assuming that Pearson probably does buy something from Sidles.

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Cross-examination by Mr. Barton:

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(3602) Q. I didn't have it in my notes. You also call on Arlington Oil? A. Yes, sir.

Q. I believe you said you didn't sell tires there? A. No, sir.

Q. Have you ever tried? A. Yes, sir.

Q. What reason, if any, was given to you? A. He wanted to stay with a national advertised line.

Q. And your line is what? A. Century.

Q. That is not a nationally advertised line. A. It is manufactured by Mansfield Tire and Rubber Company.

Q. But it isn't nationally advertised in the same sense as Firestone or Goodrich? A. Not in as great a quantity, no.

* * *

Redirect examination by Mr. Boyd:

Q. Mr. Hansen, I believe the questions were asked you about Art's Texaco on cross-examination, and you said that at one time they had Siberling tires. A. That's right.

(3603) Q. When was that? Do you recall? A. Well, it has been this year. I would say along about August, September, or October. Somewhere along there. Maybe earlier. I don't know.

Q. 1956? A. 1956.

Q. They don't have any any more? A. Not to my knowledge. They might have some that I don't know about.

Q. How about Delco batteries? You said they also used to have them. A. That's right.

Q. They don't have them anymore? A. Not to my knowledge.

Q. When did they have them that you know about? A. That has been approximately a year or so ago. In fact I used to sell him some Delco batteries about one or two years ago.

Q. Why did he stop buying Delco batteries?

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A. I don't know why he stopped buying Delco batteries. I have no specific proof so I had better not say anything. I know about it, but I have no proof so I am not going to tell (3604) you what the setup is.

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By Mr. Boyd:

Q. Did he carry Siberling tires up to 1956? Did he regularly carry them or did you just see them that one time? A. Not normally as stock. He carried them, I believe, as a secondary tire. Primarily it is Firestone, but I think he carried Siberling as a second-line tire.

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Mr. Royall: That is all, sir.
(Witness excused.)

LAWRENCE B. TAYLOR was thereupon recalled as a witness, and, having been previously duly sworn, testified further as follows:

Cross examination by Mr. Royall:

Q. Mr. Taylor, it is true of course, is it not, that these (3605) various service stations are approached by numerous wholesalers, are they not? A. That's right.

Q. And those that you have testified about have bought from others besides yourself, have they not? A. That's right.

Q. And they sometimes decline to buy from one and buy from another, don't they? A. That is very true.

Q. When they don't buy from one they always have to give them some good reason, don't they? A. Well, there usually is a good reason.

Q. They give them one anyhow, don't they? A. Yes.

Q. They don't want to offend them and they give them some reason. A. That's right.

Q. Mr. Taylor, I want to ask you about several of these specifically. If you don't know, you just say so. A. I will.

Q. I want you to tell me what you know about it.

Do you know what other wholesalers Mr. Cress buys from? We have no record at all. A. I have never met one of my competitors there, so I can't tell. I do not—

(3606) Q. Could you tell from the type of goods that you see? A. You mean in his place of business?

Q. Yes, sir. A. The only thing that I do know is that he buys from Frost. I have seen all of that type of merchandise there.

Q. But he does buy from others, too, doesn't he? A. Not to my knowledge.

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Q. Did you give in the case of Mr. Fisher the items that he bought from you?

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Q. Did you mention Weed chains in that case? A. No, I did not.

Q. And did you mention Delco batteries? (3607) A. No, sir.

Q. Or Gates belts? A. I did belts.

Q. Or Zecol sealer? A. No, sir.

Q. He did buy from you, did he not, Weed chains, Zecol rust stop, and a Walker jack, did he not? A. I sold him a front-end jack, and I sold him Zecol. To my knowledge I have never sold him a battery unless he has needed it for a specific purpose and has called and we have delivered it. For stocking purposes, I have never sold him one.

Q. You sold him Weed chains? A. Not to my knowledge. We had a bad snow storm awhile back and almost every service station in town bought chains from us because we had them and some other accounts didn't.

Q. Let me ask you something about Beaver. We have no record of that. He buys from Anderson and Sidles, doesn't he? A. I would presume he does. I wouldn't say for sure.

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(3609) Q. Did you say that you tried to sell tires to George Peers, 42nd and "L"? A. No.

Q. Pardon. A. No, I did not sell him tires.

Q. Did you say you tried to? A. Yes, I have tried to.

Q. What reason, if any, did he give you for not handling— A. George has always been tied in with Firestone and he prefers to stay that way.

(3610) Q. He likes the Firestone line? A. On tires.

Q. What kind of batteries does he handle. A. He handles Grant batteries.

Q. Did you sell him any batteries? A. The only time I sell him a battery is when he is caught and needs a battery for a particular automobile and he can call us and we would deliver, or run down to the store and pick it up.

Q. Has he ever given you a reason for not buying your batteries? A. Yes, he has. He told me that he bought Grant batteries during the war and Grant took care of him, so he felt obligated to them and he would stay with them as long as possible.

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By Mr. Royall:

Q. Frank Cerny buys from Sidels, does he not? A. I presume he does.

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(3611) JAMES S. ZALOUDEK was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

* * *

Direct examination by Mr. Dias:

Q. Will you state your full name for the record? A. James S. Zaloudek, 5248 South 23rd Street, Omaha, Nebraska.

Q. Mr. Zaloudek, did you at one time operate a Texaco station? A. Yes. In 1948 I opened a new station at 13th and Deer Park. That was July 24.

Q. How long were you in that station? A. Six years.

Q. When did you say you opened in 1948? What date? A. The 24th of July.

Q. When did you first negotiate for that station? (3612) A. That would have been in June.

Q. Will you tell me what occurred in your negotiations? A. I signed a contract—

Mr. Royall: Wait a minute. When did this happen?

Mr. Dias: July, 1948.

Mr. Royall: Your Honor, that goes way back of the date of the specific occasions which were set in the pretrial hearing.

Mr. Dias: Let's not argue. The man left the station in 1954. I am bringing him up to date on it.

Mr. Royall: That is all right. You asked about 1948.

Mr. Dias: I asked when he started and he said July 24, 1948.

By Mr. Dias:

Q. What negotiations took place before you signed for your station?

Mr. Royall: Objection.
Hearing Examiner Kolb: Overruled.

A. In June—that is what you want?

By Mr. Dias:

Q. Before you signed the lease. A. Before I signed the lease, how did it come that I got to sign the lease?
Q. Yes. (3613) A. Okay.

Mr. Royall: Objection.
Hearing Examiner Kolb: Overruled.

A. I worked for Super Service at the time at 18th and St. Mary's Avenue. It was in the fall of the year when Firestone first introduced their ice tire.

By Mr. Dias:

Q. I am talking about when you went to the Texaco office for the purpose of signing the lease. Did you not?
A. That's right. That was what I thought.
Q. What did they tell you at that time in connection with this prospective lease?

Mr. Royall: Objection.
Hearing Examiner Kolb: Overruled.

A. I went to the Texas Company and that was signed right at their office.

By Mr. Dias:

Q. Which Texaco officials were there?

* * *

(3614) A. At the time of signing the lease with Mr. Coleman, Mr. Sittler, Fred Opocensky.

Q. Did they at that time discuss the rate of rent? A. Yes.

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(3615) The Witness: That was right in the contract.

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By Mr. Dias:

Q. Did they also discuss products to be carried in the station?

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By Mr. Dias:

Q. What was your answer to the last question? A. They explained the contract, rent, and their product that I would handle.

(3616) Q. Was there any conversation about tires, batteries and accessories?

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By Mr. Dias:

Q. You may answer. A. They told me that I had a pick of two tires, and that was a Firestone Tire and Rubber Company or the Goodrich Tire and Rubber Company.

Q. Did that refer only to tires? A. That was to all TBA products.

Q. And did you make a choice? A. I made a choice—Firestone.

Mr. Royall: Objection. Same grounds.

Hearing Examiner Kolb: Objection overruled.

A. I made the choice of Firestone because I sold Firestone for Super Service.

By Mr. Dias:

Q. How did you arrange to get your Firestone TBA into your station? A. I was told there would be a meeting—

(3617) Mr. Royall: Objection.

Hearing Examiner Kolb: What is the ground of your objection?

Mr. Royall: On the same grounds and also because it is hearsay.

Hearing Examiner Kolb: What are the same grounds?

Mr. Royall: I say that is an additional ground.

Hearing Examiner Kolb: Let the record show that Mr. Royall has a continuing objection to each and every question asked and they are overruled. Go ahead.

Mr. Royall: On the grounds stated?

Hearing Examiner Kolb: On the grounds so far stated they are overruled.

Mr. Royall: If there are any other grounds, I will state them at the time.

Hearing Examiner Kolb: All right. Go ahead.

A. They told me in a week or ten days they would have a meeting over at the Firestone place and I would be there at 8:00 o'clock. I signed a contract.

By Mr. Dias:

Q. Can you tell me who told you that? A. That was told to me by Mr. Sittler and Mr. Coleman.

(3618) Q. Go ahead. A. Then it would have been probably ten days when I appeared at 20th and Harney, Firestone Tire & Rubber Company.

Q. What date was that, approximately? A. That would have been probably the latter part of June.

Q. When did you open your station? A. July 24, 1948.

Q. Did you meet with them at Firestone? A. Yes, sir, right in the main office.

Q. What did you do at that time? Did you order a supply of TBA? A. I signed a contract with them for tires, Firestone tires and TBA that evening.

Q. When your station opened on July 24 were the tires, batteries, and accessories in your station or not? A. No. They were delivered by Firestone.

Q. When? A. That would be about a week before I opened.

Q. Before you opened? A. Before I opened. I had to get everything on the shelves and properly placed.

Q. Did you at any time carry any other tires, batteries, or accessories? A. I bought—it would have been the same Fall of 1948 (3619) when I ordered Peak, Zerex, and Prestone, that my customers insisted on that type of anti-freeze.

Q. Did you display them in your station? A. I displayed them in the window, all four products.

Q. Which were the four? A. That was PT, Peak, Prestone, and Zerex. And when Mr. Sittler saw all that in the window I had to take it out—he told me to get rid of it, but I didn't. I put it in the back room. I never did take it out of the building. But I couldn't keep it in the window.

Q. Do you have your lease with you? A. Yes, sir.

Q. May I see it?

(The witness produced a document.)

Q. Do you want this back? A. Yes. Here is the cancellation.

Mr. Royall: May I request counsel, in these conversations, do you desire to name the persons with whom he talked?

Mr. Dias: I have attempted to do that so far. I think you have all the names to date. I would like to know them, too.

I would like to have this four-page document marked for identification.

(3620) (The document referred to was marked Commission's Exhibit 154-A thru G for identification.)

By Mr. Dias:

Q. I ask you is this the lease that you executed with the Texas company? A. That's right.

Q. Including this document, marked 154-A? Is that all part of it? A. That's right.

Mr. Dias: I offer the document in evidence, your Honor. I would like the record to show that the gentleman would like the return of the original. We would like to substitute a photostatic copy.

Mr. Royall: We have no objection to that.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 154-A thru G. A photostatic copy may be substituted in lieu of the original.

(The document previously marked Commission Exhibit 154-A thru G for identification was received in evidence.)

By Mr. Dias:

Q. During the year 1948 did you purchase any other items, tires, batteries, or accessories, other than Peak, Zerex, Prestone, and other than the Firestone brand? (3621) A. About the following year, when I had customers calling for different types of filters and two grades of oil,

I ordered, such as AC, Purolator, Wix, Hasting filters, Kendall oil, and Pennzoil, and that, too, I could not display and I had to put it in the back room and they told me I had to take it out.

Q. Who told you? A. Mr. Sittler and Opocensky.

Q. Did you take it out of the display room? A. I took it out of the display room, put all the oil and filter cartridges in the back room.

Q. Thereafter did you place any more orders for Peak, Zerex, Prestone, or these other items you have mentioned? A. In the Fall of the year, customers still kept asking for it, so I ordered it.

Q. Did you also carry the comparable products in the Firestone line? That is, did you carry Firestone anti-freeze? A. No. The anti-freeze I carried, none from Firestone; it was all Peak, from the Texas Company.

Q. Did you at any time carry other brands of tires or batteries? A. Yes.

Q. When did you do that? A. I carried—I didn't carry them, I bought them; I made a good price on some Armstrong tires purchased from (3622) Remde Tire Company.

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Q. You started to tell us about the Armstrong tire situation. A. Yes. I purchased in the neighborhood of, I would say, about 48 to 52 tires. I made a good buy on them through Mr. Remde. They were delivered to the station and I put them in the rack with the Firestones that I had and I was told to remove those, too, which I didn't.

(3623) Q. Who told you to remove them? A. Mr. Sittler, Coleman, and Opocensky.

Q. Did they tell you why you should remove them? A. They said "you have a Firestone contract and that is what you are supposed to have in our racks."

Q. Were there any other similar instances with any other products in the TBA line? A. In the TBA line I had merchandise purchased from Sidles Company and Al's Auto, Storz Supply. That, too, I was told to take off the shelves, that they didn't want it there. But I never did take that off the shelves. That remained right there.

Q. Did you continue to purchase from those suppliers? A. Yes.

Q. And those same products? A. Same products, because customers asked for it.

Q. Did your purchases over the years increase with those suppliers? A. Yes, sir.

Q. You bought more and more of their products? A. I bought more and more and more.

Q. How about batteries? A. Batteries, after I had Firestones for I would say two to two and a half years, I signed a contract with Carl Anderson, George Hoffman, salesman, for Auto-Lite batteries. (3624) And that again I had to take out, and I went back to Firestone batteries.

Q. Will you explain what you mean by "had to take out"? Who told you to take them out? A. Sittler and Coleman didn't want them in the building, that I had a contract to sell Firestone and I had to sell Firestone batteries.

Q. Can you tell me what your gas gallonage was over the years that you were with them? Did it vary? A. Overall for the six years that I had been there I would say it was over 18,000 average.

Q. Is that per month? A. A month.

Q. Did you start off by pumping that much gas? A. We started off by pumping I would say close to that amount, and picked up a little, and it stayed about right at that peak, about 18,500 a month.

Q. When did you leave, or when was your lease cancelled? Was your lease cancelled? A. I was cancelled out to leave the premises July 24, 1954.

Q. Do you have a copy of the notification of cancellation? A. Yes.

Mr. Royall: Your Honor, from this point on I do not desire to carry the continuing objection, but will make (3625) objections specifically.

(The witness produced a document.)

Mr. Dias: May I have these marked for identification?

Mr. Royall: That is the first item after 1952 that you asked him about?

Mr. Dias: I believe his story was running as he went along.

Mr. Royall: The last year he gave was 1949.

Mr. Dias: We will go back over it again.

(The document previously referred to was marked Commission's Exhibit 155-A and B for identification.)

By Mr. Dias:

Q. I show you Commission's Exhibit for identification 155-A and B and ask you to tell us what that is. A. This is to advise me, "pursuant to the term of our lease with you dated May 18, 1948, covering service station site 13th and Deer Park, Omaha, Nebraska, Texas Company cancels and terminates said lease July 23, 1954."

Q. What is the date of the letter? A. That is July 2, 1954.

Q. And Commission Exhibit 155-B for identification, is this a copy of the cancellation of your lease? A. This also is a cancellation, yes, sir.

Q. Mr. Zaloudek, is this document, Commission's Exhibit (3626) 155-A and B—rather, is Commission Exhibit 154-A thru G the lease that you operated under with the Texas Company during your entire stay with the Texas

Company? A. That's right. I never received any other contract but that there one. That is the only one I signed.

Q. And this Commission Exhibit 155-A and B is your notice of cancellation? A. Yes.

Mr. Dias: I would like to offer these documents, 155-A and B in the record, with the request for permission to have them photostated and return the originals to Mr. Zaloudek.

Hearing Examiner Kolb: Is there objection?

Mr. Royall: No, sir.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 155-A and B, and photostats may be made and substituted for the originals.

(The document previously identified as Commission Exhibit 155-A and 155-B was received in evidence as Commission Exhibit 155-A and 155-B.)

By Mr. Dias:

Q. Mr. Zaloudek, let's go back. In 1948 you purchased Peak, Zerex, and Prestone? A. That's right.

Q. From whom—

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(3627) Q. Will you answer the question? In the Fall of 1948 you purchased Peak, Zerex, and Prestone? A. That's right.

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(3629) Q. You purchased Peak, Zerex, and Prestone in the Fall of 1948, did you not? A. Right.

(3630) Q. From whom did you purchase that? A. From Storz Supply, Carl Anderson, Sidles, Al's Auto.

Q. When was the next time you purchased other than Firestone tires, batteries, or accessories? A. I would say it would have been in the year '51 when I purchased the Armstrong tires from Remde Tire Company.

Q. During the years between 1948 and 1951, were you purchasing these same products—Peak, Zerex, and Prestone? A. Yes.

Q. Were you purchasing anything else in the TBA line? A. In the TBA—

Q. Other than the Firestone brand. A. Yes. I was purchasing different makes of filters and TBA products.

Q. Were you on all those occasions chided by the Texas Company? A. What?

Q. Were you told by the Texas Company not to carry those products? A. When they saw them on the shelves they said I wasn't supposed to have them on the shelves. It was supposed to be Firestone.

Q. In 1952 what products did you buy, other than Firestone (3631) tires, batteries, and accessories? A. If a customer would want Goodyear tires, Seiberling, or whatever it might have been—U. S.—I purchased them, left them in the office until the customer called for them or had them put on. And that again, when there was any other tire in our racks, or on the floor, they told me at the time that they did not want them in the building. And that was Sittler, Coleman, and Opocensky, the three representatives for the Texas Company.

Q. Did a similar occurrence come about during 1953? Were you purchasing other tires, batteries, or accessories from wholesalers or distributors other than Firestone? A. Around '53 I dealt exclusively, you might as well say, with Firestone, and the batteries. I went back to their batteries. But I still carried, say, waxes and filters and so forth from different companies. Our customers wanted them.

Q. Why did you revert to the Firestone line? A. Just to keep peace in the family.

Mr. Royall: Your Honor, we object and move to strike that, why he did it.

Hearing Examiner Kolb: Objection overruled. Motion denied.

By Mr. Dias:

Q. In the early part of 1954 were you still carrying (3632) Firestone TBA exclusively? A. There was—

Q. Or were you carrying some accessories? A. There was more Firestone and Texaco; I would say that 92 percent of it was Firestone and Texaco.

Q. What constituted the other 8 percent? A. That would have been, say, chains, anti-freeze, filters, oil polishes, wax. It didn't amount to too much.

Q. Did you receive any notice prior to July 2 that your lease was going to be cancelled? A. I had an inkling that they were going to cancel me out.

Mr. Royall: Move to strike.

Hearing Examiner Kolb: Denied.

A. I had an inkling I was going to be cancelled out for this reason: that one argument led to another about handling this merchandise since I was there, and as I say, I had an inkling they would cancel me out just for the reason of not being cooperative.

By Mr. Dias:

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(3633) *By Mr. Dias:*

Q. Did anyone in the Texas Company tell you that your performance or your method of operation was unsatisfactory? A. No, sir.

Q. The first notification you received was that letter dated July 2? A. Cancellation.

Q. How were your gasoline sales at that time? A. Right up to par, as high as I thought they would ever go for a neighborhood station.

Q. Did a Texaco official ever give you any reason why you were cancelled out? A. Nothing was stated in the letter. About all I remember is opening the letter and saw the cancellation.

Q. Did you do anything about that? Did you attempt to— A. When I knew I was cancelled out I went to see if I could find another lease close by to protect the business that I built up for six years, which I was fortunate to find within a range of about three and a half or four blocks.

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Q. During the time you were in that station, Mr. Zaloudek, (3634) did any Texas Company official ever tell you that you did not have to buy Firestone or Goodrich TBA? A. Nothing was ever said about that from the company. That was at the time that I was in my place of business.

Q. And by "the company" do you mean the Texaco Company? A. The Texaco Company; that's right.

Q. What became of the stock that you had in your station when you were cancelled out? A. The stock I had in the station I moved to my new location. They would not take Firestone tires, tubes, batteries back. The only thing that was returned and was paid for was the gasoline, oil, PT, and whatever had the name of Texaco on it.

Mr. Dias: That is all.

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James S. Zaloudek, Recalled, for Commission—Cross

(3636) JAMES S. ZALOUDEK was recalled as a witness for the Commission and, previously having been duly sworn, was further examined and testified as follows:

Cross-examination by Mr. Royall:

Mr. Royall: Your Honor, as we stated this morning, the first information we had that Mr. Zaloudek was to be a witness came to us after the morning's hearing started. We have naturally been unable to get in touch with the people he states he talked to, or to get the background or the position of the Texas Company officers or employees as to the great part of his testimony.

We have located some papers which will enable us to proceed with some examination of him, and we would like to go as far as those papers permit. But that is as far as we would be able to go with it today. I will start with it along that line. There are a few general questions we want to ask him which we can ask him. But there are a great many specific matters we are not in sufficient position to go into fully and we don't want to do it fragmentarily.

(3637) Mr. Dias: If your Honor please, it is our position they ought to undertake cross-examination now or postpone it until another date.

Hearing Examiner Kolb: He will cross-examine now and at the close you can make a motion and we will determine at that time whether it is to be extended or not.

By Mr. Royall:

Q. Mr. Zaloudek, I believe you testified that from time to time during your lease on the station, the Texas outlet, and for the period, among others which I won't ask you about, the period from 1952 on you from time to time

carried in your store TBA of brands other than Firestone? A. That is correct.

Q. I think you further testified that immediately before the termination of your lease in July, when you got the first notice, 1954, that you had got to the point where you were selling 92 percent of your TBA in the Firestone brands? Is that right? A. Right.

Q. And that was an increased percent over what you had been selling at some other times? A. Yes.

Q. What do you say was the lowest period of Firestone, that is lower than 92 percent, what was the lowest percent of Firestone you sold in 1952 and 1953 and 1954 up to (3638) July? A. That is carrying the other product, too?

Q. You said 92 percent of your products were Firestone and you said it had been lower than that. How low did it get at one time? Did it get to 60 percent Firestone? A. I would say 60 percent.

Q. And about when was that? In 1952? A. That would be starting about 1952.

Q. Then you moved up the percentage until finally in July it was 92 percent. Is that right? A. That is right.

Q. Do you recall a transaction in either 1952 or '53 involving some credit card purchases by a man named Saab? A. Yes, sir. I had to pay that back to Firestone Tire and Rubber Company by check.

Q. When did you pay that? A. I have no date here, but that was after termination. It was $127.63. These credit cards, photostats—

> Mr. Royall: Your Honor, I don't want him to do any more than answer my questions unless it is an explanation. I just asked this question, a simple question.

James S. Zaloudek, Recalled, for Commission—Cross

By Mr. Royall:

Q. When did you pay it? You said it was after the cancellation? A. After the cancellation in July.

(3639) Q. This matter first came up—first came to your attention—this matter of these credit cards, credit sales, did it not, in August or September 1953? I am not trying to mislead you and I would be glad to give you something that would probably refresh your recollection if you need it. A. I have some dates here that might give me an idea. I can check the dates on these photostatic copies.

Mr. Royall: I am detaching this, gentlemen, from the file. I hate to detach it because it comes from the company.

The Witness: It seems as though it all happened in the eighth month, 1955.

By Mr. Royall:

Q. August 1953? A. From 1953 to—

Q. It was all in 1953, wasn't it? A. 1953, yes.

Q. Have you got copies of those credit cards? A. Yes, sir.

Q. You brought them up here, did you? A. Yes, sir.

Q. Were you asked to bring them up by government counsel? A. If what?

Q. Did these gentlemen, the attorneys for the government, ask you to bring those up here? (3640) A. I told them that I had them, that I was going to bring them.

Q. When did you tell them that? A. That was last night.

Q. How did it happen that you told them you were going to bring them? A. They wanted to know why I was cancelled out.

Q. Let me see those a minute, please? A. I told them it was probably due to—

Mr. Dias: There is no question pending, your Honor. I object to any response.

By Mr. Royall:

Q. You told them what? A. Go ahead, look at them.

Q. You told them it was probably due to what? A. I told them I would bring those here.

Q. What did you say a moment ago it was probably due to what? A. This case here.

Q. These cards? A. No. It could have been that they cancelled me out either for this here, or that I didn't cooperate. That is why I brought them with me.

Q. This matter was called to your attention in September 1953, shortly after these cards were issued? (3641) A. That is right.

Q. It is a fact, isn't it, Mr. Zaloudek, that these cards, these credit cards were issued in part for tires that were not put on any car at your station? A. That is right.

Q. It is also true, is it not, that there are cards in here of exactly similar amounts for different sized tires? A. Right.

Q. It is also true, is it not, that these items, all items in addition to gasoline in the first three of these cards, are an even $15? A. That is right. That is what the tires amounted to; marked "Miscellaneous."

Q. Isn't this $15 for tires? A. That is the size it should be, 6.40 by 15.

Q. What is that? Is that for a tire? A. I would say yes.

Q. And yet you put on that "Miscellaneous", didn't you? A. Yes, sir.

Q. Was this other one for a tire? A. That is right.

Q. And you put on that "Miscellaneous"? A. Yes, sir.

Q. I show you a fourth one—differing in the order in which they come—for $15. And that is $15 and that is for (3642) a tire? A. It is marked "tire."

Q. And here is one for $20 for a tire, isn't it? A. 7.60 by 15 deluxe tire.

Q. What are these items on the next to the last one? A. It says "labor" which could have been possibly a wash job.

Q. Are any of those miscellaneous for tires? That is what I am trying to find out? A. One would be a grease job. I can't make out what the bottom one is.

Q. There are no tires or miscellaneous on that? A. No.

Q. Here is another one, $10 for miscellaneous. Is that right? A. That could have been grease, oil and filter.

Q. But you put it down as miscellaneous? A. We mark many a credit card that way, rather than write them out. Still do it to this day.

Q. For some of these items you gave Mr. Saab cash, didn't you? A. No, sir.

Q. All of these tire items—one, two, three, four, and five—were in a period from August 15 to August 26, weren't they? A. That is right. Four for his Studebaker and one for his (3643) Buick.

Mr. Dias: What year?

Mr. Royall: 1953.

By Mr. Royall:

Q. You were questioned about these items, weren't you? A. That is right.

Q. I will ask you if you didn't state at that time, under oath, that all the tires were mounted at the time they were sold? A. No, we didn't swear under oath that the tires were mounted. We swore under oath, brought down by the

Texas Company, that we did not give cash. That was brought down by Mr. Burgess.

Q. You were familiar with the regulations on credit cards. You have been dealing with them for sometime. Weren't you? A. That is right. I was in the wrong there, putting miscellaneous down, or putting down tires not mounted.

(3644) Q. I will give you these back, sir.

These matters were the occasion of a considerable amount of controversy between you and the Texas Company, weren't they? A. That's right.

Q. And that controversy lasted continuously from September, 1953, up to and through the time of the cancellation notice, didn't it? A. That's right.

Q. And the company demanded payment from you on the theory that these cards had been properly issued for improper purposes, didn't it? A. That's right.

Q. And you employed a lawyer in the matter, did you not? A. That's right.

Q. And your lawyer had a considerable amount of controversy with the company? A. He still has it on record. It is not finished yet.

Q. And they demanded that because of those circumstances that you repay the money? A. Did I pay it?

Q. The company demanded that you pay the money back to them? A. Texas Company demanded me to pay the money.

Q. And you finally did pay it back to them, you say? A. That's right. Only—otherwise I wouldn't—

Q. Have you gotten any information about the check? You (3645) said you had it paid by check. Do you know the date of it? A. If we have to, I could get that from the bank.

Q. Sir? A. If I have to get the cancelled check, I could get that.

James S. Zaloudek, Recalled, for Commission—Cross

Q. There is no doubt about the fact that you paid it, is there? A. Yes, it was paid. $127 and some cents. Otherwise they wouldn't make a settlement with me on what they owed me until this was paid.

Q. And you know do you that this same man, Saab, during that time or that same period went to a number of other Texaco stations and did the same thing during the same time, don't you? A. I was told that. I don't know it.

Q. And you know that the other stations paid the amounts back without any hesitation? A. I don't know anything about that. All I know is that his credit card was current, which I thought if a credit card is current that I should have whatever was issued on those cards.

Q. That matter was in writing, wasn't it, your credit card? A. That's right.

Q. I ask you if it isn't a fact that when they first went down to see you about this matter—or later went down to see you, some few months before the cancellation—if you did not (3646) tell them that they would find job tickets in your records that would support these vouchers? A. I didn't get that. Say that again.

Q. Did you tell them that you had job tickets that would support these credit cards? A. I did at that time, and then when we looked for them most were destroyed. When I got quite a number of them we just burned them up.

Q. After you burned them up didn't they go down there a second time and find that some had suddenly appeared in your records, but their numbers didn't correspond with the consecutive job sheet back that you had? A. That's right. I made those out myself to satisfy—

Q. You made those out yourself and put them in there between the time they first came and when they came back? A. That is what they wanted.

Q. They were not numbered in the regular order were they? A. Naturally they wouldn't be if the others were burned. Each job ticket had its own number.

Q. When did they first come to see you about this matter? Early in September? A. It could have been the latter part of September or October.

Q. The latter part of September? A. Or October.

Mr. Dias: What year?

(3647) *By Mr. Royall:*

Q. That was just about three weeks, not more than four weeks after these credit cards and job tickets had been paid out. Is that right? A. That's right. I made them out for them, to show them what we did.

Q. I mean they first came to you within three weeks after the last one of these credit cards was originally made out didn't they? A. That's right.

Q. And you say in that interim of three weeks that the job tickets had been burned? A. Right.

Q. I will ask you if they weren't in your job tickets, unburned at the time they went there, consecutive job tickets in your little book, right along with no vacancies, which covered this period from August 15 to the 26th? A. If they were around there I wouldn't know where they would be.

Q. Weren't they in your book there, that you had, down one, two, three, four, whatever the numbers were; weren't all the job tickets there when they first went to see you about it, every number filled, over this period from August 15 to the 26th, but no ticket about these jobs? Isn't that right? A. Naturally we wouldn't make a ticket out for tires. We (3648) only made job tickets out for grease, oil, filters and wash. Why would we make out tickets for tires and tubes, or gasoline?

Q. Didn't you say a few minutes ago that you hadn't made tickets out for these items? And they had been destroyed? A. That was taken right off of these photostatic copies, just the way I made it for them. Just the way they brought them to me.

Q. Have you got any job tickets with you? A. No, sir. They are all destroyed.

Q. I mean do you have any in any other matter? You haven't got any other job tickets, the form you use, have you? A. Oh, no, no. As I left the company three years ago I wouldn't need them.

Q. Not these, but others. You have been using job tickets all along haven't you? A. Where I am at now or there?

Q. There? A. There, yes. For grease, oil, filters and so forth. Where we would sell tires and gasoline we wouldn't make a job ticket.

Q. You knew at the time of this transaction with Saab that it was not the right thing to do to issue credit cards for cash, didn't you? A. That's right.

Q. And you knew it was not the right thing to issue credit (3649) cards for the sale of merchandise when you knew that the man who bought them was going to sell them and get the cash. You knew that, didn't you? A. That's right. They had to be mounted. Tires and batteries had to be put on the vehicle.

Q. But you are not permitted to issue a credit card directly or indirectly for cash given a man, are you? A. We don't do that.

Q. You were not authorized to do that, were you? A. No, sir. It states right on the back of the card, no cash is to be given on any of the credit cards.. That pertains to any company.

Q. Were some of these credit cards issued for used batteries? A. No, sir.

Q. You are quite sure about that? A. Yes, sir.

Q. And none of these $15.00 items except those that describe tires were itemized, were they? A. No, sir. Marked "miscellaneous."

Q. And you knew that you were supposed to itemize them? A. That's right.

Q. You said a minute ago that tires were not supposed to be carried on the job sheets? A. No.

Q. What was to be carried on the credit slips. Did you put (3650) tires on there; weren't you supposed to put tires on here? A. Yes.

Q. And you didn't do it in two or three instances? A. Some of those miscellaneous, which could be grease, oil, gas, filters.

Q. You said you sold him five tires? A. That's right.

Q. And you put only two of them under the name of "tires," didn't you? A. I think—

Q. Three of them? A. Three of them. One 7.60 by 15, two 6.40 by 15. The other two marked "miscellaneous" were also 6.40 by 15. Because at the time we could make them that cheap, and the tire was obsolete as far as any automobile was concerned, Firestone made a give-a-way special of $5.00 apiece on the tires. We could sell them for—

Q. Wait a second. A. Furthermore, another thing—

Q. Wait a minute. I am not asking you any questions. A. That's all right, I can talk.

Q. Wait a minute. A. I can talk.

Q. I will ask you furthermore if one of the job tickets that they found when they went back the second time was dated (3651) September 15, and if you didn't later admit the transaction was August 15? A. What was on the sheet?

Q. Sir? A. What was on that sheet?

Q. I am asking you, sir. I am asking you if it isn't a fact that when they went back the second time and found this job ticket or service order, whatever you want to call it, that one of those you had put back in there was dated September 15th instead of August 15th. And you admitted that it was— A. That could have been done because they told me to make credit cards out for those job tickets.

Q. You made them out, didn't you? A. I made them out, yes.

Q. That September 15 was for a transaction on August 15, wasn't it? A. I just guessed the date, I would say. If they were to go back through their credit cards they would probably find thousands of miscellaneous in there. You know why they didn't send those back to me, don't you? They collected for them.

Mr. Royall: Your Honor, this has no relation to that.

The Witness: They collected for those. They didn't collect for these. That is where the rub came in.

(3652) Mr. Royall: Your Honor, he should not volunteer until I ask questions. This doesn't relate to what I just asked him.

The Witness: You ask them and I will tell it back to you.

Mr. Royall: That is all, your Honor.

(3653) *Redirect examination by Mr. Dias:*

Q. Do you have some further explanation, Mr. Zaloudek? A. Yes. Now we are talking about these credit cards right here. Why were those credit cards brought up? Because the man wouldn't pay for them. Why weren't other thousands of credit cards returned to me, marked "miscellaneous" that were paid for? And that was over

a period of six years. If they were to go through every credit card that was issued they would probably find thousands of them marked "miscellaneous." Why didn't they send them back to me? Where the people paid for them? I took this man's word that that credit card was good.

Q. What was the story on that man's credit card? A. I didn't know the card was expired. They told me later that they cancelled him out, but they didn't tell me they cancelled him out.

Q. Do you mean they used an expired credit card— A. That is something that I didn't know. Whether they expired his card, cancelled him out or what, I didn't know anything about it.

Q. Did you ever receive notice that that credit card was cancelled? A. I didn't receive any notice that the card was cancelled out.

(3654) Q. Referring to that job ticket that you just spoke about a minute ago—

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Q. That last date you mentioned, September rather than August—where did that come from?

Mr. Dias: Do you have something on that?

Mr. Royall: Those are in the records. We just had to pick up what we could. We haven't got the job tickets. He has them.

By Mr. Dias:

Q. Do you have the job tickets? A. No, I don't have no job ticket. I was asked by Mr. Burgess to make out job tickets pertaining to these here credit cards marked "miscellaneous," which I did.

Q. What are you referring to by "job tickets"? What is a job ticket? A. It is a work sheet, an original and duplicate.

Q. Is that the big yellow sheet? A. It is a regular sheet, put out by the Texas Company.

Q. How do you usually date those? Do you write out "September" or "October" or "August" or do you use numerals? A. There are numbers on the job tickets.

(3655) Q. I am not talking of that. I mean when you fill in the date? A. When we fill in the date?

Q. Do you write out each month, September, October, or November, or do you use the full designation of the months? A. When the customer comes in, John Doe, if he wants a grease job we put it down, wash, oil, grease, wheel bearings. The date isn't necessary.

Q. Don't you ever put a date on? A. We do, but I say it is not necessary as far as that is concerned.

Q. When you do use a date how do you put it on the form? Say it is July 5? A. If it is July, or say it would be right now, which would be 1/19/57.

Q. Exactly. You would use the numeral, wouldn't you? A. Yes.

Q. Is it not unusual to use an "8" or "9" instead of August or September? A. That is right. We don't pay attention to date. We get the mileage down. That is what we are interested in.

Q. How many cards were involved in this business? How many people did you have trouble with? A. This is the only one who wouldn't pay his bill.

Q. How long had he been coming into your station? (3656) A. I would say two and a half years.

Q. Was it unusual for him to get credit on a credit card? A. No, it wasn't. He signed for many cards for miscellaneous, and he paid them. But when this here stacked up on him, as I understand, it amounted to—Mr. Burgess

can verify this—he told me the man went and charged about $600 or $700 and he don't have the money.

Q. And you knew about that at the time, that he was running around making these charges, didn't you? A. No.

Q. You didn't? A. Until they told me that—

Q. Who told you? A. Mr. Burgess.

Q. How long was that after he had been into your place? A. That was after they cancelled him out and I didn't know anything about it.

Q. How long was it before they notified you about that? That is, in relation to the time that they told you about the incident? A. Well, the way it first started, they came down and wanted to know if we were issuing money on these credit cards. I told him we didn't do that. We didn't practice that.

Q. You are under oath, Mr. Zaloudek. (3657) A. That is right.

Q. Did you issue money on those cards? A. Sir?

Q. Did you issue money on those credit cards? A. No, sir.

Q. You did not? A. No, sir. There was no money issued on these cards.

Q. Go ahead. A. When John Saab accumulated such a big bill, they went around the service stations, I was told by Mr. Burgess and he said some of the companies have given him money, they are paying. So he handed me all my credit cards back and he said, "We won't accept these because they are marked 'Miscellaneous', tires not mounted," and he can't pay the bill.

Q. Was it unusual for you to mark cards "Miscellaneous" and sell something other than— A. That is right.

Q. Was that unusual? A. It is not unusual.

Q. Do you know that others do the same thing? A. That is right. We do it to this day with the company I am with.

Q. There has been reference to credit cards. Just to keep it straight, are you referring to credit slips? (3658) A. This is the credit slip itself. The customer has the card.

Q. He has the card? A. It has his name and the number.

Q. So that what we are talking about is one credit card, namely that issued to Saab? A. That is right.

Q. And a number of credit slips signed by Saab, is that right? A. That is correct.

Q. Did you say that you paid Firestone for this money? Or did you mean Texas? A. No, I paid Texas Company.

Q. When did you pay them? A. When I moved out of the building, that would have been the last part of July, West came down and inventoried my grease, oil, PT, gas, what was on hand.

Q. This is July of what year, 1954? A. That is '54.

Q. Now place the date of this trouble. Is it August 1953? A. That would have been at the end of the month.

Q. Of what month? A. July, 1954.

Q. No. That is the date you were cancelled. When did this Saab business arise? What year? 1953? (3659) A. 1953.

Q. What is the first date of one of those credit slips? Start right at the beginning and let me have them all. A. Okay.

8/15/53. That was marked "miscellaneous" for $15.

Q. Just before you get beyond that, is that the slip that raised this ruckus before about August and September dates? Is that the one? A. That is it.

Q. Is that the way the date is written on there? 8/15/53? A. That is right.

Q. And that is marked "miscellaneous"? A. That is marked "miscellaneous."

Q. What is the next one? A. Then we come to 8/22/53, 6.40 by 15, tires and gas.

James S. Zaloudek, Recalled, for Commission—Redirect

Q. And the next one? A. 8/21/53, miscellaneous, $15 and gas. $17.20.

Q. And the next one? A. 8/24/53, 7.60 by 15 tires, wash, one four-door, five gallons, gas, $23.40.

(3660) Q. Next. A. The next one would be 8-26, for 6.40 tires, $15.00; $2.20 gas.

Q. What is the total? A. $17.20.

Q. And the next? A. 8-27, wash, labor and a grease job.

Q. That is a total of how much? A. And gasoline. $15.78.

Q. Are there any others? A. One of these here could be "six". It could have been tubes. It is pretty hard to make out. It is right on that line there. Because the way I give it to you, five something, $5.98 or something, gas; $1.00, labor; $1.50, wash; that wouldn't make $15.48.

Q. That is the one dated 8-27-53? A. That looks like "27". Right.

Q. And the next? A. Then on 8-30, miscellaneous, marked $10.00. Car wash, $1.50. That miscellaneous, if I am not mistaken, that was grease, oil, filter, gasoline.

Q. What was the total of that one? A. That one was $11.50.

Q. I missed the totals of the first three. Eleven dollars what? (3661) A. The first one?

Q. Yes. A. $15.00 total.

Q. And the next? A. $17.00.

Q. And the next? A. $17.20.

Q. In testifying on cross-examination you said that this Saab deal might be the reason why you were cancelled. I think you misunderstood the question. You certainly, I believe, were misinformed. Is it not a fact that when I talked to you last night I explained to you that there was one dealer in this town who lost—

Mr. Royall: Your Honor, we object to cross-examination of this witness.

Mr. Dias: The witness was given some erroneous testimony and he is entitled to have it straightened out.

Mr. Royall: As a matter of fact, the record will show he started to make the explanation. Mr. Dias stopped him in the middle of it. And he made it only after the second question to him. That is what the record will show.

Hearing Examiner Kolb: Objection overruled.

By Mr. Dias:

Q. Is it not a fact that it was explained to you that there was one dealer that had been cancelled because he may have been (3662) cheating? A. That's right.

Q. And I asked you if you could be the one? A. And I said no.

Q. And you said no. And you thought for awhile and then you said, "there is one incident that might—that they might be referring to." Is that correct? A. Yes. That is the Saab credit card.

Hearing Examiner Kolb: You can cover that on cross-examination.

Mr. Royall: He can ask him. I didn't want him to lead him.

By Mr. Dias:

Q. The point is that you did not testify that that is the reason you thought you had lost your station. A. That's right.

(Discussion off the record.)

James S. Zaloudek, Recalled, for Commission—Recross

By Mr. Dias:

Q. Let me get back to Saab, the Saab deal. When were you first notified of this Saab trouble? Do you recall? A. I would say it could have been three weeks later.

Q. Sometime in September, 1953? Is that your best recollection? A. Possibly, yes.

Q. What was the first thing said to you about that? (3663) A. That Saab has gone around and charged in the neighborhood of $600 or $700 worth of merchandise, and he can't pay it, and they cancelled him out, and they thought the dealers were giving Saab money on credit cards.

Q. Did they tell you when they cancelled out his credit card? A. No.

Q. Do you know right now that that credit card was cancelled? A. I still don't know whether the card is current to this date. I never received any letter cancelling Saab's card.

Q. How much did you say that you paid the Texaco Company? A. $127.63.

Q. Was that supposed to cover the face value of all those tickets? A. That's right.

Q. Did it include interest? A. Nothing was said about interest.

Mr. Dias: That is all.

Mr. Royall: Your Honor, I have a couple more questions, and then I want to answer some of the redirect.

Recross examination by Mr. Royall:

Q. Mr. Zaloudek, did you receive a bonus from the company in 1952 and '53? A. For oil sold, yes.

(3664) Q. And that was sent to you with the usual form letter? Wasn't it? A. That's right.

Q. Have you got that letter? A. No, sir. All destroyed.

Q. They sent a form letter with it, didn't they? A. How much oil and grease were sold.

Q. And they sent you a letter of explanation did they not? A. Yes.

Q. Mr. Zaloudek, it is true, is it not, that the first time your lease expired, after this transaction in August 1953 — A. 1954.

Q. No, the transaction in August, 1953, I am talking about. A. I thought you were talking about expiration.

Q. The first time your lease could be cancelled after that date and after September, 1953, when it was brought to your attention, was July 23, 1954. That was the first time your lease ran out, wasn't it? A. That's right.

Q. And the first time it ran out after that occurrence, and after you had had a discussion over it for five or six months, the first time they could do it they gave you notice, didn't they? A. That's right.

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(3665) Q. He spoke to you about some conversations with Mr. Burgess. You know Mr. Burgess, don't you? A. That's right.

Q. He is a man of the highest character, isn't he? A. Right.

Q. I will ask you if Mr. Burgess didn't have prepared an affidavit in the fall of 1953, two or three months after this happened, in which he put down the facts that you stated were correct? A. That's right.

Q. And he brought it to you and you signed it, didn't you? A. Right.

Q. And you swore to it? A. Right.

Q. And in that affidavit I will ask you if you didn't state that "all tires sold on this credit card to this cus-

tomer were mounted by my employees on an automobile driven by Mr. Saab.'' Didn't you swear to that? A. That is what the employees told me, that they mounted them.

(3666) Q. Didn't you swear in your cross-examination that they were not mounted? A. On the affidavit, the reason I signed that, my employees told me they mounted them. That was in the evening. I didn't know. I took their word for it.

Q. This affidavit was signed two or three months after —three months after the transaction, wasn't it? A. I wouldn't remember the date.

Q. But it was along in November or December, wasn't it? A. I didn't think it was that late.

Q. You yourself made out these credit cards, didn't you? A. That's right.

Mr. Royall: That is all.

Redirect examination by Mr. Dias:

Q. Where did you get that affidavit? A. It was brought down by Mr. Burgess.

Q. Where? To your station? A. Right to the station.

Q. Do you remember the time of the day? A. I would say it was after dinner. After 12:00 o'clock.

Q. Noon? A. At noon.

Q. Were you busy then? A. No, I wouldn't say at the time.

(3667) Q. Did you read that affidavit? A. I thought I did.

Q. Did you just sign it without reading it or did you glance over it?

Mr. Royall: He said he did. We object to that question.

A. I remember signing it.

Hearing Examiner Kolb: Objection sustained.

A. He said here is an affidavit for you to sign, whether you took money or not. So I signed it.

By Mr. Dias:

Q. Whether you took money or not? A. Yes, from this Mr. Saab.

Q. What has that to do with the tires mounted? A. That is something I don't know.

Q. Did he tell you that here is an affidavit to the effect that you didn't give him money in cash? Is that what he said? A. That is what they were after. Whether we gave him money or not.

Q. With that understanding you signed it, is that correct? A. That is it.

Mr. Dias: That is all.

The Witness: They weren't interested in the tires or anything else. They wanted to know if we gave him money (3668) on this credit card.

Recross examination by Mr. Royall:

Q. Coming back to that again, you swore in your first cross-examination they were not mounted, didn't you? Right here in this court? A. I didn't see them mounted.

Q. You swore they weren't mounted, didn't you? A. I probably said they weren't. I didn't see them.

Q. When you signed this affidavit you said they were mounted didn't you? A. That's right.

Mr. Royall: That is all.

The Witness: That is what was told to me by the employees.

Mr. Dias: That is all.

* * *

(3669) GEORGE HOFFMAN was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Dias:

Q. Please state your full name and business address for the record? A. George Hoffman, 16th and Jones.

Q. What is the name of your company? A. Carl A. Anderson, Incorporated.

Q. How many years have you been in the TBA business, TBA or related business? A. I have been with Mr. Anderson since April 1, 1940.

Q. What is your position with Anderson? A. At the moment it is assistant sales manager.

Q. Have you had occasion to visit the sales territories with your salesmen? A. Yes.

Q. Do you know how many Texaco and Conoco stations there are in your sales territory? A. Not exactly. There is something over 30 in the City of Omaha.

Q. And Conoco stations? (3670) A. In the city limits of Omaha I would say probably 15.

Q. Do you know how many are regularly solicited? A. About three or four.

Q. Three or four Conoco? A. Conoco, yes.

Q. How many Texaco do you regularly solicit now? A. About eight. I believe a few of those are independent.

Q. Among the Texaco stations have you ever sold Gene Talmadge, at 42nd and Ames? A. Yes.

Q. What have you sold him? A. At one time we had batteries.

Q. Had what? A. Batteries.

Q. What type batteries did you sell? A. Auto-Lite.

Q. You say at one time. When was that? A. That would be when he first took the station, in the early Fifties, I believe.

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(3671) Q. You say they at one time purchased Auto-Lite. Did they stop purchasing Auto-Lite batteries? A. Yes.

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Q. Was any reason given? A. He took on Goodrich batteries.

Q. Were you able to sell them any, or do you sell them any other products? A. We did up to sometime ago—car jacks, wheel seals, miscellaneous items, fast charger.

Q. Do you have some idea of the volume of business with that station? A. We have no business there to amount to anything at all at the moment.

Q. Does Gene Talmadge own that station? A. No. Not that I know of. I would say No. I think he leases it.

Q. How about the Ray and Dick Swanson Texaco Station? A. I would say they lease that.

Q. Do you sell anything to those people? A. I believe I sold them a fast charger. Ray and (3672) Dick took a station on North 30th and—30th and Pratt, I believe. We sold them a little ignition while he was there. Then he went back with his father at 19th and Cumming.

Q. They own their station? A. I wouldn't know. But I would say No. I would say it is leased.

Q. Have you ever tried to sell them batteries? You sold them a battery charger, a fast charger. Is that a battery charger? A. Yes.

Q. Have you ever sold them any batteries? A. No.

Q. Have you ever tried? A. I imagine so. I have tried all of them in town, every place I have gone into.

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(3673) *By Mr. Dias:*

Q. How about the Leo Bray Conoco station? A. Leo Bray has never purchased anything from me, other than—that is in the TBA line, I mean. He has purchased fast chargers, shock absorbers, ignition, bumper jacks, such items.

Q. Ray and Dick Swanson, do you know what brand of TBA they carry? A. As I remember it was Firestone.

Q. And Leo Bray Conoco? A. That would be Goodrich.

Q. Do you have any other Conoco stations in the Omaha area that you sell to? A. Nothing in the TBA line.

Q. Do you know Ernie's Texaco? A. Yes.

Q. Does your company sell to them? A. We sell them ignition. And I sold them a battery charger.

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(3674) Q. Do you know what TBA products they carry? A. I would say Firestone.

Q. Does Ernie own his own station? A. I believe it is leased. I believe he is a lessee.

Q. This Gene Talmadge at 42nd and Ames, is that also known as Fontenelle Park Texaco? A. Yes.

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Cross-examination by Mr. Lorenzen:

Q. The station you described as Ernie's Texaco, his last name is Kohler, isn't it? A. Ernie Kohler, I believe. That is 45th and Lake.

Q. You sell him filters, among other things, don't you? A. I believe we did have some filters, yes.

Q. Purolators? A. Yes.

(3675) Q. Don't you sell him some miscellaneous accessories such as waxes and radiator leak compounds? A. I cannot answer that offhand.

Q. You didn't mean to give a complete list of all of the Texaco dealers to whom your company sells in the Lincoln-Omaha area, did you? A. No.

Q. Were those few you mentioned? A. No.

Q. These were just a few you picked out? A. Just a few here in the City, yes.

Q. You didn't even pick out all of the ones in the City, did you? A. I believe I said there were something over 30 stations. Some of those could be TBA, or could be independents, I mean.

Q. Whether they were independent or not, what I am asking you is whether you have given us or intended to give us the names of all of the dealers who handle Texaco gasoline who also buy from your company? A. No. Just the ones that I was asked to.

Q. I see. You just picked out the ones that the Government asked you— A. I didn't pick any out. I believe Mr. Dias picked them out.

Q. Mr. Dias picked them out. I see.

(3676) Mr. Lorenzen: That is all.

Cross-examination by Mr. Barton:

Q. And the same thing I take it was true with respect to the Conoco stations? You just looked for the ones Mr. Dias told you to look for? A. I didn't look for any. I just answered his questions on the ones he asked me about.

Q. So you weren't inferring those were all the Conoco stations you sold to? A. No, sir.

Mr. Dias: Thank you, Mr. Hoffman. That is all.

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Mr. Barton: It is hereby stipulated between counsel that Automotive Supplies, Inc., is the same as Frost Industries, Automotive Supplies merely being a successor name to Frost Industries, and that Frost was a Goodrich distributor and that the name of Frost has been changed to Automotive Supplies.

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(3682) RALPH W. McCANN was thereupon called as a witness for the Commission, and, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name and business address for the record? A. Ralph W. McCann, 1914 South Central Expressway, Dallas, Texas.

Q. And the name of your company? A. Continental Battery Manufacturing Corporation.

Q. Will you state your position with the company? A. I am president and general manager of the company.

Q. How long have you been in that position? A. Since 1950.

Q. How long have you been with the company in all? A. Since its inception in 1932.

Q. What type business is the Continental Battery Company in? A. Storage battery manufacturing and sale.

Q. What type storage batteries? A. All passenger and truck type storage batteries.

Q. Do you manufacture airplane or motorcycle type— A. No, sir, we do not manufacture motorcycle or airplane.

Q. What class customers does the company sell to? (3683) A. To a very large extent perhaps half to service stations and garages.

Q. And the other half? A. I would say distributors, who in turn sell to service stations and garages.

Q. Have you also sold to that class of customer? A. Yes, sir.

Q. Do you have any idea of how many service stations you sell to? A. I would say perhaps 700. 650 to 700.

Q. Does your company have salesmen? A. Yes. We directly call on the service stations ourselves with our own salesmen, and then sell to distributors to them. In that case the distributor calls on them. That figure that I gave you, that would represent the number of stations that we are selling direct ourselves, and not those through the distributors which I wouldn't be familiar with, the number.

Q. Will you briefly narrate the method of doing business in your company, from its inception on up to date? A. Yes, sir. We started our business in 1932 for the purpose of recognizing the specialized and perishable nature of storage batteries and the difficulties of their being handled and distributed, and knowing that some of the regular automobile accessory houses had discontinued batteries to the service station accounts due to those difficulties, we (3684) conceived the idea of selling factory-fresh storage batteries direct to the service station trade, handling their adjustments, handling all their trouble for them. And there is some trouble in connection with the battery business in as much as they are sold on regular guarantees and there are some adjustments.

We felt that we would represent a very valuable service to the service station dealers. The battery business is largely an auxiliary department with them, a very necessary and useful one to their consumer trade and to them, but an auxiliary department.

We started out in '32 and were able to build up four very good routes in Texas and southern Oklahoma, and profitable routes. That continued to build up and increase until the late 30s. Then we began to feel some restrictions in our salable market, and we found it a little tougher from then on to expand the business.

That restriction seemed to continue until the late 40s. In the late 40s we found through experience that we couldn't expand. We attempted to establish a new route as we had the previous ones, and we used one of our experienced men on the route as we had in times past to build it up, and he found the market restricted to such an extent that he couldn't make a success of it. And that was in 1948.

(3685) Then in 1949 we weren't willing to give up on it, although we had invested several thousand dollars in it. We changed salesmen on it and continued it through 1949, and we finally had to give it up. We just didn't find the market remaining out there to sustain the trucks as we had been able to establish the previous four.

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(3686) Q. During that period 1932 to 1949, what was the sales territory of your company? A. Well, it embraced all of the state of Texas and southern Oklahoma, eastern New Mexico, and western Louisiana and parts of Arkansas.

Q. Do you recall how many trucks you had selling at that time in your territories? A. We had four. We attempted to establish a fifth.

Q. Who were the main customers during that period, from 1932 to— A. Service station operators.

Q. Did you sell to other type customers during that period? A. We sold to garages, and to a much lesser extent to a few auto supply stores.

Q. During that period, 1932 to '49, did you at any time among your customers have Texaco station customers? A. Yes, sir. We formerly sold between two and three hundred Texaco stations.

Q. How long did that condition prevail? A. That started to dry up in the late 30s. By 1949 it was greatly reduced.

Mr. Royall: Your Honor, may I move to strike that on the ground that that is not the period which we are assuming to try, as I understand it. At this time it doesn't seem (3687) connected to that period. For that reason I move to strike that answer.

Mr. Dias: As I stated before, by the time we have the other witnesses from this company testify, that will be connected.

Hearing Examiner Kolb: Motion to strike will be denied.

By Mr. Dias:

Q. Does your company continue to call on Texaco stations Mr. McCann? A. Yes, to some extent. We try to avoid those that we feel are lease-controlled. We try to call on those that we feel are not in a leased station because we don't think we can sell those in a leased station.

Mr. Royall: Your Honor, we move to strike that answer as being non-responsive to the question, and secondly, because it embodies conclusions and opinions that we consider not admissible.

Hearing Examiner Kolb: Read the question and answer.

(Question and answer read.)

Hearing Examiner Kolb: Motion to strike will be denied.

By Mr. Dias:

Q. Will you state again the number of Texaco stations that you sold at one time? (3688) A. I would say—

Mr. Royall: May we ask the time?

Ralph W. McCann, for Commission—Direct

By Mr. Dias:

Q. During the period 1932 to '49. A. I would say in the late 30s we were selling close to 300 of them.

Mr. Royall: We object, your Honor, and move to strike on the same grounds previously stated, that it is in a period we are not trying.

Hearing Examiner Kolb: Motion to strike will be denied. Objection overruled.

By Mr. Dias:

Q. Of that number were there stations, all types of Texaco stations? In other words, operator-owned and company-owned stations? A. Yes, sir.

Q. Did they openly stock and advertise your batteries on the stations? A. Most of the ones from the leased stations, no, sir. The ones from the leased stations that were handling our batteries did not openly display them.

Mr. Royall: You are still talking about 1932 to '49?

Mr. Dias: The late 30s. I understand his peak was two to three hundred stations.

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(3689) *By Mr. Dias:*

Q. You stated that by the end of 1949 the number had been greatly reduced. Do you have any idea of the number at that time? A. I didn't—

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A. (Continuing) —arrive at an actual figure in 1949, but I would say it was less than a hundred.

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Q. Do the same conditions prevail today as far as you know? A. Yes, sir. I would say we are selling less than 25 now.

Q. How long has that condition existed? A. That condition has existed for a year or more.

Q. Can you give me the trade names of the batteries that you sell? A. Continental, Pow-R-Life, Mustang, and Budget.

Q. Are they various price ranged batteries? A. Yes, sir.

Q. I take it Budget is a low priced battery, budget. A. Yes, sir.

(3690) Q. Pow-R-Life is the next and then Continental? A. Yes, sir.

Q. Are your batteries competitive, price-wise, with the other batteries on the market? A. To the best of our knowledge, they are. We certainly try to keep them that way at all times.

Q. Do you have any idea of what your volume of business was with those Texaco stations when there were three hundred dealing with you? Monthly figures?

Mr. Royall: We object. It comes outside the period we are trying.

A. I would say that the average Texaco account runs from $600 to $750 a year.

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By Mr. Dias:

Q. During the current time, can you estimate the volume of business done with Texaco stations that are buying your batteries? A. I would say it will run into over fifteen to twenty thousand dollars a year.

Q. That is total for all stations? A. Total for all of them.

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Ralph W. McCann, for Commission—Cross

(3691) *Cross-examination by Mr. Royall:*

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(3692) Q. Have you with you or have any of the people working for you a list of all the service stations that now buy from you? A. No, sir. I wouldn't say they had a list of all of them. But I think the two salesmen—do you mean service stations of every variety?

Q. Yes. A. No, sir, they do not have that.

Q. You have that data, do you? A. Yes, we have that data. It would not be complete in all probability because selling off-route trucks a lot of that business is cash business. And we keep no particular records on those accounts. But the ones that buy from us on open account we do have those records.

Q. So any figures that you would give, or the salesmen would give, would be confined to open accounts and would not include cash accounts? A. That is largely true; yes, sir.

Q. Do you have a good many places of business? A. Yes, sir; we do. Of course Dallas is our headquarters and we have warehouses in Louisiana and other points in Texas, and Oklahoma.

Q. Do you have more than one warehouse in Dallas and the vicinity? (3693) A. No, sir. Just one warehouse in Dallas and vicinity.

Q. Does a good part of your service station business come from Dallas itself? A. Yes, a substantial part of it.

Q. More than 50 percent? A. No, sir; I wouldn't say that.

Q. Forty percent? A. You have me guessing now. I would say somewhere around 35 or 40 percent.

Q. I suppose in the Dallas area particularly there is a good deal of pickup buying, is there not? A. Yes, in the city there is.

Q. That is what I mean. That is also true in the neighborhood of any other warehouse that you have? A. Not to as much an extent as it would be in Dallas.

Q. And you keep no record that would disclose the amount of the pickup business in Dallas, do you? A. We wouldn't have that separated on our records.

Q. Is this battery of yours a dry battery? A. We sell them both ways.

Q. How long have you been making dry batteries? A. Since it has become common in the industry in the last year and a half.

Q. Year and a half? A. Yes.

(3694) Q. When did you get it on the market? A. We put it officially on the market about a year ago.

Q. Wasn't it a little less than a year ago? A. I wouldn't undertake to say the exact date.

Q. Who would— A. I believe Kelly McCann would know the date on which we put it on. Of course we have been making dry charge batteries for a good many years but not on our price list and not for the general trade. It is just when the demand for dry charge batteries became common that we then started to sell them as a matter of general offering.

Q. There were a good many companies started selling before you did, weren't they, selling dry batteries? A. Not very long before we did.

Q. Two years, at least? A. No, sir, I wouldn't say that.

Q. Do you know? A. Well, no, I don't know the exact date. In my opinion we were not that far behind.

Q. Does anybody make any batteries for you? A. No, sir. We make them all ourselves.

Q. It is not of course a nationally advertised battery: it is designed for the particular localities you mentioned? A. It is original company, which is common in the battery

manufacturing industry. A large portion of the business is (3695) among the original companies. We are the original company in the Southwest.

Q. I mean it is not a nationally advertised or nationally distributed brand, is it? A. No, sir.

Q. Do you have any arrangements through any contracts of any kind to service your batteries outside of the territory which you serve? A. We service them direct whenever the necessity arises. We will service them anywhere in the United States. And we have done so.

Q. Have you any contracts with anybody? A. No, sir; no contracts.

Q. You have no regular arrangement to do that, do you? A. No, sir. Just on an individual basis.

Q. And in the instances where you service they have to notify you here and you handle it from here, is that right? A. That is right.

Q. Are there any other suppliers of batteries in this area, any other distributors or manufacturers of batteries, other than Texas Company or the Goodrich Company? A. Oh, yes, sir; there are many distributors of batteries here.

Q. Could you give us the names of as many as you can think of, offhand? (3696) A. Well, I know them all.

Q. Would you say there are 40? A. Are you speaking about manufacturers now?

Q. No, sir, different distributors who distribute. A. Whether there would be 40 distributors in the Southwestern region in which we operate?

Q. Yes. A. Yes, sir.

Q. Would there be 60? A. Yes, sir.

Q. Would there be 100? A. Yes, sir; I expect there would be.

Q. Let's take Dallas alone. How many would there be here? A. There would probably be—

Q. Thirty? A. No. I doubt that. I would imagine there would be a dozen.

Q. Will you name some of those for us? A. Yes. Among the manufacturers of course Dallas is a battery manufacturing center. Vatilic Battery Company is here; Green Manufacturing Company; and of course Electric Storage Battery Company have a distributor here, distributing Willard and Exide batteries. Offhand I don't know just who that is.

And perhaps our sales manager can give you, when (3697) he testifies, a more detailed list.

Q. These various distributors are competitors of yours? A. Yes, sir.

Q. Has not the volume of sales increased very rapidly in the last four or five years, your sales? A. No, sir, I wouldn't say it increased very rapidly.

Q. Do you have those figures? A. No, sir, I do not have those figures.

Q. You do know that they have increased some in every year? A. Of course we had quite a decline in 1949.

Q. I didn't mean— A. Before we reorganized and redirected our efforts.

Q. I am not asking— A. We have had small increases probably five or six percent on an average per year.

Q. And your 1956 sales were above your 1955, weren't they? A. I am not positive of that.

Q. Didn't you make a statement to that effect in the paper recently? A. That statement might have come from our organization. And it is probably true.

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(3699) Q. Have general business conditions been affected by drought in the last few years? A. I would say generally, yes, to some extent.

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Q. * * * You spoke of having sold a considerable part of your business to distributors—subdistributors or subjobbers? Is that right? A. To jobbers and distributors, yes.

Q. And you don't know how many of those there are, do you? A. Yes. I would say about a half dozen.

(3700) Q. Don't you know that there are at least 60 or 70? You are not including wagon jobbers, are you, in that number? A. Yes.

Q. Don't you know that there are between 60 and 70 of them in this area? A. I am glad to hear that. You are giving me some competitive information here. Maybe we have been asleep on the job.

Q. Would you be surprised if I told you that there are at least 68 of them? A. Yes, I would be surprised at that.

Q. And I believe you have already said that you don't know how much they sell? A. No.

Q. And those of course are additional sources to the distributors you first mentioned, where you estimated there would be 12. Is that right? A. I estimated there would be 12 distributors here in Dallas. I was talking about our own accounts.

Q. I was asking not about those but about others, including wagon jumpers. There are two distinct classes, aren't there? A. Yes, there are two distinct classes, but we like the wagon jumpers.

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(3702) Q. You gave some of them. Are there any more you can think of? A. Oh, yes. Every battery that is sold nationally in the country is sold here.

Q. Any special ones locally? Do you have one named Texan? A. Yes, Texan is sold locally.

Q. Do you have any others you can think of? (3703) A. Southland is sold locally; Green is sold locally; Reliable is sold locally; and all of the nationally distributed batteries, of course.

Q. This wagon trade or wagon jobbers—what is the proper name for that? A. Some of them call themselves wagon jobbers. Some term themselves battery distributors.

Q. Has that been growing recently? A. Has it been growing?

Q. Yes. The number, I mean. A. No, sir, I wouldn't say it has been. I would say otherwise.

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(3704) *Cross-examination by Mr. Barton:*

Q. Mr. McCann, the purpose of the dry charge battery was to give the battery a longer shelf life, wasn't it? A. Yes, sir.

Q. That is peculiarly necessary because, as you said, the battery business is a business where it is a perishable commodity. I think you stated that that is the reason you went into the business? A. Yes, but we were delivering factory-fresh batteries direct, right off the truck, right out of the factory. That was not a great problem with us.

Q. Your largest selling is what? Mustang? A. Continental.

(3705) Q. And that is your highest-priced brand, Continental? A. Yes, sir.

Q. And you have the other brands which grade down in price? A. Our competitive brands.

Q. Power-Life, Mustang, and Budget? A. Yes, sir.

Q. Mr. McCann, your dry-charge battery came on the market sometime during the past year, is that right? A. Yes, sir.

Q. And— A. We had them available. We notified all of our accounts six months before we put them on the price list that we had them available as the demand developed. And sometime last year we put them on the price list.

Q. You don't have dry-charge batteries on your price list for all your classifications, now, do you? A. I believe we do in all popular group sizes. Batteries you know are sold by groups.

Q. How about Mustang? Do you have that on your price list? A. Oh, no, we don't have it on Mustang.

Q. You don't? A. No.

Q. And not on Budget? A. No, sir.

Q. And not on the Power-Life? (3706) A. I might add—

Q. You don't have it on the Power-Life price list? A. I might add—

Q. You don't have it on the Power-Life price list? A. No.

Q. And you don't have it on all the Continental price lists? A. I don't know of anybody who has dry-charge batteries in the cheap competitive items.

Mr. Barton: I move to strike the answer as not responsive.

Hearing Examiner Kolb: Read the question and answer.

(Question and answer read.)

Hearing Examiner Kolb: The answer may stand.

By Mr. Barton:

Q. Is your Continental a cheap battery, Mr. McCann? A. No, sir, it isn't.

Q. And you don't have the dry-battery on Continental's price list for all of the batteries, do you? A. We have it in various groups, popular groups, on Continental.

Q. What is the date of your most recent Continental battery price list? A. I believe it is in November.

(3707) Q. November 19, 1956? A. I believe that is correct.

Q. And when you talk about group you are talking about your group one, group two, et cetera batteries? A. That is right.

Q. What would be the most popular group? A. Group one.

Q. I take it in group 1 your Super Power battery would be the most popular brand, wouldn't it? A. Yes, I suppose it would be.

Q. That is the 15-TT type? A. Yes.

Q. Mr. McCann, that battery on your November 19, 1956 price list does not carry a price for dry-charge battery, does it? A. I believe that is correct. However, we supply it on order, dry-charged.

Q. Pardon? A. We supply it on order dry-charged.

Q. In the event a customer takes the pains to order a dry-charge battery, even though it isn't on your price list, you will supply it? A. We don't put that kind of a hardship on him. We tell him if he wants that battery dry-charged it is available.

Q. Why don't you have it on your price list? A. Well, maybe our sales manager can tell you more about (3708) that than I can. I would say that we don't have it on there simply because there hasn't been sufficient demand for that type battery in dry-charge.

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Q. Your sales in 1951 were in excess of a half million dollars? A. Yes, sir.

Q. And they have grown each year since that time, haven't they? A. Small percentage, yes.

Q. Your sales now are in excess of a half million dollars? A. Yes.

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(3709) Q. How many salesmen do you have? A. We have five.

Q. One in each territory? Five trucks? A. Four trucks. Four route trucks.

Q. Pardon? A. Four route trucks. Territorial route trucks.

Q. How many salesmen do you have in Dallas? A. One.

Q. And one truck that you use in Dallas? A. No. We have delivery trucks that we deliver orders as the salesman takes them and 'phones them in.

Q. In other words, you are not including— A. We don't use the route system in Dallas.

Q. You are not including in your four trucks the delivery trucks which you use for deliveries in Dallas? A. No. City delivery trucks are not included in the route trucks.

Q. How are your salesmen paid? A. Salary and bonus.

Q. Is that bonus based on a commission plan? A. Yes. It is based on quotas, volume. They have a base salary.

Q. And then they get a bonus based and commission based on the extent to which they reach their quotas for the year? A. Exceeding their quotas.

(3710) Q. How many service station customers did you say you presently have? A. I would say in the neighborhood of 700.

Q. You are not including in those cash customers, I take it? A. Yes, I believe they would be cash customers in there, too.

Q. They would be in the 700? A. Yes.

Q. How many other types of customers; numerically, how many other customers would you have? A. That would require a little thought. I would say not distributors, I would say not over 12 or 15.

Q. How about garages? A. Garages would be in that 700. Of course, the percentage of garages is very small.

In other words, we consider a garage with a pump, we consider that a service station account.

Q. Does that include new car dealers also? Or do you sell to new car dealers? A. We sell to some new car dealers.

Q. But not many? A. Not a great many of them. We do sell some.

Q. Do you sell any used car dealers? A. In the cities we sell a few used car dealers, like Dallas, Houston. But a comparatively small and insignificant number.

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(3713) Hearing Examiner Kolb: When did your dry charge battery first appear on your price list?

The Witness: It was sometime the early part of last year. But I think Mr. Kelly McCann can answer that when he gets on the stand more directly than I can.

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Cross-examination by Mr. Royall:

Q. You gave certain figures on averages and volume of sales, to which objection was made. Do you have with you the records supporting those figures? (3714) A. No, sir.

Q. Are they your estimates? A. Well, they are my knowledge. I have a business that is sufficiently small that I have to keep my fingers on it to keep it going. To my knowledge. But in so far as saying that I have records dating way back and produce them at this hearing, I certainly don't.

Q. I wasn't asking you about way back. You must have misunderstood me. I say have you got records readily available from which you got that conclusion of the

amount? A. That is my general knowledge, based on our general overall business.

Q. Did you look at your records when you got it? A. I didn't have to look at my records. I know.

Q. But you don't have the records here? A. No, I don't have those records here in my pocket.

Q. Are they readily available? A. No. I would say it would take quite a good deal of tearing down and quite a good deal of clerical work to break that down.

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Redirect examination by Mr. Dias:

Q. What is the difference between open and closed account? (3715) A. In route truck distribution, where a salesman calls on a service station account, and he takes his order and delivers his batteries right then, many service stations with first-class credit ratings would prefer to pay a truck routeman cash right there, and then he eliminates a lot of bookkeeping through his records and the transaction is a very simple and direct one. When you sell batteries off a route truck like that you have many dealers who prefer to pay you cash. Perhaps you would be perfectly willing to carry it on open account if they so desired.

Q. Does that type account buy for stocking purpose or do they just buy one here and one there? A. Oh, no. They buy for stocking purposes just like the other type accounts.

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Q. You also mentioned that your sales have increased about five or six percent, 1956 over 1955. Can you estimate how much of that increase was attributable to sales to Texaco stations? (3716) A. None of it.

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By Mr. Dias:

Q. What is the difference between a dry charge and a wet charge? A. A wet charge battery and a dry charge battery—

Q. Does a dry charge have longer life? A. No, sir. I wouldn't say they had longer life at all. The advantage to them is that it is an advantage in their handling in wholesale warehouses and in retail establishments inasmuch as they can be kept on the shelf without any attention from the dealer, such as recharging and testing, for periods up to six months.

So far as their capacities are concerned and their life is concerned, I would say it is substantially the same as the wet charge battery. But the wet charge battery does have to be gotten fresh and if allowed to set on the dealer's shelf for an indefinite time, the dealers have to periodically charge it. That is where our trucks come around once a month and keep that dealer's stock fresh for him. It relieves him of that obligation.

Q. How do they keep it fresh? A. They would pick up those recharged batteries and replace them with fresh charged batteries. We would bring the (3717) batteries back in on the truck, recharge them, clean them up and take them back out again. There is nothing the matter with them.

Q. I think you stated that you have about 700 service station customers. A. That would be my estimate.

Q. Did you say about 12 others? Or did I misunderstand you? A. About 12 or 15 other type accounts, I would say.

Q. What would those other 12 or 15 be? A. They would be distributors.

Q. You mentioned that you had included garages in that figure of 700. Are there any other type customers

included in that 700 figure? A. Yes, sir. There would be a few auto supply stores, which would be store type setups handling auto supplies and the battery line.

Q. Anything else? A. Garages, auto supply stores, and yes, we sell a department or two.

Q. Is that all that you can think of? A. That is all I can think of offhand.

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(3718) *Recross-examination by Mr. Barton:*

Q. You don't know how many service stations these 15 or 10 distributors sell to? A. No, sir. I don't have that information. That is their business and they naturally keep their own records. They just buy batteries from us.

Q. That is about 40 percent of your business though? A. I would say—

Q. 50? A. 35. Somewhere in that neighborhood.

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KELLY McCANN was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

(3719) *Direct examination by Mr. Dias:*

Q. Will you state your full name and business address for the record? A. Kelly McCann, 1914 South Central Expressway, Continental Battery Manufacturing Company.

Q. And your position with the company? A. Sales manager.

Q. How long have you held that position? A. Since 1951.

Q. Were you with the company prior to that time? A. Yes.

Q. For how many years? A. About a year and a half.

* * *

(3720) Q. Do you know how many Texaco stations your company sells? A. I know approximately. I wouldn't say right down to the exact one, but I know approximately how many we sell.

Q. Can you give us that figure? A. Do you want the Texaco stations that are leased? Operators lease them from the Texas Company? Or the stations that are leased individually, that are owned-stations?

Q. Do you have a breakdown of that type? (3721) A. Yes.

Q. Can you tell me the number of leased stations that buy your batteries? A. The number of leased stations that buy our batteries would be approximately 10. When I say "buy our batteries," these are not stations that stock our batteries 100 percent and just sell our batteries. This includes customers that may want to fill in, may want one battery or two batteries on a fill-in basis.

Q. Of those ten, are there any that stock them regularly? A. Yes.

Q. How many are there? A. I would have to check. I would say around five.

Q. Do they purchase your battery exclusively? A. I personally only know of one account that purchases our batteries exclusively. But there may be more, and you can get that information from the salesman that actually called on them.

Q. About these five others that buy a single battery here or there— A. It is approximately five. They buy on a fill-in basis and we sell them only a portion of their battery needs.

Q. Do you have figures showing sales to some Texaco stations? A. Yes.

Q. Can you give me some instances of those sales? (3722) A. What do you want now?

Q. Do you have sales figures to some accounts, some Texaco accounts? A. I have a sales figure here on an account that was one of our very good—it is just an illustration and a good example—of an account that we sold, one of our very best accounts here in the City of Dallas. A Texaco station. We sold him for years and years. We are now losing out on the account. He is discontinuing the use of our batteries.

I can give you those comparative figures.

Q. Can you do that? A. This is a Texaco station that we understand to be a leased station. In 1952 he bought $3,761 worth of batteries.

In 1953 he bought $4,550; and it was along in this period that the account was split and it was our understanding that—

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The Witness: It was at this point that we were beginning to lose out on the account.

In 1954, $2,786; 1955, $1,705; 1956, $802. And the last quarter, the last three months of 1956 we sold $78.00 worth of batteries.

Q. What was that $802 figure? A. That was for the year 1956.

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(3724) Q. Will you name the station? A. Ray Tosch.

Q. If I understand correctly, you started with Continental in roughly 1949. Is that right? The middle of 1949? A. It was 1950.

Q. Were you familiar with the type business your company was doing at that time? A. Yes.

Q. Class of customers? A. Yes.

Q. What class of customers were you dealing with at that time? A. It was mostly service stations.

Q. Were you dealing with a greater number or greater percentage at that time than you are today? A. Yes.

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Q. You may answer. A. Yes, we were doing a larger percentage I believe with service stations than we are now. However, it is really very (3725) small. It is practically the same. I think a little larger.

Q. Are you talking about the percentage of customers or the percentage of business? A. Well, it would be about the same. The percentage of business the same as the customers.

Q. Were you selling to a greater number of Texaco stations in 1950 and 51? A. Yes.

Q. Can you state roughly the number you sold at that time? A. During that period—during the early 1950s I know we have sold as many as 19 Texaco stations that were operated on a lease arrangement.

Q. And today? A. Today it would be approximately 5, but we don't sell those a hundred percent. We only have one Texaco dealer now that we sell 100 percent, to my knowledge. Of course, the salesman could verify that. I don't recall on all these accounts, or this would be—I would want this confirmed.

Q. Would your salesmen have this information? A. I believe they would. That is in the City of Dallas.

Q. Can you name the accounts that are stocking your batteries? Do you have any objection to naming those accounts that are stocking your batteries? A. I really don't think we would be selling them long if we did.

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(3727) *Cross examination by Mr. Barton:*

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Q. You have a number of other battery manufacturers and distributors in this area who have salesmen out in the field (3728) contacting the service stations do you not? A. That's right.

Q. Including Allied Battery Company? A. That's right.

Q. And Interstate Battery System? A. That's right.

Q. And of course the Electric Storage and Battery Company, distributors of Exide batteries? A. Yes.

Q. And the Electric Auto-Lite Company? A. Yes.

Q. And the Globe Union? A. No. Globe does not solicit.

Q. They have batteries but they do not solicit? A. They do not sell as far as I know to service stations and garages.

Q. You mean they don't have men going around like you have? A. No.

Q. How about Gould National? A. No.

Q. Green Manufacturing manufactures the Excel battery? A. Yes.

Q. They have men traveling around to the service stations? A. No. They sell I think—from observation—all their output through local distributors.

(3729) Q. Who have men going around to service stations? A. I suppose so.

Q. And the Hobson Electric Company? A. No.

Q. You know the Vitalic Battery Company? A. Yes.

Q. Who sells Southland batteries. A. Yes.

Q. And the Southland Battery is a very strong competitor of yours in this Dallas area, as well as in the entire territory? A. Yes.

Q. Southland batteries really are sold more in this area than are your batteries? A. In the City of Dallas I don't think so, now.

Q. In the area they have more than you? A. Yes, they are a larger company than we are.

Q. And they are a local company? A. Right.

Q. With a manufacturing plant in Dallas? A. Right.

Q. Of course the Willard battery is sold here? A. In Dallas or the territory?

Q. In Dallas and the territory? A. Very few. Very few in Dallas. There are some in the territory but very few.

(3730) Q. And the Hargett Electric Company distributes Delco batteries? A. Yes, they distribute Delco batteries. But those people, sir, are not as rugged competition as some of the others are.

Q. You mean they don't have as many men out in the field as you do? A. I don't know that they sell any to wholesale accounts that we compete with. They may or may not.

Q. Motor Mart sells batteries to service stations doesn't it? A. They could. They very well could. I have personally never run into one that they were selling.

Q. But you are not in the field very much. A. I am out in the field all the time, but not just here in the City of Dallas.

Q. And Pasher Auto Parts, they are selling batteries in competition with you to service stations? A. I have never heard of that company. But that could very well be.

Q. How about Terry Auto Supplies? A. Yes.

Q. Generator Service Company? A. You see, you are doubling up. You are talking in terms of Allied and Southland. That is one. You are talking in terms of Generator Service and Willard, that is one, too.

Q. You think Generator sells Willard batteries to service (3731) stations? A. Yes.

Q. How about Reliable Battery Company? A. Yes.

Q. They sell the Reliable battery? A. Yes.

Q. Is Reliable more widely distributed than Continental? A. I would say no.

Q. You think it is equal do you? A. Yes.

Q. How about Mechanics Auto Supply? A. I am not familiar with them. I don't know them.

Q. You are not familiar with their solicitation of service stations?

(No response.)

Q. How about Beardon Johnson? They sell batteries? A. I don't know any of these companies.

Q. How about Meggs? Do they sell batteries? A. I think Meggs sells batteries?

Q. There are a number of other automotive parts and accessories houses besides these I have named which have been contacting service stations in the Dallas area selling batteries, aren't there? A. They have batteries among their other items, but they do not push batteries and their battery sales, I believe, will (3732) be very small. In fact, I don't know of very many accounts on these parts stores—that the parts stores do sell.

Q. In other words, you say they are primarily interested in parts? A. Parts. They try to sell batteries, too. But I think their primary business is parts.

Q. Their main sales effort goes into the selling of the parts? A. That would be my guess. And it is strictly a guess.

Q. You didn't have a dry charge battery in 1954? A. Yes, sir, we have had a dry charge for, I guess, four or five years.

Q. You didn't have it on your price list? A. No. We did not have it on our price sheet.

Mr. Barton: I think that is all.

Cross-examination by Mr. Royall:

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(3737) Q. We were talking about Mr. Tosch. Coming now to leased stations, you sell Jolly, do you not? A. Yes.

Q. And you sell him 100 percent, don't you? A. Yes, we buy all our gas from him. It is a trade-out proposition there. He does our service work for us and we supply his batteries.

Q. He displays your batteries openly, does he not? A. Yes, he does.

Q. Do you know C. W. Williams? A. Yes.

Q. He is a leased account? A. I think he is. I assume he is.

Q. I ask if he doesn't openly display Continental batteries? A. I have never called on him. He has only been buying our products for two weeks, you see.

Q. You haven't seen his station? A. No. I know where it is but I haven't seen his batteries.

Q. How long has he been in business? A. He has been in business for years and years.

Q. And you sold him the last two weeks? A. We sold him years and years ago when he had his old (3738) building. When a new building was put up we lost out. He ordered some batteries two weeks ago.

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Q. Do you know Walter P. Apple Station? A. Yes.

Q. You sell him? A. No, I don't believe so.

Q. Who is your salesman who would cover his territory? A. Mr. Cavett.

Q. He is not here? A. No, but we do not sell Mr. Apple.

Q. Is it possible that he might have bought from someone other than you? A. Not in the city, no. Well, I mean he could have, but we don't have anyone else wholesaling batteries here, Continental batteries. So it is doubtful that he did.

(3739) Q. Could he have been sold by a wagon jobber? A. No, sir.

Q. How about cash sales? A. No, sir. To the best of my knowledge—and I am in the business every day—we do not sell Mr. Apple batteries. We did formerly. He was a very good account of ours but we lost him.

Q. And you don't know that you sold him batteries in 1955 and 1956? A. To the best of my ability we have not sold Mr. Apple any batteries during that period.

Q. Isn't it a fact that you sell Mr. B. S. Colgin and sold him an order in December 1956? A. We sold him one battery, I believe. I could check. I took an order for one battery, from Mr. Colgin in December 1956.

Q. And you have sold him previous to that time? A. He used to be one of our finest accounts here in the city. But he is no longer. He does not stock our batteries any more.

Q. Is Colgin one who discontinued in 1954? A. Sir, Mr. Colgin several years ago was a very fine account. He just dried up on us.

Q. When did that happen? In 1954? A. No, sir. He started drying up in 1954, '55 and then (3740) 1956.

Q. Started in '54? A. Yes.

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Q. You know, do you not, that Firestone were the first to generally offer the dry battery, were they not? A. I believe that is right.

Q. And that was in 1954? A. I believe that is right.

Q. What happened about the battery market, your battery market in 1951? You mentioned that year. Did it go up or down? A. In 1951? I would have to check the figures but I believe we went up.

Q. Have you got your present price list on batteries? A. Not on my person.

(3741) Q. It would be no difficulty to get it to us? A. No, sir.

Q. Have you got the first price list you put out sometime last year which first advertised dry batteries? A. Yes.

Q. You could get that for us without any difficulty? A. Yes.

Q. Have you got a list of all the service stations you sold in Dallas? A. That we are selling now?

Q. Yes. A. Yes.

Q. I believe that might not include cash sales? A. This includes cash and charge.

Q. You haven't the figures on the amount of the cash sales I believe your father said? A. No, we don't.

Q. Would that be available readily? Or will it take time to get it? A. No, it would be available.

Q. But you would have to tabulate it, would you? You don't carry that list, do you? A. I know the customers that we sell in the city of Dallas now.

Q. Of all stations, all types of stations? (3742) A. No, I don't have that information with me. It would take some time to get that information.

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(3745) *By Mr. Barton:*

Q. How many service station customers do you have in Dallas? A. I don't have that exact figure. It would be close to one-hundred.

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(3746) *Redirect examination by Mr. Dias:*

Q. You were asked for the definition of a leased station. What other type station is there, Mr. McCann? A. We call an independent station one that the property is owned—not owned by the Texas Company, and the man either has his own building or owns the lease.

Q. You mentioned—you were asked about C. W. Williams. Does he own his own property? A. I don't know.

Q. When did you lose the Apple account? A. It was in the early 1950s; about 1951, I think, or maybe '52. I am just not positive. It was somewhere in that period.

Q. You mentioned Colgin drying up. Did he give any reason for drying up?

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(3747) Q. When did he stop dealing with you? Let me ask you: Did he formerly stock on a full basis, buy for stock? A. He formerly stocked ten or fifteen Continental batteries.

Q. When was that, roughly? A. That was until approximately a year and a half ago.

Q. When did he start buying one battery at a time? A. From that period on. It is just on an emergency basis on Saturday afternoons or occasionally we get an order out of him. But very seldom.

Q. As sales manager did you call on him? A. Yes, I did.

Q. Did you try to determine what happened to his business? A. Yes.

Q. What did he say?

Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

A. I don't recall the actual conversation. I wouldn't attempt to try to repeat it in Mr. Colgin's own words. But the gist of the conversation was that he was going to handle Firestone batteries.

Q. Is that all? A. Yes.

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(3748) *Recross examination*

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By Mr. Barton:

Q. Of those 100 stations to whom you sell, do you get all of their business? A. Approximately a hundred that we sell, and we get the majority. We supply all their batteries.

Q. The majority of those hundred? A. Yes.

Q. Buy exclusively their batteries from you? A. Yes.

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(3749) *By Mr. Royall:*

Q. How many total Texas stations do you sell? A. Leased and independent?

Q. Yes. A. Throughout all our—

Q. What you call independent, yes. A. Throughout all our territory?

Q. No, in Dallas. About 20, don't you? A. I have a list of that here.

No, sir, I believe it is 10.

Q. Is that all? A. Yes.

Q. Didn't you say there were ten leased stations? A. No. These ten are not leased. Were we talking about the city of Dallas or other territory?

Q. What territory were you testifying on direct about? I thought it was Dallas and vicinity. A. Vicinity, but that is our trade area, around Dallas. I am talking now that we sell, to the best of my records here, ten Texaco service stations within the city limits of Dallas.

Q. Of all kinds? A. Yes, of all kinds. Wait a minute now. Let me check that to be sure. Ten or twelve.

(3750) Q. I ask you to refresh your recollection, if you don't sell at least 16? A. Here in the city of Dallas?

Q. City of Dallas, yes, sir, of all types. A. Texaco service stations?

Q. Yes. A. If the records given to me are accurate, we don't.

Q. Who gave you the records? A. Our city salesman.

Q. Where is he? A. He is on the territory, working.

Q. So this is his knowledge and not yours? A. Well, it is the best of my knowledge, too. I think I know all these accounts. I know all these accounts. I know all these accounts and I don't know of any other that we sell here in the city.

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(3751) C. F. SANFORD, JR. was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Dias:

Q. Please state your your full name and home address for the record? A. C. F. Sanford, Jr., 3109 Moulton Street, Greeneville, Texas.

Q. Did you at one time operate a Texaco station? A. I did.

Q. Will you tell us when you were in that station? A. I was in there from November 1953 to November 1955.

Q. Do you have a copy of your lease with you? A. I do.
Q. May I see it?

(The witness produced a document.)

Mr. Dias: I would like to have marked for identification as Commission Exhibit 156, a document dated (3752) November 11, 1953, from the Texas Company to Mr. Sanford, signed "I. G. Morgan, Division Manager, Texas Company" announcing the execution of a lease with the Texas Company.

And as Commission Exhibit 157-A and B a lease dated the second day of November 1953 between the Texas Company and C. Fagg Sanford, of Greeneville, Texas.

By Mr. Dias:

Q. I will ask you, Mr. Sanford, is this letter as I have described it a letter of acknowledgment from the Texas Company that you have entered into a lease agreement with them? A. It is.

Q. And is this document, 157-A and B, the lease form which was executed by you? A. That is right.

Q. And the Texas Company? A. Yes.

Mr. Dias: I offer that in evidence at this time?

Mr. Royall: No objection.

Hearing Examiner Kolb: The documents will be received in evidence as Commission's Exhibits 156 and 157-A and B.

(The documents heretofore marked Commission's Exhibits 156 and 157-A and B for identification, were received in evidence.)

(3753) Mr. Dias: I would like to have marked for identification as Commission Exhibit 158 a letter dated November 11, 1953 from the Texas Company

signed "I. G. Morgan," to Mr. C. Fagg Sanford, transmitting a sales agreement with the Texas Company.

And marked for identification as Commission Exhibits 159-A and B a document entitled "The Texas Company, agreement of sale," signed by C. Fagg Sanford as purchaser, and by C. D. Hall, the Texas Company, as seller.

And marked for identification as Commission Exhibit 160-A and B a Texaco document entitled "Selling schedule—motor lubricants, dealer prices effective August 1, 1953."

(The documents referred to were marked Commission's Exhibits 158, 159-A and B, and 160-A and B for identification.)

By Mr. Dias:

Q. Is this the selling agreement that you executed with the Texas Company? A. It is.

Q. And is this the price arrangement? A. It is.

Q. Is this Exhibit 158 the letter you received with those documents? A. It is.

(3754) Mr. Dias: I offer those in evidence at this time.

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(The documents heretofore marked Commission's Exhibits 156, 157-A, 157-B, 158, 159-A, 159-B, and 160-A and B for identification, were received in evidence.)

By Mr. Dias:

Q. Mr. Sanford, did you handle TBA products in your station? A. I did.

Q. What brand? A. Different brands.

(3755) Q. When you first moved in the station what brand did you handle? A. I had different brands when I went in.

Q. What make tires did you handle? A. There were Firestone.

Q. Did you have any others? A. No, sir.

Q. How about batteries? When you first moved in the station? A. I had Firestone.

Q. And accessories? A. Different makes.

Q. Take some filters. What brand filters did you carry? A. Fram.

Q. Did you carry any Firestone filters? A. I don't believe there were any there.

Q. How about fan belts? A. I had some Firestone fan belts and Gates, I believe, were the two.

Q. Where did you get your original stock of equipment? A. From the man that sold the station.

Q. Did you ever buy any other type of tires while you were in that station? A. None to speak of. I might have bought one, if a man drove in and wanted a certain tire, and sold it, and got (3756) him a special tire for that.

Q. How about batteries? Did you ever handle any other make of battery? A. Yes, I did.

Q. What make was that? A. Continental.

Q. When did you—did you stock Continental batteries? A. I did.

Q. When did you start stocking them? A. I think it was approximately six months after I had been there.

Q. Did any Texaco official say anything to you about those batteries? A. Yes, they did.

Q. Who? A. There was the zone manager.

Q. Do you remember his name? A. I don't offhand.

Q. What did they have to say about the battery? A. Well, they said they would rather that I handle Firestone.

Q. Did they say anything else? A. At that time they didn't.

Q. He didn't at that time. Did he ever say anything later about these Continental batteries? (3757) A. Later when the different zone man come in he did.

Q. What did he say? A. Well, he more or less insisted at the latter part that I handle Firestone batteries.

Q. Can you give us the time that that occurred? A. About three months before I went out.

Q. What did he say to you at that time in regard to those batteries? A. He told me that I would either handle Firestone or not to expect my contract to be renewed.

Q. He was referring to your lease on your station, was he? A. Yes.

Q. Did you continue to carry the Continental battery? A. I did.

Q. And were you subsequently notified of a cancellation of your lease? A. I was.

Q. Who was the zone manager? Do you recall? A. Mr. Charley Swan.

Q. Do you have a copy of that termination with you? A. I do.

(The witness produced a document.)

Mr. Dias: I would like to have marked for identification as Commission Exhibit 161 a letter dated October 12, 1955, from the Texas Company, signed C. D. Hall, to C. Fagg (3758) Sanford, notifying him of the cancellation of his lease effective October 31, 1955.

(The document referred to was marked Commission Exhibit 161 for identification.)

Mr. Dias: I offer that document in evidence.

Mr. Barton: Your Honor, I take it I have a continuing objection which was made at the beginning with relation to Texas/Firestone?

Hearing Examiner Kolb: That is right.

Mr. Barton: And that the record so states?

Hearing Examiner Kolb: Is there any objection?

Mr. Royall: I have a continuing objection on the part of Firestone, too.

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Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 161, subject to a motion to strike by Goodrich.

(The document heretofore marked Commission Exhibit 161 for identification was received in evidence.)

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(3759) *By Mr. Dias:*

Q. You moved into the station in November 1953? A. That is right.

Q. At that time you carried Firestone tires? A. That is right.

Q. Did you also carry Firestone batteries when you first moved in? A. I did.

Q. How long did you carry the Firestone battery. A. I had a few Firestone batteries practically all the time I was there.

Q. Did you ever carry the Firestone battery exclusively? A. Not except right at the first.

Q. For how long? A. Approximately six months.

Q. During that time did you receive any complaints from the Texaco Company? As to your operations? A. Not right at first, I didn't, not that I can remember.

Q. What sort of gallonage were you pumping when you first moved in? A. Around 14—12 to 14,000 gallons to start.

Q. Did you increase that gallonage? A. I did.

Q. What was your peak and when? Can you give us some idea? A. Around 20,000 gallons.

(3760) Q. Can you tell us when you reached that peak? A. I was about a year later.

Q. Did you maintain that level of gallonage? A. I have maintained around 16 or 17,000.

Q. Over what period? A. All the time I was there.

Q. Are you giving us an average figure now? A. Approximately average, I think.

Q. Those were monthly figures, were they not, that you gave us? A. That is right.

Q. When did you first start buying Continental batteries? A. About six months after that.

Q. Is that roughly around May or June 1954? A. That is right.

Q. And how soon after that was it that you were told by that Firestone manager that you should carry Firestone?

Mr. Barton: Object.

Mr. Royall: Object. That is not what he said. It is not a correct quotation as I recall what the witness said.

(3761) *By Mr. Dias:*

Q. What did the Firestone man say in May or June, 1954, about those Continental batteries? A. That he thought I ought to handle Firestone.

Q. And that was May or June that he made that statement? A. It was.

Q. Did you continue to buy Continental batteries? A. I did.

Q. Can you tell us why you bought the Continental battery?

Mr. Royall: Objection.
Hearing Examiner Kolb: Overruled.

A. I bought them because they were quite a bit cheaper than Firestone batteries.

By Mr. Dias:

Q. Were they as good as Firestone?

Mr. Barton: Object.
Mr. Royall: Object.

A. I think so.

Hearing Examiner Kolb: Objection overruled.

By Mr. Dias:

Q. What type service did you receive from the Continental Battery Company on those batteries? A. How do you mean?

Q. Did they come around and see you frequently on them, or infrequently? (3762) A. They came around frequently.

Q. How often? A. About once a month.

Q. What did they do at that time in regard to your batteries?

Mr. Royall: Objection.
Hearing Examiner Kolb: Overruled.

A. They would check my supply and if I had any bad ones or anything, they would replace them and give me adjustments on them.

By Mr. Dias:

Q. Did you ever have any dissatisfied customers with that Continental battery? A. None that I know of.

Q. Did you continue to carry the Continental then through November—through the time you were cancelled? A. That's right.

Q. Was that the occasion that Mr. Swan spoke to you about the Continental battery? Was that the only other occasion on which anyone from Texas spoke to you about the batteries? A. Oh, it was brought up several times. But I couldn't tell you exactly when or exactly what was said.

Q. Can you tell me by whom? A. It was Mr. Swan.

Q. In what way was it brought up?

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(3763) A. He had told me several times that they handled Firestone batteries and that they thought—he thought I should handle them.

Q. Were these statements made in your station? A. I am sure some were.

Q. Where were some others made? A. At the bulk plant.

Q. Which bulk plant? A. At Greeneville, Texas.

Q. Who operates that bulk plant? A. Mr. Daniels.

Q. Did anyone there hear any part of that conversation? Any of it? A. I am sure they did.

Q. Who do you think heard it? (3764) A. I don't know.

Q. Who was present when you had this discussion with Mr. Swan? A. I think Dan Daniels was present.

Q. While you were carrying these batteries, what other accessories were you carrying? Or what accessories were you carrying? Can you name some of them? A. Fan belts, Fram—

Q. What make fan belts? A. Gates, I believe.

Q. How about filters? A. Fram.

Q. Spark plugs? A. I had AC and—what is the other one? Champion.

Q. How about radiator hose? A. I didn't stock many radiator hose. I think what I had was Firestone.

Q. What about these other products you just mentioned? Were they Firestone products? A. No, they weren't.

Q. Where did you buy those? A. Locally.

Q. From whom? A. Wholesale houses locally, in Greeneville.

Q. Was anything ever said about those items? (3765) A. Yes, there were.

Q. What was said to you?

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Q. Who was it said anything to you about it from the Texas Company? A. Mr. Swan.

Q. Can you tell us roughly when that was? A. I would say six months before I went out of business.

Q. In other words, about May or June of 1955, is that correct? A. Yes. Then I was also told about three months—

Q. About three months prior to that time that you went out of business? A. Yes.

Q. That would have been in August. By whom? A. By Mr. Swan.

Q. Do you recall what was said about those items? A. I was told that the bulk plant was going to handle that, and that they would like me to handle that.

Mr. Dias: Will you read that answer?

(3766) (Answer read.)

By Mr. Dias:

Q. I don't understand that. They wanted you to handle what? A. Firestone accessories.

Q. In May or June, 1955, was that the first time Swan talked to you about these accessories? A. To my memory.

Q. Do you recall exactly what he said?

Mr. Royall: He just said.
The Witness: I just said that.
Mr. Dias: Will you read that?
(Record read.)

By Mr. Dias:

Q. Was any reason ever given you why your lease was cancelled? A. There was only reason given me.

Q. When was that? A. Just before I went out I asked Mr. Swan why did they let me go. I remember him saying that, "Put it this way: you are not a good station operator."

Q. And that was just before you left your station? A. Yes.

Q. How many hours a day did you keep that station open? A. 24 hours a day.

Q. Was that your idea? (3767) A. That was understood—

Mr. Royall: Objection, your Honor.
Hearing Examiner Kolb: Objection overruled.

A. That was understood when I went into the station.

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(3768) Q. Did you think you were a good station operator? A. I think I was an average station operator.

Q. Did you keep your station clean? A. I think so.

Q. You kept it open the agreed number of hours? A. I did.

Q. And you carried Continental batteries? A. I did.

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Q. Were there other Texaco stations in Greeneville, Mr. Sanford, at the time you were operating? A. There were.

Q. Do you know how many were there? A. About five.

Q. Were they leased stations? Do you know? A. I don't know really what the term "lease" is.

Q. You were operating under a lease. A. Well, no, I don't think any of the others were operating under the same conditions that I was.

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(3769) Q. Do you know whether or not the other station operators were ever—what TBA did the other station operators handle? Do you know? A. Various types.

Q. Do you know whether or not those other station operators received any complaints from the Texas Company? A. No, I don't.

Mr. Barton: Objection.

Hearing Examiner Kolb: Objection overruled.

By Mr. Dias:

Q. Did you say you did not know? A. I didn't know.

Q. When did you actually leave the station, Mr. Sanford? A. I believe it was November 19.

Q. What disposition did you make of your stock, the Firestone tires, for example? A. I sold it to the man that bought the station from me.

Q. Did you have any Firestone batteries at that time? A. I don't think so.

(3770) Q. What about your other brand batteries? What did you do with those? A. I sold them back to the company.

Q. Which company? A. Continental.

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Q. You sold him your Firestone tires, is that correct? A. That's right.

Q. Did you have any accessories left over? A. I did.

Q. What did you do with those? A. I sold most of them to the man that bought me out.

Q. Did you attempt to sell him your Continental batteries? A. No, I didn't.

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Q. Did any Texaco representative make any statement to you (3771) in regard to those Continental batteries? A. They did.

Q. What did they say?

Mr. Royall: Objection, without more information.

Hearing Examiner Kolb: Objection overruled. You may state who you talked to.

A. I talked with Mr. Charlie Swan.

By Mr. Dias:

Q. What did he say about those batteries? A. He asked me to dispose of those batteries before I sold the station.

Q. Is that all he told you? A. That is all.

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Cross examination by Mr. Royall:

Q. Mr. Sanford, you got your petroleum products from Mr. Daniels, didn't you? A. I did.

Q. He is the man who sold them to you and the man you contacted about getting them? A. That's right.

Q. You dealt direct with him and not through any Texas salesmen? You dealt direct with Mr. Daniels? A. In ordering my merchandise?

(3772) Q. Yes. A. Yes, sir.

Q. When did you first meet Mr. Charlie Swan? A. After he came on the zone.

Q. That was in May? A. I don't remember the exact day.

Q. It was just a few months before you got out? A. That's right.

Q. And you had been there about a year and a half? A. That's right.

Q. Did you know him after that? Did you see him from time to time after that? A. Oh, yes.

Q. Does he live in the same town or not? A. He does.

Q. Had he lived in the same town before where you had the station? A. I don't know.

Q. Mr. Swan came there and he made a number of suggestions to you about improving the station, didn't he? A. He sure did.

Q. Sir? A. He did.

Q. You got the impression he was trying to help you, didn't you? (3773) A. I do.

Q. A pretty nice fellow, isn't he? A. Mr. Swan is all right.

Q. I think you said—I am trying to say it just as you said it—that at one time—I think this is what you said—he thought you could handle Firestone—that we handle Firestone batteries and he thought you should handle them. Is that what you said? A. As well as I remember.

Q. And you said on another occasion, "I would like you to carry Firestone batteries." Is that what he said? A. Yes. He told me that times.

Q. On what occasion did he say any more than that? If he did? A. He told me more than that at the bulk plant in Greeneville.

Q. And that is the only time? A. That was the only time I was just threatened, yes, I think so.

Q. And that is the one you told about a moment ago? Is that right? A. Yes.

Q. Who was present at that time. A. I think Mr. Dan Daniels was present. He was working over on the desk.

(3774) Q. You know Mr. Daniels? A. I do.

Q. You dealt with him for a number of years, haven't you? A. That's right.

Q. You had bought from him and he was one that got you interested in the station, wasn't he? A. I think so.

Q. And you and he got along well together? A. We never had trouble.

Q. Was anybody else present besides those two? A. That is the only ones I remember.

Q. Mr. Daniels is a good, reliable man, isn't he? A. Mr. Daniels?

Q. Yes. A. In my dealings with him he has been reliable.

Q. You said—I think the question was did you get along all right, and you said, "There weren't but a few complaints." What were those complaints? Do you remember what they were? A. I don't know what you are talking about now.

Q. You don't remember any complaints? A. About what.

Q. I am asking you about what—whether there were some complaints after you went in the station. About the

way you ran it. A. I don't remember any complaints. I remember talking. (3775) He came down and asked me.

Q. Let me ask you about these and see if you recall them.

Do you remember that they spoke to you about not keeping the restroom with soap and towels? A. I think the station was clean all the time.

Q. I didn't ask you that. But you remember him speaking to you a couple of times about that? A. Not about keeping the station clean. I don't remember that.

Q. Do you remember about the soap and towels? A. I remember about the soap and towels.

Q. And you remember that they complained about the shelves being dirty and not used, don't you? A. That was corrected.

Q. When they spoke to you about it you had on the shelves, did you not, messy clothing and even a used commode brush, didn't you? A. That I wouldn't know.

Q. And I ask you if even after they spoke to you that wasn't there and left there and your successor found it? A. I don't believe that.

Q. Did they speak to you about having insufficient help in the station? A. I don't remember that.

Q. It was a fact there were times, a long time there, a (3776) considerable time when there wasn't anybody there but you and one colored janitor, isn't it? A. No, that is not.

Q. Isn't that right? A. No, sir.

Q. With respect—weren't there plenty of times when you couldn't give prompt service? A. No, sir, I certainly don't believe that.

Q. You did have complaints about the service you gave, as to washing and polishing, didn't you? Continuing complaints? A. I don't remember that.

Q. You don't remember complaints about serving the cars or scarring the cars? A. I don't know what you are referring to.

Q. You don't remember that? A. No, sir.

Q. They did speak to you about that, didn't they? A. Not that I know of.

Q. You also frequently ran out of just the simplest merchandise that people wanted, didn't you? Fan belts? Didn't you? A. I think you are mistaken.

Q. Don't you remember an incident when a man came into the station and asked you for a fan belt, and there was nobody there but you, the colored man having gone somewhere. He (3777) asked for a fan belt? A. I don't have any idea what you are talking about.

Q. You don't recall the case? A. No, sir, I don't.

Q. You don't recall the case where another person came for a radiator hose and there was nobody there but the colored man and the man had to keep the station while the colored man went down the street to find it? A. I don't, sir.

Q. You don't remember a thing about it? A. No, sir.

Q. They did complain to you about not keeping accurate books and records, didn't they? A. Who complained?

Q. Didn't both Mr. Daniels and later, when Mr. Swan came there, complain about it. A. Not to my knowledge.

Q. You didn't keep an accurate record—you didn't even check your gas against the measuring stick, did you? A. Daily.

Q. Sir? A. Daily.

Q. In spite of a—daily, the gas leaked for a month into an adjoining building and you didn't know anything about it until somebody reported it to you. Is that right? (3778) A. I complained, I would say, six months before that happened; about my gas.

Q. You could have checked to see by measuring, and your records, to see whether it was leaking couldn't you? A. You try to check a 2,000 gallon tank and be five gallons off.

Q. Do you mean in six months you couldn't tell the difference between whether you had had a leakage, constant leakage by checking your measuring stick and the records? Do you mean to say that? A. I remember I complained several times.

Q. I didn't ask you about your complaining. I asked you are you telling us now that you could have gas leaking as you say for six months and you couldn't tell from your measuring stick and your records whether you were losing gas? Do you mean to say that? A. I knew I was losing gas.

Q. Did you do anything about it? A. I told the Texas Company. I don't know—

Q. You were running the station, weren't you? A. That's right.

Q. Didn't they ask you to solicit customers, by 'phone and otherwise, and that you neglected to do it? A. I would say I made thousands of calls trying to solicit business, and I made hundreds and hundreds of contacts trying (3779) to make business.

Q. Didn't they complain to you about your lack of doing so? They did speak to you about it? A. I don't remember them complaining about it.

Q. They spoke to you about it? A. I remember it being brought up.

Q. You remember him also bringing up the fact that they had a program in the town of notifying you when anybody moved to town. And they spoke to you about not carrying that out and following up on it, didn't they? A. Not that I know of. I don't remember that.

Q. You had quite a hard time with your finances in various ways, didn't you? A. I was never rich.

Q. Sir? A. I was never rich, no, sir.

Q. I know that. But you were having a hard time keeping the station going, weren't you? A. I wouldn't say it was a hard time, no, sir.

Q. You delayed the payment on deliveries frequently, didn't you? A. Not frequently, no, sir.

Q. And they would have to follow up now and then on it? A. Not frequently.

Q. They did a number of times? (3780) A. They have done it. But not frequently.

Q. And they complained to you about that, didn't they? A. Yes, sir, they did.

Q. And also you gave a number of checks that had a little trouble, didn't you? At least 8? A. What kind of trouble, sir?

Q. Didn't you give checks for gasoline, drawn on a bank different from the one that Mr. Daniels used—and I want you to think about this carefully—didn't you give checks, and those checks were turned down by your bank and sent back to the bank, Mr. Daniels' bank from which they were deposited, and you had to make them good? A. That was taken care of.

Q. But that happened about 8 or 10 times, didn't it? A. No, sir.

Q. Eight or ten times a year? A. I have no idea.

Q. They complained to you about that? A. There were never any hard feelings over it.

Q. They complained about it a number of times, didn't they? A. They were always made good.

Q. You knew that was causing Mr. Daniels a lot of worry and trouble? A. I don't think it caused him a bit of trouble.

Q. You also on occasion did a little switching of your (3781) gas between the pumps, didn't you? A. I had done it.

Q. You had done it? A. Yes.

Q. You would take the Fire Chief, the cheaper brand, and put it in the Sky Chief tank which sold for a higher price, wouldn't you? A. I think somebody misinformed you.

Q. You didn't do that? A. No, sir, I didn't.

Q. Do you mean to tell me you didn't put Fire Chief in the Sky Chief tank? A. No. Wait a minute. I think it was done one time. When that gas leak came up. I think they emptied my Fire Chief into the Sky Chief tank and it was done then.

Q. You sold it as Sky Chief? A. No, sir.

Q. Didn't you admit that to Mr. Daniels' brother? A. I don't know what you are talking about.

Q. When did that happen? A. Whenever they took the tank out and put in a new tank.

Q. Didn't they find out about it and complain to you about it? A. They did it. I didn't do it.

Q. Did you complain about it? Did they complain to you (3782) about it? A. They did it. I didn't do it.

Q. Didn't you deny, just like you did a minute ago, first deny that you did it, and then later admitted it? A. I don't know what instances you are talking about?

Q. Didn't you a moment ago say you didn't do it, and then on second thought say yes, it happened once. A. Whenever they had the leak in the tank it happened.

Q. Didn't you do the same thing with them; didn't you first deny the same thing you have done here today, deny you did it and when confronted with the facts admit it to Mr. Daniels' brother. A. They changed the gasoline. I didn't change it.

Q. Before you went in that station there was—you may have been there two or three months and then there was somebody else in there before that? A. Yes.

Q. Is that right? A. That's right.

Q. The man who had been there before that had averaged a little over 23,000 gallons a month, hadn't he?

Mr. Dias: I object. How would this man know that?

Hearing Examiner Kolb: If he knows he can answer.

By Mr. Royall:

Q. Didn't he? (3783) A. Yes. He did quite a bit before that.

Q. When you went in there you said to these people, of your own volition, that your own objective was that you would do that good, you were sure you would do that good or better, and that is what you set as your figure, didn't you? A. I don't remember that.

Q. You did talk to him about it, didn't you? A. Not that I know of. I don't remember a thing about it.

Q. Do you mean you didn't talk to him at all about the gallonage you expected to have? A. I don't remember.

(3784) Q. As a matter of fact, you averaged about 16,000 gallons—plus a little more in the summer months—but you averaged about 16,000 gallons, which was 25 to 30 percent less than the other man had had, didn't you? A. I had to build new business. This man took his business with him, because he was a very good station operator and whenever he left he took his business with him.

Q. But for the last year you didn't average—you just made by a gallon or two 17,000 after your second year, didn't you? A. I don't know the exact amount; somewhere in that neighborhood.

Q. You know that even after your first year they were talking—you knew that they were considering cancelling your first lease after one year, didn't you? A. No, I didn't.

Q. And it was after that time, after the one year expired that Mr. Swan came down there for the first time and talked the situation over and made suggestions, didn't he? A. Repeat that.

Q. It was after the first year had expired before Mr. Swan came down there, wasn't it? A. Quite a bit after that, I think.

Q. Three or four or five months? A. Yes.

(3785) Q. Is that right? About four or five months? A. Five or six. I don't know.

Q. And before Mr. Swan came Mr. Daniels had been talking to you about these various matters we have discussed, keeping the station, sufficient supplies, and everything, hadn't he? A. I don't know what time you are referring to?

Q. Mr. Daniels had discussed the difficulties you were having with the station often, hadn't he? A. I talked with him, yes.

Q. He talked to you, too, didn't he? A. I am sure he did.

Q. And Mr. Swan came there for the express purpose of trying to help you get over these difficulties, didn't he? A. I think so.

Q. This battery, Continental battery that you were handling, was that their highest grade? A. I handle all their battery line.

Q. All? A. Yes.

Q. But you principally had one of their cheapest grades, one that sold for $7 and some cents? A. No. I sold lots of good batteries.

Q. But that was your principal battery, wasn't it? A. No, sir.

(3786) Q. For a time— A. I didn't buy any more of those batteries than I did other batteries. I sold lots of them.

Q. For a time wasn't it the only battery that you had in the station? For months or weeks at least? A. No, sir.

Q. How many people came around to replace the batteries? You said people came around there and they replaced batteries. How many of them came? A. Who are you talking about?

Q. You said folks came there about replacing the batteries. How many came? Or regarding them or getting adjustments. How many came? A. They came once a month. Are you talking about—

Q. I mean customers. Did the customers come? A. Why yes. Any time you sell batteries you are going to have trouble with batteries. Not always the battery's fault either, but still you have to make adjustment with them.

Q. And you say Mr. Swan told you that you were not a good station operator, and I believe your answer was that you thought you were an average station operator. Is that right? A. I would say I was above average.

Q. You have gone above average since you testified before? A. I am going above average.

Q. You are moving forward. You never handled any dry (3787) batteries, did you? A. Yes, sir, I did.

Q. When? A. When they came out.

Q. Not when they first came out, did you? A. I think, yes.

Q. Did you handle Firestone dry batteries? A. I handled a few.

Q. Did you handle any after that? A. Sure.

Q. Who did you buy those from? A. Mr. Daniels.

Q. You had handled Firestone before you ever came to that station, hadn't you? A. Yes, I have.

Q. And you were the one selected Firestone originally, weren't you? A. Firestone what?

Q. Firestone products? When you were working with the Banks Tractor Company? A. We handled Firestone tires.

Q. Were you in charge of the Banks Tractor Company? A. I worked there.

Q. Weren't you the sort of manager? A. I was just the bookkeeper.

(3788) Q. But you did the buying? A. I did some of it.

Q. You did that part of it that bought Firestone? A. Yes, sir.

Q. I will ask you if late in 1955 if there wasn't a complaint about you having vending machines in your station handling contraceptives, and if that complaint didn't come from a Methodist minister? A. I was told that.

Q. I will ask you if after it was brought to your attention if you didn't put a second vending machine of the same kind into your station, and if you weren't spoken to about the unusual thing of putting in two? A. No, sir. There was two machines in there when I had the complaint.

Q. You put in one and then you added one, didn't you? A. That was before Mr. Swan's time.

Q. You put in one before Mr. Swan's time and you added one before Mr. Swan's time? A. No.

Q. And you were asked to remove those machines and refused to do it? A. No, sir, I wasn't asked to remove it, that I remember.

Q. It was suggested that you remove them? A. Not that I remember.

(3789) Q. And you were told there was a complaint about them? A. I was told there was a complaint about them.

Q. And you didn't remove them? A. As far as I know, I wasn't asked to remove them.

Q. That was shortly before you got out of the station? A. No, sir, that was a long time. I would say six months before.

Q. And they still stayed in there? A. That is customary in stations. I think if you will go around stations—

Q. Customary to have two? A. You will find them in lots of them.

Q. You knew that that was not approved by the people who were talking to you from Texas and your consignee, didn't you? A. I don't think they disapproved too much.

Q. They spoke to you about it, didn't they? A. I remember about the complaint.

Q. Let me ask you this last question: You sold Firestone tires not only at Banks but you also sold them and other Firestone matters with the Sulfa Springs Farm Store? A. I did.

Q. That was long before you went in this station? A. Right.

Q. Mr. Daniels was your consignee? He was the consignee (3790) who sold your gasoline? A. That is right.

Q. And your transactions on that were with him? A. That is right.

Q. And your transactions with TBA were with him in part, weren't they? A. Well, partly.

Q. He handled Firestone TBA, didn't he? A. I think a few.

Q. Let me ask you this: You worked for the Crawford Drug Company in 1949, didn't you? A. I worked there a little bit.

Mr. Dias: I object.

Hearing Examiner Kolb: Overruled.

By Mr. Royall:

Q. Then you moved to the Banks Tractor Company? A. No, sir, you are very confused.

Q. Where did you move from the Crawford Company? A. I moved—I bought the station.

Q. That was the second time you were with the Crawford Drug Company, wasn't it? You were there twice? A. No, sir.

Q. Where did you first work? A. I think the first job I ever had was International Milling Company.

(3791) Q. When was that? 1949? A. No, that was back in 1948.

Q. What was the name of the company? A. International Milling Company.

Q. Where did you go next? A. I would have to—

Mr. Dias: Your Honor, I don't see the relevancy of this at all.

By Mr. Royall:

Q. Where did you go next? A. I don't remember.

Q. You mean you don't remember? You went to Sulfa Springs Equipment Company? A. I went to the Army from the International Milling Company.

Q. I understand. Then from the Army into the International Milling. What was next? Did you work for Banks Tractor? A. I worked for Banks Tractor Company and went to school.

Q. You worked for Sulfa Springs Farm Stores? A. That is right.

Q. You worked for Crawford Drug Company? A. I worked there about a month or two months maybe.

Q. And then in 1953, which was four years after 1949, you went to the— A. What four years after 1949?

(3792) Q. 1953 is when you made this lease, isn't it? A. Yes.

Q. There were four years in between 1949 and 1953. In that time you had worked five places in four years. A. I went to work with Banks Tractor Company, I think it was in '46, I believe. And I believe I worked for International Milling Company back in—it was right when I got out from high school.

Q. Did you work any other places in that period? A. I don't remember.

Q. You don't remember. What are you doing now?

Mr. Dias: I object. That is certain irrelevant.

Hearing Examiner Kolb: Objection sustained.

By Mr. Royall:

Q. I will ask you if you are not selling these same vending machines about which there was a complaint in your station?

Mr. Dias: Objection.

Hearing Examiner Kolb: Objection sustained.

Mr. Royall: Your Honor, the purpose of this is to show frequent changes in employment.

Mr. Dias: He is out of the station now.

Mr. Royall: I know.

Hearing Examiner Kolb: You are talking about vending machines now, aren't you?

(3793) Mr. Royall: Yes, sir.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Royall: Your Honor, the vending machine matter was taken up as one of the things that they

were irritated about, the people he was working about, and that is one of the circumstances.

The Witness: I never received any bad complaints from the company on that.

* * *

Redirect examination by Mr. Dias:

Q. You ordered merchandise from Daniels. I think this came up later, too. Did that include TBA? A. Yes.

Q. What TBA items did you order from Daniels? A. I have ordered tires and tubes and batteries.

Q. Did he carry a full line of Firestone TBA? Or did he carry others? A. He carried a good line of tires.

Q. Firestone tires? A. Yes.

(3794) Q. Other tires? A. I don't remember any other tires.

Q. How about batteries? A. He never had many batteries. Maybe two or three usually in stock.

Q. How about accessories? Did he carry Firestone accessories? A. All the accessories I ever saw were some that he had there for years. That is all that I ever saw.

Q. Was it Firestone? A. Yes.

Q. The question was asked whether it wasn't true that the shelfs were dirty and not used? What were they supposed to be used for? What shelfs? A. Well, I think as a whole my shelfs stayed clean. I think they were used for display of TBA merchandise.

Q. What TBA merchandise did you display on those shelfs? A. All that I had.

Q. What brands? Firestone? A. All different brands.

Q. Were there other competing brands of TBA— A. Yes.

Q. (Continuing) —on the shelfs?

On that gasoline tank, did you say that you complained to the Texaco Company about the leaking tank? (3795) A. I didn't know whether it was leaking. I was complaining about loss of gasoline.

Q. How often did you complain to them? Did you call? A. I would imagine on the average once a month.

Q. For over how long a period? A. About six months.

Q. What did they do about it? A. Nothing.

Q. Is that their tank? A. Yes.

Q. Is that your gas that was getting away? A. Yes.

Q. You paid for it? A. Yes.

Q. It has been brought out that you might have owed them money. Did you leave the station owing them any money? A. No, sir.

Q. Did you ever owe them any money for any period of time? What is the longest period of time that you can think of? A. I had some tires on consignment.

Q. On consignment? A. Yes. And I don't remember what length of time. But when I sold the tires I paid for them.

Q. Did you get them from the Texas Company? A. Yes.

(3796) Q. From the Texas Company? A. Yes.

Q. The tires? A. Yes.

Q. Do you mean they are selling TBA, too? A. I meant bulk plant, Daniels.

Q. We run into different situations. I want to be sure.

On the trouble with checks that was mentioned, I think you said that it happened eight or ten times a year. Is that correct? Was it as often as that? A. I would have no idea.

Q. What sort of trouble was it? Was it just insufficient funds and then you made good? A. It was insufficient funds.

Q. And you made them good? A. That is right; immediately.

Q. We have heard quite a bit about dry and wet batteries. Apparently you handled the dry batteries? A. I have.

Q. In your opinion, is that any better battery than a wet battery? A. I think a battery is just as good as the guarantee behind it.

Q. What is the advantage of a dry battery? Is there any advantage? Or what is the advantage of a wet over a dry? (3797) A. They both are good. I would say a battery is a battery. I see no—I would say the dry battery is a little easier to handle. I mean it is not as dirty, not as apt to spill acid on you as it would if you had a wet battery.

Q. How many dry batteries did you have? Do you recall? A. I would say three.

Q. Did you have much customer demand for dry batteries? A. No.

Q. Does the benefit from a dry battery accrue to an operator or a customer? A. An operator.

Q. What was your opinion when you took the station? Were you going into business for yourself? Was that your impression? A. That was my impression.

Q. Did you feel that you were an independent businessman—

Mr. Royall: Objection.

Q. (Continuing) —running a gasoline station? A. I certainly was not.

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D. A. Zimmerman, for Commission—Direct

(3798) D. A. ZIMMERMAN was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Dias:

Q. Will you please state your full name and business address for the record, Mr. Zimmerman? A. D. A. Zimmerman. I work for Continental Battery Company, 1914 South Central Expressway.

Q. How long have you been with Continental? A. Since 1950.

Q. Have you been a salesman all that time? A. Yes, sir.

Q. Can you describe the territory that you cover for Continental? A. I have four routes, one each week. I make a complete revolution and start again. I am out all week.

Mr. Barton: I can't hear you.

The Witness: I run a route truck. I leave on Monday and return on Friday. I have four such routes.

By Mr. Dias:

Q. Can you give us generally where you begin a route and where you end it, the east and west boundaries of it? Gives us some idea of where you cover. (3799) A. I make a loop into Texarkana and back, and a loop into Marshall and back, all on separate highways. You will find that is just two loops. One loop into Western Oklahoma and one into Eastern Oklahoma.

Q. What was the second one? A. Marshall.

Q. Roughly how many customers do you call on in that territory? A. Approximately 300, I guess.

Q. How is that comprised? Do you have some gas stations, or all gas stations? A. The majority of my business is service stations.

Q. What else do you handle? A. Garages, small percent. Some auto supply houses.

Q. Do you have any idea of the number of Texaco service stations in your area? A. I sure don't.

Q. You can't estimate at all? Five, ten, fifteen, twenty? A. In that whole territory?

Q. Yes. A. It would be a guess if I made a figure.

Mr. Royall: We object.

A. Two hundred maybe. I don't know whether that is right or not.

Mr. Royall: What did you say?

(3800) The Witness: A couple of hundred in the whole territory, I would say; just a guess. Several in each town I know, Texaco stations.

By Mr. Dias:

Q. A couple of hundred Texaco? A. That may be too high. It would be a guess, I told you.

Q. You only sell batteries? A. That is correct.

Q. Do you sell any to the Texaco stations? A. A few.

Q. You sell a few batteries or a few stations? A. A few stations.

Q. Can you tell us the number of those that you sell? A. What type of stations do you mean?

Q. Texaco stations. A. Company stations?

Q. You tell us how many you sell to and then we will find out if they are leased or company. A. I think I sell about 19 all together.

Q. Of that 19, do you know how many are leased stations? A. Not for sure. I just don't know for sure what company stations is. I have an opinion what I think it is.

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(3801) Q. Of those 19, do they all buy your complete line? A. No.

Q. Do they buy for stock? A. I have only one does that; other are fill-ins.

Q. How many do you sell to that one that purchases for stock? A. I would say an average of four or five a month.

Q. And the other 18? Can you give us some idea of how many they buy per month? A. Not any more than that. Some vary. Some just fill-in and some will buy that many, too. Even their split accounts.

Q. Do I understand that all 19 buy four or five a month? A. I believe that would be a little strong; all of them.

Q. How many batteries would you consider a stocking purchase? How many batteries would a station purchase for stock?

Mr. Royall: Objection. He already told that.

Hearing Examiner Kolb: Overruled.

By Mr. Dias:

Q. You may answer. A. For a stocking account?

Q. Yes. A. Fifteen.

Q. Is that purchase of 15 on one order? (3802) A. For a coverage, yes, sir. There is various types I am talking about. That is what it would take to make a complete coverage of batteries.

Q. By types do you mean sizes? A. Sizes and types.

Q. Have you in the last three years lost any Texaco accounts, or suffered a loss of business among them? A. I have lost some; yes, sir.

Q. Can you name those for us? A. Well, right offhand I don't believe I could just name them, no. I have lost some Texaco business; yes, sir.

D. A. Zimmerman, for Commission—Direct

Q. Did you sell to Mr. Sanford? A. Yes, sir.
Q. Did you lose business with him? A. Yes, sir.

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Q. Were there any whose purchases decreased? A. Yes, sir.

(3803) Q. Month by month or whatever the period was? A. Yes, sir.

Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

By Mr. Dias:

Q. Can you name those? A. I have one in mind. I think there is more but I have one in mind now.

Q. Do you feel free to tell us who he is? A. I don't feel free, but I would. Steve Rowland, Duncan, Oklahoma.

Q. What is the situation in regard to that account? A. Almost stock buying, and what is remained is in hiding.

Q. In hiding, you say? A. Yes.

Mr. Royall: Motion to strike the answer as not being responsive and being an opinion.

Hearing Examiner Kolb: The motion will be denied.

By Mr. Dias:

Q. When was the last time he purchased from you? A. I believe 90 days ago. Three months back, I believe. That's correct.

Q. Do you recall how many batteries he purchased from you at that time? A. One.

(3804) Q. Did he stock that on his shelf? A. No, sir.

Q. What did he do with it? A. In the back room.

Q. Prior to that time had he been buying more than one battery at a time? A. Yes, sir.

Q. How long ago was that? A. It started tapering off maybe a year—maybe six months, I would say, back.

Q. Six months ago? A. Six months back.

Q. Before it started tapering off, can you give us some idea of the size of his orders? A. As many as six a trip, a month.

Q. Do you only call on him once a month? A. Yes, sir.

Q. How long had he been buying that many, six a month? Was that the average purchase? A. Yes.

Q. Over what period of time? A. Ever since he has been with us.

Q. How long has that been? A. I don't know that for sure; three or four years.

Q. Did he give you any reason for cutting down on his (3805) purchases?

Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

A. He said that they wanted him to handle their TBA line.

By Mr. Dias:

Q. Who is "they"? A. I don't know for sure who he was talking about. I think when he was talking to me, there was pressure put on him, "that I'm going to have to handle the line that the agent handles."

Mr. Royall: Motion to strike. That is an impression that he got.

Hearing Examiner Kolb: He is stating a conversation that he had with the man.

Mr. Royall: I don't think so.

Hearing Examiner Kolb: Overruled.

D. A. Zimmerman, for Commission—Direct

By Mr. Dias:

Q. Who is the agent? A. I don't know the agent's name.

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(3806) Q. These 19 that you are now selling, how often do you call on each one of those? Is it once a week? Once a month? A. Once every four weeks.

Q. Were there any among those that bought more batteries in the past than they are now buying? A. No, sir. In the past?

Q. Yes, in the past. A. Yes, sir. Excuse me.

Q. How long ago?

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A. I would say the last two years it become the worst.

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Q. Do you have any idea what those stations were purchasing per month at that time?

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A. They vary. I couldn't put my finger on it. I believe Steve Rowland's account of 6 to 10 would be the average.

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(3807) Q. Of those 19 are there any among them that buy less than four or five a month? A. Yes.

Q. Do you have some idea of how many? How many stations first buy less than four or five a month? A. I would say half of them.

Q. How many do they buy a month? A. One or two. Sometimes miss several trips before they buy any.

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(3808) *Cross examination by Mr. Royall:*

Q. In your territory there are other salesmen of other jobbers? A. Yes, sir.

Q. And of manufacturers? A. Yes, sir.

Q. About how many different wholesale and manufacturing concerns are selling batteries, either singly or with other equipment, and travel that territory? About 25 or 30? A. I don't know. I would say that is too many.

Q. What would be your best estimate? Would you say 20? A. Ten or 12 would be my estimate.

Q. Does that include—that doesn't include any wagon jobbers? A. Yes, sir.

Q. Do you mean there are only 12 including the wagon jobbers? A. That would be my estimate.

Q. Let's run over some of them.

Who sells Delco in that area? A. I wouldn't know for sure who. I think there are several.

Q. There are several? Would you say three for Delco? Or four? A. Different localities I believe there are different (3809) distributors. There would be one in this territory and I believe one in another one.

Q. Aren't there two in some single territories? A. I really don't know where they get their supply. I just know they buy Delco batteries?

Q. Do you know whether they are sold by one or two competitors? A. No, sir.

Q. Or three? A. No, sir.

Q. Southland? A. They have distributors, yes, sir.

Q. Do you know whether they have more than one? A. Over all of mine? Yes, sir. One will be here, one will be there.

Q. You don't know whether they duplicate in any single place, do you? A. No, sir.

Q. Auto-Lite? A. They are in my territory.

Q. Do they have several people selling that? A. I don't know.

Q. And Texan? A. They are in my territory.

Q. And Exide? (3810) A. Yes, they are in my territory.

Q. And Willard? A. Very little.

Q. How many wagon jobbers are there in each particular location? Three or four? A. I don't have the least idea. There are some going here and yonder, but I don't pay any attention to them. I don't know.

Q. You don't know whether there would be a half dozen or a dozen of those, do you? A. No, sir.

Q. So you have no way of estimating what the total would be for the jobbers and wagon jobbers, would you? A. No, sir, I don't.

Q. And the figure of 12, you are speaking principally of jobbers? A. My competitors. That is what I would call them.

Q. When you say competitors you mean the jobbers? A. Well, I don't know whether jobbers or distributors are my competitors.

Q. Do you consider the wagon jobber a competitor also? A. Yes, sir. Any body who sells a different brand of batteries than me is my competitor.

Q. And do you still say that there are only about a dozen? A. That is a guess.

(3811) Q. But after thinking about it you think it may be a little more, do you? A. I wouldn't want to change it.

Q. The first time that Continental delivered dry batteries was May 1, 1956? Doesn't that state that on the price list? May be this will refresh your recollection. A. I am just trying to think.

Q. Is that right (a document was handed to the witness)? A. That is the first time they appeared on the price list, yes, sir.

Q. It says on the price list "available May first." A. They were available sooner than that.

Q. It meant they were not available generally on February 20, did it? A. They weren't listed before that on the price list.

Q. They say here, on the February 20 list, "available May 1st." A. I don't know about that.

Q. Don't you see it? A. According to the price list.

Q. And the price list is gotten out by the company, isn't it? A. Yes, sir.

Q. I didn't understand one thing you said, and I am merely seeking correction of it. Do you mean it takes 15 batteries (3812) to have a full stock? Is that what you meant? A. That is my opinion.

Q. I understand that. That is what you meant by 15 to cover the stock. It didn't mean that you had to sell him 15 at one time, did it? A. The initial order, yes.

Q. The initial order, yes. But after that if he had 15 after he purchased a particular order, he had what you in your opinion thought was about a full coverage? A. That's right.

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Cross examination by Mr. Barton:

Q. I take it Excel batteries are sold in the territory in which you operate? A. Yes.

Q. They are manufactured by the Green Manufacturing Company? A. Yes, sir.

Q. I take it also that Southland is a very important competitor of yours in that territory? A. Competitor, I would say. I don't know how important.

Q. There are a lot of Southland batteries sold in that territory? A. Yes, there are Southland batteries.

(3813) Q. And they are manufactured by a company located here, are they not? A. I believe, by Vitalic.

Q. And the Reliable battery is sold in that area, isn't it? A. Some, yes, sir.

Q. It is manufactured by a company located here, isn't it? A. Manufactured by a company. Its factory I don't believe is here. They have a warehouse here.

Q. In your area, you say you have four different routes? A. Yes, sir.

Q. And you travel one of those routes each week? A. That's right.

Q. And you leave here on Monday and get back on Friday? A. That's right.

Q. How many batteries do you put in your truck? A. Seasons will vary. The maximum I would say 250.

Q. Two hundred fifty. And you call on all 300 customers that you have every month? A. Yes, sir.

Q. How many batteries do you sell a month? A. That varies quite a bit.

Q. I understand it varies. What is the average number you sell them? It will vary with the season of the year, I take it. A. Yes, sir.

(3814) Q. What is the average that you will sell in a year? No, per month. You understand what I mean? A. Yes.

Q. Per month. A. The average I would say would be approximately 500 per month.

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Redirect examination by Mr. Dias:

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Q. How many calls you made during the week? (3815)
A. That will vary because I call on prospects every week.
Q. How many steady customers do you call on per week?

Mr. Barton: I object to this as not proper redirect.

Hearing Examiner Kolb: The objection will be overruled.

A. Steady customers? Average say 60 a week.

By Mr. Dias:

Q. Sixty a week. A. Approximately.
Q. You also call on prospective customers? A. Every day.
Q. Do you have any idea what that number might be? A. Not for sure. It depends how the business runs and what time I have.
Q. How many of those 250 batteries that you start out with do you usually come back with? Do you have any idea? A. From 30 to 75.
Q. In other words, you sell anywhere from 175 to 220 batteries per week, is that right?

Mr. Barton: Object.

Hearing Examiner Kolb: Overruled.

A. Yes, sir.

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George Snapka, for Commission—Direct

(3816) GEORGE SNAPKA was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name and business address for the record. A. I am George Snapka. I work for the Continental Battery Company, 1914 South Central Expressway.

Q. How long have you been with them? A. I have been with them four years.

Q. In what capacity? A. Salesman.

Q. For the entire four years? A. The entire four years.

Q. What is your sales territory? A. I work the west Texas area, and south.

Q. What type customer do you call on? A. Service stations, garages, and a few parts houses.

Q. How many service stations do you sell a week? Approximately? (3817) A. Over my entire territory the entire customer calling I would say it would be about 130 customers for a month.

Q. Sir? A. For a month.

Q. One hundred thirty customers a month? A. Yes.

Q. How often do you make your rounds? A. I make my territory every 28 days, divided into four sections weekly.

Q. There are 130 customers in your entire territory? A. That is right. It includes everything. And I call on them once a month.

Q. Are there any Texaco stations among the service stations in your area? A. Well, there are quite a few Texaco stations in the area.

Q. Can you give us some idea of how many? A. I imagine there would be about 100 to 150. Somewhere in that neighborhood.

Q. Are you able to sell to any of those Texaco stations? A. Yes, I sell a few of them.

Q. How many? A. I sell approximately 16.

Q. Do they purchase for stock? A. Most of them purchase for stock, yes, sir.

Q. Can you tell us about how many purchase for stock? (3818) A. Individually, of course, each town varies according to the demands of the town, or of the customers, and each one buys according to his requirements or his sales for each month. Some batteries don't sell but maybe four batteries a month. Others don't sell but 8 or 10, and so on up. I sell them according to their requirements.

Q. Have you called on all the Texaco stations in your trade area? A. Most of them at one time or another, yes.

Q. And out of them all you sell to 16? A. That's right.

Q. Do those 16 advertise the batteries in and around the station? A. Well, the largest percentage of them do, yes. They don't advertise it. They do show the merchandise.

Q. When was the last time you tried to sell to Texaco stations other than those 16? A. Just last week.

Q. Were you successful? A. No.

Q. What reason, if any, was given?

Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

A. Well, the one particular one that I called on last week said that he—if he bought batteries from me he would have (3819) to put them in the back room, and that until he discussed it further with his agent he would see me later.

George Snapka, for Commission—Cross

By Mr. Dias:

Q. Have you called on any others recently?

Mr. Royall: I move to strike that as being a conclusion and double hearsay.

Hearing Examiner Kolb: Motion to strike denied.

By Mr. Dias:

Q. Have you called on several others recently? Other Texaco stations? A. Yes, sir.

Q. And have you attempted to sell them the battery? A. That's right.

Q. Did they buy? A. No.

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(3821) *Cross-examination by Mr. Royall:*

Q. You have a lot of competitors there selling, too, don't you? A. Yes, I do.

Q. Everybody is trying to get as much as he can? A. Why sure.

Q. Sometimes you get it all and sometimes you get none? A. That is true, too.

Q. And sometimes you get part? A. That's right.

Q. How many service stations are there, of all kinds, in your area? A. Oh, Lord—

Q. A thousand? 1,500? A. I imagine it would be. You can't tell how many there would be unless you went out and specifically counted them.

Q. Maybe more than that. What territory is it? A. West Texas area.

Q. As a whole where does west Texas start? At Fort Worth? A. I work the area from Abilene to San Angelo to the New Mexico area.

(3822) Q. There might be many more than I said, might there not? A. There could be. I don't know.

Q. That is a country where they have a great many small service stations? A. That's right.

Q. Delco is one of the products they sell a lot of out of there, isn't it? Do you run into that a lot? A. I run into very few Delcos.

Q. What is the leading brand besides yours in that territory? A. I imagine that I run more into the Republic line in that area. That is worked out of San Antonio which overlaps my territory.

Q. Do you have any others that are making a good deal of headway out there? A. Well, there are any number of brands. However, I don't know what the headway would be concerned.

Q. Some of them? A. The number of batteries is almost too numerous to mention, that you run into.

Q. The types of batteries? A. Car storage batteries.

Q. Do you mean the names or brands are too numerous to mention? A. I—a person could sit here for a half hour and mention them.

Q. You see most of them all the time at one place or another? (3823) A. Yes, sir, I see a lot of them.

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Redirect examination by Mr. Dias:

Q. Do you ever run into Firestone and Goodrich batteries out there? A. Oh, yes.

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Thomas James Meggs, for Commission—Direct

(3824) THOMAS JAMES MEGGS was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Dias:

Q. Please state your full name and business address for the record. A. Thomas James Meggs, 2600 Main Street, Dallas, Texas.

Q. And the name of your company? A. The Meggs Company.

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Q. What is your present position? A. I am sales manager and also vice president of the company.

Q. How long have you been sales manager? A. Twelve years.

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(3825) Q. What type business is your company in? A. We are in the TBA—tires, batteries and accessories.

Q. What tires do you handle? A. We handle the Diamond tire.

Q. And batteries? A. Delco.

Q. And among some of the most popular accessories, what is your filter? A. AC.

Q. Fan belts and hose? A. Gates.

Q. On both? A. Yes, on both of those.

Q. Spark plugs? A. AC.

Q. What sort of chemicals do you carry? A. We handle several brands, primarily DuPont. If you would like more names I can give them.

Q. Do you carry more brands? I mean other than DuPont? A. Yes. We have Johnson. Of course they don't carry a full line of chemicals. They just carry polishes, we will say.

Q. What all is included in chemicals? A. Of course there would be polishes, brake fluid, car (3826) washes, radiator chemicals like for cleaning out, stop-leak, anti-rust, and others.

Q. What type of customer do you sell to? A. Primarily we sell to the auto supply store and to the service station.

Q. Is that all? A. And to a few garages, a few car dealers, and a few that would be classified as fleets.

Q. Can you give us some idea of your sales territory? A. Yes. At the present time we cover what we call North Texas. We would start with about Brownwood up to Wichita Falls, and go east to the Louisiana line, and not across the Red River. We do not cross the Red River.

Q. Among your customers do you have any Texaco stations? A. Yes, sir.

Q. Can you give us some idea of the number? A. No, sir, I cannot.

Q. Can you approximate the number that are in your sales territory? A. No. I tried to arrive at a figure and that I couldn't do, either. I did get an estimate from the service station association that there were approximately—are you asking all service stations or just Texas Company?

Q. Just Texaco. A. There were approximately 100 Texaco stations in the (3827) City of Dallas, and in the metropolitan area about 175. In the rest of the territory it would be just a wild guess if I were to give you a number.

Q. Do you have any estimate at all of the number that you sell to? A. No sir. The reason for that, we do business under the man's name that is operating the station, rather than under the Texaco.

Q. Is there anyone in your company who would know the number of stations that you deal with? A. No. It would take some time. I could make a rough estimate. I would say in the neighborhood of 450.

Q. 450 what? Texaco? A. No; all service stations. Texaco stations woud be just too wild a guess, I am afraid.

Q. Of course you wouldn't be able to give us any idea of the annual purchases of Texaco? A. No, sir. I tried to do that but I couldn't.

Q. How many salesmen do you have? A. Eight.

Q. Do they work out of the home office here? A. Yes. I have one man that lives in Arlington and I have one man that lives in Longview. The rest of course live here, work out of here.

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(3828) LEONARD R. AKIN was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Dias:

Q. Please state your full name and business address, please? A. Leonard R. Akin, Beard and Stone Electric.

Q. How long have you been with Beard & Stone? A. Approximately four years.

Q. In what capacity? A. Outside salesman.

Q. During that entire period? A. Yes, sir.

Q. What territory do you cover? A. City of Dallas.

Q. Do you work on a salary or commission? A. Commission.

Q. What type products do you handle? A. We handle Auto-Lite batteries, Auto-Lite spark plugs, (3829) Purolator filters, DuPont and National Carbon—Prestone chemicals, Shaeler Rislone, Gates belts and hose, Trico windshield wipers, washers, hose. There are numerous other accessory lines as well as automobile electrical outlets.

Q. You do not handle tires? A. No, sir, we do not handle tires.

Q. What type customers do you call upon? A. I call upon service stations, garages, fleets, industrial accounts. That is the host of them.

Q. Do you call on— A. I call on some car dealers, too.

Q. Do you call on any Texaco stations? A. Well, approximately four, sir, off and on; not regularly anymore.

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Q. How many Texaco stations are in your area? A. I would say there are in the area of Dallas that I cover probably 25; approximately 25.

Q. And of the 25 you call on four? (3830) A. Not regularly. I don't even call on those four regularly.

Q. Have you ever called on any of the other 25? A. At times.

Q. Did you do any business with them? A. No, sir, not enough to warrant my continuing to call on them.

Q. What about these four that you call on regularly? A. I do very little business with them.

Q. Can you give me some idea of the products that you sell to them? A. Most of the products that I sell those accounts would be electrical, automotive electrical, stuff such as points, maybe carburetors or carburetor parts, and such as that.

Q. Can you give us the names and addresses of those four? A. I can but I don't believe I care to, sir.

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(3831) Q. These four that you call on regularly, will you tell us whether they are leased stations or privately-owned? A. I think that I wouldn't know for sure. I think two of them are privately owned and two are leased.

Q. How about the remaining 25 in town? Do you know anything about them? A. No, sir.

Q. These four, can you tell me what batteries they handle? A. Not offhand. I would say I don't call on them regularly anymore. It just doesn't pay me to call on them. My time is valuable.

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(3832) *Cross-examination by Mr. Lorenzen:*

Q. Could you tell us what part of Dallas you cover particularly? A. Actually, we have no exclusive territory, sir. However, the main part of Dallas that I cover would be the industrial river bottom, out Harry Hines, Lover's Lane, Preston Road, Mockingbird Lane, Northwest Highway, McKinney.

Q. I don't know much about geography. Is that generally the industrial section? A. Generally the northwest area of Dallas would be most of my accounts.

Q. Is that the industrial part of the city? (3833) A. Not all of it. Part of it is the industrial area.

Q. Are there other salesmen who cover other portions of Dallas? A. Yes, sir.

Q. How many? A. Well, I think in the City of Dallas there are—to cover every part of Dallas and the surrounding towns there would be approximately about seven salesmen.

Q. That is Dallas County? A. Yes.

Q. It would take about seven salesmen to find out just what your company sells in all parts of the county? A. Yes, sir.

Q. Your company is principally an automotive electric equipment supply house, isn't it? A. Yes, sir.

Q. I think that is what has been known as "hard goods" or "hard parts"? A. No, sir. I would say a hard parts jobber would be one who sells pistons, rods and such as that. We are an automotive electrical house mainly. And

we handle various accessories lines such as filters, batteries, spark plugs, windshield wipers.

Q. The lines you testified about you handle on the side in addition? (3834) A. Not on the side. They are main lines. They are one of our main sources of revenue.

Q. But you just testified a few moments ago that you are principally an automotive electric equipment supply house. That is your main line, your main business. The percent is what? About 78 percent of your business is in those lines, isn't it? A. Well, sir, I wouldn't be willing or able to say what percent of the Beard & Stone's business is in their electrical end of it.

Q. You wouldn't know that at all? A. No, sir. I wouldn't know. It is a pretty large company. They have stores all over Texas. So I wouldn't be able to say at all what the percentage of their business is the automotive electrical. It is a large company that also handles various other lines such as small engines and lawnmower parts and accessories such as that.

Q. And you testified that four Texaco stations to whom you sold electrical points and carburetor parts? A. Mainly, sir; yes, sir. Sell them equipment from time to time; small equipment.

Q. But principally these electrical points and carburetor parts? A. Yes, sir. To those places; yes, sir.

Q. That is a part of the automotive line of business rather (3835) than what you call accessory? A. Yes, sir, I would say that.

Q. And still it is those four to whom you sell that sort of equipment whose names you don't want to give us. Is that right? A. That is right. I wouldn't want to give any service station's name.

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Q. I don't think there is a question now.

Do you know what the total number of service stations is in the general territory which you cover? A. No, sir. I have no idea, sir. I only know that which I call on.

Q. And that is a very small percent of the overall total, is that right? A. I call on other stations. I just don't happen to call on Texaco and Conoco, sir.

Q. What are some of the other companies who have stations in there? A. Well, there is Humble, Magnolia, Gulf Phillips 66, stations of that type.

Q. And they are all potential customers of yours and you call on them all? (3836) A. Any account that uses automotive parts is a potential customer of me, sir.

Q. That goes for all of the stations? A. That goes for all of them.

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(3837) *Redirect examination by Mr. Dias:*

Q. You were asked about the other oil companies. Do you sell to their stations? A. Yes, sir. The stations that I call on, sir, I might say have mechanics and encourage the tune up business and such as that, and I sell those stations that type of merchandise.

Q. Do you sell those stations any batteries? A. No, sir.

Q. Filters, fan belts? A. Very, very few. Emergency or pick-up.

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Van J. Smith, for Commission—Direct

VAN J. SMITH was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Dias:

Q. Please state your full name for the record. A. Van J. Smith.

Q. And your position with the Texas Company? A. Since the first of January I have been district manager, with headquarters at Fort Worth.

Q. You take care of the Dallas territory? A. That was the first of January that I went there.

(3838) Q. You were here? You were in Dallas prior to that time? A. Yes.

Q. What was your position in Dallas? A. Zone manager.

Q. For how long? A. A little over two years.

Q. As zone manager what were your duties here? A. My responsibility was to look after the sales and operations of the Texas Company in my zone, as outlined by company policies.

Q. Did that include TBA? A. Yes.

Q. Are you primarily concerned with TBA? A. No, sir.

Q. You weren't? A. No, sir.

Q. Who was? A. What do you mean by that?

Q. What do you mean by you weren't? Did you promote the TBA sales to Texas stations? In other words, did you go around to encourage them to buy Goodrich or Firestone? A. We operate this way: We encourage our dealers through our salesmen and through sales meetings and things of that sort to sell more TBA.

Q. Are you the man? Is that part of your duties? (3839) A. Generally the salesman makes the direct contact.

Q. Then there is somebody the salesman. Are you the man above? A. Yes.

Q. You are the man above the salesman at this point? A. Yes.

Q. How many salesmen do you have or did you have? A. I had six.

Q. Do they have some title other than "salesman," or is it merchandising in general? A. That's right.

Q. Do you have bulk plants here? A. Yes, we do.

Q. How many? A. One.

Q. Is that company-owned? A. Yes.

Q. Where is that located? A. 3900 Singleton Boulevard.

Q. Does that one bulk plant serve the entire metropolitan Dallas area? A. Yes, sir.

Q. Are there salesmen attached to the bulk plant? A. They office there.

Q. All the salesmen office there? (3840) A. Yes.

Q. Where do you office? A. At the bulk plant.

Q. Was there anyone directly in charge of the bulk plant? A. Yes, sir. We have a terminal superintendent who is directly in charge of the bulk plant.

Q. Was he directly in charge of the salesmen or were you? A. No, I was in charge of the salesmen.

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W. E. SMITH was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

(3848) *Direct examination by Mr. Dias:*

Q. Will you state your full name and business address for the record? A. W. E. Smith, Beard and Stone Electric Company.

Q. How long have you been employed by Beard and Stone? A. Fifteen years.

Q. And in what capacity? A. City sales.

Q. During the entire 15 years? A. Yes, sir.

Q. What territory do you cover? A. The City of Dallas, Fort Worth, Arlington and Grand Prairie.

Q. Do you sell the entire Beard and Stone line? A. Yes, sir.

Q. What type customers do you solicit Mr. Smith? (3849) A. Garages, service stations, jobbers, and other jobbers.

Q. Do you solicit the business of any Texaco stations? A. Yes, sir.

Q. Do you have any idea how many there are in your territory? A. Well, no, not exactly. I don't call on all of them because we have card-in accounts. I mean by that we have designated accounts that we call on.

Q. In other words, you have fixed customers that you call on? A. That's right. We don't work in a certain area, in other words.

Q. Do you know from those cards how many Texaco stations you have? A. I have four that I call on regularly. Approximately four.

Q. Would you care to name those four? A. Jack Wilkie Service Station is one—

Mr. Lorenzen: Could you tell us where?

The Witness: 9507 Garland Road.

By Mr. Dias:

Q. And the next one? A. Howard Rush Service Station, Greeneville and Ross; Russell Tableman.

Q. And the address? (3850) A. Lewis and Skilman. That is all I can recall at the moment.

Q. I thought there were four. A. I said approximately four. That is all I can recall at the moment.

Q. How about Safety Services? A. Oh, yes. I forgot about them. Their main office is at Gaston and Haskell.

Q. Of these four, do you sell anything to Wilkie? A. Yes, sir. I sell him mostly repair parts. He has a mechanic.

Q. Have you ever sold him any batteries? A. No, sir.

Q. Filters, fan belts? A. No fan belts.

Q. Filters? A. Once in a while.

Q. And your brand of filters is what? A. Purolator.

Q. Radiator hose or plugs? A. A few hose. No plugs.

Q. You carry Gates hose? A. He handles—

Q. Your company? A. Oh, yes, we handle Gates hose.

(3851) Q. Do you know whether this operator is a leased station? A. I understand it is a leased station.

Q. Does he carry TBA products? A. Yes, sir.

Q. What brand, do you know? What brand tires? A. Firestone.

Q. Batteries? A. Firestone.

Q. How long have you been calling on Wilkie? A. Since about 1943.

Q. What do you sell to Howard Rush? A. Practically nothing now.

Q. Did you at one time sell him anything? A. Yes, sir. I used to sell him Auto-Lite batteries, Gates hose, Gates fan belts. Most everything we had.

Q. How long ago was that? A. Up until about three years ago, I would say.

Q. Was any reason given for discontinuance of your line? A. Yes. He told me that they were going to have to handle Goodrich products.

Q. And is that what he is carrying now? A. Yes, sir.

Q. Tires and batteries? A. Yes, sir.

Q. Accessories? (3852) A. Yes, sir.

Q. Do you know whether or not he owns the station? A. It is my understanding that he does.

Q. That he owns it? A. Do you mean whether it is a leased station?

Q. Yes. Is it leased from Texaco or does he own the property? A. Frankly, I do not know.

Q. How long have you been selling to that account? A. I have known Howard and called on him for the last ten years.

Q. Tableman? A. I have only been calling on Mr. Tableman a short time.

Q. About how long? A. I would say five or six months. Just since he has taken over this location. He bought it out from another source.

Q. Do you mean he bought the property? A. No, sir.

Q. Just bought the lease? A. Yes, sir.

Q. Took over the station. What did you sell to him, if anything? A. Very minor items and some mechanical parts.

Q. And in the minor parts— A. He has a mechanic also.

(3853) Q. Among the minor items are they repair parts? A. Yes, sir. Mostly repair parts.

Q. Does he handle TBA products? A. Yes, sir.

Q. Do you know what brand? A. Firestone.

Q. Tires and batteries? A. Yes, sir.

Q. And accessories? A. Yes, sir.

Q. You say he opened about five or six months ago. Did you call on him when he first opened? A. I called on the man who was there before him, Parks Hunter, who leased the station at that time?

Q. Had you ever sold to Parks Hunter? A. Yes, sir, a few items.

Q. Such as? A. Mostly anti-freeze.

Q. What brand? A. We handle Prestone.

Q. Is that all the prior owner bought? A. Of any consequence, yes, sir.

Q. How long had he been there, as far as you know? A. He was there I think three or four years. I don't recall the exact length of time he had the station.

(3854) Q. Had you called on him regularly up until the time he left the station? A. Yes, sir.

Q. When Tableman opened up—that is, took over—how soon after he opened up did you call on him, do you recall? A. The following week.

Q. The following week? A. Yes, sir. Almost immediately as soon as he took it over. I went by on my regular routine calls.

Q. How long—how often do you make your rounds? A. Once a week. Some customers of course, once every two weeks.

Q. And on Safety Service? Can you give me some information about that? Do you sell to that account? A. A few minor items, yes, sir. I sell them a little Gates hose and belts.

Q. Isn't that a chain here? A. Yes, sir. They have I think 7 or 8 stations.

Q. Do you sell to each of the stations or just to this one account? A. Just to the warehouse.

Q. Is this address Gaston and Haskell the warehouse of Safety services? A. Yes, sir.

Q. What sort of a setup is that? Is that a leased outfit (3855) or do they own their own property, Safety Services? A. I don't know, sir. I just don't know.

Q. Does this warehouse purchase for all stations? A. Yes, sir.

Q. At this address is there also a service station? A. Yes, sir. That's right.

Q. A service station and a warehouse? A. That's right. The warehouse is off to the side. Away from the station.

Q. You mentioned Gates hose. Is there anything else you sell to them? A. A few Trico blades.

Q. How about batteries? A. No, sir.

Q. Your company does not handle tires, does it? A. No, sir.

Q. How about tubes? A. No, sir.

Q. Do you sell them any filters? A. No, sir.

(3856) Q. Do you sell them any repair parts? A. I did at one time. They had a mechanic at their station on East Grand and I sold them a few repair parts there. But primarily they don't use any mechanics.

Q. It is just a gas station? A. Most all of their stations are just gas stations.

Q. Do they handle TBA? A. Yes, sir.

Q. Do you know what brand? A. Well, I believe it is Goodyear. I am not sure.

Q. And is that tires— A. They handle Goodyear tires.

Q. Do you know about batteries? A. They handle Continental batteries. I believe that is the brand. I am not sure.

Q. How long have you been calling on them? A. I would say 12 or 13 years.

Q. Are there any others that you know of that you have called on in your territory? A. No, sir. Those are the main Texaco stations.

Q. Have you always been in this territory, Mr. Smith? A. Yes, sir.

Q. How about Conoco stations? Are there any in your sales territory? A. I have one in Oak Cliff.

(3857) Q. And his name? A. J. H. Caldwell Service Station.

Q. Is he the only Conoco station in your territory? A. He is the only one I call on, sir. There are others in the whole city of course which I cover.

Q. But they are not designated accounts? A. But they are not designated accounts.

Q. How does a station get to be a designated account? Does somebody in your own office designate it? A. If we go out and find a new customer we turn in a card on it. That card is set up and we are given that account to call on. Each territory is what we call a carded account. We get credit from all the business that comes in from those carded accounts.

Q. Do you ever attempt to sell to other accounts? In other words, assume you have a hundred accounts in your territory. Do you ever try to expand that and sell to others? A. Oh, yes. We try to find new accounts all the time. And if you find a new account, if some other salesman doesn't have it designated as his account, you can pick that account up and add it to your territory.

Q. Returning to the Texaco stations, have you ever attempted to sell to other Texaco stations in your area? A. No, sir.

Q. How about Conoco?

(3858) Other than this one have you ever attempted to open an account in other Conoco stations? A. I just haven't found any new Conoco stations that weren't already designated by some other salesman.

Q. This Caldwell, what does he purchase from you? A. I sold him a little anti-freeze last winter.

Q. Anything else? A. No, sir.

Q. Is he a leased station? A. I understand he owns the property.

Q. Does he handle TBA? A. Yes.

Q. Tires? A. Yes.

Q. What brand of tires? A. I don't know, sir, to tell you the truth, because we are not interested in tires.

Q. How about batteries? A. I believe it is Reliable. I am not sure.

Q. Turning to Wilkie's Texaco Station, have you ever tried to sell him batteries? A. Several times.

Q. What reason, if any, was given for not buying his battery? A. That he had to handle Firestone.

(3859) Q. How about Howard Rush? Have you ever tried to sell him batteries? A. At one time I sold him batteries, yes, sir.

Q. Have you tried again recently? A. Yes, sir, but he said he had to handle Goodrich.

Q. And Russell Tableman. Since he opened have you tried to sell him batteries? A. Yes, sir.

Q. What reason, if any, was given for not selling him? A. That he had to handle Firestone.

* * *

Cross-examination by Mr. Lorenzen:

Q. You testified that this Texas operator. H. D. Rush, is one whom you have known pretty well for ten years? A. Correct.

Q. You call him by his first name? You call him "Howard"? A. Yes, sir.

Q. And you used to sell him quite a few items of TBA? A. I sold him Auto-Lite batteries, Gates fan belts, Gates hose.

Q. And that stopped about February 1954, didn't it? Just about that time? A. I would say that was approximately right.

(3860) Q. Don't you know that in that very month his own brother got to be in charge of the Goodrich supply point here in Dallas? A. That was my understanding; yes, sir.

Q. And after February 1954 he bought from his own brother instead of buying from you? Isn't that right? A. He buys stuff through his own brother now, yes, sir.

Q. That is what he does now? A. Yes, sir.

Q. Let's go to this chap Tableman. Don't you know that he is a former employee of the Firestone Company? A. No, sir, I didn't know that.

Q. You didn't know that? A. No, sir.

Q. Didn't know that he came from Firestone to the Texas Company? A. No, sir, I didn't know that.

Q. There was never any discussion about that with you? A. No, sir.

Q. One of your fellow salesmen is Mr. Akin, is he? A. Yes, sir.

Q. Do you likewise call on those service stations that have mechanics and encourage the tune-up business and things like that? A. Yes, sir.

(3861) Q. That is the type of stations you call on? A. Yes, sir.

Q. That is because a very substantial part of the line of Beard & Stone has to do with mechanical parts—ignition parts, carburetor parts and things like that? A. No, not entirely. A good percentage of our business is mechanical parts.

Q. A good percentage of it is mechanical parts? A. Yes, but we have all this other merchandise to sell, also.

Q. But other things being equal you like to call on somebody where you also have a chance to sell your mechanical parts and things like that? A. Well, naturally, if you are going to call on a service station you call on a prospect to try to sell him something. And if you know that in calling on this service station that you can't sell him other items then you would pick the accounts that have mechanics where you would naturally have a chance for a sale.

Q. Whatever the reason is, that is the kind you call on. Right? A. Right.

Q. You testified that you didn't sell the SS Stations any batteries, didn't you? A. No, sir. I don't sell them any batteries. Safety (3862) Service Stations?

Q. Yes. And you say the line they handle is Continental? A. I believe that is correct.

Q. There are quite a few accounts that you call on to whom you don't always make sales, aren't there? A. Well, yes, sir, sure.

Q. That is part of the game of being a salesman, isn't it? A. Yes.

Q. Sometimes you get the sales and sometimes you don't? A. That is right.

Q. And the people on whom you call give you all kinds of reasons for not buying from you, don't they? A. Oh, yes, we have quite a few.

Q. You get sort of the same excuse as a police judge does, don't you? When you try to explain to him why you speed. A. Just about.

Q. You sell Mr. Wilkie, I think you said, radiator hose? A. Yes, sir, occasionally. Not on every call, of course. When he needs them.

Q. The Gates— A. I don't sell him all of his hose, if that is what you mean.

Q. Gates fan belts and Gates radiator hose are a very popular item among service stations, aren't they? A. Yes, sir.

(3863) Q. There are a great many Texaco stations that handle those Gates fan belts and Gates radiator hose? A. No, most of them handle Firestone and Goodrich.

Q. Let me ask you, do you ever look at the Gasoline Retailer? Do you know what that is? A. I have had occasion to read it, yes.

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(3864) Q. E. L. Stewart, at Beacon and Lindley? A. At one time he was my account. I no longer call on him.

* * *

(3865) Q. And Jack Wertheimer, at 3613 Live Oak? A. I call on Jack.

* * *

Cross examination by Mr. Barton:

Q. You say you call on Howard Rush regularly? A. I did.

Q. Do you now? A. Yes, sir.

Q. How often? A. About every two weeks.

Q. You know of course that he works for his brother who is the Dallas station supply and Goodrich distributor here? A. Yes.

Q. And he has worked for him for sometime, ever since— A. He still has the station.

Q. He has the station but he also works in the tire distributing business, doesn't he? A. He spends most of his time at the station.

Q. You know he spends some time at the tire company? A. Yes, sir.

Q. What kind of accessories does Caldwell's Service Station handle? (3866) A. All types of TBA items. Of course he does a lot of mechanical work, too.

Q. But you don't sell him any of it? A. I don't sell him any TBA items, no, sir.

Q. What reason did Safety Services give you for not buying batteries from you, if any? A. They have handled the line of batteries that they have for years and years and years, and they don't give me any particular reason for staying with it, other than they have just handled it for years and years; they are satisfied, they don't want to change.

* * *

Redirect examination by Mr. Dias:

Q. You mentioned that you used to sell to E. L. Stewart, Mr. Smith. How long ago was that? A. That was quite sometime ago. I would imagine six or seven years ago.

Q. Did he buy any of your batteries, filters and so on? Did you sell to him at that time? A. I sold to him at that time.

Q. And what did he purchase? A. Gates fan belts and radiator hose.

Q. Batteries? A. No batteries; no, sir.

(3867) Q. When did he stop purchasing from you? A. I quit calling on him.

Q. You quit calling on him? A. Yes. And turned it over to one of the other boys.

Q. And Wertheimer? Do you call on him now? A. Yes, sir.

Q. What do you sell him? A. I sell him a little Shaeler Rislone, some fan belts and a few radiator hose, and he is just about two blocks from us. He picks up quite a few items at the store.

Q. Such as? A. I don't know all of the items he picks up. All I know is the orders that I write for him.

Q. Have you ever attempted to sell him any batteries? A. No, sir. He has a hookup on batteries.

Q. With whom? A. Through this tire company. I have forgotten what line of tires he handles now. Oh, it is U. S. He is a U. S. Tire distributor.

Q. Does he own his own station? A. Yes, sir.

Mr. Dias: That is all.

Recross examination by Mr. Lorenzen:

Q. Mr. Stewart has told you that he has this hook-up with (3868) the U. S. Tire Company? A. No. This is Wertheimer.

Q. And likes to buy his batteries through them? A. Well, he buys his batteries through U. S., yes, sir. I think it is mostly on account of price.

Q. Mostly on account of price? A. Yes.

Q. There is some advantage in quantity discounts and matters of that kind, isn't there, in buying your entire TBA line from one source?

Mr. Dias: I object, your Honor; beyond the scope of the direct.

Hearing Examiner Kolb: The objection will be overruled.

A. Of course the fact that Jack is a U. S. distributor, I imagine he gets a better price.

By Mr. Lorenzen:

Q. You don't know that? A. No, sir.

Q. You know in general if you buy— A. It usually works that way; yes, sir. If you are a distributor you get—

Q. And if you buy your entire line from one source, you get some quantity discounts, too? A. That isn't always true; no, sir.

(3869) Q. But there are situations where that is true? A. Yes.

Q. And you have run into that in connection with selling to service stations? A. Well, not so much on service stations; no, sir.

Q. But you have to some extent, haven't you been advised of that by operators? A. Oh, yes.

Q. You have? A. Yes.

Q. Of service stations? A. Yes.

Redirect examination by Mr. Dias:

Q. Can you name the service stations that told you that? A. No, sir, not offhand, that I can recall.

* * *

(3870) JOHN MORGAN HUSSONG was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Dias:

Q. Please state your full name and business address for the record? A. John Morgan Hussong. My business address?

Q. Yes. A. 3909 Live Oak, Beard and Stone Electric Company.

Q. How long have you been with Beard & Stone? A. About 14 years.

Q. In what capacity? A. Well, I came up from delivery boy and I have been on the sales force since 1946.

Q. Sales force since 1946? A. Yes.

Q. Will you tell us what territory you cover? A. We have no set territory, other than in the City of Dallas. Our men work all over the City of Dallas wherever they might pick up customers.

Q. Do you too have designated accounts? A. Yes, sir. If we pick up an account that no one else is calling on, our company will designate it to us by (3871) request.

Q. Do you sell the full Beard & Stone line? A. Yes, sir. I attempt to.

Q. What type customer do you have? A. Well, sir, I have practically all types. Service stations, garages, dealers, fleets, industrial accounts.

Q. Among the service stations do you sell to any Texaco stations? A. Yes, sir, a few.

Q. Can you tell us how many? A. Approximately four or five.

Q. Are there any others that you call on? Are these the four or five you sell? Are there any others that you call on in addition to those four or five? A. Well, I have attempted to call on them but I have just about weeded them out that I didn't get any business out of.

* * *

Q. Which are the specific stations that you call on, Mr. Hussong? Will you name them? (3872) A. Ray Tosch Service Station.

Q. Address? A. I believe it is 8315 Preston Road.

Q. And your next Texaco station? A. C. K. Stowers.

Q. And their location? A. Midway Road and Northwest Highway.

Q. And the next one? A. I believe that is about all I am calling on at the present time in the way of Texaco stations.

Q. What do you sell to Tosch? A. I sell him mostly ignition, some shop supplies, and carburetion.

Q. Have you ever attempted to sell him batteries? A. Yes, sir.

Q. Has he ever bought any from you? A. No, sir, not to my knowledge.

Q. What reason, if any, was given for not buying batteries?

Mr. Lorenzen: Could we have a time on that?

By Mr. Dias:

Q. Go ahead and we will try to get the time. A. He has probably a better deal. He buys them on jobber prices which we don't sell to service stations on jobber price.

Q. What brand battery does he carry? (3873) A. I am not sure but I believe it is Southland or Continental. I can't say for sure.

Q. And C. K. Stowers, what do you sell to him? A. I sell him a few chemicals, equipment occasionally, friction tape, fan belts occasionally.

Q. Have you ever attempted to sell him batteries? A. Yes, sir. I have sold him a few batteries.

Q. Do you know whether or not he owns his own station? A. Yes, sir, I believe he does.

Q. Didn't you say that you called on four? Are there two more? A. Yes, sir. I have called on one, just about quit calling on him, Carroll on the East Side.

Q. Do you have the name? A. The new attendant? No, sir, I don't know the name.

Q. You say he is a new attendant? When did he take over? A. Approximately three months ago.

Q. Do you recall the name of the former operator? A. Yes, sir.

Q. What is his name? A. Mullins.

Q. Did you sell to Mullins? A. Yes, sir.

Q. Tell us what you sold to him? A. I sold him fan belts, some ignition stuff.

(3874) Q. Batteries? A. No, sir, not batteries.

Q. Any filters? A. Yes, sir.

Q. I take it that is a leased station? A. Yes, sir.

Q. What brand tires did Mullins carry, do you recall? A. I believe he just picked up Firestone maybe as he sold them. I don't think he stocked any.

Q. How about batteries? Did he stock batteries? A. Yes, sir.

Q. Do you recall the brand of batteries he stocked? A. I believe it was Continental. I am not sure on that. He stocked a few of them.

Q. Is that the only brand he carried? A. No, sir, I believe he handled some Delco.

Q. Any others? A. That is all that I recall.

Q. When this new operator took over about three months ago did you call on him? A. Yes, I called on him a few times.

Q. How soon after he opened? A. Within a week.

Q. Does he carry any tires or batteries, the new operator? A. Very few, if any. His stock is small.

(3875) Q. Is there another Texaco station that you called on? A. Well, I have called on P. F. "Red" Reynolds.

Q. Are you still calling on him? A. No, sir. He moved out of my reach and I quit calling on him.

Q. How long ago is that? A. Approximately a couple of years, I guess. A year and a half, something like that.

Q. Did he purchase anything from you? A. Yes, sir.

Q. What did he buy? A. Some Gates, some ignition, carburetion.

Q. Did he purchase any batteries? A. No, sir, not from me.

Q. Did he carry TBA? A. Yes, sir.

Q. What brand did he carry? A. I believe he handled Goodrich tires and batteries. I think most of his TBA were Goodrich.

Q. Was his a leased station? A. Yes, sir.

Q. Are there any others that you call on? A. W. E. Drumgold.

Q. Are you still calling on him? A. No, sir.

(3876) Q. When did you discontinue? A. About two years ago.

Q. Were you able to sell him anything? A. Yes, sir.

Q. What did you sell him? A. We sold him a few ignition stuff, chemicals, DuPont chemicals.

Q. Anything else? A. Some soap.
Q. Is he still in business? A. Yes; not at this location.
Q. Is he out of your territory again? A. Yes, sir.
Q. Did he carry TBA? A. Yes, sir.
Q. Do you recall the brand? A. No, sir; I don't.
Q. Did he own his own station? A. No, sir.
Q. Do you recall the brand battery he carried?

Mr. Barton: I object.
Hearing Examiner Kolb: Objection overruled.

A. No, sir.

By Mr. Dias:

Q. Are there any others? (3877) A. I believe that is all.

Q. Do any of these stations that buy your Gates hose and belts and filters advertise your products in their station? A. I don't know whether they advertise them or not. They display them.

* * *

Cross-examination by Mr. Lorenzen:

Q. There is one station I think that you weren't asked about, whether it was leased or owned, and that is Mr. Tosch. He is a leased station, isn't he? A. Yes, sir.

Q. He is the one who carries the Southland batteries? A. Yes, sir.

Q. Mr. Reynolds operated a leased station and you testified that he bought Gates fan belts, among other things, from you, and some batteries, I think? (3878) A. No, sir, no batteries.

Q. You said Gates fan belts? A. Yes.

Q. And hose? A. Yes, sir.

Q. And then you said that he moved. That is why you don't call on him any more? A. Yes, sir.

Q. He moved to a bigger and better Texaco station, didn't he, in another location? A. Probably did. I never have been in his place, in his new place.

Q. Then if I showed you a picture you wouldn't recognize it? A. I don't believe I would.

Q. Have you made any effort to sell him Gates fan belts at his new location? A. No, sir, I have not visited him in his new station.

Q. Do you know whether some other salesman of your company now sells him these Gates fan belts? A. Not that I know of.

Q. So if he got Gates now he buys them from some other source, some competitor of yours? A. I don't know.

Q. There are other jobbers, many of them that handle this (3879) Gates line in Dallas? A. Oh, yes; yes, sir.

* * *

(3880) ELMER W. JOHNSON was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name and business address for the record? A. Elmer W. Johnson, Johnson Automotive, Incorporated, 611 East Jefferson.

Q. How long have you been in the TBA or related business, Mr. Johnson? A. About 25 years.

Q. How long have you been in business as the Johnson Automotive, Inc.? A. Two and a half years.

Q. What is your position with Johnson Automotive, Mr. Johnson? A. I am President of the company and general manager.

Q. What did you do prior to the time you were with Johnson Automotive? A. I was in Fort Worth, with another company in Fort Worth.

Q. What type company? What did it deal in? A. Automobile supplies.

Q. How long had you been with them? A. I believe 23 years with that company.

(3881) Q. Will you describe the business of the Johnson Automotive Company? What type business it is, and what do they sell? A. You mean items that we sell?

Q. Yes. It is automotive supplies. A. Yes.

Q. Do you handle tires? A. No tires.

Q. How about batteries? A. We handle a battery, but I don't sell many batteries?

Q. What battery? A. We handle a battery made in Cleburn, Texas.

Q. Do you handle filters? A. We handle Fram filters.

Q. Belts and hose, what type? A. Thermoid.

Q. Spark plugs? A. AC.

Q. Do you handle chemicals? A. Yes.

Q. What brand? A. I don't believe I could name all of them.

Q. Name a few. A. DuPont for one.

Q. And you handle others? A. Yes.

(3882) Q. What about anti-freeze? Do you carry anti-freeze? A. We do.

Q. What type? A. DuPont Zerex.

Q. What is your sales territory? A. You are talking about the TBA sales area, I guess.

Q. Yes. Apparently there is a difference. What type customers do you sell to? A. We do a split—part of my business is redistribution.

Q. Of what? All these items you have mentioned? A. Yes.

Q. How much of your business is redistribution? A. About half. The area in the other half, regular wholesale, would be, I guess, 15 miles is the furtherest out that we go.

Q. Fifteen mile radius of your place of business, is that correct? A. Yes.

Q. Half is redistribution and the other half is wholesale? A. Yes.

Q. And in those sales at wholesale does that include sales to service stations? A. Yes, sir.

Q. Are there any Texaco service stations in your sales area? (3883) A. Yes, sir.

Q. Can you tell us approximately how many? A. It would just be a guess.

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Q. Do you employ salesmen? A. Five.

Q. Have they ever reported the number of Texas Company stations in their territories? A. No. We don't keep a separate record of Texaco.

Q. How are your salesmen compensated? Salary or commission? A. Commission.

Q. Solely? A. Yes.

Q. Do you sell to any Texaco stations? A. Yes.

Q. Can you tell me how many? A. It wouldn't be accurate because I don't keep an accurate record of them. But I would say 25 all told.

(3884) Q. Can you name any? A. Yes, I could name some of them. However, I don't know the address. Cornett Service Station would be one. I don't know what street he is on.

Q. And the next one? A. It is O. C. Mann. He is on Clarendon. I don't know what address.

Q. Can you name some more? A. There is one in Grand Prairie, Vic Robertson, I believe it is.

Q. Any others? A. I don't believe I could name any more from memory, no.

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Q. Can you tell me what you sell to Cornett? A. Mostly tune up items and garages, like shock absorbers, ignition, universal joints and stuff like that.

Q. Have you ever sold them any batteries? A. No.

Q. Have you ever tried? A. I couldn't answer that question. I don't know whether, (3885) my salesmen tried or not.

Q. How about— A. They are supposed to have.

Q. Is that true with each of these stations? You don't have any first-hand information about whether or not you sell them, or attempt to sell them or anything else? Is that correct? A. Are you talking about batteries?

Q. Yes. A. I don't think that they try to sell them, the batteries that I have, too much, because I really just keep these batteries—I use them in my own equipment a whole lot. Of course, we do sell them over the counter, but we don't really try to sell batteries. We have got them.

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Cross examination by Mr. Lorenzen:

Q. I just want you to define "redistribution" for me. You said half the business was redistribution. A. Yes.

Q. That means you sell it to wagon jobbers and they in turn sell to somebody else? A. Not wagon jobbers. Other jobbers throughout the territory.

Q. Other jobbers? (3886) A. Yes.

Q. You don't know who their customers are? A. No. I wouldn't have any idea.

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LEE BARTON was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name and business address? A. Lee Barton, Johnson Automotive, Incorporated, 611 East Jefferson, Dallas.

Q. How long have you been with Johnson Automotive? A. One year.

Q. Have you been in the TBA business prior to the time of your employment with Johnson? A. I was in the service station business.

Q. Operating or supplying? A. Operating.

(3887) Q. What is your sales territory with the Johnson Automotive? A. North Oak Cliff. I make a few calls in Irving and Grand Prairie, at the dealer level, and I make some out of town calls at the jobber level, the redistribution level.

Q. How many service stations in all do you call on? Do you have any idea? A. Roughly I would say 50.

Q. Do you sell to any Texaco stations? A. Yes, sir.

Q. Can you name them? A. Out of Grand Prairie I sell to Vic Robertson, I sell a few items to the Texaco service station out on South West Third Street there, which is—it is a new operator out there and I am trying to think of his name.

Mr. Dias: Can you help him?

The Witness: It is a man by the name of Fox. I don't know who his partner is. It is Fox and Stiles.

By Mr. Dias:

Q. Are there any others? A. Yes, sir. I sell to Paul Vogel on North Sylvan. 1732 North Sylvan.

I sell to W. R. Cornett, on the corner of Tyler and Davis.

Q. Any others? A. There is one that I did do business with, I haven't done (3888) any business with since the operators changed over there. I believe it is 100 North Industrial. Emory Johnson did have that. I did some business with Mr. Johnson. I haven't done any business with the new operator. He has been in there approximately a month.

Q. Any others? A. And Flippen, 1400 block on North Zangs.

Q. Any others? A. That is all I recall offhand.

Q. Are there others in your territory? A. Yes, sir.

Q. As to Vic Robertson, what do you sell him? A. I sell him a few chemicals, some oil filters, some of his wash and lube rack supplies.

Q. Do you attempt to sell him batteries? A. No, sir. I am ashamed to admit that in front of my boss. He said I was supposed to, but I don't put out as much effort on batteries as I should.

Q. Is that going to be true of all these stations? A. I work on a commission, and I work harder on the things that are easier to sell. The boss knows that.

Q. Is that true of all the stations? A. No, sir. I try to work hard on all the stations.

Q. Have you run into any that you can't sell? A. Yes, sir.

(3889) Q. What kind are they? A. I don't know that you can brand them. There are personalities that enter into the sales picture that some people that I have to admit I can't sell. Maybe I get discouraged and rile too easily.

But any station that is in my territory I work on them until I am convinced in my own mind that either I can or I can't sell him, before I drop him off the list.

Q. How many Texaco stations are in your territory? A. To recall a few of them—it is hard to single them out—there is a station at the corner of Fort Worth Avenue and Hampton Roads, which is a Texaco-operated station now. I used to sell them something when they had a dealer in there. They are a company-operated station now, and we are not getting—once in awhile we will get an emergency item of some kind out of them, but most of the stuff—it is a Texas Company salary operated station, and naturally they buy emergency items from us occasionally.

And there is J. J. Lieto, on Fort Worth Avenue.

Q. What about that one? A. That is a personal proposition. I don't like Mr. Lieto and he doesn't like me.

Q. Any others? A. There are two more in Grand Prairie. I don't recall the (3890) name of the operators right now that I have called on in times gone by, and haven't been able to sell them. I have discontinued calling on them.

Q. You say you have been able to sell? A. I haven't been able to sell. Those that I haven't been able to sell after what I considered the necessary effort, and when I am not able to sell them I discontinued calling on them. There are two in Grand Prairie that way.

Q. Is that Vic Robertson? A. No, I still call on Vic.

Q. Do you attribute the failure to sell to a clash of personalities again? A. No, sir. Out in Grand Prairie there is another proposition. They have, besides their company sources of supply on tires and batteries, things that the company handles their credits on. There is a proposition out there with a couple of local jobbers out at Grand Prairie. It might be in some instances to those

boys' advantage to do business with the local jobber in Grand Prairie rather than do business with a jobber in Dallas.

I know that to be the case of one of them, because one of the local jobbers out there is doing business with him so he is doing business with the local jobber rather than us.

Q. You call on these stations regularly? (3891) A. Yes, sir.

Q. Does Vic Robertson carry tires and batteries? A. Yes, sir.

Q. What brand tires. A. Goodrich.

Q. And batteries? A. Goodrich.

Q. What about accessories? A. He carries some Goodrich accessories. I sell him some accessories.

Q. Does he own the station? A. No, sir. He has a leased station.

Q. How about Fox and Stiles, at South West Third? A. I understand that is a leased station, too.

Q. You visit there all the time, do you? A. Yes.

Q. Do they carry tires? A. Yes, they carry a few tires.

Q. What brand? A. Firestone.

Q. Batteries? Do they stock batteries? A. Very few batteries they stock. What batteries I have seen there are Firestone.

Q. How about accessories? A. They carry Firestone filters, fan belts.

(3892) Q. Do they lease the property? Is that a leased station? A. I understand it is a Texas Company-owned station. Leased.

Q. That is a leased station? A. Yes.

Q. How about Paul Vogel? A. Yes, sir. I sell Paul, I would say, a large percentage of his repair items, ignition parts, brake parts, a few mufflers, tail pipes. He does quite a bit of repair work in connection with the service station business.

Q. Does he carry tires? A. Yes, sir. He carries a few tires.

Q. What brand? A. Goodrich.

Q. How about batteries? A. I think he handles both Goodrich and Delco.

Q. And accessories? Is it a varied line? A. Varied line, yes, sir.

Q. Does he own that property? A. No, sir, I don't think so.

Q. It is a leased station? A. Yes, sir. The property belongs to Dr. Harris, but I understand it is a Texaco lease.

Q. How about W. R. Cornett? A. Yes, sir.

Q. Do you sell to him? (3893) A. Yes, sir.

Q. What do you sell to him? A. Repair items, I would say, more than anything else. A few chemicals. Mufflers, tail pipes, ignition parts, grease seals.

Q. Does he carry tires? A. Yes, sir.

Q. What brand? A. Firestone.

Q. Batteries? A. Firestone.

Q. Accessories? A. He carries quite a few Firestone accessories, and some other brands; light bulbs and things like that. Occasionally different brands of those displayed.

Q. Is he a leased station, too? A. Yes, sir.

Q. How about Emory Johnson? A. Emory Johnson is not there any more. I don't know the name of the new operator over there.

Q. Is that the company-owned store? A. No. That is a leased station. It is a small station and it changed hands two or three times in the last year.

Q. There was one that you mentioned that was taken over by the Texas Company itself. (3894) A. That is a company station at the corner of Fort Worth Avenue and Hampton Road.

Q. That is none of these I have mentioned so far? A. No, sir.

Q. You say Emory Johnson is out of there about a month? A. Yes.

Q. What did you sell to him? A. I sold him some supplies, a few radiator hoses, an occasional filter or two.

Q. Did he carry tires? A. I don't believe he has a stock of tires.

Q. How about batteries? A. A very small stock, if any.

Q. And do you recall the brand? A. I don't.

Q. Is his a leased station? A. Yes, sir.

Q. What about Flippen? A. Flippen is a new operator at that station. He has been there some three months I guess. Charles W. Moore formerly operated that station.

Q. How long had Moore been there? A. Several years. I don't know from my own knowledge.

Q. Had you been dealing with Moore? A. Yes, sir.

(3895) Q. What did he buy? A. Supplies more than anything else. Wash rack supplies.

Q. And did he carry tires? A. A few.

Q. Do you recall what brand? A. Firestone.

Q. And batteries? A. Firestone.

Q. Accessories? A. He carried very few accessories. Most of what he carried were Firestone.

Q. What type station was that? A leased station? A. Yes. It is a small station.

Q. How about the current operator, Flippen. Does he carry tires? A. He carries a few tires, yes sir.

Q. What brand? A. Firestone.

Q. How about batteries? A. Yes, sir, Firestone.

Q. Have you sold him anything to date? A. I sell him a few chemicals, repair items.

Q. Is there any reason why you don't try to push your battery?

Mr. Lorenzen: I think that was explained by the (3896) officer of the company.

A. I can give you my reason.

By Mr. Dias:

Q. Yes? A. It is that nationally-advertised batteries, most of the service station operators had rather carry a nationally-advertised battery to take advantage of the national advertising on it. That is strictly an opinion.

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Q. Are there any Conoco stations in your area? A. Yes, sir, there are a few Conoco stations in my area.

Q. Do you sell to them? A. I don't believe I sell regularly to but one Conoco station.

Q. Have you tried to sell to the others? A. Yes, sir.

Q. Is that a clash of personality there again? A. Maybe because I am not a good enough salesman. I have called on them.

Q. What reason, if any, was given for their not buying? A. I can't recall specific reasons.

Q. You sell to one? A. Yes, sir.

Q. What does he buy? (3897) A. Supplies, repair items.

Q. What is his name? A. Samford—S-a-m-f-o-r-d.

(3898) Q. Where is he located? A. 2,000 Fort Worth Avenue.

Q. What do you sell to him? A. Shock absorbers, mufflers and tail pipes, brake parts, occasionally ignition parts, some chemicals.

Q. Does he carry tires? A. Yes, sir.

Q. What brand? A. Goodrich.

Q. Batteries? A. Goodrich.

Q. Accessories? A. A varied line.

Q. Is he a leased station? A. I believe he told me that so far as his petroleum products were concerned he was a commission agent for Continental Oil Company.

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(3899) *Cross-examination by Mr. Lorenzen:*

Q. You testified in each of these cases, when you were asked what kind of accessories these dealers stocked, you said they had varied kinds of accessories in many of the cases? A. Yes, sir.

Q. How did you know that? By observation? A. Yes, sir.

Q. You saw those accessories in the station? A. Yes, sir.

Q. Of course you don't remember every item that you sold to each of these stations? A. Certainly not.

Q. You may have sold some of the others some spark plugs or chemicals that you don't exactly remember now? A. No, sir.

Q. That is a possibility? A. Sure, it is possible. It is not a possibility, it is a certainty. You can't remember everything.

(3900) Q. Did you sell them other things that you haven't told us about this morning? A. It is entirely possible, yes.

* * *

Q. You see a number of other salesmen of other companies traveling around the same service stations you call on from time to time? A. Yes, sir.

Q. How many are there in this area? Around 30 or 40 competing jobbers calling on service stations? A. It would be hard to say. It is a highly competitive business.

Q. There are a lot of them? A. Yes.

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John W. Green, for Commission—Direct

(3901) JOHN W. GREEN was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name for the record? A. John W. Green.

Q. And your position with the Texaco Company? A. Regional Manager of the Southern Region, San Jocinta Street, Houston, Texas.

Q. Will you slowly and clearly tell us what this setup is? Before and after, starting with before. A. You are talking about our organizational setup?

Q. Yes. A. For approximately twenty years we have operated under a system of territories and districts in which our field organization had state managers and zone managers in the field, in each of the districts. The Southern territory, (3902) for example, comprises four districts which are now termed as division under the new organizational setup.

Q. Four districts? A. Four districts. Actually, it has been changed to divisions, Mr. Dias, under the new setup.

Q. It now has four divisions? A. One headquartered in Dallas, Texas; one in Houston, Teaxs; one in New Orleans, Louisiana; one in Atlanta, Georgia.

And the territory covered by those four divisions is eleven states.

* * *

(3905) Q. And the chief clerk, what are his duties? A. He is chief clerk, compiles records and keeps information on sales and operations and sees that policy letters are handled through our office.

Q. Would that include TBA information? A. That is correct.

Q. What would his duties be in connection with TBA? A. None other than to see that the information, reporting information from the divisions, is properly reported to New York and that copies are received in our office just for our general information.

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(3907) Q. You are still employed there? A. I hope so. My duties as regional manager, I have indirect supervision over all sales and operating matters that come within the southern region. That is indirect supervision.

Q. That includes Atlanta? A. Yes.

(3908) Q. Atlanta and Dallas? A. That is correct. And I have direct supervision over personnel, salaries, promotions. It is my duty to see that all company policies, company practices, and our methods and procedures of doing business are carried out in the field; that they are first passed on to the field and then carried out in the field.

I work in more or less of a liaison position between New York—I am actually carried on the New York staff from a title standpoint, but my work is liaison, one between the New York management and the field, to see that these policies and instructions and the methods are handled properly in the field, in the divisions and in the districts, and in turn make certain recommendations to our New York management from the field concerning recommendations for changes in our policies and programs that would improve our business in the field.

Q. So that you are not responsible to any of these new people here in the field? A. No, sir.

Q. You are just responsible directly to New York? A. That is correct.

Q. And these district representatives, merchandising and dealer sales, are they the only two that are connected

or have any concern with TBA? (3909) A. That is correct. Wait a minute. District representatives? Wholesale, too.

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(3910) Q. Do I have all the personnel that are interested or concerned with TBA at this level right here in Dallas? A. Yes, sir.

Q. And it will be true also—it will not be true in Atlanta? A. It will not be true in Atlanta.

Q. In Atlanta—to save you coming on again—who will be the personnel in charge of TBA there? A. It will be salesmen, zone managers, state managers, and division managers. Of course, in each of our divisions, not in the line organization but in a staff position, we have our representative of TBA sales who devotes his entire time to the promotion of TBA within the division.

Q. I have met him. A. Mr. Roberts here in Dallas, and Mr. Ferguson in the Atlanta division.

Q. Here in Dallas we will have merchandising representatives, (3911) dealer sales representatives, and wholesale sales—these are all district representatives? A. That's right.

Q. That is the entire crew involved with TBA primarily? A. That is correct.

Q. In Atlanta where the old system is in effect it will be the salesmen, zone managers, state managers, and division managers? A. That is correct.

Q. You may or may not know anything about this. The other day I believe Mr. Burgess mentioned—he is the zone manager. A. That is correct.

Q. He mentioned that salesmen receive bonuses on lubricating— A. Sales of lubricating oils and greases. Merchandising salesmen receive a bonus on gasoline sales.

Q. And the zone manager receives— A. On lubricating oils and greases only.

Q. Then it was his assumption that the man just above him also received a bonus. A. No, sir. State managers do not.

Q. The bonuses stop at the zone manager level? A. That is correct. Under the new setup the bonuses stop at the salesmen's level.

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(3914) Q. Under this new setup do the divisions report to the region and the region to— A. No, sir. Regions report direct to New York. They merely furnish us a copy for our files.

Q. So you have eliminated that step? A. That is correct. Not only on TBA but all other matters of similar reports and records. With the exception of personnel.

Q. Has that increased or decreased the number of personnel that deal primarily with TBA? In the territorial office there used to be— A. Assistant territorial manager that handled TBA.

Q. And you had a clerk or staff of assistants? A. That is correct.

Q. Do you still have that? A. I beg your pardon?

Q. Does each division have that now? A. Yes. Where it has decreased the personnel from the territorial standpoint, the divisions have been increased.

Q. So that each division now has a man in charge of TBA? A. That is correct.

Q. And they have a clerk? A. They have a representative of TBA sales in each division, and they have a TBA clerk in each division. And you have the (3915) district representative of merchandising and of dealer sales and of wholesale sales that are interested in TBA sales out in the field.

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Cross examination by Mr. Lorenzen:

Q. Mr. Green, you testified that part of your duties were passing along to the field the policies as made by the home office in New York. A. That is correct, sir.

Q. Does that include the policies with respect to TBA? A. That's right, sir.

(3916) Q. Can you tell us what those policies were which you passed along to the field? A. Yes, sir. It has been our policy ever since I have been connected with the Texas Company that our dealers are independent merchants. They are free businessmen and have a right to make a choice of any type products that they wish to sell and sponsor, generally speaking.

Q. That is part of the policy that you transmitted on down to the field? A. Yes, sir. It is not only transmitted originally, but it is brought up to date every year and re-transmitted again, sir.

Q. Is that policy kept a secret from people outside of the Texas Company? A. No, sir.

Q. Have there been any occasions when that policy has been passed on to others outside of the Company? A. Yes, sir. Occasionally dealer organizations in the various communities, and possibly other people—we have had several calls and maybe a letter or two asking us just what our policy was in respect to our dealers, and we have always been very happy to give them that information both verbally and have written them to that effect and furnished them a copy of our printed form of our statement of policy.

Q. That is the policy that a dealer may select what TBA he (3917) wishes? A. That is correct.

Q. Have you had any complaints that that policy has not in fact been carried out in the field from any organization? Let's take specifically this Dallas area now, because that is where the testimony has been. A. None that has ever come to my attention, sir.

Q. Have you specifically had any complaint from the Continental Battery Company? A. No, sir.

Q. Would that type complaint get to your office in the normal course of events? A. Oh, yes. If it involved a public relations matter, it would certainly reach my office. If the complaint were made in Dallas it would come to the attention of the division manager who would in turn forward it to me.

Q. You said that among other duties was one relating to the promotion of salesmen, I guess, and all other personnel. A. That is all personnel within the region, yes sir. Salesmen on through division managers.

Q. In connection specifically with the salesmen, will you state on what factors you base your action as to the promotion of a salesman? A. Let me explain it on this basis. In the event that the Dallas division wished to compensate a salesman with an (3918) increase in salary, or maybe they wanted to promote him, we have certain forms that they would make up within the Dallas division. That form would be attached to the man's personnel record folder, which we keep on him from his date of employment, and on these forms, on the back of them, it would list his progress on petroleum sales, the current year and the previous year, both broken down by gasoline and oils and greases, and his general overall comments as to why he has recommended the raise for the salesman.

Q. In that connection, is any part of your action based upon the TBA sales of the customers who are within that particular salesman's territory? A. No, sir. I would have no way of knowing what his actual sales were. The only TBA figures I get are the composite figures from the division. It is not broken down by individual employees or salesmen. The information is not shown on the recommendation for raises or increases in salary.

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K. R. Roberts, for Commission—Direct

K. R. ROBERTS was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

(3919) *Direct examination by Mr. Dias:*

Q. Will you state your full name and position with the Texas Company? A. K. R. Roberts. I am representative of TBA promotion for the Dallas division.

Q. You have nothing to do with the Atlanta division? A. I have absolutely nothing to do with the Atlanta division.

Q. How long have you been with the company? A. Sixteen years.

Q. Do you have these statistics that we have asked for, the number of Texaco outlets and the sales area? A. Would define the sales area there that you—

Q. The City of Dallas. A. The city limits of Dallas. I believe in the City limits of Dallas we have 142. These statistics were around the end of 1956, therefore I wouldn't want to be quoted right to the exact figure.

Q. But the office here certainly knows how many Texaco stations there are in the City, does it not? A. Yes, sir. But we are liable to take on a new station—

Q. Since we started this morning? A. Yes, sir. In fact, we have opened several. We, on the other hand could have lost some, too, since that time.

Q. Of that 142, how many are leased stations? (3920) A. If you would take Dallas County on that, I think I could give you a little better or more definite figure.

Q. You tell us what Dallas entails. Is that the City of Dallas and suburbs? A. The City of Dallas, County, and only the suburbs. Dallas itself occupies a pretty large percentage of Dallas County, and I think Grand Prairie, Irving, and Garland would be the only towns of any conse-

quence that would be in Dallas County besides the City of Dallas itself.

Another thing, when you talk of Dallas we talk of greater Dallas, because there is Highland Park and University Park located right in the middle of Dallas, which are really not incorporated in the City of Dallas. They have their own government, but they are right in the middle of Dallas.

Q. Would you include those in the figures—did you include those in the figures you gave us? A. In Dallas proper, yes, sir.

Q. That 142 would take care of the people in that area? The stations in that area? A. Yes, sir.

Q. Now, as to "C" or leased stations, how many of those 142— A. I am going to have to expand that a little bit if you want the exact number of "C" stations and go to Dallas County, because Dallas County is what I have that for. That is (3921) certainly in all respects within the Dallas marketing area, because these towns, none of them, are over about 15 miles from downtown Dallas.

Q. Do I get the bigger bite by asking for Dallas County? A. Yes, sir, you will get the bigger bite.

Q. May we have that? A. Of course, testimony so far has been varied on that.

Q. What about the 142. Is that Dallas County? A. That is greater Dallas City limits. Dallas County we have approximately 190 stations.

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(3924) So that the number of service stations would be 119 plus 66. A. Correct.

Q. And the number of service stations in 1956 would be 124 plus 66. A. Yes.

Mr. Dias: I would like to have marked next (3925) Commission Exhibit 163-A and B for identification.

(The document referred to was marked Commission's Exhibit 163-A and B for identification.)

By Mr. Dias:

Q. Will you refer to your copy, Mr. Roberts. Total number of outlets nominated to and approved by Firestone in 1955 was 120 to Firestone, and 71 to Goodrich. That makes a total of 191. If I understand this other document, there are only 185 service stations. Is that correct? A. That is correct. That is easily explained, Mr. Dias.

We have some service stations that handle some Firestone and some Goodrich merchandise. And we also have a number of service stations that are so small, and probably a grocery store type of account, that there wouldn't be any TBA potential.

Q. Does this document, 163-A, show the number of that type account? In other words, those stations that are so small that they would not be a potential TBA supply point? A. No, sir.

Q. Do you know how many there are of those? A. No, sir, I don't, off hand. I really don't.

Q. Are they included in this figure on 162 then? A. Yes, sir. They would be included on that.

Q. In other words, in 1955, there were 185 service stations in all? That number would include this type station that (3926) would not handle TBA, is that right? A. Yes, sir. The few of those that wouldn't handle TBA would be included.

Q. It would also include those few stations that handle both Firestone and Goodrich? A. This exhibit, Commission

Exhibit 162, includes all of the service stations in Dallas County.

Q. I don't distrust your figures. I just want to know how to read this. A. I think 4-A will probably help you.

Q. Do you have another document? A. No, sir.

Q. Did you say 4-A? A. Exhibit 163, Section 4-A. I am just assuming what you are probably confused on.

Q. 4-A indicates those stations that—forgetting the rest of it—buy both the Goodrich and Firestone lines, is that correct? A. And competing TBA.

Q. Just ignore that temporarily so that we get this picture. Thirty-four, under 1955, and the other under 1956. Taking 1955, would they be included in this total figure of 120 and 71? A. Would you repeat that?

Q. The number buying Firestone in 1955 were 120. The number (3927) buying Goodrich were 71, or nominated to and approved by. That is a total of 191. This 34 figure down here in 4-A, would you subtract that 34 from the 191? A. No, sir. You have two different exhibits here. Your Exhibit No. 162 shows you the total number of Texaco service stations. It has absolutely nothing to do with TBA except if they did handle TBA what classification would we put them under under C, D, B, and E.

In your second exhibit, Commission Exhibit 163, it gives you a breakdown more or less of the buying habits of these particular stations, not necessarily buying habits because it is possible for a station to be on this list over here—

Q. In two or three spots? A. No, sir.

Q. In other words, he could be under Firestone listing and he could be under the Goodrich listing and under the combination? A. No, sir. If you will read that real well, you will see that there is not any duplication of dealers anywhere in this.

Hearing Examiner Kolb: The 34 is added to the 191? Is that right?

The Witness: No, sir.

(3928) Mr. Lorenzen: Do you mind if I try to clear this up for you?

Mr. Dias: Not at all.

Mr. Lorenzen: Incidentally, I may say we didn't choose this way of setting it up. It was in response to your letter. This is exactly—

Mr. Dias: This?

Mr. Lorenzen: Yes.

Mr. Dias: It couldn't be. I couldn't even begin to ask for it.

Mr. Lorenzen: You can tell in part, can't you, Mr. Roberts, the duplication by looking at 4-A? You find there, for instance, in 1956, that you have 30 stations who buy from both Goodrich and Firestone designated supply points in addition to other competing goods. Is that right, thirty of those?

The Witness: That is correct.

Mr. Lorenzen: That means that those are nominated to both Firestone and Goodrich, so that you have them included in both the 146 figure of outlets nominated to Firestone in 1956, and in the 67 figure of those nominated to Goodrich that year?

The Witness: Correct. I probably made an error in answering the Examiner's question when he said 191. I was looking at this figure over here (indicating). So (3929) what he asked was wrong in one sense but I would have given him a better answer had I looked at this. Thirty-four is not in addition to 191, but 34 is included in the 191.

By Mr. Dias:

Q. This is what helps confuse me. The 1955 figure on Exhibit 162, the total number of service station accounts is 185. As I understand it, that includes also those that don't even handle TBA because they are too small? A. That is right.

Q. It seems to me that that figure should be larger than any combination of figures that you can come up with over here? A. No, sir.

Q. That is not so? A. Because there are a number of these stations in there that handle both. Therefore, when you add—you would use them twice.

Mr. Lorenzen: As we just brought out, in 1956 you have a duplication of 30 stations, which are on both lists and of 34 stations in 1955.

Hearing Examiner Kolb: That will reduce Goodrich to 37 and Firestone to 116?

By Mr. Dias:

Q. Could you supply a figure showing the number of outlets that you have that are not nominated because they are too (3930) small to handle TBA? Do you have any idea of that? A. We would have to research that. I would say in Dallas County they are relatively few. There are a few of the Safety Service stations that are not nominated to them although solicitation of that account, promotion of those accounts, TBA, is carried on.

Q. You mentioned Safety Service stations. Does this list include the 7 or 10 in the branch? A. Yes, sir.

Q. Is each one listed as a separate station? A. Yes, sir.

Q. How many are there? Seven or ten? A. I think there is about 10 of those now. That is a guess.

Q. Are they "D" accounts or "C" accounts? A. "D" accounts. Some of those Safety Service stations are in these figures over here. Some of them—you see, here is the thing that may probably confuse you slightly. A service station would be on this thing if he buys one or more dollars TBA per year.

Q. I understand that. Under Goodrich it shows 71 in 1955, nominated to and approved by Goodrich. Does 2-A indicate that of that 71 only 18 purchased? Is that correct? From Goodrich? A. No, sir. That means that only 22—you are using 1955?

(3931) Q. Yes. A. Only eight of them bought B. F. Goodrich and non-sponsored merchandise. An additional 34 of them bought Firestone and Goodrich and non-sponsored merchandise.

Q. What does this mean, in 2-A:

"Buying competing items of TBA from any supplier not on either B. F. G. or Firestone list of suppliers." Are you referring to those designated supply points of those two rubber companies? Or are you referring to independent suppliers? A. "The number buying B. F. G. TBA from designated Goodrich supplier and also buying competing items of TBA from any supplier not on either B. F. G. or Firestone list of suppliers." Here is exactly what that means. That means that 18 are buying B. F. Goodrich merchandise and, in addition, are buying merchandise from one of these 65 to 75 TBA supply houses or wagon jobbers located in Dallas County. It does not include—we have broken that down and given you in 2-B the figures because our B. F. Goodrich supply source here in Dallas also handles non-sponsored brands of merchandise, such as Delco batteries and miscellaneous accessory items.

Q. Is there only one B. F. Goodrich designated supply source in town? A. Yes, sir.

Q. Are there other B. F. Goodrich supply points? This will help— (3932) A. There would only be in an emergency basis only, or what the B. F. Goodrich Company terms emergency basis only, because we don't term it that. A dealer is certainly free to buy any place that he chooses to buy from. But for simplicity of it, and for the best of service, they set up a designated supply source.

Q. That is for accounting purposes, too, isn't it? A. Not necessarily. Exactly why they set it up I don't know. I don't work for B. F. Goodrich. But one of our dealers could go into one of their stores, which they have two or three of in the Dallas area, and could buy that merchandise.

Q. Read 2-B to yourself and see if I can get that cleared up. A. I have it clear.

Q. That indicates to me that there are Goodrich and Firestone. Let's refer to Firestone. That there are Firestone supply points in town that are not designated supply points and that when purchases of Texaco accounts are made from there Texaco gets no commission, is that right or wrong? A. No, sir, that is not what this particular one refers to. What this refers to—and there is one station in this class because he buys his entire TBA from B. F. Goodrich supply source, and included in that is nonsponsored brands of TBA which this supply source handles, besides the (3933) B. F. Goodrich TBA. Therefore in this one instance he buys nothing in the TBA line from anyone other than the designated B. F. Goodrich supply source, although a good bit of that merchandise is nonsponsored merchandise and the Texas Company receives no commissions on it.

Q. You have the alternative in there, or Firestone list of suppliers? A. That was just taking it a little further so there would be no confusion in it, where there might be Firestone.

Q. In 3-A I think it makes it a little clearer. I think it points out the confusion which was in my mind on this: "Number buying Firestone TBA from designated Firestone supplier, and also buying competing items of TBA from any supplier not on either Goodrich or Firestone list of suppliers."

Let me point out what it is that is bothering me. Is there more than one Firestone distributor in town? Do you know? A. Yes, sir. There are quite a few Firestone distributors. The Firestone Tire & Rubber Company has what they call a master supply point set-up at one of their stores here that also does quite a bit of wholesaling not only to Texaco service stations but to any service stations.

Q. Is that place that you talk about the designated Firestone supply point for your Texaco stations, or is there (3934) more than one? A. It is designated by Firestone; yes, sir, as their supply source, and I believe that right in Dallas it is the only one.

Q. Then— A. Their other stores are sometimes used as emergency supply sources, and incidentally one or two of them regularly service one or two Texaco dealers. But in those instances they are set up as a supply source, even though I would say it is an auxiliary supply source instead of an emergency, in my terminology.

Q. Is there any Firestone supply point that is not designated as you described and not designated by Firestone, where if a Texaco dealer were to make purchases of Firestone products there, there would be no commission payable on that purchase? Is that a situation? A. I couldn't answer the question on whether there is or whether there could be. It is entirely possible that sometimes a dealer could go into one of their stores and make a cash purchase on a thing and no one would ever know about it.

Q. In 4-B, do those figures, 2 and 1, for the year 1955, indicate that there are that number of Texaco stations buying Goodrich or Firestone TBA from a designated supply point of either of those, and of course all the other (3935) competing items, and yet Texas got no commission? Is that what that indicates? A. Yes, sir. The explanation for that is this: It would include in the year—if you will notice in 4-B we have two in 1955—if you will notice in 1956, under 2-B, we have 1. These two will total out, 2 and nothing is two, and one and one is two.

Here is the answer to that. In 1955 one of the men that appear there also bought some Firestone merchandise. In 1956 he didn't buy any Firestone merchandise. These two dealers are brothers. They are part owners of the Dallas service station supply, which is B. F. Goodrich's designated supply source for the Dallas metropolitan area.

Q. Is that Rush? A. That is the Rush brothers. I think there is probably some other financial interest in this company but they are principally the owner. They buy fairly well exclusively from their own organization. In other words, if any one of them bought anything from a wagon jobber or TBA supply store he would have it billed to Dallas Service Station Supply and then bill his own station from Dallas Service Station Supply to the station.

That basically is these two accounts that are listed in there. I think that statement on it probably will clear up that confusion that I am sure existed in your mind.

(3936) Q. You thought there was only one designated Firestone supply point. Is that true? You are quite sure of that? A. No, sir, I didn't say that.

Q. I thought you said there was this master warehouse. A. Principally there is this master warehouse. What they would like—and I am speaking of Firestone—they would like to have their total service station business come

through that supply source, which is fully set up to take care of service station business, that is, by delivery trucks and by salesmen that call on service station business.

Q. What records was this 163 made from, Mr. Roberts? A. 163 was made from several. I would like to point this out, as you bring that up. There was certainly no attempt made here to not give you the 1952, 1953, and 1954 figures. I would like to explain this because I think it is very essential to it.

I was assigned to this job in November 1954. I got on the job in the latter part of November, and two days after I came into the division office our TBA clerk went to the hospital and has never returned to service. In fact, it is my information now that he is on a total disability or going to take early retirement. That I don't know for sure. But there is no continuity on record keeping on anyone going out and anyone coming in on this. I am quite sure he did a good job of keeping the records but he did probably too (3937) much of the records in his own mind, probably. I think in most divisions you will probably be able to get that information maybe for 1954 and possibly, in some cases as far back as 1953.

Q. I am familiar with some of the forms, S-40, S-79, and so on. Is there some form of that type that your office gets this information on, and which is compiled on that type? A. Yes, sir.

Q. Can you tell us what those forms are? A. No. 1 of this was taken from the S-40 cards. It was a visual count of the S-40 cards maintained by the TBA clerk.

Q. And 2-A? A. I think I can go right on through and give you the whole business.

Q. Please do. A. The other was taken from information given to me by our salesman in this area—not all of it; I will have to take that back—that is taken partly from the S-40 cards and from the S-79.

Q. And between those two you are able to compile those figures? A. Yes. Plus some of our salesmen actually contacting the dealers on getting some of the information on competitive or non-sponsored sources.

(3938) I explained all the rest of it outside of No. 1 in that one statement.

Q. All the rest of these were taken from S-40s, S-79s, and salesmen's information? A. Yes, sir.

Q. 2-A through 6. A. Yes, sir.

Q. Did you find out through the same sources how much unsponsored TBA was purchased by the Texaco outlets? A. No, sir. Do you mean dollar volume?

Q. Yes. A. No, sir.

Q. Do you have records which show the amount of non-sponsored TBA purchased by Texaco outlets? A. No, sir.

Q. Then how was this information obtained that the stations were buying other items of TBA? A. By visual observation of the salesman and interrogation of the dealer, as to whether he bought this merchandise. But no attempt was made to get the amounts of merchandise. We don't think in the first place that it is any of our business, and in the second place all dealers being independent, Texas dealers are even more independent than dealers you will find in other parts of the country, I believe.

Q. Do your records also show the amount of purchases by these (3939) Goodrich stations of sponsored products? Goodrich and Firestone? The volume of purchases? A. Yes, sir.

Q. Is that obtainable from the S-40 and S-79 forms? A. Yes, sir, it is recorded. Not only S-40 any more. S-40 cards in prior years—not in prior years but in times gone by, an S-40 card had the purchases on it. When we switched over to IBM, the only thing the S-40 card does is a sort of a header card. All it has now is information on it, not any dollars and cents figures of any description on it.

Q. But you do have a record of the amount of purchases by each of the stations in this area, do you not? A. Yes, sir.

Q. Would that be much trouble to get? A. Yes, it would.

Q. Would it take too long to compile the information? Doesn't this office, like the Omaha office, get a monthly statement from the division office? A. Yes, sir.

Q. And in one year's time there would be just 12 such statements and that gives you the information as to purchases, does it not? A. Yes, sir. That would be for the entire Dallas division, the Dallas area. It is of course broken down on that. But we are talking about one thing with the Dallas city limits, (3940) we are talking about another with Dallas County. We have had zones 1 and 2 which were in Dallas but also include some territory outside of Dallas maybe as far as 60 and 70 miles away which would be intermingled and it would be a tremendous job to pull out and pin down to any of these figures that you have here on this number of dealers because they are all intermingled by zones and not by just Dallas itself or Dallas County.

Q. When salesmen got the information on other TBA items, didn't they get similar information on their purchases of Firestone and Goodrich products? A. No, sir.

Q. It was the salesmen who got the information from which this was compiled, to the effect that these stations also carried other TBA items? A. Yes, sir, and of course headquartering in Dallas I have had occasion to see a number of Texaco stations. All of this was on my own, and to be doubly sure that the information that I already thought was 100 percent correct was verified by someone other than myself.

Q. In Chicago or Omaha there was quite a survey made. Is that what was done here? A. I wouldn't call it a survey in the sense of a survey. There again you have a different —we run into a definition of exactly what a survey is.

(3941) Q. Did they fill out questionnaires, each of these stations or each of the salesmen? A. The dealers absolutely did not fill out any kind of a questionnaire. We asked the salesmen to supply us with certain information, and the salesmen did that, sometimes in one form and sometimes in another.

Q. In other words, you had no formal questionnaire made out filled in by the salesman? A. Yes, sir. We have had two such things as that on different phases of it.

Q. When was that? A. Some of the information is not directly related to this.

Q. When was that survey made? A. October. December.

Q. October and December. A. You are calling it "survey."

Q. What do you call it? A. I would say a sort of compilation of information.

Q. Compilation of research. When was it? One was in December, did you say? A. Yes, sir.

Q. When was the other one? A. October.

Q. Do you have those available? The results of that survey?

Mr. Lorenzen: I think we have them.

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(3943) Q. What are your duties—your other duties in connection with TBA? A. My duties on TBA, I think my job title is very descriptive. I am the representative of TBA promotion. It has become commonly known as the TBA representative, even to the point of some of the representatives TBA promotion calling themselves TBA representatives.

Q. When you give me this, it is as of now and as of January? Your duties haven't changed any in the switch-

over? A. No, sir. The title is and has been "Representative, TBA Promotion." The exact title. Most of us refer to ourselves as TBA representatives because we are so referred to by the average employee of the company.

My job is a very complex one in a lot of ways. It takes quite a while to describe it.

(3944) Q. Before you go into it, is it similar to Mr. Underhill's? A. It is exactly the same as Mr. Underhill's.

Q. You are in the same category as he? A. I am in exactly the same position in the Dallas Division that he is in the Denver Division.

Q. We won't go into it, because we have a description of that office. If that is it there is no point in going into it.

What areas do you cover from here? A. I cover the Dallas Division, which is comprised of the States of Oklahoma, New Mexico, and the north two fifths of Texas. Mr. Green says about a third, and he is probably just about right. It is around a third or two fifths, from about the 32nd parallel, north.

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Cross examination by Mr. Lorenzen:

Q. You said that you are not in charge of salesmen, Mr. Roberts, but you do have some contact with the new salesmen who are employed by the company, don't you? A. Yes. I have contact with of course all salesmen in the Dallas Division. In addition to that the new salesmen, one of my responsibilities, every new salesman that we give our new training to—and that is every salesman (3945) now—about a six or eight-month training course on it—he rides with me, works with me for one week of his training program, and one of my responsibilities during that period of time is to thoroughly explain the Texas Company's policy as regards TBA, and to see to it that he understands his re-

sponsibilities in regard to that program, and that he thoroughly understands that program so that he will obey the instructions of the Texas Company in that regard.

Q. To your knowledge, has this policy which you have explained been embodied in letters, circulars, letters or directives of some kind which are sent down to you from the division office? A. Time after time.

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(3946) Q. Mr. Roberts, I show you a document which has been marked Exhibit 26-A to E and ask you if that is one of the documents stating the Texas Company's policy on TBA which came to your attention as an employee of the Texas Company? A. Yes, it is. • • •

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By Mr. Lorenzen:

Q. I call your attention to the letter of June 1 which (3947) has been marked for identification as Respondents' Exhibit 26-D and 26-E and ask you whether you are acquainted with the author of that letter, Mr. Hochuli. A. Yes, sir, I am.

Q. At that time what was his position with the Texas Company? A. I believe that he was general sales manager. It may have been that he was vice president in charge of sales at that time.

Q. From the New York office? A. He was from the New York office, and a mighty big wheel.

Q. At about the time of that letter did he have occasion to discuss with you the company's TBA policy? A. He did with me and a number of other employees. Practically the entire Oklahoma organization was in Tulsa for one of our annual or semi-annual sales meetings and he had occasion to discuss this letter with all present.

Q. Will you state what if anything was said with respect to the independence of the dealer on that occasion? A. He requoted exactly what he had said in this letter in no uncertain terms, and there was—

Q. What was it that he said? A. He said that the dealer is an independent merchant and should be treated as such by all salaried employees of (3948) the Texas Company, and if we did not treat him as such that we would be subject to immediate dismissal.

Q. As far as you know, has that policy of the Texas Company ever been changed? A. No, sir.

Q. Have you to the best of your ability adhered to that policy in your position as representative of TBA? A. I certainly have.

Mr. Lorenzen: I ask to have this document, dated February 25, 1952, a circular letter No. S-8, addressed to State Managers, Zone Managers, Resale Salesmen, Dealer Service Representatives, Dallas Division, given the next number for identification.

Hearing Examiner Kolb: That will be Respondents' Exhibit 27-A through D.

(The document previously described was marked Respondents' Exhibit 27-A through D for identification.)

By Mr. Lorenzen:

Q. Did you receive this letter which has been marked Exhibit 27-A through D? A. I did.

Q. Did you carry out the policy of the Texas Company as set out in that letter to the best of your ability? A. Yes, sir, I certainly did. I always do to the very best of my ability.

(3949) Mr. Lorenzen: I now ask to have marked for identification a letter dated December 28, 1953, addressed to Mr. Sanderson and others in Dallas, with copies to Zone Managers, Salesmen, Dealer Service Representatives, and Representatives Dealer Training, and the enclosure which is dated December 15, 1953 and is entitled "Circular Letter No. 544."

Hearing Examiner Kolb: That will be marked Respondents' Exhibit 28-A through F.

(The document referred to was marked Respondents' Exhibit 28-A through F for identification.)

By Mr. Lorenzen:

Q. Mr. Roberts, did you receive the exhibit marked 28-A through F for identification? A. Yes, sir, I received it in its entirety.

Q. Have you done your best to carry out the policies of the Texas Company as stated in Exhibit 28-A through F for identification? A. Yes, sir.

Mr. Lorenzen: I ask to have a circular letter, No. S-96, dated December 13, 1955, addressed to State Managers, Zone Managers, General and Merchandising Salesmen, Dealer Service Representatives, and Representatives Dealer Training, and a one-page printed enclosure, given the next number for identification.

(3950) Hearing Examiner Kolb: That will be Respondents' Exhibit 29-A, B, and C.

(The document referred to was marked Respondents' Exhibit 29-A, B, and C for identification.)

By Mr. Lorenzen:

Q. I ask you whether you received copies of this document marked 29-A through C for identification. A. Yes, sir.

Q. Have you endeavored to the best of your ability to carry out the policies of the Texas Company as set out in those letters? A. I have.

Q. In connection with your job do you attend meetings of dealers? A. Yes, sir.

Q. At those meetings do you discuss various aspects of handling and merchandising TBA? A. At some of the meetings, yes.

Q. Are those meetings limited in any way to dealers who handle only Firestone and Goodrich TBA? A. Not any meetings that we would hold. Any meetings that the Texas Company holds for dealers are open to every dealer that we have in our organization or in the geographic area for which the meeting is being held, regardless of what brand of TBA merchandise it may handle.

(3951). Q. Do you know of dealers who do not handle Firestone and Goodrich who have attended those meetings? A. Yes, sir.

Q. Have you endeavored, in connection with your job as representative TBA promotion, to keep secret in any way the policy of the Texas Company as to the independence of dealers? A. No, sir.

Q. Have you had occasion to discuss it with dealers? A. Yes, I have.

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Van J. Smith, Recalled, for Commission—Direct

(3952) VAN J. SMITH was thereupon recalled as a witness for the Commission, and, having been previously sworn, testified further as follows:

Direct examination (resumed) by Mr. Dias:

* * *

(3953) Q. Do you know when the Texaco salesmen were classified as general and merchandising salesmen for the first time? A. I believe that was in 1954. Yes.

Q. Do you have charge of the salesmen in that area? (3954) A. Yes.

Q. Do you pass on the information on a new station opening up to the Goodrich or Firestone people? A. We don't have an established procedure for that. Actually, of course, they have men out in the territory all the time and they are pretty well on the job and they see a new station under construction. A thing like that gets pretty well publicized. We haven't found it necessary to establish a procedure.

Q. There is no necessity of you notifying Goodrich or Firestone people of the opening of a new station, or the changing of an operator? A. I don't think so.

Q. Would there be somebody else in your organization that would do that? A. Not as an assigned responsibility, no, sir.

Q. In talking to new operators, whether it be a new station or a change of operator, do you have some sort of sales presentation on TBA? A. Yes, we do.

Q. Can you give us some idea of how that runs? A. We explain to them the advantage of handling a nationally advertised product that has good public acceptance, and one that is in keeping with the high quality of Texaco products, and we explain to them the necessity, as we see it, for (3955) handling a complete line of TBA along with their petroleum products and services and the profit that they

just nearly have to get from additional lines of merchandise.

Q. Do they usually make their selection of source of TBA before they open the station? A. Probably before they open a new station, yes, sir.

Q. How about where there is a change of station? A. No, that wouldn't be it.

Q. Station operators usually buy out one another as they succeed one another? A. Yes. In opening a new station, of course, we try—we are not always able to do it—we try to have a dealer selected well in advance of the opening of a station. And of course before he opens he determines his TBA and equipment he will buy and things of that sort.

Q. So that he will be prepared when he opens his door — A. That's right. When he opens he would like to get in business.

Q. Do you call on them at home in company with a rubber company representative? A. I don't think so.

Q. Do any of the salesmen? A. I don't think that would be a regular procedure. I don't say that salesmen won't sometimes call on them at home. I don't think I would if I were a salesman.

(3956) Q. Where would you get these two people together sometimes, the rubber company salesman and the new operator? Would you have them at the Texaco office? A. Let me say again, there is no established procedure for handling that. Those things just work out.

Q. Can you tell me about how they work out? A. That could be any number of ways.

Q. Give us one. A. Maybe our salesman would see the TBA salesman at a service station, at a dealer's place, and might make arrangements to get together; or he might tell the TBA salesman where he could contact the dealer we are going to put in. Sometimes if we got a new station

going in, they may call us a time or two to find out if we have selected the dealer.

Q. Who may call you a time or two? A. The TBA salesman.

Q. The rubber company? A. Yes.

Q. That is one of the ways. How else might it come about? A. I suppose by telephone.

Q. By whom to whom? A. Maybe our man to the TBA man, or maybe the TBA man to our man.

Q. Any other way? A. I can't think of any other offhand.

(3957) Q. How much time do you spend on TBA activities? A. It is a pretty hard question. Of course, lots of our activities indirectly promote the sale of TBA. Probably 10 or 12 percent.

Q. Is there anybody in your office working on TBA? A. No.

Q. Do you have any sort of a quota system for your salesmen? A. Yes. We have objectives. Sales objectives.

Q. That only involves gas and lubricating oils and that sort of thing? A. No. We have objectives on TBA sales, too.

Q. How do you base those? A. Well, usually on an increase over the previous year's business.

* * *

Cross-examination by Mr. Lorenzen:

Q. You testified yesterday that among your responsibilities was looking after the sales and operations of the Texas Company in your zone as outlined by company policy.

In connection with this TBA end of the business I am going to show you some documents which have been marked Exhibits 26, 27, 28 and 29, with subject letters, for identification, and ask you whether you are familiar with those documents and whether you received them as an employee of the (3958) Texas Company? A. Yes, sir.

Q. You did receive those letters or copies of them? A. Yes, sir.

Q. In carrying out the policy of the company did you adhere to the policies as set out in these Exhibits 26 through 29, to the best of your ability? A. Yes, sir, I sure have, for two very good reasons. One is that there are definite instructions to the company, and the other is that through years of experience we have learned that to get a man to do a satisfactory job you have got to sell him. We adhere to that policy by maintaining the independence of our dealers and selling them the programs that we felt were good business for them.

Q. And have you ever authorized any of your salesmen to threaten a dealer with any kind of punishment or reprisal or cancellation of lease in the event that he did not adhere to purchasing the TBA line of either Firestone or Goodrich? A. No, sir.

Q. Do you know of any case where that has been done? A. No, sir.

Q. Have you ever done it? A. No, sir.

Q. Generally, in connection with the selection of a new operator for any station, will you tell me whether you (3959) interview that new dealer before he is finally selected? A. Yes, sir. As a matter of practice that is the way our business is handled.

Q. Do you know whether as a general proposition before you select him has that dealer committed himself by ordering his TBA from any TBA supplier? A. Oh, no. No, sir.

Q. The order for TBA comes after the date you make the selection? A. That's right. After we select him as a dealer we handle that, and the other phases like buying his equipment and things of that sort, as he sees fit.

Q. In connection with your discussion, which I think you testified to, that you had a discussion with this new

dealer before he was selected, has the question arisen as to whether or not he can buy TBA from whatever source he selects? A. Yes, sir. I believe we generally tell him that. I think we pretty particularly try to get that done in view of our policy letters and things of that sort.

We like for him to feel, as I said—we try to do a selling job. We think it is the most effective way to operate. We think he accepts our sales talk better if he feels that he is free to make his own selection.

Q. Have you made any effort to keep the policy of the company with respect to the independence of the dealer a secret, either (3960) from the dealers or from any competing TBA salesman? A. No, sir.

Q. How many dealers have you cancelled out so that they left the station at the termination of their lease, since you have been in Dallas? A. I can remember only one.

Q. What was the occasion of that? A. He gave us several worthless checks, ran out of money, couldn't buy gasoline, and actually, after we issued the notice of cancellation, before the lease expired—before the cancellation was effective—he closed the station because he just couldn't operate any further.

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Redirect examination by Mr. Dias:

Q. These policy letters, how often do you show those to your dealers? To the station operators? A. I can't say that I have ever shown a letter to the dealer. As a matter of fact, it isn't often we show dealers company correspondence. We tell them verbally.

Q. You never have shown them to them? A. I don't expect we ever have.

Mr. Dias: That is all.

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William E. Childress, for Commission—Direct

(3961) WILLIAM E. CHILDRESS was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name, please? A. William E. Childress.

Q. And your position with the Goodrich Company? A. Until the first of January I was district manager here in Dallas. Since that time I have been transferred to Oklahoma City, same position.

Q. District manager? A. That is correct. Of the replacement tire division.

Q. And that was until January 1? A. 1957.

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(3962) Q. On 165 you list Dallas service station, Goodrich distributors, and J. A. Eubanks. Are they the only Goodrich distributors in Dallas? A. They are the only ones that are wholesale distributors and supply points here. We have other outlets in Dallas County, yes.

Q. What type of outlets? A. They are tire retailers. Different types. Some of them (3963) are industrial accounts, some of them are farm tire accounts, and accounts of retail tire dealers.

Q. These Texaco stations that choose Goodrich TBA, when they want Goodrich supplies they go either to Dallas Service or to J. A. Eubanks, is that correct? A. Are you speaking of Texas?

Q. Texaco stations. A. Texaco is usually handled by Dallas Service Station Supply.

Q. And Eubanks? A. Eubanks handles Conoco stations.

Q. What happens if he gets crossed up? Suppose Conoco goes to Dallas? What happens? A. They don't usually get crossed up.

Q. If a Texas station went to Eubanks Tire Company, would Texaco still receive a commission, override commission? A. It would be reported, yes. Sure.

Q. And these other types that you mentioned, can they service a Texaco account? A. Generally they don't. It is a different type of business. The B. F. Goodrich stores would serve and could serve as an emergency supply point for any Texaco or Conoco station.

* * *

(3964) Q. Will you describe your duties, please? A. I have charge of distribution of our tires, batteries, home and automotive items that we sell in our Dallas district.

Q. Are seat covers on that TBA program? A. I believe they are.

Q. Do you know? A. I can't say for sure.

Mr. Barton: I will give you a book on that. I think seat covers are on that list.

By Mr. Dias:

Q. Do you know who manufactures Diamond tires? A. I do.

Q. Who does manufacture them? A. It is manufactured by the Associated Lines of the B. F. Goodrich Company.

Q. Do you know how many Conoco stations are in Dallas? (3965) A. I think I can tell you approximately. There are approximately 75.

Q. Do you know how many of those have been nominated to and approved by Goodrich? A. Nominated?

Q. Yes. A. What do you mean.

Q. You know that there are some gas stations that aren't large enough to carry TBA? A. But nominated.

Q. They do not nominate any but those that are large enough to carry them. A. Will you define nomination?

Q. Yes. The Conoco Oil Company submits a list or the names of various Conoco stations that they recommend carry the Goodrich line, and Goodrich looks over their credit I suppose and decides whether or not they are going to sell them. A. No, it don't work that way. We have a form. I presume that you are referring to that, called notification of dealer change. And after a station has selected our brand of merchandise, then we get this form you see for the reporting of sales, and the effective date that he became a B. F. Goodrich dealer.

Q. Referring to notification, how many have been notified and approved, or is it accepted? (3966) A. We have the opportunity to either accept or reject.

Q. Do you know how many there are of those in Dallas? A. I couldn't tell you for sure. A substantial portion of the 75 stations.

Q. Do any of your salesmen ever attend dealer meetings conducted by Conoco? A. Oh, yes.

Q. And they do also attend dealer meetings conducted by Texas? A. Yes. We are invited on some of the meetings to attend.

(3967) Q. Have you personally been present at those meetings? A. Yes, I have.

Q. Are you usually the one to go or is it more often the B. F. Goodrich salesman? A. It would be our salesman.

Q. Do you, like in so many other cities, look for a break of new ground for new stations and find your own accounts? Or do Texaco and Conoco notify you? A. No, our people are out covering their area very completely.

They watch for construction or erection of new stations. That is a part of their job.

Q. Isn't it true that normally the way you get in touch with a new station, either of Texas or Conoco, is by notification from the Texaco or Conoco people? A. To my knowledge I have never heard of it.

Q. You have never heard of it? A. No, sir.

Q. Never heard of what? Notification? A. Being notified.

Q. In advance? A. No, sir. There is no formal notification that we have.

Q. Is there any informal? A. Oh, yes, sure.

Q. In what form is that? A. Well, it is generally word of mouth. Either our supply (3968) point salesman or our territory manager works in close relationship with the oil company personnel, and he has to be an aggressive individual to try to gain that information so that he can attempt to present our franchise and the quality of our products and the merchandising programs that we have.

Q. Isn't it true that that is the way you get most of those accounts? A. Oh, sure.

Q. So that the business of spotting a new location going up plays a very small part in it. Isn't that so? A. Well, it has something to do with it. We can tell by the basic construction whether it is going to be a Texaco or Conoco or whatever type it is going to be.

Q. As a matter of fact, you get very few, if any, that way, by finding the new location yourself? Isn't that true? A. You say finding the location?

Q. Yes. A. We wouldn't find the location. We might see the location where the construction is under way.

Q. You would see a location where there is construction under way. There are few of those cases where you make the initial contact yourself. Isn't that true? A. Well, we

have to gain the name of the operator through some other source, yes.

Q. Isn't it true that it is usually through Texaco or Conoco? (3969) A. It wouldn't always be that way. Our man in contacting other stations, we might gain that information from another station operator. He might give us the name. Maybe our supply point distributor here would gain that information and we would find out who the man was going to be.

Q. How about where a station changed hands? In other words, a new operator going into a station that already exists? There you would have no indication, would you? A. We would because—I presume you are talking about Dallas County still?

Q. Yes. A. Our two supply points are contacting these stations on a weekly basis. We would gain that information from the present operator, or within a few days after the new one is in because we maintain very close contact with him.

Q. He would hardly know who the new lessee is going to be? A. Oh, yes. If a man has a business for sale he is not just going to do it on the spur of the moment. He probably knows about that several days or a week or so in advance. We would gain that information before the station actually changed hands in many cases.

Q. And you would get that information from somebody or some source other than Texaco or Conoco? A. In many cases we would.

Q. Do you have any warehouses in Dallas? (3970) A. Oh, yes. We have a large warehouse here in Dallas.

Q. Just one? A. Yes.

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William E. Childress, for Commission—Cross

Reagan Ferguson, Jr., for Commission—Direct

Cross-examination by Mr. Barton:

Q. Mr. Childress, Dallas Service Station Supply, and J. A. Eubanks are independent distributors, are they not? A. Oh, yes.

Q. J. A. Eubanks is a Conoco service station operator, isn't it? A. That is correct.

Q. And had been for sometime? A. He grew into this business after having been a successful service station operator.

Q. And he of course is familiar with and acquainted with all of the Conoco dealers, is he not? A. Oh, yes.

Q. In the same business that he had been in? A. That is correct.

(3971) Q. What is the situation with regard to Dallas Service Station Supply? A. We have a similar situation there. Mr. Rush, who owns that business, also operates a Texaco service station, and he grew into this TBA supply business having been successful in operating a Texaco station, and he has a very wide knowledge of Texaco dealers throughout the county.

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(3976) REAGAN FERGUSON, JR., was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name and title, please? A. Reagan Ferguson, Jr., Representative TBA Promotion, generally referred to as TBA Representative.

Q. How long have you been TBA Representative in this area? A. Since April, 1950.

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(3977) Q. Do you have the number of outlets in the city nominated to Goodrich and Firestone, and the number approved? A. Yes, sir.

Q. May I see that? A. Yes, sir. Two sheets (handing).

Mr. Dias: I would like to mark for identification as Commission Exhibit 167-A and B a document entitled "TBA data for Federal Trade Commission, supplied by the Texas Company, Atlanta standard metropolitan area."

(The document referred to was marked Commission's Exhibit 167-A and B for identification.)

By Mr. Dias:

Q. Do you have a copy of this before you, Mr. Ferguson? A. No, I do not.

(3978) Q. Can you tell us how this was compiled? A. As I believe you know, we maintain a card in the division office on each account.

Q. Would you refer to that card by form? A. Form S-40. These figures were obtained from an actual account of the cards that we have on file in the division office.

Under the year 1955, questions 2, and on down from 2, you will note a footnote B referred to there, which indicates that an actual count for the year 1955 was not available.

In the year 1956 we changed our method of handling records in the office from manually prepared records to tabulating machine records. In order to do that we turned all of our cards for the entire division over to our accounting department, to the tabulating machine department, where those things are now formally kept within our TBA department and filed by zones, which would show Atlanta as a separate zone, instead they are setup by the entire four states of our division in alphabetical order, which would make it impossible to get an accurate count on that.

However, as referred to in the footnote, the percentage of buying accounts to nominated accounts is felt to be very nearly the same as for 1954 or 1956.

Q. These sums here shown under the various years, do they represent the number for the entire year or were these made (3979) up as of a specific month? A. Those represent the number for the entire year.

Q. Did you say you obtained this information from the S-40? A. Yes, sir. If I may clarify that for you: I S-40 cards for the current year are different from the ones that we had for the years prior to 1956. I don't know which one it is that you have there.

Q. In which way do they differ? A. In that the 1956 cards do not show any actual figures on them.

Q. What about the earlier cards? Do they show the purchases of TBA supplies from other than Goodrich or Firestone? A. No, sir.

Q. Then how did you arrive at these figures for 1953, '54, and '55? A. Under which question is that?

Q. We asked for the number of each account buying Goodrich or Firestone tires and tubes and/or batteries, and/or accessories. Under the years 1953, '54, and '55 you have indicated that "X" number buy Goodrich from the designated Goodrich supplier, and also buy competing items of TBA from other suppliers not on the Goodrich or Firestone list of suppliers. A. That is from our contacts with the dealers by our salesmen, our zone managers, and myself, and our discussions with the dealers of their buying habits and actually asking them (3980) questions, and from our general knowledge of the accounts.

Q. When did you do that? A. We have done that from time to time over a period of years.

Q. And you kept a record of the fact— A. No, sir, we do not have any records.

Q. That is the point you see. How do you know as of 1957 that in 1953 there were 22 accounts purchasing—take 1954, for example—that there were 23 accounts purchasing Goodrich and TBA items from other suppliers? A. We know that all of our accounts were purchasing not exclusively from Goodrich.

Q. What is the basis of that knowledge? You couldn't designate the name of any particular supplier other than Goodrich or Firestone supply point, could you? A. I suppose I couldn't.

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(3982) Q. Will you explain just how you got these figures? A. These figures for 1956 were taken from a combination of our S-40 cards and the survey that we made.

Q. Do these current S-40s show the purchase of unsponsored items? A. No, sir.

Q. They do not? A. No, sir.

Q. Then actually the information as to the unsponsored items came from this survey that you talked about? A. Yes, sir.

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(3984) *Cross-examination by Mr. Lorenzen*:

Q. Mr. Ferguson, you testified that you were the TBA Representative for this company? A. Yes, sir.

Q. Will you state generally what your duties are in that capacity? A. My job is principally to work with our salaried selling personnel, such as salesmen and zone managers, and also contact our state managers on occasion, and to work with the tire company district personnel and their field selling personnel such as their territory managers and their store managers and store salesmen to coordinate the efforts of the Texas Company and the Tire

Companies; to assist Texaco dealers in developing a more successful TBA business; and it is my job to explain and see that our field selling personnel who are charged with carrying out our programs understand the policies of the company as regards our TBA program.

I also contact and work with dealers from time to time and work with the rubber companies in various ways. Sometimes in helping to arrange meetings such as on tire sales, tire trading, or adjustments, or battery and accessory sales, to assist our dealers to become better merchants, to pass on to our field selling personnel the various programs and promotions that we feel will benefit our dealers in helping them become (3985) better TBA merchants and in the long run better and more successful Texaco dealers.

I am sure there are a number of other things that I do, but in a general sense I think that covers it.

(3986) Q. Do you have anything to do with indoctrinating the new salesmen of your company? A. Yes, sir; I certainly do. I always spend time—whenever possible I spend time with the new salesmen or the men as you call them who are salesmen in training, to fully explain the TBA program and the ways in which they can help the dealers, and to explain to them the Texas Company's TBA policy. In fact, I always show them the current letter on Texaco TBA policy, and we actually read it together and I furnish the salesman with a copy of that letter.

Q. I want to show you Respondents' Exhibit 26-D and E for identification and ask you whether that letter came to your attention? A. Yes, sir. I received this letter when I was zone manager prior to becoming TBA representative.

Q. That is you received a copy of that particular exhibit which was sent out from the Atlanta office? A. A letter which I believe stated verbatim the same letter as

this. I recall it specifically because of the wording of the last paragraph. I was a new zone manager at the time and I was impressed with the emphasis that our general sales manager put on maintaining the independence of our dealers.

Q. You mean that you would get fired if you didn't respect it? A. Yes, sir.

(3987) Q. I show you Exhibits 27-A through D for identification and ask you whether you likewise received a letter identical to that one as to contents in this Atlanta division? A. Yes, sir. I received that and still carry it in my briefcase.

Q. I show you Exhibit 28-B through F for identification and ask you whether that is a letter, the identical contents of which you received? A. Is that one letter?

Q. I believe it is. A. It is dated December 1953. Yes, sir, I did receive that and I also have that letter in my briefcase at the present time. I have had ever since the letter was issued.

Q. I show you Exhibits 29-A, B and C and ask you whether you received a letter similar to 29-A and a document identical with 29-B and C? A. Yes, sir, I received this letter. It was sent to our—I recall that it was sent to our salesmen with copies to our state and zone managers, and dealer-service representatives and other representatives in the field. And I also have that letter in my possession and have had since its issuance.

Q. Are those letters which you said you discuss with the new salesmen? A. Yes, sir. I discuss these and furnish him with copies.

Q. Did that discussion include the portions of the letter (3988) which have to do with the independence of the dealer? A. They certainly did. They covered the letters in their entirety.

Q. Did you endeavor to keep that policy of independence a secret from the dealers of the Texas Company or from competing jobbers? A. No, sir. In any discussion that I have had with the dealers I am sure that I have always left that understanding with them because if I expect them to be successful TBA merchants they are going to have to be sold on the TBA program that they have and the TBA merchandise that they are selling in order to do a good job of selling.

Q. The information which is a part of this Exhibit 167 for identification was compiled by you, was it not, in direct request to obtain statistics as a result of the government's questions in this proceeding? A. Yes, sir.

Q. And prior to that time, as I understand it, you never kept any specific record to indicate what part of the TBA merchandise in any case—in the case of any one dealer was sponsored and what was non-sponsored? A. No, sir. We did not keep any record of that.

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Redirect examination by Mr. Dias:

(3989) Q. In addition to these policy documents which date back to 1948 and 1952, do you carry anything else in your briefcase that old? A. I do not have the letter of 1948; no, sir. I do not have that.

Q. How about the one of 1952? Is that in your briefcase? A. Yes, sir, I do have that in my briefcase.

Q. When did you put it there? A. When it was issued, sir, and I have had it there ever since then.

Q. And all these other policy letters, you have those in your briefcase? A. Yes, sir. And they were also placed there at the time the letters were issued. I carry them there for my ready reference and discussions with our field selling personnel.

Q. And then I take it that when you spoke to your dealers and wanted to assure them that they were free to buy anything you showed them the letters? A. Well, it isn't common practice to show company correspondence to the dealers. However, I am sure that they were led to understand their independence in these matters.

Q. But you could convince them by showing them the correspondence, couldn't you? There would be no question in their mind then as to the sincerity of the company? Isn't that true? (3990) A. Certainly there wouldn't. I don't believe that there would be any doubt in their mind about it from our discussions without my needing to show them the letters.

Q. And I believe you testified that you never kept it a secret from competing jobbers? A. Of course I have limited contact with competing jobbers.

Q. Very limited, I would assume. You don't normally call on competing TBA distributors and that sort of people, do you? A. No, sir.

Q. As a matter of fact, you call on them very seldom if ever, is that correct? A. Yes, sir.

Q. As a matter of fact, do you ever call on them? A. Offhand I don't recall, sir.

Q. So that when you say you didn't keep it a secret from them it is mainly because you had no occasion to talk to them and tell them, isn't that so? A. Do you mean from dealers?

Q. Competing jobbers and dealers? A. I think what I said was that I didn't keep it from the dealers. I actually have no occasion or very little occasion, at least, to talk to competing jobbers and TBA distributors. The only time that I might talk to them I think would be when I would see them at one of our dealer locations, dealer's (3991) places of business.

Q. And at that time you told them to feel free to walk in and sell all they could? That you would step aside, or the rubber company would step aside? A. I think that they know that they are free to; that we are not in a position to tell them that; that they can't call on our dealers and sell them.

Q. How would they know that? You said you didn't keep it a secret from them. Did you tell them point blank that they could come in and sell to them? A. No, sir. I was never asked that question by them, and had no reason to tell them that.

Q. On cross you also testified that you contact rubber company representatives. Which rubber company representatives? A. Firestone and Goodrich.

Q. Are there any others? A. No, sir.

Q. You don't have any other arrangement with any other rubber company? A. Well, now, we have recently—not for the years which this covered—we have recently started a test program with the U. S. Rubber Company in this particular area.

Q. When did that start? A. That started about May of last year, I believe, 1956.

Q. Is that the same type arrangement that you have with (3992) Goodrich and Firestone? A. Yes, sir.

Q. Full line of tires, batteries, and accessories? A. Yes, sir.

Q. That was May of 1956? A. Yes, sir.

Q. Is it possible that in these figures given for 1956 that some of the other supply points may have been U. S. Royal? Is that possible? A. I don't believe so.

Q. But you don't know? How could you find out? A. That wasn't what I considered as "Other" in there. I was thinking principally of other brands.

Q. U. S. Royal is another brand, isn't it? A. Yes, sir, but U. S. Royal does not sell to many Texaco accounts in our area.

Q. Can you give us some idea of how many? A. Not offhand; no, sir.

Q. Can you state definitely that when you spoke about "other suppliers" here under 1956, that the other suppliers were definitely not U. S. Royal? A. It definitely referred to other than U. S. Royal.

Q. Other than U. S. Royal? A. Yes, sir.

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(3993) *Recross examination by Mr. Lorenzen:*

Q. When you say these competing jobbers and stations on occasion, did you ever tell them that they couldn't sell their merchandise in a Texaco station? A. No, sir. I certainly did not.

Q. And did you ever on those occasions make any recommendation that any reprisal whatever be taken against the dealer because he was buying from them? A. No, sir; never did.

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C. T. FITTS was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Dias:

Q. Please state your full name and title, please. A. C. T. Fitts, 5901 Winters Chapel Road, Doraville, Georgia.

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(3995) Q. How many bulk plants do you have in Atlanta? A. One.

Q. Is that company-owned? A. Yes, sir.

Q. Where is that located? A. 5901 Winters Chapel Road, Doraville, Georgia.

Q. Do you office there, too? A. Yes.

Q. Do you, like the other areas, conduct sales meetings with your salesmen? A. Will you repeat the question?

Q. Yes. Do you conduct sales meetings with your salesmen? A. I do.

Q. Do your salesmen have meetings with dealers in your territory? A. They do.

Q. And do they also meet with rubber company representatives from time to time? A. Yes, sir; at times.

Q. Do they have these dealer meetings together with rubber (3996) company representatives from time to time? A. Not necessarily; no, sir.

Q. Do they have them ever? A. At times we have had some rubber company personnel to attend our meetings.

Q. Is it your testimony then that sometimes you have meetings without rubber company representatives? A. Yes.

Q. Do your salesmen have any responsibility or authority to recommend or cause the transfer as a promotion or demotion of an operator? A. Yes, they do. They have the authority to recommend to me that we not continue a lease with a dealer.

Q. And who makes the final determination as to whether or not the lease should not be continued? A. That is made in the division office by the assistant division manager in charge of sales promotion.

Q. Who is he? A. Mr. W. H. Griffin, Jr.

Q. Do you also receive recommendations for improvements about the station? A. Yes, sir.

Q. And are these improvements made or refused strictly on your authority, or does that go higher up? A. No, sir. I have a certain authority and then if a (3997) certain expenditure is necessary I have to get authority from our division office personnel.

Q. How do you rate your salesmen's performance? A. Well, there are a number of ways that we rate a salesman's performance. We do not have any forms that we fill out regarding a salesman's performance. But we consider primarily his activity, his interest, his initiative, and his ability to work and help the dealers to be better merchants, and that is especially true with the merchandising man.

Q. How often do you have sales meetings? A. We have sales meetings three times weekly, on Tuesday, Thursday, and Saturday.

Q. Is the purpose of that to review the records, to find out how they are doing in sales? A. Well, we cover a lot of things at those sales meetings. In fact, if we get a policy letter we sit down and read the policy letter to the salesman and we discuss it thoroughly to see that they understand the Texas Company's policy.

Q. Do your salesmen receive a bonus on lubricating oils and that type thing? A. Yes. All salesmen receive a bonus on lubricating oils, providing that they have an increase in their sales over the previous year, and it is divided in two periods: The first six months and the last six months.

Q. Do you receive your bonus based on those increased (3998) sales, too? A. Yes, I do. I receive my bonus the same as the general salesman. I do not receive any bonus on gasoline.

Q. Do some of your salesmen receive a bonus on gasoline? A. Merchandising, yes.

Q. Isn't it true that when you rate a salesman you go over his sales, that is, as to gasoline and— A. That is taken into consideration; yes, sir.

Q. And isn't it true that also included in that is his TBA production; that is, the purchases of TBA by the sta-

tions which he is responsible for? A. I wouldn't say that is true because we do not have records of all purchases of TBA by our service stations.

Q. But you do have a record of their TBA purchases of the sponsored brands, do you not? A. Yes, sir; we do.

Q. What happens when the station's volume declines? When TBA volume declines? A. We only urge a dealer—we realize in the service station business this day and time you have to do something in there besides sell gasoline if you are to make a living to pay you for your time and investment that you have. We encourage the dealer to handle a full line of TBA and we work with him and help him merchandise his TBA.

Q. You take it up with the salesman? Indicating that a (3999) customer's purchases of TBA have declined? A. In all probability I will ask the salesman is there any way we can assist the dealer to help him make more profits from TBA. Yes. We work with our dealers very closely in an effort to get them to make the most out of their investment and time.

Q. How often do you have that type of meeting where TBA purchases are involved? A. We do not have any meetings on TBA purchases.

Q. I say where they may be involved. Is it once a month? A. It would only be where the—where we do not have any set times for meetings. I don't know of any meeting we have had recently regarding TBA at all or where discussion was made of TBA. It is just in isolated cases where maybe a dealer's profits have gone down and we are having a hard time, or he is having a hard time buying petroleum products or making the necessary money out of that station to justify his time and investment.

Q. Isn't there— A. We give him special attention and try to help him.

Q. Isn't there some period during the year that you have a special sales meeting with your salesmen for the purpose of going over and reviewing their records of production in order to determine whether or not they are carrying their load? Don't you have meetings of that sort? (4000) A. Do you mean from an over-all standpoint?

Q. Yes, over-all; performance. A. Oh, sure. We do that quite often.

Q. How often is that? A. We don't have any set time to review them. We might review them two or three times a month. We keep a daily sales record on gasoline and oil.

Q. Isn't it at that type meeting that you go over with each salesman his deficiencies, for example, slipping on his quota or one thing or another? A. Yes, we have an objective on gasoline and oil. We sure do.

Q. Isn't it at that time, too, that you point out that the TBA purchases of his customers are lagging behind last year or have increased? A. No, sir, we do not. I cannot remember any time that we have sat down and talked about TBA, regarding purchases.

Q. Not specifically? A. We do not know what the dealer purchases in TBA, a total.

Q. Didn't you testify before that that is certainly part of the salesman's duty, to promote these two rubber companies? A. It surely is.

Q. Then how can you tell whether or not your salesmen are performing their duties unless you check on them? A. The salesmen report that individually to me and we sit (4001) down and try to figure out some way that we can help the dealer. And we make certain suggestions to the dealer how he can improve his TBA sales.

Q. How often does the salesman report that sort of thing to you? A. Just when he has a problem. There is not any definite report in time. Just when he has an individual problem.

Q. What sort of problem would you talk about? Declining sales? A. We might have a dealer that is not making the necessary money out of his investment and time in order to keep a good stock of petroleum products, or he might be giving us a bad check and we could determine it from that. Of course in the visits to the service station the salesman probably could determine then the amount of TBA or how active he was, or how successful he was.

Q. Do you predicate TBA sales on the gallonage, or do you predicate gallonage on TBA sales? Which comes first? A. Well, I don't think that we predicate sales in that respect whatsoever.

Q. You have some yardstick? A. We have a yardstick to go by, yes.

Q. What is it? A. As I say again, we do not know how much TBA the dealer is selling. We do not have any records.

(4002) Q. At that rate then you don't know whether he is selling Goodrich or— A. Sure we know whether he is selling Goodrich or not, but he is probably selling Goodrich and some other merchandise that he buys from other suppliers.

Q. And you don't know how much from the other suppliers? A. No, sir.

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Cross-examination by Mr. Lorenzen:

Q. Is that yardstick that Mr. Dias talked to you about, the same thing that we have had referred to heretofore as a profit computer? A. That is right; yes.

Q. That is some sort of a slide rule type of thing? A. That is right.

Q. That is made up by some research organization? A. Chek-Chart; yes, sir.

Q. It is nothing that the Texas Company makes up? A. No, sir.

Q. It is distributed by the Texas Company to its dealers as a service to them? A. That is right; yes, sir.

Q. In connection with these salesmen's meetings at which you say you discuss the policies of the company, do you (4003) discuss the policy letters with respect to the TBA program? A. We do.

Q. Of the Texas Company? A. We do.

Q. Let me ask you whether you ever received a copy of a letter having the identical subject matter as Exhibit 26-D and E for identification? A. Yes, I remember this letter very well, especially the next to the last paragraph on the second page.

Mr. Dias: I object. It is in the letter. It is in the letter. When they are ready to put it in it will be in evidence.

By Mr. Lorenzen:

Q. You do remember that letter? A. Yes.

Q. You received that before you became zone manager? A. Yes. I was dealer service representative when I received that letter.

Q. I show you Exhibit 27-A through D and ask you whether you received a letter which contained the same subject matter as that part of the letter which is in quotation marks? A. I did not receive this letter.

Q. What is the date of this letter? A. February 25, 1952.

Mr. Lorenzen: May I have this exhibit marked (4004) for identification?

(The document referred to was marked Respondents' Exhibit 30-A through C for identification.)

By Mr. Lorenzen:

Q. I show you a document which has been marked as 30-A through C for identification and ask you whether you received a copy of that letter in your capacity as zone manager? A. I did receive this letter.

Q. Is that one of the policy letters which you testified you discussed with the salesmen? A. It is.

* * *

(4005) Q. I ask you whether the document which has been marked as 31-A through E for identification is a copy of a letter which you received in your capacity as zone manager? A. I did receive this letter.

Q. Is that one of the letters which you discussed with your salesmen at the salesmen's meetings about which you have testified? A. Yes, we discuss all policy matters at our meetings.

Q. That includes that particular letter? A. Yes.

* * *

Q. I show you the document which has been marked 32-A through C and ask you whether that is one of the policy letters of the company which you received as zone manager? A. I did receive that letter.

Q. Is that one of the letters which you discussed with the salesmen at the salesmen's meetings? (4006) A. It was.

Q. You testified that you had some meetings with dealers, also? A. Well, those meetings are primarily held by our salesmen. We do have, the zone has meetings with their dealers, yes.

Q. Don't you yourself personally have meetings with new dealers before they are selected to become dealers? A. I do.

Q. Do you have any discussion with them, called I think "indoctrination," the general language that is used by the Texas Company? A. Yes, sir.

Q. You have such indoctrination talks with them? A. Yes, sir.

Q. Are you there when that happens? A. Yes, sir.

Q. Do you discuss TBA with them? A. We surely do.

Q. Will you state whether or not that discussion is held in conformity with the policy letters which you have just identified? A. It is.

Q. Can you recall any case which you did not follow the company's policy with respect to the TBA and the independence of the dealer in connection with your discussions with the (4007) dealers, as long as you were zone manager? A. I cannot.

Q. You testified that salesmen can make recommendations to you about termination of a lease? A. Yes, sir.

Q. That is, non-renewal of a lease? A. Yes.

Q. Will you tell me how many times since you have been zone manager, from 1952 down to date, you have had occasion to check-out a dealer as the result of the non-renewal of his lease by the Texas Company? A. One time.

Q. When was that? A. That was January 11, 1957.

Q. Just a few days ago? A. Yes, sir.

Q. Will you tell me whether or not that non-renewal had any relation to the dealer's purchasing or not purchasing of sponsored TBA? A. It did not.

Q. That non-renewal had no connection directly or indirectly with TBA? A. It did not.

Q. From time to time during the years when you have been zone manager, dealers have left their dealerships in their (4008) station, have they not? A. They have.

Q. That is sometimes before the expiration of the lease? A. Yes, sir.

Q. And you consented to it? The Texas Company consented to their leaving? A. Yes.

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Donald E. LaGarde, for Commission—Direct

(4009) DONALD E. LA GARDE was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Dias:

Q. State your full name and title for the record. A. Donald E. LaGarde. Since January 1, 1957, I am zone manager of Atlanta. Prior to that I was Atlanta district manager. The lines of authority between the two are similar. That is, the responsibilities that I had in 1956 as district manager are similar to the responsibilities which I have as zone manager.

Q. Goodrich had a reorganization too? What is it now? Give us the chain of authority here and your responsibilities prior to 1956, and how they have been changed. A. Prior to 1956 or '57?

Q. Prior to 1957. A. There is no change in responsibility. I am responsible—I was responsible in 1956 for the distribution of B. F. Goodrich products through dealers and stores within the Atlanta district. I have now become responsible for the distribution of B. F. Goodrich products within the Atlanta zone.

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(4011) Q. I believe you have some statistics for me, have you? Or are you going to read them into the record. The names and addresses of all Goodrich stores. A. Within the metropolitan area of Atlanta?

Q. I suppose; yes. A. We have three stores within the metropolitan area of Atlanta. The Atlanta store, located at Courtland and Auburn Streets, and the Decatur store at 140 Claremont Road, in Decatur; and the East Point, Georgia, store is on Church Street. I don't recall the number.

Q. Is that here in Atlanta? A. That is in East Point, part of metropolitan Atlanta, in Fulton County, in which Atlanta is also located.

Q. Do you have the name and address of all your Goodrich distributors, the independent distributors? A. We have no distributors that solicit service station or (4012) dealer business in the metropolitan area. Our store performs that function. Two stores.

Q. Which two? A. Atlanta, Georgia, store, Courtland and Auburn Streets; and Decatur, Georgia, store, 140 Claremont Road.

* * *

Q. How do these Goodrich stores operate as a supply point? What is the procedure? A. The procedure is for us to designate one of our employees working within those two stores to solicit service station (4013) business within their given area; to promote the sale of our merchandise through other dealers, smaller dealers within the area which is assigned to them.

Q. What was the latter? Through smaller dealers? A. To solicit business through smaller dealers.

Q. Such as what? Do you mean service stations? A. Service stations, car dealers.

Q. Where do these stores get their supplies? Do they get them from the master warehouse? A. From the master warehouse.

Q. Do you receive notice from Texaco when a new station is opening up or a station changing operators? Do you receive advance notice? A. No, sir.

Q. Do your supply points receive that information? A. To the best of my knowledge they don't, no, sir.

Q. Do you go out and just find the business? Is that the idea? A. In the great majority of cases we do, yes.

Q. At what point does Texas submit the name of a station to you for approval? You don't sell to every service station, do you? A. No.

Q. Nor do you sell to every Texaco station? A. That's right.

(4014) Q. At what point does Texas identify a new station or a change of operator so that you can determine whether or not you want to sell to him? A. Well, they don't as a rule identify that information to us. We have to pretty much seek that information out to the best of our ability.

Q. They are not much help are they? A. Well, they are very much help when we sell the account. Exceedingly so.

Q. Do you home office—when I say home office I mean salesmen out of your office—you have salesmen in your office? A. Yes.

Q. Do they call on Texaco stations, too? A. Yes.

Q. And also your stores, your supply point stores call on the stations? A. Yes.

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Cross examination by Mr. Barton:

Q. Mr. LaGarde, I think Mr. Dias was asking you about how the B. F. Goodrich Company obtains information as to the names of operators of new Texas service stations in this area. I would (4015) like for you to explain the details of how you obtained the names of the last seven Texas service stations who signed up with B. F. Goodrich in 1956 and '57? A. That is in the metropolitan area of Atlanta?

Q. In the metropolitan area of Atlanta. A. Our salesman at the Atlanta store is an example. In his daily rounds of being aggressive, attempting to improve our distribu-

tion in the market, he would recognize that a new service station is being built and quite often would determine from the physical appearance of the building that it will be a Texaco, in certain instances, and he begins to try to determine who is going to be the operator of that station.

I can recall an instance where a service station out on the Covington Highway—Reagan—R-e-a-g-a-n, to the best of my knowledge—who was a personal friend of a Texas—B. F. Goodrich dealer by the name of Harold Gully, and J. V. Andrews, and we feel that the success that those two B. F. Goodrich-Texaco dealers were having, and their recommendation to this dealer, had an awful lot to do with our selling him B. F. Goodrich merchandise, and because of that interest developing he contacted our store.

Q. Who contacted your store? A. I think that our salesman in this instance notified our store in Decatur that this party was going to operate this station on Claremont Road. It developed later that he knew (4016) our store manager.

Q. Mr. Reagan knew your store manager? A. Yes. In that particular instance that helped to sell our account on B. F. Goodrich.

Another one I can think of not too far from that particular area has to do with a Parker Service Station on South Church in Decatur. He was a friend again of Harold Gully, a Texas-B. F. Goodrich dealer. Gully told our salesman at the Atlanta store about this new operator, and therefore our salesman, James Matthews, notified our salesman in the Decatur store, and that is how the contact was made.

I have another case in mind. The name of the account is Dobbs, located on North Decatur Road. Mr. Dobbs was a former B. F. Goodrich employee and left us sometime at the start of World War II. He was engaged in some business that I am not familiar with, but in his contacts

in this business that he was working with, he called on a former employee of our Decatur store, a man by the name of Shepard, and notified him that he was going to operate the Texas station on North Decatur Road, and we learned of that new operator from that source.

Another case I can think of has to do with a Texas dealer by the name of T. O. Gresham. Mr. Gresham was associated with his brother, Ed Gresham, on Moreland Avenue, Southeast. Texas was building a new service station and we found out through T. O. Gresham that he was going to be the operator of that (4017) station, and working with his brother, Ed Gresham, handling B. F. Goodrich and Texas for several years, it was a known quantity that he wanted to handle B. F. Goodrich.

Then we had a case of Harper. I think that was on Garden Road. In that particular instance I can recall from the information that definitely was given me that the Texas Company contacted our salesman at the Atlanta store and notified him that he expressed a preference for B. F. Goodrich.

Another case I have in mind that has to do with a man by the name of Bond, who would soon operate a Texas station on the corner of Hemp Hill Avenue and North—North Avenue and Hemp Hill. He was a personal friend of a very fine Texas-B. F. Goodrich dealer by the name of L. C. Smith, who is located on Northside and Bishop.

"L. C." has been a very fine B. F. Goodrich dealer and a very loyal B. F. Goodrich dealer and has expressed his appreciation for the fine assistance that we have rendered him in the development of the TBA business, and he spoke very kindly toward Mr. Bond about this association, which enabled us to contact him and review the opportunities that he would have with the B. F. Goodrich franchise.

Q. Do you recall a dealer, an additional dealer who opened up in that period, since January 1st, and took on

the line, by the name of Hall, on Campbelton Road, whose station was originally opened, I believe, by Garland Holland? (4018) A. Yes. Garland Holland was a customer of Strickland in East Point, Georgia, the Strickland Service Station in East Point, Georgia. Our salesman, Jim Matthews, was in the station—Strickland's station in East Point—when this gentleman came in and he was introduced to Jim Matthews. Jim was advised that he would be an operator of this station on Campbelton Road. That is how the contact was made there.

Q. That was in February, 1956? A. Yes, sir.

Q. Is it correct that the total number of Texas dealers obtained for Goodrich among these new stations since January 1, 1956, is seven? A. That's right.

Q. In other words, these are the seven dealers that—A. Texas stations that B. F. Goodrich sold in 1956.

Q. These are the same seven that you have talked about in your testimony today? A. That's right.

(4019) Q. Mr. LaGarde, in connection with the so-called, what counsel likes to call nomination by Texas of a Texas account to Goodrich, and approval by Goodrich, and which I think our form provides the word "notification" rather than "nomination," when does that take place with respect to one of these new Texas stations which becomes a Goodrich dealer? A. Anywhere from two weeks to two months after the account has been sold B. F. Goodrich.

Q. In other words, the account is sold by B. F. Goodrich to take the Goodrich franchise and then sometime after the station is opened and he is handling Goodrich a form comes through from the Texas Company to the Goodrich office? A. Right.

Q. With the name of that dealer on it, and indicating that he is handling Goodrich products, and at that time you approve that form? Is that right? A. That is right.

Q. Have you ever disapproved one during the course of your period as district manager in Atlanta? A. I can't recall of ever disapproving any.

Q. You told Mr. Dias that in connection with obtaining the Texas station as a customer you do not receive assistance except on some occasions from the Texas Company. But in connection with their activities after that you receive very great assistance? (4020) A. That is right.

Q. Will you detail what that assistance comprises? A. After we are able to sell a Texas operator B. F. Goodrich products, where he becomes a retail marketer of those products, we sense immediately that Texas is extremely interested in the sale of TBA merchandise through their stations and we feel that through their contacts with their service stations, which are quite often, they are able to do an awful lot—of rendering us an awful lot of help in securing cooperation from the dealer in fostering merchandising programs that we might suggest or whenever we want to hold a dealer meeting to give him a product story or merchandising discussion.

It emphasizes that fact, that they are extremely interested in rendering service to that operator, to improve his over-all volume through TBA. We sense that without any doubt. And they do give us any assistance that we ask for.

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Keller F. Melton, for Commission—Direct

(4021) KELLER F. MELTON was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Boyd:

Q. Mr. Melton, will you give us your full name? A. Keller F. Melton.

Q. With what business are you connected? A. I am with the Georgia Association of Petroleum Retailers.

Q. Is that commonly called GAPR? A. Yes, sir.

Q. What is your position with GAPR? A. Field Director.

Q. How long have you been with the GAPR? A. A little over five years.

Q. In the same position? A. In the same position.

Q. Would you tell us what the business of the GAPR is? A. The purpose of the organization is to try and stimulate better economic foundation and better working conditions; to try to create in general a more healthy retail service station business.

Q. When was the organization formed? A. In 1941 it was chartered as a state organization.

(4022) Q. What are the requirements of membership? A. The requirements of membership, as they are stated, the members try to uphold the principles of the local chapters in that we tend to try to make a livable margin of profit and try to discourage such things as premium-type give-aways, discounts, and any type operation that will tend to create an unhealthy operation.

Q. Could you give us some idea about your membership in the State of Georgia, and in the Atlanta area? A. The membership runs somewhere in the neighborhood of 3600 members in the State of Georgia; in the Atlanta area it runs about 500.

Q. Do you have any idea as to the percentage of membership as compared to the number of service stations in the State of Georgia? A. It runs just about 80 percent in connection with the major brand stations who we primarily contact.

Q. When you say "major brands," will you define that for us? A. That would be Standard, Gulf, Texaco, Sinclair, Cities Service, Phillips and so forth.

Q. Do you have any idea as to how Texaco ranks in size in the State of Georgia? A. According to their report on tax to the state it would rank somewhere about fourth.

Q. What is this report that you refer to? (4023) A. That is the report on the amount of tax that they turn into the state.

Q. And it is based on what? A. In other words, you figure your gallons from the amount of tax that they turn in.

Q. Do you have any idea as to how many, approximately how many Texaco dealers there are in Georgia? A. That would be something that Texaco could give you the exact answer on. I would approximate about 800 if that would include all type pumps, exclusive of bay stations and so forth.

Q. Would you tell us what your duties and responsibilities are as a field director with the GAPR? A. We have about 30 chapters over the state. In my territory there are approximately ten.

Q. Tell us what your territory is? A. It would be a radius of approximately 100 miles out of Atlanta, to the Alabama line, to Columbus, as far as Cedartown and Alpharetta.

Q. Will you finish your description of your duties? A. We handle complaints from dealers, whether it be on price discrimination, lease cancellation—unfair lease cancella-

tion, I might add—TBA pressure. In the case of the unfair lease cancellation we attempt to find out the trouble in this and possibly either go to the company or take (4024) various other courses to try to find out why this lease was cancelled.

And then in the course of the TBA pressure and price discrimination we get up these various facts, report it to the various government agencies for their consideration.

Q. Does your work include direct contact with dealers? A. Yes, sir.

Q. Would you explain the nature of that? A. Of course in having our meetings we contact as many dealers in person as possible.

* * *

(4025) Q. Mr. Melton, do the members of GAPR file complaints with you—with the organization? A. Yes, they do file complaints.

Q. Do you have occasion to check into such complaints? A. Yes, sir. I sure do.

Q. Have you had occasion where dealers have registered complaints with your organization with respect to TBA? A. Yes, sir.

Mr. Barton: Objection.
Mr. Royall: Objection.
Hearing Examiner Kolb: Objection overruled.

A. Yes, we do.

By Mr. Boyd:

Q. Will you tell us generally the nature of such complaints?

Mr. Barton: Objection.
Mr. Royall: Objection.

(4026) Hearing Examiner Kolb: Objection overruled.

A. The nature of the complaint is the fact that they do not receive direct pressure from the oil companies to handle a given line of TBA; * * *

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By Mr. Boyd:

Q. Mr. Melton, have such discussions included with respect to the handling of TBA the matter of lease non-renewal? Things of that nature?

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(4027) A. The complaints do involve lease cancellation.

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(4028) Q. In your territory, which you described as a hundred mile radius of Atlanta, do you have any idea how many service stations are in that area, of all kinds? A. I would say about 4,000, the latest count.

Q. This is just your territory? A. That is right. That is all type outlets. There are some we don't consider eligible for membership in GAPR due (4029) to lack of volume.

Q. What type operation would that be? A. A grocery store with one pump possibly or two pumps that have very, very small volume.

Q. Do you have any idea about the approximate number of Texaco stations in your area? A. I couldn't give you the exact figure. I would say somewhere in the neighborhood of 300 to 400, probably more.

Q. What about the number of Texas stations that are members of the GAPR? A. It would be about 150.

Q. Do you know about how many of those would be leased stations as contrasted to independent stations?

Mr. Royall: Objection.
Hearing Examiner Kolb: Overruled.

A. That would be hard to give a figure. It would just have to be approximated. Of course you have your independents who come into it, where they have all their—as a rule—all their own places, and you have independent chains including in that. I would say in the whole category it would probably be dominated by 60 percent of company-owned leased property.

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(4030) *By Mr. Boyd*:

Q. Mr. Melton, do you call on the Texaco stations in your area that are members as well as non-members? A. Yes.

Q. What is usually the purpose of the calls on the members?

Mr. Royall: Objection.
Hearing Examiner Kolb: Overruled.

A. Well, of course if we receive any complaints, that is one basis for calling on the members.

Q. Any others? A. And of course there again you have your meeting, you have various other reasons such as your "C" type operations where they cut the price in that location; where the company tries to get the operator to stay open longer than a station warrants; where the company tries to persuade dealers to take on lines that are disadvantageous to the dealer, such as premium stamps. There again you get back into of course your insistence on handling their controlled line of products.

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(4031) Q. In your calls on these stations, Mr. Melton, have you observed the line of tires and batteries that are carried in Texaco stations? A. Yes, sir.

Q. What brand or brands have you observed in most Texaco stations?

Mr. Barton: Object.
Mr. Royall: Objection.
Hearing Examiner Kolb: Objection overruled.

By Mr. Dias:

Q. You may answer. A. If I might qualify that by saying in the company-owned property it is predominantly either B. F. Goodrich or Firestone.

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(4033) Q. In your travels what have you noticed with reference to stations other than company-owned or leased stations?

Mr. Royall: Objection.
Hearing Examiner Kolb: Overruled.

A. Well, I would say, from calling on these stations and noticing this pretty closely, that they would have a field (4034) of taking in every or nearly every tire that is made, and not tied down to any one or two specific tires.

Mr. Royall: Motion to strike on the grounds previously stated in the other question, unless your Honor wants me to repeat it.
Hearing Examiner Kolb: Motion denied.

By Mr. Boyd:

Q. What about batteries?

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

A. The same with batteries.

By Mr. Boyd:

Q. Mr. Melton, have any of the Texaco operators ever discussed with you the brand of TBA they handle?

Mr. Barton: Object.

Mr. Royall: Objection.

Mr. Boyd: I am coming to the specific part now.

Hearing Examiner Kolb: Objection overruled. The witness may answer, Yes, or No.

A. Will you repeat the question?

(Question read.)

Mr. Royall: Objection.

A. Yes.

By Mr. Boyd:

Q. Are you familiar with some instances? (4035) A. Yes.

Q. Will you name some for us? A. Well, we can go back a number of years to the station out here at Piedmont and 10th Street.

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(4053) Hearing Examiner Kolb: Mr. Melton, as an officer of the Association, have you received complaints from your various members of your Association?

The Witness: Yes, sir.

Hearing Examiner Kolb: In the past three years about how many complaints have you received?

The Witness: This question of TBA—

Hearing Examiner Kolb: Just answer my question. How many complaints have you received in the past three years?

The Witness: I would say somewhere over 150.

Hearing Examiner Kolb: How many of those complaints involved TBA?

The Witness: I would say the majority of them.

Hearing Examiner Kolb: Did you do anything about taking it up with the companies in connection with the complaint?

The Witness: Yes, sir.

Hearing Examiner Kolb: Did you take any of it up with Texaco?

The Witness: No, sir.

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(4055) HARVEY G. TALLEY was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Boyd:

Q. Mr. Talley, will you give us your full name please? A. Harvey G. Talley.

Q. What is your home address? A. 83 Dartmouth Avenue, Avondale Estates, Georgia.

Q. Have you ever been in the service station business? A. Yes.

Q. With what company? A. The Texas Company.

Q. Would you detail for us when you were in the service station business for the Texas Company? A. At the beginning?

Q. Yes. A. I first became a dealer with the Texas Company June 6, 1938.

Q. Where was this station located? A. 718 Ponce de Leon Avenue, Atlanta, Georgia.

(4056) Q. How long did you continue as a lessee of the Texas Company? A. Until September 5, 1951.

Q. Had you been connected with this station before you became the lessee there? A. Yes, sir.

Q. In what capacity? A. In 1932, about June, 1932, I went there to train, to take a job on the road for the Texas Company.

Q. And after that? A. I remained there until the latter part of '33 at which time I took a territory known as the Gainesville territory, Gainesville, Georgia, territory, in the capacity of service station supervisor.

After having been there a short while my territory was combined with another territory and I returned to 718 Ponce de Leon Avenue.

Q. What did you do there? A. I still was a trainee, to go on the road in the capacity of a service station supervisor.

Q. And that was when? A. That was the latter part of 1933.

Q. Bring us on up from there to when you became the lessee of that station. A. Later, I believe the first of 1934, I was moved to (4057) Greeneville, South Carolina, to operate a training station for the Texas Company. That lasted for three or four months.

Then I succeeded Mr. T. O. Andrew as service station supervisor of the western half of South Carolina, with headquarters in Greenville, South Carolina.

Q. That continued to when? A. That continued through December, 1936. As of January 1, 1937, I was brought back to the same point, 718 Ponce de Leon Avenue, and made manager of the station.

I remained manager of the station until I became lessee June 6, 1938.

Q. Who were you managing the station for, from 1936 to '38? A. From 1936 to 1938 for the Texas Company. I was a salaried employee.

Q. While you were a lessee of that station—when you became a lessee, did that station have any TBA? Line of TBA? A. Yes. We handled Firestone.

Q. At that time was there any other line of TBA in the station?

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(4058) Q. Other than Firestone? A. No. Not in the station.

Q. That would include tires? Firestone tires? A. Yes, sir.

Q. Batteries? A. Yes.

Q. And accessories? A. That's right.

Q. After you became the lessee did you continue to carry the Firestone line? A. Yes, I did.

Q. How long did you carry the Firestone line? A. During the whole time of my stay there.

Q. Did you ever carry any unsponsored TBA? (4059) A. Yes.

Q. Will you tell us when it was and what it was you carried? A. During the war—of course all merchandise was short—we endeavored to secure merchandise to sell from any place available.

Q. Is this World War II you are talking about? A. That's right.

Q. Go ahead. A. I had done some business with Gordy Tire Company, distributors of Dayton tires. I had done some business with them and it was through them that I was able to get, during the war, tires—not enough, but tires—to sell to my customers.

Firestone was unable to supply me. Of course, I appreciate that they were rationed, as everything else was. But

I was able to get more tires from Gordy than I was from Firestone. Therefore, I was selling them right along.

Q. After World War II what was the situation? A. After the War, of course, it was a good while before merchandise became plentiful, as we all know. But I continued to handle Dayton tires as well as Firestone. And as Firestone became available, I handled more and more. But I still had Dayton tires in stock, and sold them right along.

Q. Did any representatives of the Texas Company ever say anything about your handling the Dayton tires? A. Yes.

(4060) Q. About when was it that he said something to you, and who was it? A. It was, I believe, about 1945, and I believe the representative of the Texas Company was Mr. Strickland.

Q. What did he say to you about Dayton tires?

Mr. Royall: I know you gave me a continuing objection. Since this is not historical, I wish your Honor would consider it.

Hearing Examiner Kolb: I understand the testimony this man might give extends to September, 1951. Your objection is as to any evidence prior to 1952. That will be overruled. Read the question.

(Question read.)

A. He requested that I at first—he saw that I had an ample stock on hand—he requested that I not display them out front, which I did.

By Mr. Boyd:

Q. What did you do with them? A. I put them in my back room, in the back office, in the storeroom.

Q. What else did he say? A. Later on he requested that I do away with them, sell them as quickly as possible,

Then he came to the point where he requested that I do away with them entirely.

(4061) Q. When you put the Dayton tires in the back room did you have any tires out front? A. Yes.

Q. What were they? A. Firestone.

Q. What about batteries, Mr. Talley? Did you ever carry any unsponsored batteries? A. Yes. I carried Willard batteries, and Southern batteries, along with Firestone.

Q. When did you do this? When did you carry the unsponsored batteries? Willard and Southern? A. During that same period of time.

Q. This is World War II you are talking about? A. And after.

Q. Did any representative of the Texas Company ever say anything about the Southern battery and the Willard battery? A. They didn't have as much to say about that as they had to say about the tires.

Q. Did you finally get rid of the Dayton tires? A. Yes, sir.

Q. After that did you carry any tires other than Firestone? A. No, sir.

Q. Until the time your lease—until the end of the term of your lease? A. That is correct.

(4062) Q. September, 1951? A. That is correct?

Q. What about batteries? Did you carry any other brands? A. Yes. I continued to handle Southern batteries and a few Willard right along.

Q. Did you carry those openly in the station? A. Yes.

Q. What, if anything, was said about them? A. I don't remember. No more than had already been said.

Q. What—would it be Mr. Strickland there? A. I don't remember. No, I think Mr. Strickland moved on to another territory, and I have forgotten who succeeded him.

Q. But something was said by the people of the Texas Company? A. That's right.

Mr. Royall: We object on the additional ground that who said it is not identified.

Hearing Examiner Kolb: Objection overruled. The answer may stand.

By Mr. Boyd:

Q. Mr. Talley, during the last year of your tenure as a lessee of that station, do you recall about what your average TBA volume was a month? A. About a thousand to $1,500 a month.

Q. How long did that prevail, at the rate of a thousand to $1,500 a month? (4063) A. That would be hard to say. It had grown from you might say little or nothing, a very small volume prior to the war, and I did my biggest tire business after the war.

Q. World War II? A. After World War II, yes.

Q. What about the gasoline gallonage? How did that run from the time you went in until you left? A. I won't attempt to—

Q. Approximately? A. I will approximate it at 35,000 average. The most I ever did was slightly under 40,000 gallons in one month.

Q. You figure it averaged 35,000? A. From 32 to 35,000. That's right.

Q. Mr. Talley, from what source did you acquire the Firestone tires, batteries and accessories that were handled at that station? A. From the Firestone Tire and Rubber Company at their warehouse on Lindbergh Drive.

Q. Here in Atlanta? A. Here in Atlanta.

Q. During the whole period? A. That is correct.

Q. Were you told by any representative of the Texas Company to acquire the Firestone TBA there? A. No, I wasn't. In the beginning of my lease?

(4064) Q. Yes. A. No.

Q. How did you know to go there? A. Oh, to that point of supply?

Well, that is where all Firestone dealers buy from. They don't necessarily buy from a store. They can. I always bought direct.

Q. Mr. Talley, when did you first learn that your lease on that station would not be renewed? And where? A. In 1951, I believe the last of August—I mean the last of July or the first of August, that part; I can't be sure—while I was on vacation for a couple of weeks, I had this friend of mine who did auditing work to come in and compile figures on a third shift that I was running—24 hours. I knew that I was losing money, and I had him come in and go through the whole period that I had been staying open, which was a 8-month period.

Q. You had been staying open a 24-hour period for 8 months? A. That's right. I was not open then. But he got these figures—

Q. Excuse me. What was the reason for running the station 24 hours?

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(4065) A. I was requested to do so.

Q. By whom? A. The Texas Company.

Q. Go ahead. A. This man having gotten those figures for me, and he did them carefully and diligently, it showed that I had incurred a loss of a thousand dollars the last eight months I kept it open.

Q. You mean kept it open a third 8-hour shift? A. That's right. When I say kept it open, I mean all night. I still can't recall the man's name that I went to see, at the Texas Company.

Q. Where was he, that you went to see him? A. Atlanta.

Q. At what company? The Texas Company? A. The Texas Company. I called up and asked for an appoint-

ment. I was going to ask him to look at those figures because they were wanting me to get back to staying open all night again, and I wanted him to see the figures that showed the loss that I had incurred. And he gave me the appointment graciously.

I went up to see him. When I went into his office he thought that I had learned that they weren't going to renew my lease.

(4066) Q. Did he tell you that? Whoever this man is? A. I don't believe he did.

Q. How do you know that he thought that then? A. Because he said, "It is too bad, Talley, I am sorry that things are going like they had to go." Words to that effect. Those are not his exact words. But that is how I knew something was in the wind other than what I had come up there to see him about.

Q. At this time had you received any notification from the Texas Company? A. No.

Q. That the lease was not going to be renewed? A. No, sir.

Q. That is the first you heard of it? A. Yes.

Q. And you can't remember that man's name? A. No, sir. I can't to save my life.

Q. It was at the Texas Company? A. Yes, sir.

Q. He told you he was sorry. What else was said there? A. I mentioned the fact that I had come to show him these figures, showing the loss that I had incurred, and I guess that there was no need for him to see them then, and he agreed.

Q. Did he say, at that time, anything about there having gotten another operator for the station? (4067) A. I don't recall.

Q. Thereafter did you receive notification of non-renewal of the lease? A. In due time, yes, which was 30 days prior to the expiration of my lease, or the anniversary of it.

Q. At the end of that term did you leave the station? A. I did.

Q. Mr. Talley, what reason was given you, if any, by the Texas Company, for the non-renewal of that lease? A. Well, to quote Mr. John Green, who was then assistant district manager I believe in charge of sales, he told me, he said, "Talley, we think a lot of you. You have been with us a long time. You can have any station we have got that is available but that one. 'It is going to be kept open all night and you don't want to keep it open all night.''

Q. Then, is it your understanding that if you agreed to run it all night you could have kept the station? A. No, it was not my understanding at that time. It was too late. Oh, prior to that?

Q. When did Mr. Green tell you this? A. That was, I believe, the same day, or maybe a few days following. I believe it may have been the same day.

Q. Same day of what? A. That I was in the Texas Company office.

Q. And learned— (4068) A. Learned that a successor had been selected for that station.

Q. Other than that, no other reason was given to you? A. That's right.

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(4069) *Cross examination by Mr. Royall:*

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(4070) Q. Mr. Talley, this conversation that you had with Mr. Strickland back in 1945, as you recounted, what were the exact words he used to you? A. I can't give the exact words after so long a time.

Q. Can you give us any additional information about what he said, aside from what you have already given? A. No. No. I think that was all.

Q. Do you know where Mr. Strickland is now? A. He is in his room. He was.

Q. Here in the room? A. He was.

Q. What position was he in when he talked to you? A. Salesman, I think the title was.

Q. You said in connection with keeping open all night that you went to see a man whose name you do not recall? A. That is right.

Q. What was his position at that time? A. If I remember correctly it was assistant district manager in charge of service stations.

Q. You think that would give me enough information to identify him, do you? A. I believe. I am awfully sorry I don't recall his name.

Q. As a matter of fact, in connection with the cancellation of your station, or at least the failure to renew it, you had had this discussion about staying open all night for a year (4071) or so before it was cancelled, hadn't you? A. Well, actually what took place, my lease had been renewed, we had personnel trouble. I have forgotten, I think it was about two months after my new lease had gone into effect. And I had this personnel trouble and was unable to get anyone satisfactory to run it at night, and I just had to close it down. I even found out later one of the men that I had had in there was selling whiskey all night. All such stuff as that.

Q. As a matter of fact, Mr. Talley, it was not during your last year that that occurred. It was in the year before that, wasn't it? A. Maybe it was. Maybe it was.

Q. And at that time you told them you would try to do better about it? A. Could be.

Q. And for a short time you did keep open 24 hours, didn't you? A. That is right.

Q. And they renewed your lease? A. That is right.

Q. After they renewed the lease you got a letter from Mr. H. E. Horton, did you not? A. I don't recall.

Q. I am not trying to mislead you. I would like to see if you recognize this letter so that I can identify it (handing)? (4072) A. Sure, I remember that.

Q. As a matter of fact, during the period you were not staying open all night the gallonage was a great deal less than it was when you later opened and stayed open all night again, wasn't it? A. It was some greater.

Q. Wasn't there a difference of 10,000 gallons a month between the two types of operations? A. I don't remember it being that much different.

Q. When you got a letter from Mr. Horton did you answer him? A. Of course I did.

Q. You wrote him a letter back in answer to this? A. He asked for a phone call, didn't he?

Q. You didn't write him? A. I don't recall having written him.

* * *

(4073) Q. It is a fact, is it not, Mr. Talley, that after that letter was written that you again resumed the 24-hour operation for awhile until about the first part of 1951, and then you changed the basis again? A. That is correct.

Q. And when you changed back again to a lesser period than 24 hours the gallonage went off from three to five thousand gallons a month, didn't it? A. It must have. You have the figures there. I don't have.

Q. This is not a letter to you. I would be glad to let you look at it. A. I will be happy to see it.

Q. This is for an earlier period (handing to the witness). I don't want to have this marked for identification because it is not competent evidence but I don't mind you seeing it.

Mr. Boyd: Do you mind if I read it?

Mr. Royall: Not at all.

Mr. Boyd: Since the witness is seeing it I think it should be identified.

Mr. Royall: I didn't offer it. I didn't even ask him about the letter. It was a courtesy to him. If you don't want him to have it I will take it back.

By Mr. Royall:

Q. Have you discussed this situation that you have testified about with anybody during this past Fall? (4074) A. With whom do you mean?

Q. I am asking you, sir? A. I don't recall having done so.

Q. Someone talked to you before you came up here as a witness, didn't they? A. Yes, sir.

Q. When is the first time that they talked to you? A. Two or three weeks ago.

Q. You were subpoenaed? A. Whatever time—

Q. Was it just before the subpoena? A. Just before the subpoena.

Q. How long before the subpoena? A. A week or two, I guess. I don't remember exactly.

Q. You don't remember talking to anybody else prior to that time, do you? A. No.

Q. Had you talked to anybody in the year before that about the matter? A. It is possible.

Q. You don't remember? A. No.

Q. You don't remember the year before that either, do you? A. No.

Mr. Royall: That is all I care to ask him.

(4075) Mr. Barton: No questions.

Mr. Boyd: May I see those two letters?

Mr. Royall: One of them is up there. This one is not offered in evidence and not made the basis of it.

Redirect examination by Mr. Boyd:

Q. Having seen the second letter shown to you by counsel for the Texas Company, did that refresh your recollection as to who it was that you talked with at the Texas Company, this conversation where you are unable to identify the individual? A. Mr. Monroe.

Q. It was Mr. Monroe? A. Yes.

Mr. Boyd: I wonder if we could have his full name?

Mr. Royall: D. B. Monroe.

By Mr. Boyd:

Q. Mr. Talley, can you tell us when you first started staying open 24 hours a day in that station?

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

A. I can't tell you exactly. But it was between 1938, the time I went in there, and '43. The reason why I say '43, I had a partner up until March 1943. He left me.

(4076) *By Mr. Boyd:*

Q. Then did you operate it from 1943 to along in 1950—I believe the date of the first letter is May 3, 1950—24 hours a day? A. No, not continuously.

Q. How was it? A. I don't remember the dates or anything but gasoline shortage developed and they allowed me to close, and then World War II came on and all of that. And then again I went back on 24 hours, and then again

a temporary gasoline shortage developed and they allowed me to close then to conserve the supply of gasoline for the area. The dates I don't have. I would like to say this—

Mr. Royall: Objection.

By Mr. Boyd:

Q. Do you have some explanation that you wish to make about the letters or about the 24-hour operation? A. Yes.

Mr. Royall: Objection.

By Mr. Boyd:

Q. Which is it about, the 24-hour operation?

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

A. It is about the second letter.

(4077) *By Mr. Boyd:*

Q. All right, sir. Do you need the letter in front of you? A. I would like to have it.

Mr. Boyd: May we have it?

Mr. Royall: Certainly.

Mr. Boyd: I would like the record to show that the witness now has before him for his use a letter dated July 17, 1951, and it is addressed to Mr. T. O. Andrews, Atlanta, Georgia, and it is signed or has stamped by a rubber stamp: "Signed B. Monroe." The letter is from Atlanta, Georgia.

Mr. Royall: Wait a minute.

Mr. Boyd: That is the subject.

Mr. Royall: We object to it. We can't offer it. And we haven't offered it.

Mr. Boyd: You showed it to the witness.

Mr. Royall: At his request.

Mr. Boyd: He requested it again.

Hearing Examiner Kolb: Is there a question pending?

The Reporter: No, sir.

By Mr. Boyd:

Q. Did you have an explanation that you wished to make with reference to that letter? A. Yes, I did.

Q. Tell us what it is.

(4078) Mr. Royall: We object, your Honor.

Hearing Examiner Kolb: Objection overruled.

A. At just about this time, stated in this letter, the Shell Oil Company opened up a station up the street, and it was open 24 hours. And the first month he was opened I suffered a loss of 5,000 gallons. If I had the dates of his opening the Texas Company could verify that according to their records.

* * *

Q. Do you know who Mr. D. O. Andrews was at this time? A. He was known as zone representative.

Q. For the Texas Company? A. Yes, sir.

Q. How abou. D. B. Monroe? Do you know what his title was? A. If I remember correct, assistant district manager in charge of service stations.

Q. For the Texas Company? A. The Texas Company.

Mr. Boyd: That is all that I have.

Recross-examination by Mr. Royall:

(4079) Q. At the time that you lost the 5,000 gallons a month was during the period when the Shell station was open 24 hours, and you were not? A. I was open.

Q. You were not, is that correct? A. It is my recollection that I was open at the same time they opened it up, when it was a new station, and five thousand gallons of my business went to him. He was right up there in the middle of my territory.

Q. Didn't you testify that at the time, and for a few months before you closed, that you were not open 24 hours a day? A. Would you repeat that, please?

Q. Didn't you testify that for the period immediately before your lease was terminated you were not open 24 hours a day? Didn't you testify that? A. I did.

Q. This was in the period just before you terminated, wasn't it? July 1951? A. That is right.

Q. So you were not open? A. No, sir, I was not open.

Q. And he was open? A. Yes.

Q. And you lost 5,000 gallons? A. Yes.

(4080) Mr. Royall: That is all.

Redirect examination by Mr. Boyd:

Q. At the time you went down to see Mr. Monroe you were keeping the station open 24 hours a day, weren't you? A. No.

Mr. Royall: He just said he wasn't. Objection.

The Witness: Not at that time.

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George R. Boyd, for Commission—Direct

(4081) GEORGE R. BOYD was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Boyd:

Q. Mr. Boyd, will you give us your full name? A. George R. Boyd.

Q. And with what company are you connected and what is your position? A. Manager, Gordy Tire Company.

Q. What is the business of the Gordy Tire Company? A. We are distributors for tires; recappers, both aircraft and passenger and truck.

Q. How long has the firm been in business? A. Since 1927.

Q. Will you tell us the brand of tires that Gordy—that is, automobile tires, passenger and truck tires—that the (4082) firm sells? A. We are distributors for Dayton, Fisk and Gillette.

Q. Does the firm sell batteries? A. Yes, National batteries.

Q. What is the brand name? National? A. Yes, that is correct, National.

Q. Do you sell accessories? A. No, none at all.

Q. Could you tell us who the manufacturers are for each of those brands of tires that you carry? A. Dayton Rubber Company, Dayton, Ohio, is the manufacturer for the Dayton brand. The United States Rubber Company is the parent company of both Fisk and Gillette.

Q. Would you tell us what the trading area of the firm is? A. All of Georgia and about half of South Carolina.

Q. Is that for all three brands of these tires? A. That is for Dayton. We have only Fisk and Gillette for Georgia.

Q. How many salesmen does the firm employ? A. 26.

Q. Will you tell us the classes of customers to whom the firm sells its tires and batteries? A. We have a retail

trade of course here, and then we have dealers throughout Georgia and half of South Carolina and that territory, and commercial accounts that we service.

(4083) Q. What kind of dealers? A. Small dealers mostly, service stations and garages and car dealers.

Q. Does the firm also sell tread rubber or camelback? A. We sell a little, not much. We don't do very well with that. We use a lot of it but we don't attempt to sell it very often. Sometimes we do.

Q. Does it— A. A small amount.

Q. I believe you said you do recapping? A. Yes.

Q. Does that include recapping for service station dealers? A. Yes.

Q. Could you tell us what the approximate annual volume of business has been for the last several years? A. A little in excess of $4,000,000 average, the last several years; between four and five million dollars.

Q. What period of time would that cover? A. Twelve months.

Q. In other words, that would be 1956 you are talking about? A. Yes, it was a little more in 1956 than in 1955. It will run a little better than $4,000,000 average for the last five years.

Q. Could you tell us about the amount of that business that is done with service stations? Would this include new tires and recapping and everything? (4084) A. That is total business that we do, both for the service stations, commercial accounts and retail accounts.

Q. Could you give us some idea as to the amount that is done with service stations? A. I tried to—we don't separate our business to service stations and car dealers but not more than 25 percent of it would be to service stations, and that is strictly a guess. That is not based on records because it will take a long time to determine exactly what we do with service stations, to go back and

pick it out. I would say not in excess of 25 percent. Maybe not that much, possibly 25 percent would cover it. That is a good estimate.

Q. Do you have any idea as to about how many service stations of all types are in your trading area? A. No, sir, I have no idea. I sure don't.

Q. Would you have any information as to the number of Texaco stations? A. No, sir, I don't. I don't have any idea.

Q. Do you do any business with Texas stations? A. Yes, we have some dealers who buy from us.

Q. What type business would that be? A. Well, we have some who buy recaps from us. We ship recap tires to them. Occasionally some new tires. I don't recall any battery sales to any of them but we probably have. I know we sell some service station operators that sell (4085) Texaco gasoline, we sell them some tires occasionally. We do business with some of them.

Q. Do you know whether these that you do business with are lessees or independently-owned stations? A. No, sir, I do not.

Q. Do Texas stations generally carry and openly display your new tires—Fisk, Gillette and Dayton—that you know of?

Mr. Royall: He hasn't said he knew.

A. As a rule they do not display, make any special display. I have seen a lot of our tires in racks but not any special displays. There again I don't know whether they are leased stations or owned individually. I just don't know.

Q. The business that the firm does with Texas stations, could you tell us whether it is more recapping or new tires or what is it? A. I would say it is more new tires than it would be recapping, because after we leave a certain, after we get a certain distance away from Atlanta, then

other recap shops move in and start getting that recap business. We can only go out a certain number of miles and then the local shops begin to move in on us. I would say that the majority of the business that we do with service stations would be new tires business rather than recapping business.

Service stations in Atlanta and the Atlanta area, (4086) out fifty or sixty miles, we do more recapping with that type of service station that was in a 50 or 60 miles redius of Atlanta. But when you get down as far as Macon, for instance, Macon has shops that begin to move in and take the service station business away from you.

Mr. Boyd: I believe that concludes the direct examination.

Hearing Examiner Kolb: You may cross-examine.

Cross examination by Mr. Barton:

Q. Mr. Boyd, Gordy Tire Company has quite a few competitors in this area in the tire business, doesn't it? A. Yes, sir, a lot of it.

Q. And that is tire distributors who are soliciting service stations along with you? A. Yes.

Q. I suppose you are the largest one in the State, aren't you? That is my understanding. You would agree with that, wouldn't you? A. I don't know if we are the largest or not. I am just not familiar with other people's volume.

Q. Prior tires are a large competitor of yours? A. Yes.

Q. Selling what brand? A. Hood.

(4087) Q. And Farland Duke is another tire company? A. Yes.

Q. What brand does he sell? A. I believe he has Diamond and I am not sure about the other brand. He has Diamond, which is made by Goodrich.

Q. And you have another competitor, Edwards Warren Tire Company? A. Yes, that is right.

Q. Which distributes the Goodyear brand of tires? A. Yes.

Q. At Atlanta and surrounding area? A. Yes.

Q. And the American Tire Company is located here and sells at wholesale as well as retail? A. Yes.

Q. It sells the U. S. Royal line? A. Yes.

Q. And the Riddick Tire Company is also located here and has salesmen in the service stations? A. Yes.

Q. What line does Riddick handle? A. He has McCreary and Dunlop.

Q. Do you ever run into Cooper in connection with your service stations? A. Yes, sir.

Q. You do sometimes? (4088) A. Yes, sir.

Q. Do you mean in the Georgia and South Carolina area in which you compete? A. Yes.

Q. Do you have a competitor named Bill's NU Tred, in the tire business here, selling Pennsylvania tires? A. At East Point?

Q. At Decatur; do you know him? A. I am not sure that I do.

Q. How about Carrol's Company, at Hapeville? Do you run into them? A. No, sir. I don't hear of them.

Q. Of course in connection with the sale of National batteries you have a much larger number of battery distributors, don't you? A. Yes.

Q. Would you estimate 40 or 50 in the area— A. I wouldn't have any idea.

Q. It would be even larger than the number of tires? A. I am sure it is.

Q. I think you testified that your average sales were over $4,000,000 in the past several years? A. Yes, sir.

Q. They were over $5,000,000 in 1956? A. I don't believe our total sales were quite $5,000,000 (4089) last

year; about that. They run right close to $5,000,000; $4,850,000.

Q. That was an increase of about $500,000 over 1954? A. About $300,000.

Q. Of course that was a substantial increase from your 1953 sales. Over a million dollars, wasn't it? A. No, I don't think so. I don't have the 1953 figures. 1953 was a good year. That was one of the best tire years we ever had. But it was not as good as 1956.

Q. Not as good as 1956? A. That is right.

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(4090) Q. What percentage of your business is commercial business? A. About 50 percent.

Q. Just what is commercial business, what is the nature of it? A. Well, commercial business as we consider commercial business is to truck operators and freight lines. We consider most of our truck tire business as commercial business, used in commercial ways. And sometimes in selling taxicab fleets we classify that as commercial business. Not as retail and not as dealer business. It is really. If we sell passenger tires to taxicab fleets we consider that commercial business.

Q. In other words, it is any large, fairly large user who buys? A. Yes.

Q. You sell to them directly? A. Yes.

Q. You sell to retailers around the surrounding area, this two-state area? A. We have small service stations out in the area that sometimes aren't interested in going after truck tire business. We don't try to run the truck tire business through them because it is a different type business.

Q. It is a sort of specialized business? (4091) A. That is right. They will handle the passenger car business

and we will go direct to the commercial accounts and sell them direct.

Q. What would you estimate that you have? About 3400 accounts? A. I am sure we have more than that.

Q. You would have more than that? A. Yes.

Q. You say you have a recapping business which you carry on in conjunction with your sale of new tires. That recapping is about what? About 25 percent of your business? A. Yes.

Q. That is— A. Maybe a little better; somewhere in that neighborhood.

Q. That is carried on principally in connection with the 60-mile radius of Atlanta? A. That is true, with the exception of aircraft. We do aircraft recapping which may cover several states, for the airlines and for the Air Force. That is some of our recapping volume there.

Q. And you very actively solicit all the service stations in the Atlanta area for your recapping, as well as the other tire business, don't you? A. Yes, we work the service stations and commercial accounts.

(4092) Q. You get a good heavy percentage of the recapping business of the service stations, don't you? A. I wouldn't say we get a heavy percent.

Q. A substantial amount? A. There is a lot of recapping shops get a lot of the recapping in the market. A lot of recappers are after that business. We just get a fair share, I would say, of the service station business.

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Redirect examination by Mr. Boyd:

Q. Mr. Barton asked you, Mr. Boyd, about some other firms that were competitors of yours. What about the B. F. Goodrich store and the B. F. Goodrich Company? A. The B. F. Goodrich Company is a competitor. They sell tires in places where we sell them. I don't know how they handle their recapping down there with the dealers. I guess they handle that out of the store.

Q. Are they competitors of yours? A. Yes, sir.

Q. And the Firestone Tire & Rubber Company? A. Yes, sir.

Q. You were asked if you were the biggest in the State. How do you think you compare with those two, Firestone and (4093) Goodrich? A. In the State? I am sure we are not as large as they are. I haven't seen their books. I don't know how much business they do.

Q. You mentioned the aircraft business. What would you say the percentage of your business is, aircraft? A. It is a small percent of our total recapping volume now. And I am not sure what percent it would be last year. Our total recapping volume in aircraft sales last year would not exceed about 25 percent of our total recapping last year, in the aircraft business. Between 20 and 25 percent, I would like to say.

Q. Besides recapping for the aircraft industry do you do any other kind of tire business with them? A. For the aircraft people?

Q. Yes. A. No. We don't sell new tires. We only do recapping for the airlines and Air Force.

Mr. Boyd: I believe that is all.

(Witness excused.)

Hearing Examiner Kolb: Recess.

(A short recess was taken.)

(4094) Hearing Examiner Kolb: The hearing will come to order.

John D. Hulme, for Commission—Direct

JOHN D. HULME was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Boyd:

Q. Mr. Hulme, will you give us your full name, please? A. John D. Hulme.

Q. What is your business, Mr. Hulme? A. I am a city salesman for Gordy Tire Company.

Q. How long have you been a city salesman with Gordy? A. Since September 17, 1945.

Q. And what is your sales area? A. I would say accounts that are assigned to me in greater Atlanta, including Lithonia, Conyers, and Stone Mountain.

Q. You have accounts assigned to you? A. We have accounts that have been assigned to us to work, and also new accounts that we obtain ourselves.

Q. By whom were they assigned? A. By Gordy Tire Company.

Q. In the area in which you operate, how many Texaco stations would you say there are? A. I have some ten or 12 Texaco stations I call on. Some I get new tire business out of, some recapping, and some both new tires and recapping.

(4095) Q. I meant at this point how many would you say, whether you called on them or not, are in your area? A. I don't exactly know how many is in the Greater Atlanta—

Q. You said there are more than 12. A. I said I called on 10 or 12 that I have assigned to me.

Q. Have you called on others besides those? Texaco accounts? A. Oh, yes. Do you mean other major oil companies besides?

Q. No. Other Texaco accounts besides these 10 or 12 that you say you sell to? A. Oh, yes. I have other accounts besides those.

Q. I say are there other Texaco accounts that are in your area that you call on that you may not be selling to? A. Yes.

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Q. Do you call on accounts other than those assigned? A. Yes. I have commercial accounts that I call on in addition. Quite a few.

Q. What percentage of your business would you say is service station business? Of all kinds? A. I would say roughly 25 percent service stations.

Q. That would be of what products? What kind of business? A. Well, it would be 25 percent of service stations, all (4096) major oil companies, plus commercial accounts.

Q. I mean the type of products you would be selling to them. What would you be selling these accounts? A. I would be selling them new tires and would be selling them recapping and batteries.

Q. What about an account in east Atlanta that you formerly sold? Do you recall that one?

Mr. Barton: Object.

Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

A. I have one account in east Atlanta that I have sold since 1954, in September, starting about the 19th, and the name of the station is East Atlanta Service Station, 511 Flat Shoals Avenue.

By Mr. Boyd:

Q. Is that the first time you sold him, in 1954? A. 1954. And from '54—I mean 1945 was when I first sold him, up through 1954.

Q. Is that Shoals? S-h-o-a-l-s? A. Yes.

Q. You say you sold him during the period 1945 through '54? A. Yes.

Q. What did you sell him during that time? A. I sold him some new tires and did some recapping for him.

Q. What kind of new tires? (4097) A. Dayton tires. And I have sold him some Fisk and Gillette.

Q. And did you say some recapping? A. Some recapping I have done for him.

Q. Do you sell him today? A. I am not selling him any in the last two years, for objections that he has given.

Q. To you? A. Yes, to me.

Q. What have been those objections? A. Well, back during the years when tires were scarce, naturally most all of the stations of different types got the tires where they could, and we were able to put our Dayton tires along with another brand in his rack on display, and did that up to 1954. Since that time he said that the Texas Company objected to having any other brand except the one particular brand in stock there.

Mr. Royall: Move to strike.

Hearing Examiner Kolb: Motion to strike denied.

By Mr. Boyd:

Q. What is that particular brand? A. Firestone.

Q. Is that the reason he gave you for not buying? A. That's right. That is the reason he gave.

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

(4098) *By Mr. Boyd:*

Q. Mr. Hulme, what was the annual volume of business you were doing with that account from 1945 through '54? Yearly.

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

A. I would say from 1945 through '54 his average volume would be approximately four to five thousand dollars per year.

Q. Do you know what brand he is carrying today, of tires and batteries? A. Firestone.

Q. Do you know whether or not that is a leased station or whether the operator owns the station? A. I think it is a leased station, on a yearly basis. I am under that impression.

Q. Do you have a customer, a Texaco station at Memorial Drive and Route 78? A. I do.

Q. What is the name of the station? A. Memorial Drive Service Station.

Q. Do you know whether that is a lessee station or one that is operator-owned? A. I am under the impression the operator owns the station. That is he rents it from a party that lives nearby that owns the property.

Q. And it is a Texaco station? (4099) A. Yes, sir.

Q. Do you sell him any merchandise? A. Yes, sir.

Q. What do you sell him? A. I sell him new tires, Dayton; I sell him National batteries; and recaps.

Q. Does he openly display them and sell them in the station? A. Yes, sir.

Q. What would you say the volume of that account is on Memorial Drive? A. I will say it will average $4,000 per year.

Q. Referring back to the East Atlanta Station for a moment: Did you ever sell him batteries? A. No, sir.

Q. Just tires? A. New tires and recaps.

Q. Do you get any of his recapping business at the East Atlanta station now? A. No, sir.

Q. What, if any, reason was ever given you for not getting the recapping business? Has he ever said anything about that?

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(4100) A. Approximately ten days ago he told me that the Texas Company had informed him that they would like to see him give his recapping to Firestone as he was selling Firestone tires.

Hearing Examiner Kolb: What are you talking about now?

The Witness: East Atlanta Service Station.

By Mr. Boyd:

Q. He gave you that information in the course of a regular call at that station? A. Yes, sir. About ten days ago.

Q. I believe you mentioned that you sell 10 or 12 Texaco accounts. Can you tell us who they are and what you sell them? A. Most of the others that I sell are for recapping. One of them is a dealer, and also a Chevrolet dealer—McCurdy Chevrolet dealer, Stone Mountain.

Q. Is he— A. He is a Chevrolet dealer.

(4101) Q. Do you know whether or not he owns the station? A. I presume he owns his building. He has been there some 30-odd years I believe.

Q. He has Texas pump for gasoline? A. He sells Texas.

Q. What do you sell him? A. Recapping. I have been getting his recapping some ten years now.

Q. What line of tires and batteries does he sell? A. I believe he has U. S. Tires mainly. Batteries—

Q. Do you know what battery it is? A. I imagine it is Delco batteries that he stocks.

Next is the new car dealer, McCurdy Chevrolet.

Q. Who are some of the other stations? A. That is the only three I recall now. I have some others in Lithonia, Conyers, that give recapping.

Q. Is this Conyers Texaco station? A. That is Conyers, Jr.

Q. What is the name of the station? A. I have some others I call on there. Some I get recapping out of, some I don't. But these three here are the main three that I recall right at present.

Q. What did you say about the others? Do you sell to 10 or 12 others? Or am I mistaken? A. In other words, I said there are some 10 or 12 in all that (4102) I call on in this immediate trading area. But that is the only three that I recall right now, of cases that I can give where we are getting business and where we are not getting business.

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Cross-examination by Mr. Royall:

Q. Who is this gentleman you were talking to at East Atlanta? A. Mr. Jacka, who is a brother-in-law of Oscar Hart.

Q. You have been in that station, Mr. Hardin's station, a number of times, haven't you? A. Yes, sir, quite a few times.

Q. He was selling Southern batteries, wasn't he? A. Yes, sir.

Q. Or Southland? A. Yes, sir. I said I didn't sell him any batteries.

Q. He was selling Southland batteries? A. Southern batteries.

Q. And you talked about his recaps. Don't you know he gets them from McCart's and not Firestone? A. He did some business with McCart's.

Q. Isn't he doing it today? A. Ten days ago he told me he was giving it to Firestone. That is Mr. Jacka that told me.

Q. Both conversations were with the same man? (4103) A. Yes, sir. Ten days ago it was Mr. Jacka. Mr. Hardin was off that afternoon.

Q. Were both conversations with Mr. Jacka and one with— A. Ten days ago I talked to Mr. Jacka, his brother-in-law.

Q. And the other time? A. That was the most recent time I talked this year.

Q. Didn't you mention two conversations? A. I said at times previously that I talked to Mr. Hardin.

Q. You are sure he is not handling McCart's recapping now? A. That is what he told me ten days ago.

Q. I know. Did you see any there? A. Yes, I saw some recaps.

Q. Did you see— A. I saw some Firestone retreads and Firestone new tires.

Q. You are certain he told you that he was just handling Firestone? A. He told me that he was giving his recapping to Firestone. He had last year given some to McCart's. And sometimes he carries a car up there to get service in one-day's time.

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Cross-examination by Mr. Barton:

Q. You do some recapping business with M. J. Collins, don't (4104) you? A. No, sir.

Q. At 1156 Memorial Drive? A. One of our other salesmen might.

Q. You don't have that account? A. I don't have that account, no, sir.

Q. How about E. A. Gresham, 1120 Moreland Avenue? A. No, sir.

Q. You don't have that account either? A. No, sir.

Q. One of the other salesmen? A. Yes, sir.

Q. How many salesmen are working this Atlanta area for Gordy Tire? A. I would say roughly around 18.

Q. In Atlanta itself? A. In Greater Atlanta.

Q. In the same area that you are working but have different assigned accounts? A. That's right. We go by accounts instead of divisions or territories in the City.

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(4105) *Further cross-examination by Mr. Royall:*

Q. As near as you can recall, what were the exact words said to you by Mr. Hardin? A. Do you mean by Mr. Jacka?

Q. No. A. Mr. Jacka was the one that said the last words to me.

Q. What did he say? A. I asked him the question, I said, "For years we kept some Dayton tires in your rack here along with your Firestone. There is not a single Dayton tire up there now. Let's put a few in there with the Firestone."

Q. What did he say? A. He said, "You know we are on a leased station basis here, renewable from year to year." He said, "There are some here in Atlanta—meaning no names—that have lost leases because they didn't do what the Texas Company told them to do."

And he said, "I would like to give you some business. I (4106) like the Gordy Tire Company and I like you. A lot of salesmen come in here that I don't want to see. You come by here and I like to see you."

Of course, I was looking for some business, but I didn't get it for that reason.

Q. Is that the complete conversation? A. That is the gist of it. Yes.

Q. Tell me what is the gist of the first conversation that you had, back with Mr. Hardin. A. In 1945?

Q. In 1954. A. I have been calling on them for a good many years. There are a lot of conversations.

Q. I am asking about the conversation that you had with him in 1954. What were the exact words as far as you can recall? A. As far as I know we did some business up through 1954, but that was the time that he said that he was going to have to stock Firestone tires and that might be opportunities arising in truck tires that he would order some truck tires from us.

And he has bought some in the last two years, but very little.

Q. Is that his entire conversation as far as you recall? A. That is the gist of it.

Mr. Royall: That is all, sir.

(4107) SAM B. RIDDICK was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Boyd:

Q. Mr. Riddick, will you give us your full name and business, please? A. Sam B. Riddick, Riddick Tire Company, 1030 Marietta Street, Atlanta, Georgia.

Q. What is your connection with this Company? A. I am sole owner and operator.

Q. How long has the firm been in business? A. February 11, 1946. The day I was discharged from the Army.

I will never forget that day.

Q. Would you tell us what the business of your company is? A. Primarily it is recapping, used tires, very little other than that. No accessories to amount to anything.

Q. Do you sell batteries? A. I have in the last two weeks, but just a few. Never have tried to sell them before.

Q. What is the battery you have taken on? A. Dunlop.

Q. What brands of new tires do you handle? A. We have a state distributorship from the McCreary Tire (4108) and Rubber Company. We also handle Dunlop and Lee. And anything else we can buy right.

Q. What is the trading area of the firm? A. Approximately two-thirds of Georgia and occasional shipments anywhere in the Southeast, on odds and ends merchandise.

We also have a place of business in Moultrie, Georgia.

Q. How many salesmen do you employ? A. At the present time we have four.

Q. Will you tell us the type? Are these road salesmen? A. Yes, practically all. We have one city salesman who covers the outlying communities. Never over a radius of 40 to 50 miles. We have two other salesmen that we divide the State of Georgia down U. S. 14. One works to the east, one works to the west. We have another, a part-time salesman who travels anywhere out of the State of Georgia. He also sells merchandise for other companies, but we restrict him out of the State of Georgia. He can sell in Florida, Alabama, Tennessee, or wherever he wants to.

Q. With what classes of customers does the firm transact its business? Sells tires to? A. I would say 90 percent of our business is strictly with the small service stations and recappers and in your smaller communities.

Q. When you say small service stations, will you define that for us? (4109) A. Well, I didn't exactly mean that word small service station. I primarily meant service stations. But your larger service stations, especially around Atlanta, you can't do any good with.

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Q. Can you name any specific stations that you say you can't do any business with? A. No, because I don't—I haven't familiarized myself with the accounts in the City of Atlanta and around in the last five or six years. I have been primarily on the inside on the buying and taking care of the running of the equipment and all. I leave that up to the salesman.

I know something about names, but I wouldn't know exactly where. I would hardly know where they were.

Mr. Boyd: That concludes the direct.

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(4110) WILLIAM RUSSELL BRIDGES was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Boyd:

Q. Mr. Bridges, will you give us your full name? A. William Russell Bridges.

Q. With what company are you connected, and what is your position? A. Riddick Sales Company; salesman.

Q. How long have you been a salesman with Riddick? A. Since about April, 1948.

(4111) Q. What is your sales area? A. It runs a radius of 40 to 50 miles from Atlanta, mostly south. I don't go up north much.

Q. Do you do any business in Atlanta? A. Yes, a little. Not too much.

Q. What class of customers do you call on? A. Filling stations.

Q. Have you ever called on the filling stations in Atlanta? A. Yes, sir.

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Q. Have you formerly done business with any stations in Atlanta? A. Yes, sir.

Q. Can you name some of them for us? A. Gresham—E. A. Gresham Service Station; used to be Gresham Brothers.

Q. Is that a Texaco station? A. Texaco. On Moreland Avenue.

Q. Mr. Bridges, what type of business did you at one time do with Gresham? (4112) A. Recapping and new tires.

Q. What kind of new tires did you sell him? A. Lee and Dunlop; both.

Q. Do you know whether that is a lessee station or a station the operator owns? A. No, sir, I am not positive about that.

Q. When you sold him Lee and Dunlop tires did he openly display and sell them in his station? A. Well, it has been about two or three years ago. I don't know. I believe he had them in the back.

Q. When did you last sell him? Tell us that. A. It has been about I would say a little over two years ago.

Q. Up until two years ago how long had you sold him? A. I had sold him quite sometime. I sold him before he moved on Moreland. He used to be on Bankhead.

Q. Is that Bankhead Boulevard? A. Bankhead Highway.

Q. Could you tell us about what the volume of business was that you were doing with him up until 1954? A. I would say it would run between three and four thousand dollars a year.

Q. What occurred in 1954 that you no longer sell him?

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(4113) *By Mr. Boyd:*

Q. Answer the question. Do you understand the question? A. I think I understand the question. I believe he is handling Goodrich tires now and he, as I understand it—when he stopped buying from me he took them on—and he said that he couldn't handle—couldn't sell the Lee and Goodrich, too, because he has a tie-up with the Goodrich people.

Q. He told you this in 1954—Mr. Gresham? A. I believe that is the year. I don't know the exact date.

Q. Are there any other stations that you can name here, in Atlanta, where you formerly sold and no longer sell? A. No, I don't believe any others that I know of right offhand, except I called on some of them that I never sold, for recapping purposes, but I can't sell them any tires.

Q. Can you tell us the names of some of those? A. Mr. Lloyd, on Jonesboro Avenue. A. B. Lloyd.

Q. Do you have any idea about the address on Jonesboro? A. It is right there just about a block and a half from the Lakewood section on Jonesboro Avenue.

Q. Is this a Texaco station? A. Yes.

Q. When did you sell Lloyd's? (4114) A. I haven't sold them.

Q. When did you endeavor to sell him? A. It has been about a month ago. And I have called on him again since then.

Q. Does he sell tires and batteries? A. Yes.

Q. What line of tires and batteries does he sell? A. I don't know about the batteries but I know he handles Firestone tires.

Q. What did he say when you endeavored to sell him? A. He said he was tied up with the Firestone people and they wouldn't like for him—that the only way he can sell them was to just get an order for them and put them on right that same day. He couldn't stock them.

Q. Mr. Bridges, do you know whether or not Mr. Lloyd leases that station or whether he owns it? A. No, sir, he bought that station from Mr. Gilbert. I think it was about a month and a half or two months ago. Mr. Gilbert formerly used to be on Stewart Avenue and went back to his old station.

Q. Could you name any others? A. Just yesterday I tried to sell a new station, just opened, in Tucker, Georgia.

Q. What is the name of this station? Is it a Texaco station? (4115) A. Yes, sir; L. L. Cruze.

Q. How do you spell that? A. C-r-u-z-e. It just opened up recently. He has Firestone tires and he also said he couldn't put in any other tires, that he was connected with Firestone.

Q. How long has he been open? A. I imagine just about a month, or three weeks.

Q. Is yesterday the first time that you had gotten to see him? A. Yes, sir. I called on him once before but he wasn't in. He just opened up his station.

Q. How long ago was it that you called on him? How shortly after he opened, in other words? A. About a week or ten days after he opened.

Q. Did he have tires on hand then? A. Not the first time I called on him.

Q. There were no tires there? A. No, sir; no tires there.

Q. Are there any other places, Mr. Bridges, outside of Atlanta? I believe you say you go out 40 or 50 miles— A. Yes, sir.

Q. (continuing)—where you formerly sold and don't now sell? That is Texas stations. Can you tell me the names? A. One is Bonner Service Station.

Q. Where is that located? (4116) A. McDonough, Georgia.

Q. When did you last sell him? A. It has been about a year and a half.

Q. What did you sell him? A. I sold him recaps, tubes, and a few Lee tires, some truck tires.

Q. Were the few new Lee tires truck tires, or were they truck tires in addition to Lee? A. There were a few new truck tires and truck recaps.

Q. Were you selling him regularly up to then? A. Yes, sir.

Q. What would his volume of business have run, approximately? A. It wasn't too much. I only called on him about once every week or ten days. I don't imagine it will run maybe $2,000 a year.

Q. Does he handle tires now? A. Yes, sir.

Q. What line of tires does he handle? A. Firestone.

Q. What reason, if any, was given by Mr. Bonner a year and a half ago for not buying from you? A. Well, he stocked up with—well, he already had the Lee tires in, I mean the Firestones, when I sold him the Lees.

Q. Why did he stop buying the Lees? Did he tell you? Give you any reason? (4117) A. No, didn't give any reason.

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Cross-examination by Mr. Barton:

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(4119) Q. You sold to Gresham Service Station, did you say? A. For years.

Q. And you sold him recapping? A. Yes, sir.

(4120) Q. That is Gresham's Service Station at 1120 Moreland Avenue? A. I believe that is it. E. A. Gresham.

Q. And when is the last time you sold him recapping? A. I couldn't give you the exact date. It has been around about two years, I imagine.

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William Russell Bridges, for Commission—Cross

Q. Mr. Bridges, how many customers do you have who are handling Lee tires among those 90 that you call on regularly? A. How many handle Lee?

Q. Yes. A. I would say maybe 25 percent.

Q. Are handling Lee tires? A. Yes, sir.

Q. What are most of them? Service stations? A. Yes.

Q. Garages? (4121) A. Yes.

Q. Mostly service stations? A. Yes.

* * *

Q. Do you mean that you are selling Lee, Dunlop and McCreary tires? A. That is right.

Q. To 25 different customers? A. Approximately.

Q. Most of your customers then are stocking both Lee and Dunlop tires? A. That is right.

(4122) Q. Which they buy from you? A. That is right.

Q. They are not buying tires from anybody else? They are just buying them from you, the Lee and Dunlop tires? A. That is right.

Q. How many tires do these 25 service stations that you are selling to have facilities for stocking in their service station? A. They only buy three and four at a time. They don't buy a big majority. They just buy what they can keep on hand. These are mostly stations out of town.

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(4123) *Cross-examination by Mr. Royall:*

Q. Do you travel in Alpharetta, Georgia? Is that in your territory? A. No, sir.

Q. Is Marietta? A. Marietta is; yes, sir.

Q. Are you familiar with S. Dobbins, Jr. station at 400 Cheroke Street, Marietta? A. Name?

Q. Dobbins? A. No, sir, I don't sell them.

Q. How many stations do you call on in Marietta? A. About four.

Q. How many Texas stations do you call on? A. Not any.

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Q. Do you call on Paul Cain, at 1060 North Marietta Street? A. Yes, sir.

(4124) Q. You sell him Dunlop tires? A. I sell him Dunlop tires and tubes.

Q. He also carries Goodrich tires? A. I believe that is right.

Q. What did you say? A. I believe that is right.

Q. And you call on C. H. Hughes, 1238 DeKalb Avenue? A. No, sir; I don't.

Q. Hughes? A. Hughes?

Q. Yes. Is that in your territory? A. I go by there. I don't call on him.

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Q. Do you know Mr. John Tate, at Decatur, Georgia? A. I know Mr. Tate on Memorial Drive.

Q. Do you sell him? A. Yes, sir.

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(4125) Q. The business of the company has grown, hasn't it, from $680,000 sales in 1955 to $900,000 in 1956, hasn't it? A. I wouldn't know that figure.

Q. It has grown a great deal, hasn't it? (4126) A. Yes, sir; it has grown all right.

Q. What is it exactly that you said to Mr. Gresham?

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Q. I didn't ask you that. I asked you a very simple question. What are the words he said to you as near as

you can remember? A. It has been a little over two years. I don't know exactly the words.

Q. What is the substance of the words? A. The substance is that he wouldn't handle any more Lee tires, or Dunlop tires; that he was obligated to Goodrich.

Q. That is as accurately as you can remember? A. That is as close as I can remember.

Q. Let's take the next one. What as nearly as you can recall are the words or substantially the words that Mr. A. D. Lloyd said to you? A. That he was affiliated with; in other words, he was selling Firestone tires and he couldn't put any other brand tires in his place of business.

Q. As far as you know that is the substance of what he said? (4127) A. That is what I can recall of it; yes, sir.

Q. What did Mr. Tuckert say to you as near as you can recall? A. Mr. who?

Q. Mr. Cruze. A. That he was putting in Firestone tires and wasn't handling any other type tires than Firestone.

Q. That is the substance of what you say he said? A. Yes, sir.

Q. Mr. Bridges, some people you try to sell you sell, and some you don't, is that right? A. You are right.

Q. You are picking up new ones all the time and now and then losing some of the old ones? A. That is correct.

Q. And that is the way the tire business goes? A. It is up and down, yes.

Q. When a fellow doesn't buy your goods he always has some good excuse, hasn't he? A. I imagine he has.

Q. He doesn't want to hurt your feelings and he always gives some reason, doesn't he? A. I presume so.

Mr. Royall: That is all, sir.

William Russell Bridges, for Commission—Redirect

Earl Martin Gause, for Commission—Direct

(4128) *Redirect examination by Mr. Boyd:*

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Q. Do you know whether or not Mr. Cain owns that station or whether he leases it from someone? A. No, sir; I don't.

Q. What about Mr. Tate, on Memorial Drive? Do you know whether he leases or owns the station? A. No, sir, I don't but I have done some business with him.

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(4130) EARL MARTIN GAUSE was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Boyd:

Q. Mr. Gause, will you give us your full name? A. Earl Martin Gause, Jr.

Q. What is your present home address? A. 1159 Virginia Circle.

Q. Have you ever been in the service station business? A. Yes, sir.

Q. What kind of station did you operate and where was it located? A. Texaco station, 1958 Piedmont Circle.

Q. Is that Northeast? A. Right.

Q. How long were you in business there? A. November 17, 1952, to September, 1953.

Q. With whom did you negotiate, Mr. Gause, in becoming a lessee of that Texaco station? A. Through Mr. Charles Fitts, and Mr. Walter Jones.

Q. How many meetings were there leading up to this, in these negotiations leading up to the lease? (4131) A. I had two interviews with Mr. Fitts, and I believe Mr.

Jones was there for one of them. And that was the extent of the meeting.

Q. Who is Mr. Fitts? Do you know what his position was? A. At that time I believe he was division manager of the Texas Company.

Q. How about the other gentleman? A. He was a sales representative for Texas.

Q. And his name. A. Walter Jones.

Q. Where did these meetings take place. A. In the Doraville plant of the Texas Company.

Q. Before the lease was signed was there anything said about TBA? A. There was, yes, sir.

Q. Tell us what was said and by whom. A. To my knowledge Walter Jones said that the people that I was buying the station from were handling Firestone at the time.

Q. Excuse me. Was there another operator in the station before you took over? A. Yes. There were two partners.

Q. Go ahead. A. And they said something to the effect that it was good merchandise, a good product, widely advertised and so forth and (4132) so on.

Q. Which product? A. Firestone.

Q. Go ahead. A. And that they would like for me to continue to carry that product.

Q. Did they say anything about any other TBA line? A. They did mention the fact that most of their stations do either handle Firestone or B. F. Goodrich products.

Q. And then on the basis of that discussion what did you do about TBA? A. Being a novice in the business, rather than go into any more detailed work than I had on my hands already, I just took the line that the gentlemen before me were carrying at that time—Firestone products.

Q. Did you buy their inventory? A. Yes, I did.

Q. Had you ever operated a service station prior to this time? A. No, sir.

Q. That is as a lessee? A. No, sir.

Q. Was any information given you about where to acquire additional Firestone TBA? A. Do you mean the source?

(4133) Q. Yes, sir. A. Only the information that I got from the gentlemen that I bought, that they were buying through the Spring and Baker store.

Q. Is that the Firestone store? A. Yes.

Q. Is that Spring and Baker Streets that you are talking about here in Atlanta? A. The corner of Spring and Baker Street, yes, sir. I assumed at the time that that would be my source of supply?

Q. Was it? A. It was.

Q. Mr. Gause, was anything said by the Texas representatives about your handling any other brand of TBA other than Firestone or Goodrich?

Mr. Royall: Objection only because he asked it before. That is the only objection I have.

Hearing Examiner Kolb: Objection overruled.

By Mr. Boyd:

Q. You may answer. A. No, sir.

Q. After you signed the lease and so forth—you did sign the lease? A. Yes, sir.

Q. Who handled your account thereafter with the Texas (4134) Company? A. Walter Jones.

Q. Did any representative of Firestone call on you after that? A. Yes, sir. I might say that when the station changed hands—a Firestone representative was present at the time we took inventory—the Texas Company was represented by Mr. Jones and the Firestone Company was represented by Mr. Lamarr South.

We inventoried the equipment and so forth and so on and they both were present at that time.

Q. Is that the first time you had met the salesman for Firestone, at that time? A. Yes.

Q. During the time that you were in that station what was the average TBA volume? A. The average TBA volume was $200 a month.

Q. What was the gasoline gallonage? A. Between 10 and 11,000 per month.

Q. What was it when you went into the station? A. When I went into it?

Q. Yes. The gallonage. A. That was sort of vague. The gentlemen that I bought it from didn't offer to show their books, and I didn't insist upon it. The Texas Company keeps a running record of the purchases made by each station, by the month. Sometimes it (4135) might be less than you actually sell, and sometimes it might be more than you actually sell, because they overlap each other a little bit. • • •

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Q. Did any representative of the Texas Company ever tell you what the station had been doing, approximately?

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A. No, sir. The only thing I can say is just what I said before, that they gave me—showed me the figures in fact, of the purchases made by the owner from their bulk plant in Doraville. Other than that, I did not know.

By Mr. Boyd:

Q. And you saw the records? A. Yes, sir.

Q. How much did you say it was?

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(4136) A. Between 8,500 and 9,000 gallons a month.

Q. When you left the station what was the gallonage? Monthly. A. When I left I would say it was 10,000 gallons a month.

Q. When you took over that station, Mr. Gause, was there any other brand of TBA in it other than Firestone? A. Yes, there was.

Q. What was that? A. There were several gallons of Prestone anti-freeze.

Q. Anything else? A. Well, I remember I had to buy around $24.00 worth of Monroe shock absorber, and that is all, I think.

Q. Did you continue to handle Firestone while you operated that station? A. I did. Not the full time, no.

Q. What happened? Did you take on some other line? A. Yes. I adopted the B. F. Goodrich line.

Q. And about how long after you went into the station was it that you took on the Goodrich line? A. This was in the first of June, 1953.

* * *

(4137) Q. How did you take on the Goodrich line? A. It was on my own volition. I thought Goodrich had a very good tire in their new tubeless tire that had come on the market about a year previous to that. That was my main reason for changing the line, because I thought it was a better tire than Firestone. Firestone at that time had one tire that was a tubeless, of the tubeless type, and it was a premium tire and cost a whale of a lot of money.

Q. Did you discuss the change with Mr. Jones? A. Did I discuss it?

Q. Yes. A. No, I didn't.

Q. Did you discuss it with anyone in the Texas Company? A. Not until they found out that I was making the

change. In fact, the change had been completed or was in the process of being completed, and then I did talk to Mr. Jones at that time. He did come after I had already adopted the plan and had changed.

Q. What was your source of supply of Goodrich— A. It was an independent company—

(4138) Q. (continuing)—TBA? A. It was an independent company by the name of the Van Dusen Tire Company.

Q. Where was that located? A. At that time it was located at 225 Moore Street, Southeast.

Q. What, if anything, was said by Mr. Jones about your changing to Goodrich from Firestone?

Mr. Barton: Object.

Mr. Royall: Objection.

Hearing Examiner Kolb: The objection will be overruled.

A. Nothing derogatory or anything like that. He said "If you wanted to do that, that's all right."

Mr. Boyd: May we have a recess?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

By Mr. Boyd:

Q. Mr. Gause, when did you cease to be a lessee of the Texas station that you had? A. I believe it was in the latter part of August or the first of September.

Q. Will you tell us the circumstances under which you ceased to be a lessee? (4139) A. Yes, sir.

I took a four-day holiday and the station was closed during that time. I mean there was no operator there at all.

Q. And that resulted in cancellation? A. Yes, sir. The lease the Texas Company gave me there is a clause saying that if the station is closed for more than 48 hours in one stretch of time that your lease is automatically cancelled.

Mr. Boyd: That is all.

Mr. Royall: No cross-examination, your Honor.

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RICHARD ELIAS TIDWELL was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Boyd:

Q. Mr. Tidwell, will you give us your full name please and home address? A. Richard Elias Tidwell, 151 Pine Valley Drive, Forest Park, Georgia.

Q. What is your present occupation? A. Pilot for Delta Airlines.

(4140) Q. Mr. Tidwell, have you ever been in the service station business? A. Yes, sir.

Q. When were you in the service station business, and what kind of station was it? A. It was a Texaco station, from October, 1953, until March, 1955.

Q. Where was this station located? A. 4290 Peachtree Road, Northeast, Atlanta. Brookhaven as you might call it.

Q. Had there been a lessee in that station prior to your tenure? A. No, it was a new station.

Q. Had you ever been in the service station business prior to that time? A. No, sir.

Q. Before the lease was negotiated, was there any discussion with representatives of Texas regarding TBA? A. Not that I recall.

Q. Did you ever discuss it with them? A. When I entered the business, when I first went out to talk with Texaco, I desired a Texaco station. Since I was new in the business—I had worked in a service station but never owned one—I asked them for any help they might give me. As far as any specific declaration as to handling any one (4141) line of merchandise, they did not.

Q. They didn't tell you any type, about any TBA? A. They—if they did, I do not remember it. I don't believe they did however.

Q. Where did this discussion take place? A. At the Doraville sales office of the Texaco Company.

Q. With whom did you deal in negotiating for the station? A. My first interview was with Mr. Singleton. Mr. Fitts at the time I believe was out of town. The second interview was with Mr. Fitts. And then I talked with Mr. Walter Jones also.

Q. What was the position of Mr. Singleton? A. I will probably get the names twisted around, but Mr. Jones was the salesman, Mr. Fitts was the, I believe the district sales representative, and Mr. Singleton the regional. I might be a little mixed up.

Q. Did you carry TBA in the station? A. Yes, sir.

Q. What line did you carry? A. I handled Firestone.

Q. How did it come about that you handled the Firestone line? A. After I negotiated with the Texas Company the representative from Firestone and the representative from Goodrich contacted me.

Q. Where was this contact made? Where did they see you? A. One came by the house. I was not there, however, and he (4142) left material. That was from Goodrich. I did talk with him over the telephone.

The other was through Firestone and was Mr. Buck Head. He called me at home and I met him at the station before it was completed and we talked there.

Q. Did you take one of those lines? A. I chose Firestone.

Q. When was it you chose Firestone? A. Almost immediately. I liked the line that Firestone had. It seemed to me more complete than the Goodrich. So I chose the Firestone. That was—I can't say exactly how long prior to the station, due to the fact it was undetermined at the time as to when the station would open. But I would estimate a month before we opened the station that I definitely chose Firestone.

Q. Then you had that in when the station opened? A. Yes. When the station opened we had a complete line of the Firestone products in. And the Firestone salesmen, I would like to say, worked with me getting it set up for opening. They were very good in that respect.

I would like to say, also, no other independents contacted me. I don't know if they didn't know how to contact me, or what. But if they had, I probably would have chosen Firestone anyway, because I still think it was the most complete line. Those were the two dealers who contacted me.

(4143) Q. When you said independent, you mean other competitors selling TBA? A. When I say independents, I mean other competitors.

Q. Did you ever talk to Mr. Fitts about any other line of TBA? A. Only tires.

Q. Can you tell us what you told him and the reason for your discussion? A. I had a customer who was a salesman for what I might call an off-brand tire. A cheaper tire. And this customer told me that he could make me a pretty good proposition on some seconds. And since I had most of—most of my trade was with the higher element of people. However, I did have a goodly portion of my business from the colored section where they couldn't

afford the competitive—where they couldn't afford the more expensive tires.

I was thinking seriously about putting in a line of the second cheaper brand tires. And I explained this to Mr. Fitts. He told me at that time—and I will say it as much in his words as possible—he said, "Dick, we cannot tell you not to handle these tires, but we attempt to be more lenient, or look with favor on our dealers who are more loyal to us." As a consequence, I told him that I would not handle the tires.

Q. At that time did Mr. Fitts give you any reason for that? (4144) A. No. Or if he did, I do not remember.

Q. Did you take on the cheaper line of tires? A. Not in stock. But I did sell some.

Q. How did you sell them? A. Only by—if I knew a person who wanted a tire and he couldn't afford a more expensive tire, I would arrange to have one picked up or one delivered to me, or a few.

Q. Did you ever display those tires in your station? A. No, I never displayed any other product than Firestone.

Q. Did you sell any or display any other batteries? A. I sold them, but I did not display them. There again—

Q. How did you sell them? A. There again, with the cheaper element of equipment, I coudln't sell the Firestone battery to some of my customers; although it was a better battery they didn't want it for their cheap cars. And I would arrange to have a battery picked up or delivered to me for a specific person.

Q. Mr. Tidwell, why didn't you ever carry any other brand of TBA in your station other than Firestone?

Mr. Royall: Objection?

Mr. Barton: Object.

Hearing Examiner Kolb: The objection will be overruled.

A. When I found out that the Texas Company desired me to carry only one line, I endeavored to work with them.

(4145) *By Mr. Boyd*:

Q. When did you find that out?

Mr. Royall: Objection.
Hearing Examiner Kolb: Overruled.

A. I found it out when I tried to handle the other line of seconds.

By Mr. Boyd:

Q. From Mr. Fitts? A. Yes.

Mr. Royall: Objection to the last question, too, your Honor.
Hearing Examiner Kolb: Overruled.

By Mr. Boyd:

Q. Mr. Tidwell, will you tell us what the gasoline gallonage was in this station, from the time you took it over until you left? A. When I opened the business the first month I pumped approximately 12,000 gallons. It varied then up to 20,000, and at the time I sold it was approximately 16,000.

Q. Could you give us some idea as to the TBA volume monthly? A. I have some exact figures over there if you so desire. Or I can give you an estimate.

Q. Since you have the actual records here, we might as well make use of them. A. I have the sales here for each month.

(4146) Q. Are these your records that you had on the operation of the station? A. These are my records, kept by a certified public accountant. Would you like it by month?

Q. Yes, sir. You were there I believe you said from October 1953 to March, 1955. A. October was a partial month.

(4147) *By Mr. Royall:*

Q. May I see what he is looking at?

Hearing Examiner Kolb: Come around here and look at it while he is testifying.

A. It begins in October 1953. They are broken down as to gas, oil, lubrication, accessories, tires, and batteries. These are under one category, tires and batteries, and accessories separated from the tires and batteries. There will be two columns.

For October 1953 the accessories were $128.39 of sales; tires and batteries, $83.47 for that partial month.

November, accessories, $295.10; tires and batteries, $401.01.

December, accessories, $407.71; tires and batteries, $387.07.

January, 1954, accessories, $212.80; tires and batteries, $517.24.

February, accessories, $164; tires and batteries, $490.67.

March, accessories, $314.44; tires and batteries, $463.28.

April, accessories, $374.26; tires and batteries, $818.27.

May, accessories, $328.47; tires and batteries, $934.29.

(4148) June, accessories, $337.18; tires and batteries, $683.70.

July, accessories, $263.76; tires and batteries, $777.18.

August, accessories, $193.55; tires and batteries, $707.79.

September, accessories, $354.22; tires and batteries, $345.21.

October, accessories, $165.42; tires and batteries, $331.

November, accessories, $192.41; tires and batteries, $409.08.

December, accessories, $360.43; tires and batteries, $309.43.

January, 1955, accessories, $145.83; tires and batteries, $336.63.

February, accessories, $121.92; tires and batteries, $598.60.

And March was a partial month and I don't have those complete figures.

By Mr. Boyd:

Q. Mr. Tidwell, was your lease up, was it at the end of the term when you left the station? A. No, sir.

Q. Will you tell us the circumstances under which you gave (4149) up or left the station? How did it happen? A. Two reasons. One is that the gallonage—

Mr. Royall: Your Honor, let us have an objection because I can't tell what the answer is going to be, the general nature of it. He didn't ask him the reasons. So I want to object. This is not responsive.

Hearing Examiner Kolb: Read the question.

Mr. Boyd: What are the reasons? That is what I want.

Hearing Examiner Kolb: Do you object to that?

Mr. Royall: Yes, sir.

Hearing Examiner Kolb: Overruled.

By Mr. Boyd:

Q. Go ahead. A. Two reasons: One is that the gallonage had dropped considerably, and I felt it was due to Texaco putting up another station. It could possibly have been my management. But I felt that it was additional stations. But the main reason, however, was my desire to get back into flying.

Q. And had another Texaco station been opened in the vicinity? A. Yes.

Q. How close to your station? A. About six-tenths of a mile in an apartment project.

Q. Then you voluntarily gave up the station? (4150) A. Yes.

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Cross examination by Mr. Barton:

Q. Mr. Tidwell, it wouldn't have been very good business in opening up that station without some TBA on hand to serve the customers when they came in on the first day, would it? A. Absolutely.

Q. You mean it was good business to have it there? A. Right.

Q. You had to be in complete operation when you opened your doors? A. Right, and as I said, the Firestone man was most cooperative in helping me get it ready for opening day.

Q. What did that involve? What as a practical matter does it involve to get that station opened? To get your material in place? A. I more or less put myself in his hands by telling him that I would like a—what is the word—

Q. Proper assortment? A. Right. A proper assortment to cover my needs out there. And since he was more—since Mr. Head had been in that neighborhood for some while dealing with several service stations, I felt like he would know approximately what I would stock. And he put me in I thought a very representative (4151) stock.

Q. That was of tires? A. Tires, batteries, and accessories.

Q. And the same problem on batteries. There are several different sizes and types of batteries? A. Right. I only carried one style.

Q. But the different groups? A. But the different groups, right.

Q. And the same is true I suppose of accessories? Different sizes and types of accessories which have to be carried? Fan belts, for example? A. Right, in the fan belt line.

Q. An assortment so that you can cover it? A. An assortment, yes.

Mr. Barton: That is all that I have.

Cross-examination by Mr. Royall:

Q. Mr. Tidwell, you recognized, did you not, in your selection of Firestone that it was advantageous to a service station selling one of the leading brands of oils to sell a nationally recognized and advertised tire, did you not? A. Right, and if as I said, or if I left it out, if there had been 20 people calling on me I probably would still have picked Firestone. But only the two called on me.

Q. I understand. And you recognized also, did you not, in making that selection, that throughout the country Firestone (4152) is sold in service stations in every locality and by a great number of Firestone— A. They are sold by a great many people and in a great many places other than service stations.

Q. And they are always readily available for replacement anywhere you go in the United States? Is that right? A. Well, that is true. One of my biggest, main choices of picking the Firestone tire is that I was given my own judgment as to adjustments. I felt that people could come to me and I could make a proper adjustment on a Firestone tire and I would have a satisfied customer.

Q. In the case of Firestone as distinguished from an off-brand tire or off-brand battery, the adjustments could be made more readily if your customer traveled in any part of the country, could it not? A. I would imagine so, sir.

Q. Your records which you have there, you didn't purport to divide them down into the source of your supply? You say you handled some other items. They are not separated there. That is total TBA? A. That is total. But the other was minor.

Q. You said that. But the amount is not shown there? A. The amount is not shown.

Q. In your transactions with Mr. Fitts, there was a background of extreme close friendliness between the two of you, (4153) was there not? A. Yes. With everyone connected with both Texaco and Firestone.

Q. Particularly with him, you saw a great deal of him? A. I saw a great deal of him. However, I saw more of the salesmen, naturally.

Q. But you did see him, and I believe when you entered the Air Force that he was one of those that you asked to recommend you for that. Is that right? A. When—

Q. I don't mean the Air Force, I mean the airline. Didn't he write you a letter of recommendation? A. I honestly can't say, sir.

Q. You don't recall? A. I believe that if I did he would give me a very fair report.

Q. Your discussions with him were more in the attitude of asking his advice because you had confidence in his judgment, is that right? A. I asked him two reasons: One, I had confidence in his judgment. The other is if he had any objections. Because I wanted to stay on good standing with the Texaco Company.

Q. You never saw any indication of not being on good standing, did you, at that time? A. No. Everything is just like I said. He didn't say I (4154) couldn't handle it.

Q. When you bought the tires, when occasion arose, you met the needs that came up, didn't you? A. Well, most

of them. I probably could have met more if I had stocked them.

Q. But there was no discrimination or anything against you at that time, was there, at the station? A. No, there was no discrimination. However, I didn't handle them.

Q. But you did buy them from time to time? A. Right.

Q. When did anyone first talk to you about coming here as a witness? A. The exact date, sir, I can't say. It was—

Q. Three months ago? A. No, sir, it wasn't that long ago.

Q. Two months ago, perhaps? A. I think it would be closer to a month to six weeks.

Mr. Royall: That is all, sir.

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(4161) JOHN D. SCOTT was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Boyd:

Q. Mr. Scott, will you give us your full name? A. J. D. Scott.

Q. What is your first name? A. John.

Q. Have you ever been in the service station business? A. Three years up to the 11th of this month, 12:00 o'clock.

Q. Where was this service station located? A. 556 Candler Road.

Q. In what city? A. In Decatur, Georgia.

Q. What kind of station was this, Mr. Scott? A. Texaco station.

Q. Do you have your lease with you, a copy of the lease? A. I think I have. I found it.

Mr. Boyd: Your Honor, I ask that there be marked (4162) for identification as the next Commission exhibit number, which I believe is 168, a copy of a letter dated February 3, 1954, on the letterhead of the Texas Company and addressed to Mr. Douglas Scott, and bearing the signature of M. W. H. Griffin, Sr., assistant division manager of the Texas Company.

And as Commission Exhibit 169 a form, apparently a Texas form, S-402, and 5-52-30-M, addressed to the Texas Company, Doraville, Georgia, and signed by Douglas Scott. It is a form letter in which the blanks haven't been filled in.

And as Commission's Exhibit 170-A and B a copy of a lease dated January 12, 1954 between Douglas Scott and the Texas Company.

I ask that those be marked for identification.

Mr. Lorenzen: Didn't you say Exhibit 169 was in blank?

Mr. Boyd: No, I said it was a form. If I did say blank, I didn't intend to.

Mr. Lorenzen: It is filled in to this gentleman. I believe it is signed by him. Isn't that right?

Mr. Lorenzen: Yes.

Mr. Boyd: And it is addressed to the Texas Company.

(4163) (The documents referred to were marked Commission's Exhibits 168, 169, and 170-A and B for identification.)

By Mr. Boyd:

Q. Mr. Scott, handing you Commission Exhibits 168 through 170, are those the lease and other papers that you received when you became a lessee of the Texas Company?

A. Yes, sir.

Q. And the lease under which you operated the station while you had it? A. Yes, sir.

Mr. Boyd: I offer the papers in evidence.

Mr. Royall: We have no objection.

Hearing Examiner Kolb: The documents will be received in evidence as Commission Exhibits 168 through 170-A and B.

(The documents heretofore marked Commission's Exhibits 168, 169, and 170-A and B for identification were received in evidence.)

Mr. Boyd: I would like to ask that permission be granted to substitute photostats for the originals of those three documents.

Mr. Royall: That is satisfactory to us.

Hearing Examiner Kolb: Photostatic copies of Exhibits 168, 169, and 170-A and B may be substituted for the originals.

(4164) *By Mr. Boyd:*

Q. Mr. Scott, with whom did you negotiate in negotiating that lease? I mean the officials of the Texas Company. Can you name them for us? A. Mr. Fitts, Mr. Patton.

Q. Where did these negotiations take place? A. At the office at Doraville.

Q. Doraville, Georgia? A. Yes, sir.

Q. Before the lease was signed was there any discussion with Mr. Fitts and Mr. Patton about TBA? A. Yes, sir.

Q. What was said by you and by them? A. They said take your choice, either Firestone or B. F. Goodrich.

Q. Did they indicate—did either Mr. Fitts or Mr. Patton tell you that you could handle any other line of TBA other than Firestone or Goodrich? A. No, sir.

Q. Did you select one of those? A. Yes, sir; I took B. F. Goodrich.

Q. Had there been another lessee in this station when you took it over? A. No, sir.

Q. Was it a new station? (4165) A. Yes, sir.

Q. How soon after the lease was negotiated was it that you opened the station? A. I was open a couple of days, maybe three or four days, before I signed the last contract.

Q. When you say "the last contract," is this the lease that you are talking about (indicating)? A. Yes.

Q. It is dated the 12th day of January 1954? A. That is right. I started moving in about the 13th, I mean about the 11th, about two days before I opened up.

Q. Did you already have a stock of TBA then? A. No, sir. I bought it all from B. F. Goodrich through Mr.—what is his name now?—he is out of business. He used to be the distributor for them. I bought $2800 worth of stuff from them.

Q. You can't recall the name of the Goodrich place where you got it? A. He come through Goodrich—

Mr. Barton: It is VanDuzen.

By Mr. Boyd:

Q. Is that right? A. That is right.

Q. Did you have your stock in the station, of TBA—tires, batteries and accessories—when you opened the station? (4166) A. Yes, sir.

Q. When did you first talk to anyone from Goodrich about the stock of TBA that you were going to have there? A. About two or three weeks before I opened up.

Q. What about the recapping? Did Goodrich take care of that? A. They did up to a year ago.

Q. Did you continue to buy your TBA from Goodrich? A. Yes, sir.

Q. After you opened? A. Little odds and ends come by, peddlers, when I had to have something.

Q. Tires and batteries? A. Yes.

Q. You obtained them from Goodrich? A. All but a few I bought, some cheap batteries, $7 or $8. I put them in the back room. They weren't displayed.

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(4167) Q. Did you ever talk to anyone at the Texas Company about the batteries being on display? A. I never sold anything but a Goodrich battery up to about 7 or 8 months ago. I was selling nothing else but that.

Q. What about tires? A. Never sold but Goodrich tires.

Mr. Royall: I wish you would give us time. I move to strike the previous answer.

Hearing Examiner Kolb: Denied.

By Mr. Boyd:

Q. When you started selling Sheffield batteries did you have any discussions with anyone at Texas in that connection? A. No, sir.

Q. You said you handled some other tires other than Goodrich? A. No, sir; nothing but recaps, the last year.

Q. Did you handle Goodrich tires and batteries, with the exceptions you have mentioned, during the whole time of your lease? A. Yes, sir.

Q. This VanDuzen, was that the supply point for the B. F. Goodrich? A. I think it went through him at that time, when I went (4168) in business.

Q. How long did that continue with him? A. About four months, I imagine; maybe five.

Q. After that, from whom did you get a supply of Goodrich TBA? A. From Courtland Street Store, corner of Courtland and Alban Avenue, a B. F. Goodrich store.

Q. What was the reason you changed from VanDuzen over to the Goodrich supply store?

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

(4169) *By Mr. Boyd:*

Q. To get your supply of TBA? A. It was coming through them anyhow, through the warehouse out there. He just went out of business.

Q. Van Dusen did? A. Yes, sir.

Q. Just to be clear, you ceased buying from Van Dusen about four months after you had been in the station in 1954? A. It wasn't much longer than that. It might have been a little longer. I don't remember exactly the date. It was all Goodrich products I got from him.

Q. You say you had the recapping done at Goodrich until sometime this past year? A. Yes, sir.

Q. Where did you have it done after that? A. Collins Recapping Company, on Candler Road.

Q. What city was that in? A. DeKalb County.

Q. What city? A. Decatur, Georgia.

Q. Did you ever have any discussions with any representatives of Texas regarding the recapping? A. No, sir, I haven't. Only I told Mr. Brown I was going to give it to him. He was a personal friend of mine.

Q. Who is Mr. Brown? (4170) A. He is a supervisor for the Texaco Company. Sales representative.

Q. When you told him that did he say anything about it? A. No, sir, he didn't.

Q. Would you tell us, Mr. Scott, about what your volume of TBA was annually? A. The first two years it went over $12,000. I imagine the past year, the bookkeeper hasn't given me the figures, between five and six thousand. Over five I think.

Q. Did that include the recapping? A. It included—I didn't give any recapping this past year.

Q. The figure you gave me, from whom would those five or six thousand purchases have been? A. B. F. Goodrich.

Q. What about the recapping? A. It run about four or five thousand a year.

Q. Each year you were in there? A. Yes, sir.

Q. Would that have been true of the past year, 1956? A. I believe it would have been a little bit more than four thousand.

Q. You gave that to? A. Collins.

Q. Mr. Scott, what was the gallonage you were pumping in that station from the time you opened it until you left it? In (4171) other words, on an average basis, monthly basis? A. The first two years I averaged over 26,000.

Q. Gallons? A. Yes, sir.

Q. A month? A. Yes, sir.

Q. What about this past year? A. I imagine this past year we had 11 new stations opened in a mile and a half of me, and I averaged this past year, I believe, 23,000. Maybe a little better. They weren't Texaco stations.

Q. When you first went in the station what was the name of the salesman you dealt with? A. Mr. Emil Patton.

Q. Did he continue to handle the account the whole time? A. Up until I guess maybe six months ago, or seven. I don't know exactly.

Q. Who started handling it then? A. Mr. Brown.

Q. He is with the Texas Company? A. Yes, sir.

Q. Did you ever have any discussions with Mr. Brown about the operation of the station? A. No. All he ever done was come down and sit around and then get up and leave. He just was supposed to be a salesman, I (4172) thought.

Q. Do you recall any discussions with him about anything on the premises? A. Never discussed at all the whole time he served me. Nothing about the place at all.

Q. What about the clock? A. Oh, the clock? That went on for three years.

Q. Mr. Scott, with respect to this clock, when was it first put up? A. About two and a half—nearly three years ago now. Right after I opened up I bought it.

Q. What was the discussion with you and Mr. Brown about the clock? A. He called me up one time after he cancelled my lease, saying my lease was cancelled. He told me to take it down. I said I am going to stay here four more months, and I am going to leave it up there and keep it up there.

Q. Did Mr. Patton ever say anything to you? A. Mr. Patton was pretty nice to me, and I took it down several times when people would come in from New York or somewhere, and put it inside.

Q. What people are you talking about from New York? A. I don't know. Big wheels I guess. Big shots.

Q. From what company? A. Texas Company.

(4173) Q. Did Mr. Brown give you any reason for asking you to take the clock down? A. No, not on the 'phone. No, sir.

Q. Did he give you instructions anywhere? A. Mr. Fitts told me about two and a half years ago when I bought the clock that—it cost $220. I said I wasn't going to throw away that much money. I am going to put the clock up.

Q. Did he ask you not to put it up? A. I already had it up.

Q. Did he ask you to take it down? A. Yes, sir.

Q. What reason did he give you? A. He said it wasn't company policy to have a clock. But last year they came out selling clocks. I certainly wasn't going to send it back.

Q. Did someone from the Texas Company offer to sell you one? A. Yes. They sent me a notice in the mail. They were selling clocks last year.

Q. From whom was that received, that communication? A. It come from out of New York. I don't remember. I had a good clock.

Q. Was it someone from the Texas Company? A. Yes; it was advertised. I forget now what it said on there.

Q. Did Mr. Brown talk to you about buying a clock from Texas? (4174) A. No. That was before Mr. Brown took over.

Q. Did you ever have any discussions with Mr. Brown concerning cold drink machines? A. Oh, yes.

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Q. What was said about the cold drink machines? (4175) A. I talked more of that with Mr. Fitts than anybody else.

Q. What was that discussion? A. He told me I didn't need but one drink box.

Q. How many did you have? A. Two.

Q. What else did he say about it? A. Well, there is not but one there now. He told me I didn't need but one kind of drink. It might as well be a Coca Cola machine. I had a friend selling machines and I bought a box from the Pepsi Cola Company.

Q. Was there ever any discussion concerning cancellation of your lease? A. Mr. Brown just came out one day and said he was going to cancel my lease. I asked why, and he said it was in the future what happened.

He gave me no reason at all. It said nothing, the letter I got. I got a letter from Mr. Griffin. He didn't give me no reason. Just told me to get out by the 11th at 12:00 o'clock.

Q. When was it that discussions first occurred? Was Mr. Brown the one you learned this from? A. Yes, sir.

Q. How long ago was it that Mr. Brown first mentioned this to you? A. It was in October I think.

Q. Did he ask you to give up the station then? (4176) A. He tried to get me to sign a paper, a lease, to sell it out then. And I wouldn't do it. I told him I was going to stay there until the day my lease run out.

Q. Did he show you this paper at that time? A. Yes, he showed me a paper. He wanted me to sign it and I wouldn't sign nothing.

Q. Did you later receive other notification from the Texas Company about the lease? A. Only Mr. Griffin. I got a letter about four days before the 11th. He gave me a notice to get out and turn over the keys and all that property by 12:00 o'clock the 11th of this month.

Q. When did you receive that? A. About four days before. On a Wednesday I think it was.

Q. Do you mean before you gave up the station? A. Yes, sir.

Q. Had you received any notice prior to that even? A. No, sir.

Q. A letter or anything? A. No, sir.

Q. What reason did Mr. Brown give you back there in October as to why he wanted you to sign that paper?

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(4177) Q. What was it that he said? A. I didn't mean the future. I meant the back, two and a half or three years that I had been there, the background.

Q. What did he say about that? A. He didn't say nothing, just, I don't know what it is, but I am cancelling the lease.

Q. He gave you— A. That is the only word he said.

Q. Was anything said about the housekeeping of the station? Cleanliness? A. Not a word was said about it.

Q. Or the gallonage you were pumping? A. No, sir.

Q. Was anything said about yourself? A. Not a thing.

Q. Mr. Scott, do you know whether or not there were any complaints? Had any been brought to your attention from any customers? A. I think I had one complaint in three years. That was a wax job.

Q. What happened in that connection? A. I turned the money back to Mr. Patton and he turned it in (4178) the office.

Q. How much was involved? A. $10.00.

Q. Were there any complaints from the Texas Company, or anybody for that matter, about your conduct? A. Never have said anything to me about it.

Q. Was there anything like gambling going on in the station to your knowledge? A. Never was anything except match for a Coca Cola, maybe on Coca Cola bottles, you know, out of town. That happens anywhere. Never been no dice shot there, no crap shot in the station.

Q. Mr. Scott, are you a drinking man? A. I take a drink when I want one.

Q. Have you ever drunk excessively while you were in operation of the station? A. No, sir.

Q. Were any complaints brought to your attention concerning customers, that customers may have made in that connection? A. Mostly I try to keep my customers sober and out of the back room, when they were getting car service. The back room sometimes looked like a bar back there.

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(4179) Q. How long had that type of thing been going on? A. When you run a service station, and you have a customer on the rack and he is going to take a

drink, are you going to let the car down and tell him to get out?

Q. Mr. Scott, did any representative of Texas, Mr. Brown, Mr. Fitts, or anybody, ever say anything to you about this situation? A. Oh, yes. Mr. Fitts talked to me one day. He said, "I won't have any drinking around that station." I said what are you going to do about it? I mean to myself. Take a man in, like I said a few minutes ago, a man comes in and gets his car serviced, he steps in the back room and wants to take a drink of liquor and his car is on the rack, you aren't going to take it down and run him off. I am not. I am in business.

Q. How often did that happen? A. I have one customer, happens to be Sears Roebuck. He drinks a pint of liquor every night. Been doing it for three years. He was a regular customer of mine. I wasn't going to run him out from back there. He didn't stay there but three minutes and he was done. He drinks a half pint every night. Didn't miss a night except Sundays.

Mr. Royall: You weren't open Sundays?
The Witness: Yes, I was open Sundays.

By Mr. Boyd:

Q. As best you can recall it when was it that Mr. Fitts said (4180) something to you about this? A. I guess it was a couple of years ago.

Q. Did he say anything to you after that or since then about it? A. No, sir.

Q. That is the only time? A. Mr. Fitts hadn't been in my station over a year.

Q. Did Mr. Brown or anyone else say anything? A. No, Mr. Brown never mentioned it at all.

Q. Mr. Scott, did you attend any dealer meetings sponsored by the Texas Company? A. I think I missed two the whole time.

Q. How frequently did you attend them? A. Every time they had one. I think I missed two.

Q. How often did they have them? A. I think three or four a year, different meetings. I know I missed one at the Moose Club, a get-together. That was a sales meeting.

Q. At dealer meetings was there ever any TBA representatives there? Sellers of tires, batteries and accessories? A. Yes, sir. Every one I went to had salesmen there.

Q. With what company were they connected? A. Firestone and Goodrich.

Q. Did you ever see any others there besides representatives of those two companies? A. No, sir.

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(4181) *Cross-examination by Mr. Royall:*

Q. Mr. Scott, you said that you got notice I believe about four days ahead of January 11th about your moving out? Is that right? A. That is when to turn the keys over and the equipment.

Q. When did they give you the notice? A. That was about four days before that. But I got notice from Mr. Brown about four months before that that I was going to lose my lease on that day, that it was going to expire.

Q. You didn't get anything between the four months and four days? A. Around four days before my lease was out I got the letter.

Q. Did you get anything in writing between those two times? A. No, sir.

Q. Will you identify if you can this letter of December 18, and this card which I hand you, and see if you received that letter and signed that card?

* * *

(4182) (The documents referred to were marked Respondents' Exhibits 34 and 35 for identification.)

A. I never got this letter here; no, sir, only down here at the bottom.

By Mr. Royall:

Q. You just got the bottom of the letter? A. Yes, sir.

Q. You didn't get the top of the letter? A. Let me be sure now. I don't sign my name unless I read it.

Yes, sir—no, sir, I didn't get the 18th.

Q. You got the bottom part of it? A. No, sir, I didn't get none of it, not the 18th of December.

Q. Didn't you sign a receipt to the Texas Company on December 23 for that letter? A. That is not my writing, sir.

Q. You didn't sign that? A. No, sir. Do you want to see my—

Q. I asked you did you sign it? A. No, sir.

Q. Who was working there with you? A. I had about five men working there.

Q. And your name is Douglas Scott, is it? A. That is right.

(4183) Q. Who was working there with you at the time? A. I had two boys, one of them named Hicksward, Hawkem, and one named Rose, and Rodenbury. Five white men.

Q. As far as you know, were United States mails running at that time in December 1956? A. No, I don't remember.

Mr. Dias: I don't believe the witness understood the question.

Hearing Examiner Kolb: Read it.

(Question read.)

A. Yes, sir, I believe they was.

By Mr. Royall:

Q. Do you know which one of your employees signed this? A. I think Hawkem, but I don't know whether that is his handwriting or not. I wouldn't say.

Q. Did you turn over to anybody the duty of receiving your mail and acknowledging it? A. They don't usually receive mail there, special delivery mail.

Q. In other words, if a letter came to you he was supposed to tell you, wasn't he? A. He was supposed to, yes.

Q. By the way, do you happen to be a member of the Georgia Petroleum Retailers Association? A. Ever since it opened up; yes, sir.

(4184) Q. When did you talk with a representative of that organization about this case?

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A. Never have talked to the man about it. This is the only gentleman I ever talked to about it, this gentleman here.

Q. Mr. Boyd? A. Yes.

Q. When was that? A. I don't remember the certain day. I don't remember every day, what number.

Q. Do you remember the month? A. I don't remember when it was.

Q. Was it two months ago? A. I wouldn't say because I don't remember.

Q. Was it three months ago? A. I said I don't remember.

Q. Was it five years ago? A. I wasn't in business five years ago.

(4185) Q. Was it three years ago? A. I don't remember when it was.

Q. You don't remember whether it was three years ago or when it was? A. No, I don't remember when it was.

Q. Who was there when Mr. Boyd talked to you? A. I don't remember that. Me and him went out in the yard and talked; nobody heard us talking.

Q. Who was at the station at that time? A. I imagine the men who were working. There might have been four or five customers. I don't remember.

Q. You don't remember whether it was in the Fall of the year, summer or winter? A. It has been a little while back. I don't remember the date.

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(4186) *By Mr. Royall:*

Q. Do you know whether it was in the Fall of the year or summer?

Mr. Boyd: I will tell you, Counsel, to help the situation. I talked to him—I have the date right here somewhere—on December 19, 1956.

Mr. Royall: Thank you, sir. That is all I want to know.

By Mr. Royall:

Q. Didn't you tell Mr. Boyd at the time you talked with him that you had received a notice to get out of the station? A. I wouldn't say if I did or not.

Q. You spoke something about a clock. You say they talked to you about that over three years? A. About two and a half years ago when I bought it; around two and a half.

Q. When you put the clock in did you have to take out part of the wall? A. No, sir, put a little bolt in. I paid for that little piece of material; $25.

Q. But at the time you took the clock out, you said you took it out at one time and put it back, it showed where it had been? A. I have a piece; the clock slides into a socket.

Q. Couldn't you tell there had been a hole in the wall then? (4187) A. It is still up there, yes. You can tell. But it wasn't in the wall. It was in the enamel. I bought a piece and paid $25 for it. The old piece is still up there yet.

Q. It is true, is it not, that you were drinking during business hours? A. I took a drink; yes, sir. But I wasn't drinking. Drinking is lots different from taking a drink.

Q. Isn't it also true that a number of people who passed your station, including some that patronized it, would not even permit their wives to go by there? A. No, sir.

Q. I ask you if you don't know that was true of Mr. William B. Day? A. Never had a customer named Day.

Q. William B. Ivy? A. Ivy?

Q. Yes. A. What was his address?

Q. 580 Long Drive. A. He is still trading with me.

Q. I asked you if he didn't tell his wife not to go by your station? A. No. His wife—Mr. Ivy traded with me regular and paid his bill the other day. Came by the house and paid me. Him and his wife both.

(4188) Q. He was with his wife? A. No, she was in the station plenty of times.

Q. But he stopped here? A. No, sir.

Q. Does Mr. Carter trade with you? A. No, sir. He may come in the station once a month.

Q. Isn't that true of him? A. No, sir.

Q. And Mr. Roy R. O'Hearn, do you know him? A. Mr. O'Hearn?

Q. O'Hearn. A. No, sir.

Q. 2877 Haversham Drive. Do you know him? A. I think I know him pretty good because I had to sue him to collect my bill. I am pretty sure I did.

Q. You didn't remember him a minute ago, did you? A. I had to think. When you said Haversham then I thought who he was.

Q. Wasn't the same thing true about his wife? A. No, sir. I never had a woman—I never said a thing to a lady or anything in that station the whole time I was open. I can prove that by hundreds of them. Ninety percent of my business in the morning was ladies.

Q. I ask you if you didn't say it looked like a barn in the back room? I ask you if your entire station wasn't (4189) filthy and your rest room continued unsanitary? A. No, sir. My rest room wasn't. We tried to keep that clean back there. Every time somebody went back there we tried to throw the bottle out. When they went back there they drink some. In all rest rooms; all stations would have to close up if they didn't.

Q. You are quite frequently away from the station for periods of time? A. I have been away a good bit the last year.

Q. While you were away you were drinking a little? A. I wouldn't say. That is my personal business.

Q. Are you familiar with a complaint about your rudeness to customers made in July 1955 by T. W. Whipple? A. Yes, sir; I am very familiar with that.

Q. And you know there was a complaint made? A. Yes, sir. I gave the money back to Mr. Patton. He turned the money back in. There was nothing rude about it. Just beat me out of a wax job, that is all.

Q. Mr. Patton talked to you about your drinking? A. Mr. Patton never asked me about taking a drink. Just told me never to let anybody get drunk around there.

Q. You know what he was talking about when he said that? A. It could have been you, it could have been me, it could have been anybody.

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(4190) *Redirect examination*

Mr. Boyd: Just one question.

By Mr. Boyd:

Q. Mr. Scott, was the matter just mentioned to you, about Mr. T. W. Whipple, was that the one where the wax adjustment was made, the adjustment on the wax job? A. Yes, sir.

Q. Would you tell us the circumstances of that incident? A. She came up and wanted the car washed. We washed it. She came back that afternoon, and the paint was about faded out on it. She told us to just keep it the next day and give it a wax job. The paint was in such bad shape we had to use Simonize cleaner on it and the scratches on the door had rusted. They had been there six or eight months. I mean it showed up. She said we scratched the door.

I gave Mr. Patton $10, and that was it. There was no argument about it. Only I told her the scratch had been there maybe a year, just like a scratch on it, but it wasn't even rusted around the paint. I gave the $10 back to Mr. Patton and that was all that was said. I didn't talk to the lady.

I was mad all right but I gave the money back to Mr. Patton.

(4191) Q. Why did you give the money back to Mr. Patton? A. She had a courtesy card and refused to pay it. I refunded the money back to Mr. Patton and he turned it back to the office.

Mr. Boyd: That is all.

John D. Scott, for Commission—Recross

Herman Gilbert, for Commission—Direct

Recross examination by Mr. Royall:

Q. Since you went in detail, I will ask you as the car was driving off if one of your colored help didn't say, "That is the third car you have messed up"? A. I don't think I had a colored man working there then. I didn't work niggers.

Q. You have colored men working for you? A. Mighty few of them.

Q. I ask you if one of them didn't say as the car drove off: "That is the third car you messed up"? A. No, sir, I wouldn't say that.

Q. You wouldn't say it is not true? A. I would say it is not true. I never messed up one. That is the only money I ever refunded to anybody.

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(4192) HERMAN GILBERT was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

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(4194) *Direct examination by Mr. Boyd:*

Q. Mr. Gilbert, will you give us your full name? A. Herman Gilbert.

Q. What is your address? A. 947 Stewart Avenue, Southwest.

Q. Have you been in the service station business? A. Yes, sir.

Q. Are you in the service station business now? A. Yes, sir.

Q. What type station do you operate presently? A. Cities Service.

Q. How long have you had that station? A. It will soon be eleven years.

Q. Have you ever been an operator of a Texas station? A. Yes, sir.

Q. When? A. From April 15th until October 15, 1955.

Q. In other words, about a year and a half ago? A. This past October is when we—

Q. It was 1956 then? A. 1956; I beg your pardon.

Mr. Royall: It was April 1956?

The Witness: April 16 to October 1956.

By Mr. Boyd:

Q. Where was this station located? (4195) A. 1686 Jonesboro Road, Southeast.

Q. Where did the negotiations between you and the Texas Company take place with respect to your becoming a lessee of that station? A. I first talked to Mr. Patton about it and then we went out to Doraville and talked to Mr. Fitts. I believe we signed the lease at the station as best I remember now. I think that is right.

Q. You did go to Doraville at one time? A. Yes, I went to Doraville one time.

Q. Was there any discussion by representatives of the Texas Company concerning TBA? A. Well, it was concerning leasing of the station.

Q. Was anything said about the tires, batteries and accessories that you might sell? A. Well, they did tell us that they would expect us to handle Firestone or B. F. Goodrich.

Q. Who told you that? A. Mr. Fitts, I believe.

Q. Did he or anyone else from the Texas Company ever tell you that you could handle any other line of TBA other than Firestone or Goodrich? A. No, sir, they never did tell us we could.

Q. Was this a new station that you took over? A. No, sir, it wasn't new. Mr. Dean operated it before (4196) we got it, I believe.

Q. Was there some TBA in it when you took over the station? A. Yes. Firestone was already in it when we took over.

Q. Which one did you select when you became the lessee? A. We just went on with Firestone. It was already in there and we went on with it.

Q. Did you sell any other brand of TBA at that station? Tires or batteries? A. No. Tires and batteries, no.

Q. Just in the event there is a misunderstanding: Did you ever sell any on a spot sale basis, anything of that nature? A. Do you mean other than—

Q. Goodrich or Firestone? A. No, we didn't.

Q. What was your supply point for Firestone? A. I believe at Spring and Baker Street.

Q. What kind of place of business is that? A. That is Firestone, their main office I believe, or warehouse, something like that.

Q. While you were lessee, Mr. Gilbert, did you ever attend any dealer meetings? Texaco dealer meetings? A. Yes, sir; I did.

Q. Were there any TBA supply representatives there? A. Actually I couldn't say about that. I didn't know any of them except the one that called on me. He wasn't there. (4197) Whether there was any more there or not I couldn't say.

Q. Were there any discussions about— A. I don't think so.

Q. (Continuing) —tires and batteries? A. No.

Q. Mr. Gilbert, what was the volume of TBA monthly, average, at that station while you had it? A. It was very small. I don't know just what it would be. It was very small. We didn't sell a lot of tires and batteries.

Q. You couldn't give us any approximate figure? A. Maybe $500 a month.

Q. What about the gasoline gallonage? How was that from the time you took it over? A. I guess it averaged about 10,000 for the period of time we were out there.

Q. Is that monthly? A. Monthly.

Q. Had your lease expired when you left the station? A. No, sir, it hadn't. It had another six months to go.

Q. How was it that you left the station before the end of the term? Would you tell us the circumstances? A. Well, I cancelled the lease myself. Texas Company didn't cancel it. They wanted us to stay open from seven o'clock until ten o'clock at night, and I would have to have (4198) another man on the payroll, and I just didn't do business after eight o'clock. They said they wanted it open until ten and I didn't feel like I could do it so I gave my cancellation notice on it.

Q. Who did you discuss this with, with the Texas Company? A. Well, actually there wasn't much discussing to it. Mr. Fitts just called me up and told me that they had to have it open from seven to ten at night. I didn't feel like I could do it. So I just cancelled, sent them a cancellation notice on it.

Q. When did this occur, that he wanted you to keep it open until ten o'clock?

* * * *

A. I don't know the exact date. It was sometime the first part of September because I believe I mailed in my cancellation notice on the 15th of September, effective October 15, I believe, so it was sometime the first part of September.

(4199) *By Mr. Boyd:*

Q. What time of day was it that Mr. Fitts called you about that? A. It was about 8:30 or 9:00 o'clock one night.

Q. Where were you when he called you? A. I was at home.

Q. As best you recall it, just what did he say at that time? A. He just said he rode by the station, and "I found it closed up at eight o'clock." I said, "Yes, sir, we did close at eight o'clock." I told him that I had been reading the pumps at eight o'clock and then again at ten to see what we did on those two hours and we just weren't doing anything and I couldn't keep a man out there. And he said "Well, we just must have it kept open until ten o'clock." So the more I figured on it the more I knew I couldn't do it. Then I just gave him cancellation notice on it.

Q. Did you try keeping it open awhile? A. Well, yes.

Q. Until ten o'clock? A. The first four months we were out there we kept it open from seven o'clock in the morning until ten o'clock at night.

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(4200) *Cross examination by Mr. Royall:*

Q. Mr. Gilbert, as a matter of fact didn't your gallonage drop in September to 4,000 gallons, from a high you had of 13,000? A. I would like to say this—

Q. Will you answer my question? Didn't it? A. No, sir, it did not drop to 4,000 gallons.

Q. I will ask you if the exact amount in September was not 4,110 gallons? A. Could I explain that?

Q. Sure you can. But I want you to answer. Was that right? A. That was not the amount of gallons I pumped. That is what I want to explain. I only bought that much gas that one month. That is right. But it is not how much I pumped because I had lots of it in the ground.

Q. How much did you buy the month before that? A. I couldn't say without seeing my books.

Mr. Lorenzen: Your Honor, I would like to have (4201) this identified.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

(The document referred to was marked Respondents' Exhibit 36 for identification.)

By Mr. Royall:

Q. Would this refresh your recollection as to how much gas you bought (handing)? A. No, sir. I don't know that. If I had my books I could tell you better.

Q. The amount you buy and the amount you sell averages of course over a short period of time? A. Yes, sir, over months it does average out.

Q. Over two or three months? A. Yes.

Q. Mr. Gilbert, you reported a conversation about TBA. With whom was that conversation? Who was present? A. Mr. Patton, Mr. Fitts, and my brother-in-law, Mr. Foster, and myself.

Q. What is the exact language they used, as near as you can recall? A. As I remember it they just told us that we would be expected to handle Firestone or Goodrich products. I think that is as near as I can tell you.

(4202) Q. I believe you were there about six months? A. I believe we were there six months to the day.

Q. When you went in there there was Firestone, was there not? A. That is right.

Q. Are you a member of the Georgia Petroleum Retailers Association? A. I am.

Q. You get their literature? A. I do.

* * *

By Mr. Royall:

Q. Did you get a communication from the GAPR asking you to "Add fuel to the fire—

Mr. Boyd: I object to the question.

Mr. Royall: Wait a minute. Let me finish first.

By Mr. Royall:

Q. (continuing) "Add fuel to the fire and evidence to the file"?

Mr. Boyd: I object to that as being improper.

Hearing Examiner Kolb: Objection sustained as (4203) not proper cross-examination, it has nothing to do with the issues of this case whatsoever as to this witness' testimony.

By Mr. Royall:

Q. Were you not in particularly good health at the time of this cancellation? A. That is true. I developed a little heart ailment about that time.

Q. You gave a figure of $500 on TBA. Is that what you paid or what you sold it for? A. I would say that is approximately what I sold it for.

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(4204) GUY R. SINCLAIR was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Boyd:

Q. Mr. Sinclair, will you give us your full name? A. Guy R. Sinclair.

Q. With what company are you connected and in what capacity? A. I work for Gordy Tire Company as a commercial salesman.

Q. How long have you been salesman with Gordy Tire Company? A. Six and a half years.

Q. What is your sales territory, Mr. Sinclair? A. I work all over the City of Atlanta, Decatur, Avondale. I have accounts in different parts of the City.

Q. Do you sell any out of the City or travel out of the City? A. Yes, sir. I travel out one day a week. Every Thursday.

Q. Where is that to? A. I go through Marietta, Acworth, Cartersville, Fairmont, Jasper, Tate, Canton, and back into Atlanta.

Q. How often do you cover that territory just enumerated? A. Every Thursday.

Q. Once a week? A. Yes, sir.

Q. How many accounts do you have? (4205) A. In total?

Q. Yes, sir. A. Probably 150.

Q. What classes of accounts are they? That is, what business are these accounts engaged in? A. The greatest bulk of my accounts are commercial concerns, such as bakeries, meat packers, motor freight lines.

Q. What about service stations? A. No, sir. I have very few service stations.

Q. What percentage of your business would you say is service station business? A. Probably one percent.

Q. Have you ever called on service stations? A. Yes, sir, I have.

Q. When was this? A. I would say off and on for the first six and a half years. I think the first year and a half I called on quite a good deal.

Q. This is service stations of all categories? A. Yes, sir.

Q. Of all types? A. Yes, sir.

Q. Would that include Texaco stations? A. Yes, sir.

Mr. Royall: Your Honor, we move to strike that (4206) answer. We want, if your Honor sees fit to give it to us, to have a running objection and motion to strike on any matter that occurs before 1952. And may I in that connection call attention of your Honor to the fact that this witness said in effect that he has sold practically no filling stations, or approached them, in the last five years.

May I have a running objection?

Hearing Examiner Kolb: You can have an objection to any testimony prior to 1952. The objection will be overruled.

Proceed.

The Witness: I didn't mean to say—I contact filling stations every Thursday, Mr. Boyd.

By Mr. Boyd:

Q. On this trip out of town that you are talking about? A. Yes, sir.

Q. Do you have any Texaco accounts? A. No, sir, I don't.

Q. Have you ever had any that you sold to? A. Yes, sir. I have sold some of them recapping.

Q. When was this? A. I would say—I have a few Texas accounts now that I sell recapping only to.

Q. Where are they located? A. I have—

Q. How many of them are there? (4207) A. I would say there's only two that I know of. One is in Cartersville.

Q. Would you tell us the name of it? Where is it located in Cartersville? A. I can't tell you the street. I don't know. It is on Route 41, which is the main street going through Cartersville.

Q. This is a Texaco station? A. Yes, sir.

Q. Does the station carry TBA—new tires and batteries? A. Yes, sir.

Q. What line or lines of tires and batteries does it carry? A. It carries Firestone new tires.

Q. Is that true of batteries, too? A. Yes, sir.

Q. Do you know whether that is a leased station or whether the operator owns it or not? A. No, sir, I don't.

Q. I don't believe you have given us the name of the station. Would you identify it for us as best you can? A. I don't know—it is run by a man named Harvey.

Q. You say you sell him some recapping business? A. Off and on I do, yes, sir.

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(4208) Q. You made no effort to sell this station that you referred to? Harvey's. A. No, sir.

Q. New tires? A. No, sir.

Q. Has Mr. Harvey ever offered to buy from you new tires? A. No, sir.

Q. You said there was another one. What is the next station? A. I wouldn't quote on that because I am not positive about it.

Q. What about around Atlanta? Can you name any stations here that you called on? Texas stations? A. Yes, sir. I have called on a Texas station on Candler Road just south of Glenwood, run by Doug Scott.

Q. Did you ever sell him tires and batteries? A. Yes, sir, I did.

Q. When was this? A. It was I would say roughly three years ago.

Q. Did he give you any reason for not buying from you?

Mr. Royall: Objection.

(4209) Hearing Examiner Kolb: Objection overruled.

A. I sold him tires before he went into this station.

Q. Where was he then?

Mr. Royall: I move to strike that answer as not being responsive.

Hearing Examiner Kolb: Denied.

By Mr. Boyd:

Q. Go ahead. A. He worked for a bakery here in Atlanta and they purchased tires from us, and he did, too, for his own personal use. So when he opened that station I contacted him about it and he told me that he had already been tied up with B. F. Goodrich.

Mr. Royall: Your Honor, we have an objection to that and a motion to strike.

Mr. Barton: I move to strike.

Hearing Examiner Kolb: Motion to strike will be denied.

By Mr. Boyd:

Q. Did you do any recapping business for Mr. Scott? A. No, sir.

Q. What products do you sell primarily for Gordy? What type products? A. New tires, batteries, recapping.

Q. What about accessory items? A. Very few. We sell a few seat covers.

(4210) Q. Do you sell things like waxes and polishes and radiator chemicals, things of that nature? A. No, sir.

Q. Spark plugs? A. No, sir.

Q. Filters? Oil filters? A. No, sir.

Mr. Royall: Your Honor, two witnesses for Gordy have so testified. I see no necessity for repeating.

By Mr. Boyd:

Q. Are there any other stations in the Atlanta area that you can name for us? A. There is one on Avondale Road.

Q. Where? In Atlanta or Decatur? A. It is a Decatur address. It is between Decatur and Avondale.

Q. Can you give us the name of the operator? A. I can't recall his last name. It is—

Q. Do you know his first name? A. Johnny.

Q. Can you tell us where on Avondale Road—the number, if you know. A. I don't know how those numbers run there, but it is just about half way between Sam's Crossing and Avondale, Avondale proper, on the south side of the road.

(4211) Q. Does this station sell new tires and batteries? A. Yes, sir.

Q. What line or lines does it sell? A. B. F. Goodrich.

Q. Have you endeavored to sell him your tires and batteries? A. Yes, sir.

Q. When was this? A. About a year ago.

Q. What if any reason was given for not buying?

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

A. He said that he was tied up with B. F. Goodrich.

Mr. Royall: Motion to strike.

Hearing Examiner Kolb: Motion to strike denied.

By Mr. Boyd:

Q. Do you know whether Johnnie's is a leased station or whether Johnnie owns the station or not? A. No, sir, I don't.

Q. Mr. Sinclair, how many Texaco stations would you say are in the area in which you work? A. I wouldn't have any way of estimating that. I wouldn't even hazard a guess on it.

Q. Have you called on these stations other than the ones that you have named, at various times?

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(4212) A. I don't call on stations here in town any more.

By Mr. Boyd:

Q. Have you ever done so? A. Yes, sir.

Q. When? A. I would say probably up until two or three years ago.

Q. Mr. Sinclair, do you work on a salary or commission? A. I work on a commission.

Q. What is that based on? A. It is based on a percentage of sales, and, of course, the profit at which you sell him.

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CLAUDE M. CHAMBERS was called as a witness for the Commission, and, having been first duly sworn, was examined and testified as follows:

(4213) *Direct examination by Mr. Boyd:*

Q. Mr. Chambers, will you give us your full name? A. Claude M. Chambers.

Q. Until the first of this year with what company were you connected? A. Cooper Tire and Rubber Company.

Q. Where was that located? A. 684 Spring Street, here in Atlanta.

Q. What was your position? A. I was the branch manager.

Q. How long had you held that position? A. Approximately two years.

Q. What business were you in prior to that time? A. I was with Cooper but as a salesman.

Q. In that position, Mr. Chambers, would you describe your duties in connection with salesmen? A. We have out of the Atlanta branch five salesmen directly on Cooper's payroll, and we have one commission salesman, more or less to speak of, on his own. My duties was running the branch office, and working with my salesmen.

Q. Did you ever travel with these salesmen? A. Yes, sir.

Q. How frequently did you travel with them? A. I averaged about every fifth week with each man. In other (4214) words, I was trying to be with one of the men every week.

Q. When you were with them, what did you do? A. We called on service stations, tire shops, recap shops, any one that might be able to buy tires and repair materials.

Q. What products did Cooper sell? A. They sold tires, tubes, and repair materials.

Q. What about batteries? A. A few batteries. Here, of course, they sold batteries. They have batteries.

Q. What was the brand of batteries? A. Cooper.

Q. Did the firm engage in any recapping? A. Who?

Q. Cooper, did it do any recapping? A. No, sir.

Q. What territory did these five salesmen cover? A. Portions of Alabama, all except around the Mobile area; we didn't work out of Atlanta. Eastern Tennessee, from Chattanooga over. All of Florida, and all of Georgia.

Q. Will you tell us the names of the five salesmen? A. Mr. Jack McKinney; Mr. Fred Crawford.

Q. What territory did Mr. Crawford cover, if I may interrupt you. A. He covered portions of northern Florida and western Florida, the southern portion of Alabama, and the southern (4215) portion of Georgia.

Q. Name the other three. A. Mr. H. L. Chastain, Mr. C. J. MacManus, and we had a boy, Terry, in Atlanta, who wasn't a full-time salesman, and Mr. Warren Rathfield.

Six. Terry was just a part-time salesman here in the Atlanta area.

Q. About what was the annual volume of business while you were the manager of Cooper from 1954 to '56? A. In 1956 it was running about $1,300,000 in this particular territory, and in 1955 it was a little over $900,000. In 1954 it was around a half million dollars.

Q. What percentage of that business was done with service stations? A. I haven't broken it down. I would say roughly 10 percent.

Q. Could you give us some idea as to how much was done with Texas stations? A. No. It would be rough, but out of 10 percent it would be a guess of not over one or two percent.

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Q. Do you recall any instances in which you called on Texas service stations? A. Yes, sir. One of the latest instances was in Enterprize, Alabama, Wayne Hickman's Texaco.

(4216) Q. When was this? A. It was, I believe, around October.

Q. 1956? A. Yes.

Q. Do you know whether Mr. Hickman leases that station or whether he owns it? A. It was a leased station I think.

Q. Did he sell tires and batteries? A. Yes, sir.

Q. Were you there? At the station? A. I have been there, yes.

Q. What line of tires and batteries did he have on display? A. He had Goodrich.

Q. Was Cooper doing business with him before October, 1956? A. No.

Q. Who was with you when you were there? A. Mr. Fred Crawford.

Q. What happened while you were there? A. Mr. Crawford had made contact with him previously. While I was there we signed him up with Cooper for approximately $2,800, including tax.

Q. For what? A. Tires and tubes. Mostly tires.

Q. Were the tires shipped to him? A. Yes.

(4217) Q. What happened after that? A. I would say within the month of November—I don't have the dates; it is in my office, my former office—Mr. Hickman, whether he lost his lease or was put out, I don't know, the next thing I knew he was out of the station and a new owner had taken over.

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(4218) Q. What happened to the tires, Mr. Chambers?

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A. The tires was returned, anyway.

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Q. Did you have any discussions with the new dealer? A. No.

Q. Do you know who the new dealer was? A. No, I don't.

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(4221) Q. Do those documents refresh your recollection as to the names of some Texaco stations that you called on in Gainesville? A. I think this Harry's is the only one that I can say that I actually called on.

Q. When was this?

Hearing Examiner Kolb: Is that the one that has been testified to already?

Mr. Boyd: No, sir.

Mr. Royall: He said he talked to Harry's.

Mr. Boyd: He hasn't testified other than that he had talked to Harry.

Hearing Examiner Kolb: All right.

A. It was sometime after June.

By Mr. Boyd:

Q. What year? A. 1956. The exact month I couldn't say.

Q. Does Mr. Harry's station in Gainesville sell new tires? (4222) A. Yes.

Q. You were there? A. Yes.

Q. Did you see what tires he had on display? A. I know he had tires on display. I couldn't tell you whose tires they were.

Q. Were you there at the time that report—what is the date of it? A. This is the 10th. I couldn't say whether I was there on this particular day or not. But I have been there some times after June. This was in April.

Q. Did you make any efforts to sell Cooper tires to Harry's when you were there? A. Yes, sir.

Q. What happened? A. We was—

Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

A. We was unable to sell him any tires.

By Mr. Boyd:

Q. What if anything did he say about it?

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

A. He just said he wasn't in a position to take on Cooper tires, at this particular time, as much as he would like to.

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H. Arpin Koehler, for Commission—Direct

(4226) H. ARPIN KOEHLER was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Boyd:

Q. Mr. Koehler, will you give us your full name and present home address? A. My name is H. Arpin Koehler. I live at 167 Dunwoodie Lane.

Q. Is that Atlanta? A. North Atlanta, 19. That is in the incorporated area of North Atlanta.

Q. Mr. Koehler, have you ever been in the service station business? A. Yes, sir.

Q. When were you in the service station business? A. I was in the service station business several times. The last time was in 1955, in the Atlanta area.

Q. Where was that station located and what kind of station was it? (4227) A. The station was located on Roswell Road at Belle Isle and it was a Texas Company station.

Q. Would that address be 4980 Roswell Road? A. I believe that was the address, yes.

Q. Do you have your lease? A. I have a copy of the lease, I believe.

Q. May I see it?

(The witness produced a document.)

Q. Do you by any chance have a copy of the termination agreement with you? A. No, sir, I do not.

Mr. Royall: Here is one for you, if you want it.

Mr. Boyd: I think he can tell us the date of it. The main thing is to establish when it was.

Mr. Royall: You are not going to put it in?

Mr. Boyd: I believe not.

Mr. Royall: I wonder for the reason for asking for it.

Mr. Boyd: I wanted his copy.

By Mr. Boyd:

Q. Did you have a copy on it? A. I imagine so. I remember the termination was the sale of the products and the inventory and the equipment owned by me to another man who was taking over the operation.

Mr. Boyd: Off the record.

(4228) (Discussion off the record)

Mr. Boyd: Your Honor, I ask that there be marked for identification as Commission Exhibit 175 a letter on the stationery of the Texas Company dated February 25, 1955, and bearing the signature or reasonable facsimile thereof of W. H. Griffin, Jr., I believe. The letter is addressed to Mr. H. A. Koehler.

As Commission Exhibit 176-A and B, copy of a lease between Mr. Koehler and the Texas Company dated February 9, 1955.

As Commission Exhibit 177, Texas form S-402 5/52/30M. This form is made out and addressed to the Texas Company and is properly completed and signed by Mr. Koehler.

As Commission Exhibit 178, copy of a letter dated February 25, 1955, on the stationery of the Texas Company and bearing the reasonable facsimile of the signatures of W. H. Griffin, Jr., and addressed to Mr. H. A. Koehler.

And as Commission Exhibit 179-A and B, an agreement of sale between the Texas Company and H. A. Koehler, dated February 9, 1955.

As Commission Exhibit 180-A and B, a document entitled "Selling Schedule, Motor Lubricants, Dealer Prices, Effective June 1, 1954."

Mr. Royall: Let me see them. I may have no objection to them being introduced.

(4229) (The documents referred to were marked Commission's Exhibits 175, 176-A and B, 177, 178, 179-A and B, 180-A and B for identification.)

Mr. Royall: No objection to the admission of the papers.

Mr. Boyd: I offer them in evidence.

Hearing Examiner Kolb: The documents will be received in evidence as Commission Exhibits 175 through 180-B.

(The documents heretofore marked Commission's Exhibits 175, 176-A and B, 177, 178, 179-A and B, and 180-A and B for identification, were received in evidence.)

By Mr. Boyd:

Q. Mr. Koehler, had there been any operator of this station before you took it over? A. Not to my knowledge.

Q. Was it so far as you know a new station? A. So far as I knew it was a new station, just built.

Q. With whom did you deal with the Texas Company in obtaining that station and negotiating the lease? A. I went to the—sometime previous to February I believe I went to the Texas Company branch in Doraville.

Q. Doraville, Georgia? A. Doraville, Georgia. And talked to Mr. Fitts regarding the possibilities of leasing or obtaining a station to operate?

(4230) Q. Did you see anybody else at that time, besides Mr. Fitts? A. I don't know that at that particular time that I did. I may have. Subsequent to that time I had various conversations with Mr. Fitts and with a gen-

tleman—I am awfully sorry, I am awfully sorry I should know his name but I don't—he preceded Mr. Joe Martin as the representative for that area for the Texas Company.

Mr. Fitts: That was Mr. Gupter?

The Witness: Mr. Gunter, yes; that is right.

By Mr. Boyd:

Q. Did you talk to those gentlemen any more before you signed the lease? A. Oh, yes.

Q. Where did these other discussions take place? The same place? A. They took place in various places. I mean by that they took place at the Doraville branch of the Texas Company and in my home, and at the station site.

Q. In the course of those discussions and before the lease was signed was anything said by the Texas representatives concerning TBA? A. Yes.

Q. Would you tell us what was said in that respect? A. To the best of my—

Mr. Royall: Would you mind identifying the person?

(4231) *By Mr. Boyd:*

Q. And tell us whom you were talking with, in the Texas Company? A. In talking with Mr. Gunter as the representative of the company, who was I believe assigned to the territory that station was in, and who would be the contact between the company and the operation of the station, in several discussions about the station and its operation, the products that it would handle, the TBA question was brought up and I was told that I could have either a choice of the B. F. Goodrich line or the Firestone tire and rubber line.

Q. Mr. Koehler, was there any discussion? You say there was some discussion at your home. Was the TBA

question discussed with you at your home? A. Yes, quite thoroughly. They had film strips and so forth as a new dealer going in. They showed me several, I guess you would call them educational helps in the operation to train me or to help me become an operator of the station. And in these film strips they showed the general operation of the station; that is, the station with pumps and the man doing various jobs on lubrication and so forth and so on, and the parts that the TBA played in the structure of the sales.

Along with those strips we would discuss the TBA and what a part it would play in the—

(4232) Q. Were these film strips shown to you at your home? A. Some of them were shown there and some later on I believe were shown at the station. I think that there were two or three other operators who were opening at about the same time and saw one or two films—one film anyway that I remember out at that station.

Q. Did those films show any brand of TBA in there? A. Yes. To my memory they did.

Q. Will you tell us what that was? A. They showed to my memory the B. F. Goodrich and the Firestone Tire and Rubber Company.

Q. Tires, batteries and accessories? A. Yes, sir.

Q. As a result of those discussions, Mr. Koehler, did you take one of those lines of TBA? A. I did.

Mr. Barton: Object.

Mr. Royall: Object.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Boyd:

Q. Which one did you take? A. I chose the B. F. Goodrich line.

Q. When did you get your stock of Goodrich TBA for the station? (4233) A. Almost immediately with the time that I got my stock of Texas products. I mean it may have taken a period of a few days or so to get it all in. I don't remember exactly.

Q. You had it when you opened? A. Prior to the opening of the station we had the station stocked pretty well with the same amount of inventory that I had at the time I sold out.

Q. Where was the supply point from where you got the TBA? Goodrich TBA? A. I believe, if I am not mistaken, that the merchandise that I ordered was delivered from the B. F. Goodrich store in Atlanta on Courtland Street.

Q. Did the Goodrich representative come around to see you? A. Yes, regularly.

Q. I mean before you opened the station did he come around to see you? A. Oh, yes. The Goodrich representative came to see me and so did the Firestone representative.

Q. Where did they see you? Where did the Goodrich representative see you? A. I don't remember, sir.

Q. Was there anyone else with him when he came? A. I don't remember that, sir.

Q. Did any other sellers have TBA products call on you after you opened the station? Other than Goodrich or Firestone? (4234) A. Yes. I would say that a number of them called on me.

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Q. Did you buy any products from any of these people who came in to see you? This is right after the station opened. A. Might I ask a question?

Q. Sir? A. I don't understand your question.

Q. Did you buy anything from any of these other people who came in to sell you? That is what I am asking you.

Shortly after you opened? A. No, sir, not shortly after I opened I didn't.

Q. Were you ever told by any representative of the Texas Company that you could handle any other line of TBA other than Firestone or Goodrich? A. No.

Q. I say did you ever buy any tires or batteries from any source other than Goodrich while you were in the station? A. I bought some batteries from another company.

Q. What kind of batteries were they? A. I would have to check the invoice. It was an unknown, (4235) not a major brand. It was a battery that sold for a good deal less than the cheapest Goodrich battery I had, or that was available to me from the Goodrich line at that time.

Q. Did you display those batteries openly in your station? A. No, sir.

Q. Where did you keep them? A. I kept them back in my storeroom.

Q. What about tires? Did you buy any tires other than the Goodrich tires; that is, from some other source? A. I never bought any tires from anyone other than Goodrich. I bought some recapped service, or recapping. I don't know whether you would qualify them as tires or not.

Q. Would this be where the customer brought a tire in to be recapped, or did you buy a recapped tire? Which was it? A. I did both. I had customers' tires recapped and I also, in several cases, because the customer's tire when it was sent down proved to have a defect that prevented it from being recapped, bought for that customer a carcass and the recap.

Q. Did you have any recapping done with Goodrich? A. Yes, quite a bit.

Q. Did you have any recapping done with any other recapper? A. Yes. I had some done with a man who was very close to the station.

Q. Did you ever have any discussions with anyone with the (4236) Texas Company concerning the recapping, other than that with Goodrich? A. Yes. There was a discussion and I believe—

Q. Tell us as best you can, Mr. Koehler, about when it was that the discussion occurred, and with whom? A. Well, it was sometime after the station had been in operation. By that I mean—

Q. About how long would you say? A. It was sometime along during the summer of that year, about four or five months after the station was in operation when I had occasion to have some recapping done from this man who was close to the station. To my memory Mr. Martin, the representative of the Texas Company, either was in the station at the time a delivery was being made or came there or was there shortly after a delivery had been made. At any rate, the delivered recap job was in its—I wouldn't say exposed, I mean it was there to be seen by anybody that did come, and he asked me where I had it done. I believe I told him that I had had it done by this man not too far from the station. He told me then that I should get my recapping done by Goodrich.

Q. Were there ever any discussions with any representatives of the Texas Company concerning these batteries that you had in the backroom? A. Not to my memory.

(4237) Q. Why did you have them in the backroom?

Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

By Mr. Boyd:

Q. You may answer. A. Well, I was a franchised Goodrich dealer and my main line as far as I was concerned was the Goodrich line. The reason that I bought the other batteries was because at that time the Goodrich line did not

have a low-priced battery that could meet that competition. And I did have some calls from customers for a very low-priced battery. In my estimation I wasn't purchasing or selling that line. I mean I wasn't offering that to my customers as an exhibited item.

Q. Mr. Koehler, did you attend any Texaco dealer meetings? A. Yes. I attended one that I am sure of. I think that I attended another one but I wouldn't be sure of that. I remember one very distinctly; yes, sir.

Q. Were there any representatives of Goodrich or Firestone at the meeting? A. Yes, sir.

Q. Were there any representatives of any other sellers of TBA products at the meeting? A. Not to my knowledge.

Q. Were there any discussions at the meetings concerning Goodrich or Firestone TBA? (4238) A. As far as I remember both Firestone and Goodrich had displays of their TBA items at this meeting.

Q. How frequently were these meetings held? A. That I wouldn't know, sir. I mean if you will check previous there I only operated this station from sometime in February to the first of November. So not being with them an entire year I wouldn't know how frequently they held them. All I know is that I went to one.

Q. What approximately was your TBA volume monthly? A. I wouldn't remember. I didn't bring any records with me. I don't remember that.

Q. What about your gasoline gallonage? Could you give me some idea of that? A. It would be hard to establish an average because being a new station the quantity sold varied. It started off naturally at nothing and went up to I believe the greatest amount of gasoline purchased from the Texas Company in any one month was approximately 13, around 13,000 gallons.

Q. Why did you give up the station? A. Well, I didn't feel that the station was turning out to be as remunerative

as I had anticipated. And I don't believe that the Texas Company felt that the station was returning them the renumeration that they had expected. So I think it was more or less of a mutual agreement that we would terminate the lease and sell to another operator.

(4239) Q. Did you have an inventory of TBA on hand when you gave up the station? A. I did.

Q. What happened to it? A. It was sold to the gentleman who bought out all the rest of my stock and my equipment and took over the operation of the station.

Q. Who was he? If you know? A. I should remember it but I don't. I am sorry. I have a copy of the bill of sale at home and a copy of the inventory made.

Q. Mr. Koehler, how much did it cost you to go in business as a lessee of that station?

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

A. Do you mean for the—

By Mr. Boyd:

Q. For everything. A. I would say somewhere in the vicinity of $3500.

Q. How much of that was involved in the original outlay for TBA merchandise? A. I don't remember. I have the original invoices home and the total statement. I would approximate it at around probably $800 to $1,000.

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(4240) *Cross examination by Mr. Royall:*

Q. You spoke of a conversation with Mr. Gunter. Was anybody else there? A. At what time?

Q. I think the one you talked about with him was when he was talking to you about getting the station. Am I right

about that? Didn't you have a conversation with him? A. Well, I had a good many conversations with the Texas Company, with Mr. Fitts, and believe with Mr. Fitts and Mr. Gunter, and I believe with Mr. Gunter alone at different times.

Q. Was anybody else present at any of those conversations, from the Texas Company? I am just trying to get the names? A. I don't really remember.

Q. You don't remember anybody else being present except those two, some of them at one time, some another, and sometimes both of them? Is that right? A. That to the best of my memory is right.

Q. Goodrich tires were a well-known nationally advertised brand sold throughout the country? A. To my knowledge; yes, sir.

Q. And they were one of the leading tire manufacturers and carried prestige just like a leading brand of gasoline? (4241) A. Yes, sir.

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Cross-examination by Mr. Barton:

Q. When you were working for Lockheed you knew Mr. Lark, was it? A. Yes.

Q. Of the Goodrich Company? A. I knew Mr. Marvin Lark, yes.

Q. Didn't you buy some Goodrich tires while you were working with Lockheed in their purchasing department? A. No, sir. I didn't buy any Goodrich tires.

Q. You were acquainted with Mr. Lark, though? A. Yes.

Q. And he was with the Goodrich Company? A. That is right.

Q. I think you said that it was these Sheffield batteries that you were handling? A. I believe it was. I am not sure.

Q. And they sold at a lower price than the lowest-priced Goodrich battery which was in the line? A. At that time.

Q. And you made more money on a resale of a Goodrich battery than you did on a Sheffield battery, I suppose?

Mr. Boyd: Object to that.

Hearing Examiner Kolb: Overruled.

(4242) A. Depending on the battery.

By Mr. Barton:

Q. Pardon? A. Depending on the size and price of the battery.

Q. So as the price was lower you would have less margin? A. Less margin.

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Mr. Barton: It is stipulated that Van Duzen Tire Company was an independent Goodrich distributor in the city of Atlanta, supplying, among others, Texaco service stations from April 1953 until April 1954, at which time the Van Duzen Tire Company went out of business and the present supply point through the B. F. Goodrich store was established. Prior to that time there was a factory—a branch operation—and in April 1953 Van Duzen Tire Company, which had prior to that time been a distributor of oil I believe, took on the Goodrich tires, but wasn't interested in remaining in the tire business after April 1954.

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(4243) ABE GOLDSTEIN was called as a witness for the Commission, and, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Boyd:

Q. Mr. Goldstein, will you give us your full name and business please. A. Abe Goldstein, Prior Tire Company.

Q. Where is it located? A. At the corner of Peachtree and Pine Street.

Q. Atlanta? A. Atlanta, Georgia.

Q. What is your position? A. Partner in the firm with my son and son-in-law.

Q. How long has the firm been in business? A. 37 years.

Q. What is the business of Prior Tire Company? A. It is a wholesale and retail tire, recapping, gasoline and oil business, and some appliances.

Q. Do you sell accessories, items like chemicals? A. No.

(4244) Q. Spark plugs, batteries? A. Some spark plugs. Batteries, yes.

Q. What brand of tires does your firm sell? A. Hood tires.

Q. How long have you sold Hood tires? A. We have sold them since we have been in business—37 years.

Q. What brand of batteries? A. Exide batteries.

Q. Mr. Goldstein, who manufactures Hood tires? A. They are manufactured by B. F. Goodrich Rubber Company, Akron Ohio.

Q. Is there some division of that company that manufactures those tires? A. Known as the Associated Lines Division of the B. F. Goodrich Company.

Q. What is the trading area of your company? A. We cover most of the State of Georgia. Practically all of Georgia.

Q. Do you get into South Carolina? A. Very little. Into the edges of South Carolina.

Q. How many salesmen does the firm employ? A. It employs about ten or 12. Probably about 12.

Q. Do they travel the whole area? Are some of them City salesmen? (4245) A. Some City salesmen and some salesmen on the road.

Q. With what classes of customers does the firm do business? A. It does business with filling stations, car dealers, some garages, commercial houses that use trucks, fleet operators, motor freight lines. All type of customers of passenger and truck tires.

Q. What percentage of your business would you say is done with service stations of all kinds? A. I would estimate that sales through direct service stations would run about 60 percent.

Q. Would that be new tires, recapping and batteries? A. That's right.

Q. Could you give us some idea of the approximate amount of business that your company does with Texas service stations? A. It is very little. I don't know of any particular accounts that we have with Texas service stations. In fact, I don't know of any that we've got that handles Texas, that are Texas-owned service stations. In fact, I don't know of any. Or Texas-controlled. We just don't—my men may be working some but I don't know it.

Mr. Royall: Your Honor, we move to strike the word "controlled."

Hearing Examiner Kolb: The motion will be denied.

By Mr. Boyd:

Q. Do you have any idea how many Texaco service stations are (4246) in the area in which your firm does business? A. No, sir, I do not.

Q. Has the firm ever done business with Texas stations? A. I couldn't answer that. Whether we have ever done business with Texas stations. I merely could say that at the present time I do not know of any Texas leased stations that we are doing business with. Our men may be doing some business with some that handle Texas gas through their own stations, but a leased-operated station I do not know of any that we are selling.

Mr. Boyd: That concludes the direct examination.

Cross examination by Mr. Barton:

Q. Mr. Goldstein, your tire business has grown consistently in the past ten years, hasn't it? A. Yes, sir.

Q. What would you estimate was the degree of growth during that period? A. In the past ten years?

Q. Yes. Say from 1948 on. A. I would say we have probably had a 40 percent increase.

Q. Hasn't it been more than that, sir? A. Possibly. I haven't got the figures. I am going from memory.

Q. Wouldn't it be more in the line of around a hundred percent (4247) increase between 1948 and 1957, or 150 percent? A. No, I wouldn't think so. It might be 50 or 60, but I don't think there is any 150 percent. I am quite sure of that.

Q. You have a number of very strong competitors in the tire business in this area, don't you? A. Yes, sir.

Q. Among them are the Duke Tire Company? A. Yes, sir.

Q. And the Edwards-Warren Tire Company? A. Well, I don't come in contact with Edwards-Warren Tire Company.

Q. Do you come in contact quite a bit with Gordy Tire Company? A. Yes.

Q. They solicit service stations as much or more than you do? A. About on the same basis.

Q. Same general basis? A. Same general basis.

Q. And the Riddick Tire Company is also engaged in the solicitation of service stations? A. I don't know what territory they cover. We don't come in contact with them very much.

Q. Of course, you have competition from Goodyear, Firestone (4248) and B. F. Goodrich? A. Yes.

Q. As well as U. S. Royal? A. That's right. As well as oil companies.

Q. And a number of others? A. A number of oil companies.

Q. What percentage of your business is in recapping? A. The percentage to sales?

Q. That's right. A. About 20 percent.

Q. And of course those recap tires are sold as part of the tire market, aren't they? A. Yes.

Mr. Barton: I don't have anything further.

By Mr. Royall:

Q. Mr. Goldstein, do you have the exclusive on Hood tires? A. Yes, sir.

Q. You sell no other tires? A. No other tires.

Q. They sell no one else in your territory? A. Correct.

Q. Do you think possibly if I were to call the name of one or two stations it might come to your mind that you sell them? Or would your salesmen know about that? A. Possibly I might know. Most sales clear through my office.

(4249) Q. Just for the purpose of perhaps refreshing your recollection: Do you remember the A. G. Killingsworth station at 2830 Peachtree Road? A. We have sold them some batteries only.

Q. Sold them some Exide batteries? A. Batteries, yes, sir.

Q. Do you remember Mr. C. A. Hughes? 1230 DeKalb Avenue. A. No, sir. Don't ever recall selling them anything.

Q. Who would cover the territory of 1230 DeKalb Avenue? A. Mr. Price.

Q. Do you remember Dave Lafkowitz and Al Weingarten? A. Yes, sir, we do business with them. But I always considered them an independent operator, and they lease their own station.

Q. Do you sell Richard and Earl Porter? A. No, sir.

Q. Who would cover 327 Marietta Street? A. Mr. Price.

Q. Do you happen to know that in the case of Mr. Killingsworth that in the classified telephone directory, under the listing of "Exide batteries" it carries not only Mr. Killingsworth's station and address but also shows in the same box that you are—the Prior Tire Company, is the wholesaler? A. That's right. We sell Killingsworth batteries.

Q. And you have seen this in the 'phone book? (4250) A. I haven't seen it but I know that their retail outlets are listed in there. I don't question that. I admit that, that we sell Killingsworth batteries.

I asked with specific reference to tires when I spoke about—I didn't have specific reference to recapping or batteries. If I didn't make it clear I would like to.

Q. I understood.

And would it refresh your recollection to see this 'phone book to see if it is listed publicly in the book (handing)? A. Yes. I have said that I sell them batteries.

Q. I understand. A. It is listed there.

Q. And it is in the 'phone book? A. Yes, it is in the 'phone book.

Q. Isn't it also true that there are only five service stations in Atlanta listed in the phone book for Exide? Or did you observe that? A. I imagine that is correct. But that doesn't mean that there are only five that handle them. It means that there are only five who are willing to pay for their own listings.

Q. Do you have to pay part of it, too? A. No. We have to pay only for the ad part of it, the top part.

Q. That is about half of it, isn't it? A. Yes, sir.

(4251) Mr. Royall: That is all.

Redirect examination by Mr. Boyd:

Q. Mr. Goldstein, with reference to the matter of the increase in business that was asked you on cross-examination, would that be a dollar-wise increase that you were referring to? A. Dollar-wise, yes, sir.

Q. How do prices of tires today compare with prices back in 1948? A. I would say that they are up, my general guess would be, about 18 or 20 percent.

Q. With reference to competitors Mr. Barton was asking you about, he named a number of them. Then you mentioned that there were a number of oil company competitors. Just what did you mean by that, sir?

* * *

(4252) *By Mr. Boyd:*

Q. Answer the other question. A. I had reference to companies like Pure, Gulf, and Amoco, that also produce a tire that sells through their stations; that they are also strong competitors in the field that we operate in.

Q. Some inquiry was made of you concerning Dave Lafkowitz' Texas service station. Do you know whether or not Mr. Lafkowitz owns that station or whether he leases

it from the Texas Company? A. My understanding is, if you please, that he leases it from the owner and—

Q. You mean the owner of the property? A. Yes.

Q. Go ahead. A. And we have a sign out in front of the place, a big neon sign, and he does automotive repair work and sells gas and oil and Hood tires, Exide batteries.

Q. What kind of sign? A. Hood sign, a big neon Hood sign. And it has been generally understood that he controls his own location. And therefore he can handle any kind of product that he elects to.

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(4253) *Recross-examination by Mr. Royall:*

Q. Don't you know also that Mr. Killingsworth has an Exide sign in his main salesroom? A. I have never been in his salesroom. I don't know.

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WILLIAM B. PRICE was called as a witness for the Commission, and, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Boyd:

Q. Mr. Price, will you give us your full name and business connection and position? A. William B. Price, Prior Tire Company, sales manager of the salesmen.

(4254) Q. How long have you been connected with Prior Tire Company? A. Thirty-six years.

Q. What is your sales territory, Mr. Price? A. Principally around Atlanta, DeKalb and Fulton Counties, and Cobb. Three counties that I go myself.

Q. What classes of customers do you call on? A. Mostly commercial accounts. There are some dealers, individuals.

Q. When you say dealers, what kind of dealers do you mean? A. Filling stations, garages. Anywhere I can sell tires and batteries and recapping. New tires, batteries and recapping.

Q. Mr. Price, have you ever sold tires, Hood tires, to a Texaco station located at 1238 DeKalb Avenue, Atlanta? A. When it was run by Green and Presley. Two boys who ran it then. When they first built it.

Q. Was it a new station when they took it over? A. I sold them for years, in a dilapidated station they had there. They did such a good job that Texas Company agreed to build them a $30,000 station.

Q. Would you tell us about when that was that you sold them? Over what period? A. Up until—I imagine they left there four or five years ago. They probably traded with me from the time that they started in big. I would say in the neighborhood of six or seven years anyhow they traded me.

(4255) Q. Did they ever cease trading with you? A. Practically, yes. Just about nil.

Q. In that respect, would you tell us what happened?

Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

A. Green and Presley called me one day to come out there, and they told me that they were figuring on buying the property and building their own station. They said the Texas Company told them they would invest around $30,000 in building them a master station but they would be expected to handle all Texas products plus Firestone, and asked me what did I think about it.

I told them. That is, if they could get a station built for around $30,000, if Texaco would do it, I would advise them to do it and then to do the best they could with me

afterwards. In other words, bootleg what tires they could from me on Hood tires.

Mr. Royall: Motion to strike, your Honor, on the ground it embraces double hearsay as to anything that they said that the Texas Company said.

Hearing Examiner Kolb: Read the answer.

(Answer read.)

Hearing Examiner Kolb: Motion to strike denied.

By Mr. Boyd:

Q. Was a new station built? (4256) A. It was.

Q. Where was it built? A. On the same location.

Q. At the same place? A. Yes.

Q. Did you sell them any tires after that? A. Yes. They would buy a few tires from me, and they couldn't display them in the windows or anything. They had customers who wanted my tires and they would call up and get them and do it on the sly the best way they could.

Mr. Royall: Motion to strike, your Honor, on the ground that it is opinion and hearsay. It involves transactions between the station and Texas, of which he was not a party and as to which he had no knowledge.

Hearing Examiner Kolb: The objection as stated will be overruled.

Motion to strike denied.

By Mr. Boyd:

Q. After the new station was built did you ever see any Hood tires on display in it? A. No. I would like to add to that. None was displayed in the windows like the Firestone, the tire that they had at that time. They changed eventually to Goodrich.

Q. Are Green and Presley still operating that station? A. No.

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(4258) *By Mr. Boyd:*

Q. Mr. Price, you mentioned Goodyear and Goodrich. Which is it? A. Goodrich.

Q. Not Goodyear? A. Not Goodyear.

Q. Did the station after handling Firestone have Goodrich tires on sale and display at that station? A. Yes.

Q. Mr. Price, how many Texas service stations do you sell? A. Very, very few.

Q. Could you tell us how many there are, and who they are? A. That was the best Texas station I had, was Green Presley. Of course, I worked filling stations and commercial accounts anywhere I can sell tires. But I have quite a few dealers, filling station, owning garages, selling tires. They mentioned here Killingsworth, which is a Texas station.

Q. Where is that located? A. On Peachtree Road.

Q. 2830 Peachtree Road, Northeast? A. That is about the number.

Q. All right, sir. A. At one time Bert Miller sold my batteries for years and years and years. That is Exide batteries.

(4259) Q. Tell us who Mr. Miller is? A. He was the Exide dealer in Buckhead for years. He did a big Exide business for me. When he folded up and another concern took over then we got Killingsworth to begin to sell some batteries for us, because there were so many people in the Buckhead district wanted Exide batteries. I presume it was the reason he put a few in. And he does sell a few, very few now, Exide batteries. But mostly it is Firestone and Firestone tires that he sells. Firestone batteries and tires.

Q. Could you give us any idea as to what volume—do you sell him any tires? A. Never sold him a tire that I know of.

Q. You did sell him batteries? A. Yes.

Q. Tell us whichever way would be easier, the volume or number of batteries that you sold him in 1946? A. The boy wouldn't buy over four, five or six batteries a month at most. Average. He sells quite a few Firestone. Quite a few.

Q. Do you know who operates that station at DeKalb Avenue now? 1238? Where Green and Presley used to be? A. Creel, I believe. I called on him afterwards, they took it over, but they were going to handle Goodrich.

Q. Did they tell you this? A. That they would handle the Goodrich tire. That is what (4260) the company wanted them to handle?

Q. Creel? A. They weren't interested in handling my tire.

Q. This is Mr. Creel at that station? A. Yes. That has been several years ago.

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Cross-examination by Mr. Royall:

Q. This conversation that you had with Green and Presley was about 1948, wasn't it? A. Whenever they left here and went to Florida. I am guessing at the date. I don't have the record.

Q. You said that you had a conversation when they first went in? A. Oh, they were buying from me when they had the old station there, exclusive, on Hood tires and Exide batteries.

Q. When they first got the lease from Texas is when you had your conversation? A. They were selling Texas gas in this old independent station, leased it from the property owner.

Q. I am asking when the conversation was. A. I said four or five years ago.

Mr. Royall: That is all I want to know.

Your Honor, I move to strike the testimony about

(4261) that conversation.

Hearing Examiner Kolb: Motion denied.

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Cross-examination by Mr. Barton:

Q. Would it refresh your recollection as to when you had that conversation with Green and Presley if I told you that they left for Florida and gave up the station in May, 1952? A. That would be the date.

Q. That would be the date they left to go to Florida? A. Oh, no, no. It was before that.

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(4262) C. E. AVERY was called as a witness for the Commission, and, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Boyd:

Q. Mr. Avery, will you give us your full name and business connection and position? A. C. E. Avery. I am with the Prior Tire Company, sales representative, North Georgia.

Q. What does the "C" stand for? A. Charles. "E". Charles Edward.

Q. How long have you been a salesman with Prior? A. About three years.

Q. You cover the whole north Georgia area from Atlanta up? A. That's right.

Q. You sell which products for Prior? A. Sell Hood tires and Exide batteries.

Q. What classes of customers do you call on? A. Truckers and service stations.

Q. How many service stations would you say are in that area? The north Georgia area. A. Just service stations?

Q. Yes, sir. All kinds. A. Must be a couple of thousand.

(4263) Q. Do you have any idea how many Texaco stations? A. I imagine at least two or three hundred.

Q. How many Texaco stations do you sell in your territory, Mr. Avery? A. I am selling three out of about a hundred dealers.

Q. Do you mean of the hundred accounts that you have? A. Out of a hundred service stations I am selling three, and they are on private lease. Individual lease.

Q. Do you sell any leased stations of the Texas Company that you know of? A. No, sir.

Q. Can you tell us the names of the three that you sell? A. I am selling Powder Springs Service Station; Texaco Service Station at Madison, Georgia; Hugh Sligh, at Rome, Georgia. That is Hugh W. Sligh.

Q. Is that Powder Springs, Georgia? A. Yes, sir.

Q. What do you sell at that station? A. I sell Hood tires.

Q. How about Exide batteries? A. He buys a few. Not very many but a few.

Q. Does he sell any other tires, Hood tires, besides yours? A. Firestone.

Q. Does he sell any other batteries? A. I imagine—

(4264) Q. At Powder Springs? A. (continuing)—he does. Yes.

Q. Does he display your tires there out in the rack? A. He does because that is a private lease. He can display them if he likes.

Mr. Royall: Motion to strike.

Hearing Examiner Kolb: Motion denied.

Mr. Royall: It is not responsive and it is hearsay.

Hearing Examiner Kolb: You have a different definition of hearsay than I have. It is still denied.

By Mr. Boyd:

Q. What was the second one? A. Texaco Service Station at Madison.

Q. Do you know the name of the man who runs that? A. S. W. Fielding—F-i-e-l-d-i-n-g.

Q. What do you sell Mr. Fielding? A. Hood tires.

Q. Do you sell him any batteries? A. I sell him a few batteries.

Q. Does he sell any other tires? A. He handles Goodrich tires and batteries?

Q. Approximately what volume of business do you do with him a year, would you say? A. He just bought that station out about four months ago and it is hard to determine what he will do.

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(4265) Q. I believe the other station you mentioned was Hugh Sligh. A. Hugh W. Sligh.

Q. Where is he located? A. Rome, Georgia.

Q. What do you sell Mr. Sligh? What kind of products? A. Hood tires and Exide batteries.

Q. Does he sell any others? A. He handles Firestone.

Q. About what volume of business do you do with him? (4266) A. I would say around approximately $2,000 a year.

Q. A year? A. That's right.

Q. What about that first station? I don't believe I got the volume on that. That was Powder Springs. A. Powder Springs will do about the same thing.

Q. Mr. Avery, have you ever called on any of the other stations, Texaco stations, in your area? A. Yes, sir, I have.

Q. How long has it been since you called on the others? Other Texaco stations? A. This month.

Q. Can you name some of them for us? A. Well, it is hard to tell. You call on so many.

Q. You call on prospects? A. Yes, that's right.

Q. Do you make any sales? A. No, I haven't.

Q. Could you identify a few Texas stations that you have called on in the past months? A. That I have called on with sales prospects? Is that what you mean?

Q. Yes, sir. A. There is a Texaco at Breman, Georgia.

Q. Do you remember the man who runs that station? (4267) A. Mr. Floyd did have it and it has changed hands. There is a new man in there. He has been there three weeks. I don't know what his name is.

Q. When were you there? Was Mr. Floyd there or the new man? A. They were just changing hands when I went over.

Q. Did the station have any tires and batteries on display? A. No Hood tires and batteries. We never sold him any.

Q. Any tires and batteries? A. Yes, they had tires.

Q. What kind were they? A. They had Firestone.

Q. Any others that you know of? A. No, sir.

Q. Batteries, too? Is that Firestone batteries? A. Yes, sir.

Q. Do you know whether that is a leased station or independent station? That is, the man owns it. A. It is owned by a distributor up there.

Q. Do you know who that is? A. No, sir, I don't.

Q. Is it a Texaco distributor? A. Texaco distributor.

Q. Can you name any others that you called on recently? A. No, sir, I can't.

(4268) Q. Did you ever sell to Floyd at Breman, Georgia? A. Never have.

Q. You called on him? A. Yes, sir.

Q. What tires did he handle when you were there? A. Firestone.

Q. Batteries? A. That's right.

* * *

Cross-examination by Mr. Barton:

Q. What did you sell the Texaco station in Madison? A. Sell him tires and batteries.

Q. When? Since Mr. Fielding came in? A. That's right.

Q. What did you sell the predecessor? A. Tires and batteries.

Q. You were selling Hood tires and Exide batteries there all along then? A. That's right. The previous operator was Lee Moss.

* * *

(4269) *Redirect examination by Mr. Boyd:*

Q. Who was the predecessor to Mr. Fielding at the Madison station? A. Lee W. Moss.

Q. Did he own the station himself? A. No. It was owned by the Ford place.

* * *

Garland T. Duke, for Commission—Direct

(4270) GARLAND T. DUKE was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Boyd:

Q. Mr. Duke, will you give us your full name and company you are with, and your position? A. Garland T. Duke, The Duke Company, President.

Q. Where is the company located? A. 508 Stewart Avenue.

Q. Atlanta? A. Atlanta.

Q. What is the business of G. T. Duke Company? A. Wholesalers of new tires and recapping.

Q. How long have you been in business? A. Since 1950.

Q. What brands of tires do you sell? (4271) A. Diamond and Denman.

Q. Who manufactures the Denman tire? A. Denman Rubber Manufacturing.

Q. Where are they located? A. Warren, Ohio.

Q. What about the Diamond tires? A. B. F. Goodrich Company.

Q. Is that some particular division of the B. F. Goodrich division? A. Associated Lines Division.

Q. What is the selling territory of your firm? A. State of Georgia, principally?

Q. How many salesmen do you employ? A. Eleven.

Q. Do you sell batteries? A. Yes, sir.

Q. What brand of batteries? A. Auto-Lite.

Q. How about accessory items like spark plugs and filters and things of that nature? A. No, sir.

Q. What classes of customers does your firm do business with? A. Service stations and small tire dealers.

Q. What percentage of your business would you say is done (4272) with service stations? A. I would say at the wholesale tire end of it about 50 percent.

Q. Would that include recapping or new tires? A. Recapping and new tires about 50 percent with service stations.

Q. This is service stations of all types? A. All types, yes.

Q. Does the firm do any business with Texas stations? A. Do some, yes.

Q. What type business is done with Texas stations? A. We do some recapping for some of the stations and sell a few new tires to some of them, principally ones in the city they buy maybe a set of tires and put them right on. * * * We don't have any Texas stations that stock any of our tires, to my knowledge.

* * * * *

Q. Mr. Duke, can you give us any idea of the amount of business or the number of Texaco service stations that you do business with? A. I couldn't with any degree of accuracy.

* * * *

(4273) Q. How many Texas service stations would you say, Mr. Duke, are in the area in which you do business? A. We do business all over Georgia. I wouldn't have any idea.

Q. Do you call on the stations yourself? A. No, sir.

Q. The salesmen handle that? A. Yes, sir.

Q. What about the Auto-Lite batteries? Do you sell those (4274) to any Texas stations? A. I don't believe so. I don't know of any. Frankly, Auto-Lite batteries is a new line with us. We just started handling them January 1.

Q. You had not carried batteries prior to that time? A. Prior to that we had not.

* * * *

Cross-examination by Mr. Royall:

Q. You compete with Dunlop? That is one of your competitors, isn't it? A. Yes, sir.

Q. And you have a number of others? A. Yes, sir.

Q. Do you recall the E. V. Garrison, Jr., station at 20 South Main Street at Alpharetta? A. No, sir, I don't remember that.

Q. 20 South Main Street, Alpharetta, Georgia. What salesmen of yours could cover that general territory? A. Albert Burell.

Q. Is he here? A. He is not here.

Q. Do you think you would recognize that station if you saw a photograph of it? (4275) A. I sure wouldn't. I don't go up to Alpharetta myself. We have some customers there that I don't remember the names of. I don't remember that one in particular.

Mr. Royall: That is all I care to ask him.

By Mr. Barton:

Q. Mr. Duke, you say you started business in 1950? A. That is right.

Q. And in the year ending 1/31/56 your business was in excess of a million dollars? A. Yes, sir.

Q. And in the year ending 31 January 1957 it was in excess of $1,500,000? A. The time hasn't quite reached that.

Q. But that is the estimate? A. Yes, sir.

Mr. Barton: That is all.

Redirect examination by Mr. Boyd:

Q. Mr. Duke, has there been any increase in the price of new tires 1956 over 1950? A. Yes, sir.

Q. What would you say is the percentage of increase in price? A. From 1950 to '56?

Q. Yes. (4276) A. They come a little often some years. I don't know; roughly 20 percent.

Q. Your firm sells recapping materials, doesn't it? A. Yes, sir.

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Q. What would be the nature of the materials? A. Tread rubber and other repair materials used in recapping and repairing tires.

Q. Have you sold those items ever since you have been in business? A. Yes, sir.

Q. The sale of those items—camelback and tread rubber—how does that compare to the new tire sales over the six-year period you have been in business? A. It has increased proportionately with the other. I can give you a rough idea of the volume of that end of it. It is roughly about half of a million dollars a year.

Q. The other part would be new tires and batteries? A. New tires—

Q. Not batteries. A. New tires and recapping.

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(4277) GUY WALTER SCOTT was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Boyd:

Q. Will you give us your full name? A. Guy Walter Scott.

Q. And your business connection and position? A. I am employed by G. T. Duke Company, tire salesman.

Q. How long have you been so employed? A. Ever since he has been in business.

Q. What is your sales area, the territory you sell in? (4278) A. Southeast, northeast, Atlanta, and Decatur.

Q. What classes of customers do you call on in that area? A. Service stations exclusively.

Q. How many Texaco stations do you sell? A. Not too many.

Q. Could you tell us how many? A. In the whole area I don't think it would be over five.

Q. Could you identify those for us? A. Would I have to do that?

Q. I want to know who they were, where they were and what you sold them? A. I think I might jeopardize the dealer in the event I did.

Mr. Royall: I move to strike the answer, your Honor.

Hearing Examiner Kolb: He has given his reasons for not answering. The motion will be denied.

By Mr. Boyd:

Q. Have you made any efforts to call on other Texaco dealers? A. From time to time I have contacted all in my area; yes, sir.

Q. Could you name some of them that you have contacted? A. I could name some that I haven't sold.

Q. That is what I mean. (4279) A. I wouldn't mind doing that because I don't think there would be any—

Mr. Royall: Move to strike the answer.

Hearing Examiner Kolb: Motion denied.

By Mr. Boyd:

Q. Tell us the names of some that you have contacted? A. Well, there is Ben Franklin on Ponce de Leon Avenue.

Q. When did you contact him? A. I have averaged a call on him about say every two months since he suggested the other operator.

Q. When was that? A. That hasn't been too long ago. I would say I have called on him three times maybe in two years.

Q. Does that station sell tires and batteries? A. Oh, yes.

Q. Have you seen the kind he sells? A. I think I have; yes, sir.

Q. What brand is it? A. I think they are predominantly Firestone.

Q. Do you know if there is anything other than Firestone in there? A. No, sir, I don't go that far into—

Q. Do you know whether Mr. Franklin owns the station or leases it? A. No, I do not.

(4280) Q. Do you have another station to tell us about? A. Ben D. Watkins.

Q. Where is he located? A. Buckhead. Roswell Road.

Q. Is that Atlanta? A. Yes. It is Atlanta address.

Q. When did you call on him? A. It has been eight or nine months.

Q. Does he sell tires and batteries? A. Yes, sir.

Q. Do you recall what he had on hand? A. Goodrich and Firestone.

Q. Did you endeavor to sell him tires? A. Yes, sir.

Q. Sir? A. That was the motive of my call, to try to sell him tires.

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(4281) Q. Tell us what Mr. Watkins told you in that respect? A. That he is not supposed to carry any tires except either Firestone or Goodrich.

Mr. Royall: Motion to strike on the grounds of double hearsay.

Hearing Examiner Kolb: The motion to strike denied.

By Mr. Boyd:

Q. What about the Ben Franklin station on Ponce de Leon, Mr. Scott? What reason did he give you, if any, for not buying from you?

Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

A. He was satisfied with the line of tires he was carrying and he didn't think it advisable to put in any different line.

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Q. Do you know whether or not Mr. Franklin had any batteries on hand? A. No, sir. At that time, the last time I called on him, (4282) we wasn't carrying batteries so I wasn't interested.

Q. What about Mr. Watkins? A. The same applies there.

Q. Can you name some other stations that you called on to try to sell them? A. Berry Service Station, Piedmont Avenue.

Q. About when was this? A. It has been four months, probably, since I called on him.

Q. Did he have tires and batteries on hand? A. Yes, he did.

* * *

Q. What reason, if any, did he give you for not buying? A. It wouldn't please the oil company.

* * *

(4283) Q. Do you know whether Mr. Berry leases that station from the Texas Company? A. No, I do not. I believe he did say, though, that he did lease from Texas Company.

Q. You believe he told you that? A. I believe he did, yes.

Q. As best you can tell us, Mr. Scott, exactly what did Mr. Berry say as to why he would not buy from you?

* * *

A. He is no different from the others.

* * *

Q. Just tell us what he said to you?

* * *

(4284) A. His words, in this particular instance, is that the Texas Company were very hard to get along with unless they carried the tires of Goodrich and Firestone. And they did not—they didn't say that they had to do those things, but they would make them awfully unhappy, such as getting small repairs done and things of that nature around the station.

* * *

Q. Can you name any other stations, Mr. Scott? A. Yes, sir. L. C. Smith. This is not in my territory at present, but at the time I am speaking of was.

Q. Where is it located? A. It is on North Side Drive.

Q. Here in Atlanta? A. Yes.

(4285) Q. About when was it? A. The last time I called on Mr. Smith must have been sometime in June or July.

Q. 1956? A. '56.

Q. Does he carry tires? A. Yes.

Q. What line of tires? A. All I saw was Goodrich.

Q. What reason if any did he give you for not buying from you?

Mr. Royall: Objection.

A. He thought it would be better to string along with Goodrich.

Hearing Examiner Kolb: Overruled.

By Mr. Boyd:

Q. That is what he told you? A. Yes. That was about the substance of the conversation.

Q. Are there any other instances that you can name? A. Yes. Gresham Service Station, on Moreland Avenue, Southeast.

Q. When was this? A. I haven't called on him in about six months.

Q. Did Gresham have any tires on hand when you were there? A. Yes.

(4286) Q. What were they? A. Goodrich.

* * *

Q. What did Mr. Gresham tell you, if anything, as to why he could not buy from you?

no testimony in this record that any such thing was ever done.

I mean if there is any issue in this case as to the ratio of total TBA sales, not Firestone and Goodrich, to gallons of gasoline on the basis of a statement, generally inaccurate I may say we found, which a dealer makes as to how much TBA he sells, it seems to me it hasn't got much probative value.

This is an awful large stack of documents just to use for that purpose.

Mr. Royall: Your Honor, may I add this one word?

Whatever the other features of it are, this thing is based solely on and dependent solely on the hearsay of what a dealer says, and not based on any records that are kept by him or any supporting data of any kind.

Mr. Dias: May I be heard on that?

I think you will find in the record, somewhere (4344) around Page 1017 to 1035, testimony to the effect that these figures are accurate because they come off the dealer's tapes.

For that reason, some of your figures can't be broken down any further. They include work and other labor costs.

Mr. Royall: Let's look at that testimony.

(4345) Mr. Dias: That is Page 1035, Lines 18 to 21.

Mr. Royall: Your Honor, I don't want to go into this at great length.

This comes from, at one point it says, what the dealer says, and the other time it says it sometimes comes from a tape the dealer has. But that doesn't alter it being hearsay on the part of the dealer and nothing else.

And it is not any computation based on any records. There are no records put in to support it.

Hearing Examiner Kolb: It says: "They are sales figures because they come directly from his adding machine tape."

Mr. Royall: That's right. They said earlier that is what the dealer tells them.

Hearing Examiner Kolb: Where is that?

Mr. Royall: That is on 1017.

Mr. Dias: I believe that exchange starts a little earlier than 1017.

Hearing Examiner Kolb: At line 5 it says, "This is the total TBA sales made by the dealer, taken from his books."

Mr. Royall: Yes, sir, but the books have not been offered. This is merely what the dealers report to us, which makes it hearsay, even if it were in writing.

Hearing Examiner Kolb: Apparently you use them to determine whether or not there have been increases or decreases (4346) in the particular stations.

Mr. Royall: What page is that?

Hearing Examiner Kolb: Line 23: "I look at the report and see we have had increases or decreases at that particular station."

Mr. Royall: That is a report that was finally made, your Honor.

Hearing Examiner Kolb: This one?

Mr. Royall: I don't know whether this one.

Is this the original report?

The Witness: These are copies of the reports that were sent in.

Mr. Royall: That is the report.

you call on him when you get him as a new customer? A. Not the first time, no.

Q. In other words, it usually takes a pretty good course of working in and getting acquainted with somebody you don't know in order to get him to take on your line? A. It depends on how he answers me in respect to what he is selling. Often times he closes the door on me by telling me that he cannot sell any other line of tires except what he has in stock.

Mr. Royall: We move to strike the answer.
Hearing Examiner Kolb: Motion denied.

By Mr. Barton:

Q. You say you called on Dan D. Watkins? (4291) A. Right.

Q. And doesn't he buy from American Tire Company as well as B. F. Goodrich and Firestone? A. I couldn't answer that. He might buy recaps. I don't know. As a matter of fact, he could buy new ones and I still wouldn't know.

Q. When you were testifying about Ben Franklin you said that he was selling what? A. Firestone as well—I believe it was the predominant tire that he had.

Q. And what else? A. I don't think I said.

Q. You started to say something. What were you going to say? A. I don't know that I started to say anything.

Q. Weren't you going to say that he sells recaps also? A. Well, he does sell recaps.

Q. Does he buy them from you? A. No.

Q. Who does he buy them from? A. That I don't know.

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(4292) *Cross-examination by Mr. Royall:*

Q. Mr. Scott, in the case of Mr. Franklin, was he the one that you talked to personally or someone else? A. I talked with one of the two Franklins. I don't know which it was.

Q. You don't know which one you talked to? A. I don't know which it was.

Q. Was anyone else present? A. No, there was not. It so happened there wasn't.

Q. And you can't identify the one you talked with? A. Oh, yes, I can do that I believe. I don't know whether I can or not.

Q. You can't now identify them? You can't now tell us which one? (4293) A. No, I cannot tell you which one it was.

* * *

The Witness: He didn't identify himself as which of the two he was. He just said, "I'm Mr. Franklin." And he spoke with authority so I thought naturally I was talking to the right man.

* * *

Q. In the case of Mr. Watkins, whom did you talk with? A. Mr. Ben Watkins himself.

Q. Was anyone else present? A. On occasion, yes. I called on Mr. Watkins several times. In fact, I sold him a few times.

Q. I mean the time you testified to through Mr. Boyd. Who was present? Mr. Boyd? A. I mean the lawyer Mr. Boyd.

Q. Who was present at the time you testified about a conversation as to that? Anybody else present? A. Yes, at times there were and time there wasn't.

George H. Glenn, Recalled, for Commission—Direct

Q. At the time you referred to. You referred to a single conversation. A. That I wouldn't dare say whether there was anybody present or not.

Q. In the case of Mr. Berry, was it Mr. Berry himself you (4294) talked to? A. No. Mrs. Berry happened to be present. I assumed it was Mrs. Berry from the conversation that they had between themselves.

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Q. Was it Mr. Berry you talked to or was it sometimes the— A. If it wasn't Mr. Berry he misrepresented himself.

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Q. Was it Mr. L. C. Smith personally that you talked to? A. Yes.

Q. Was anybody else there at the time? A. There was a gang of them. He had a lot of help.

Q. You don't remember? A. No. They were going and coming. He don't let me stay there long enough to let me get acquainted.

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(4314) GEORGE H. GLENN was recalled as a witness, having been previously sworn, was further examined and testified as follows:

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Direct examination by Mr. Dias:

(4336) Q. Mr. Glenn, I hand you Commission Exhibits 204-A through F and ask you to tell us about those. Tell us what they purport to be, and the records they were compiled from, under whose supervision and so on. A. Commission Exhibit 204-A through F represents an especially compiled report at the request of the Federal Trade Commission covering the years 1955 and 19[illegible] relating specifically

to Items 3-A, 4-A, 4-D and 4-E in the agreement reached in the modification of the May 27 subpoena, and in this particular group the area involved is the Chicago standard metropolitan area. The information shown is the number of dealers, by months, in the categories of "C", "D" and "E" classifications who might have purchased $1 or more of merchandise in any of the 12 months of each of the years and in any of the categories (4337) from Firestone and Goodrich or both Firestone and Goodrich, and a dollar figure representing that part of the class of accounts total TBA purchases that he purchased, and only that part which he purchased from Firestone and Goodrich.

Q. You mentioned categories a minute ago. You meant tires and tubes, batteries, accessories, is that what you had in mind about categories? A. It depends on where I said it.

Q. Possibly so. But it does cover tires, batteries and accessories purchases? A. The categories listed here are tires, batteries and accessories.

Q. I hand you Commission Exhibits for identification 205-A through 205-F, 206-A through F, 207-A through F, and 208-A through F, and ask you if they are not respectively similar reports for the following areas: Omaha, Lincoln, Dallas, and Atlanta? A. They are similar reports especially prepared indicating in the final column that part of the dealer's total TBA volume that was purchased from Firestone and Goodrich.

Q. Did you make these summaries yourself, Mr. Glenn? A. No, sir. I had to have other people do them. It was a very extensive job and a rather costly one, incidentally, that had to be done in each of the divisions.

Q. It was done under your direction, was it? (4338) A. Yes, sir.

Q. And the data from which these summaries were made all came from official Texaco records? A. Yes, sir.

Mr. Dias: Your Honor, I would like to offer Commission Exhibits 204 through 208-F in evidence at this time.

Mr. Lorenzen: We object to that portion of the exhibit which deals solely with Firestone.

Mr. Barton: So do I.

Hearing Examiner Kolb: The objections will be overruled. Commission Exhibits 204-A through F, 205-A through F, 206-A through F, 207-A through F, and 208-A through F, will be received in evidence, subject to a motion to strike by Goodrich as to that portion of the documents which pertains solely to the purchases by Firestone.

(The documents heretofore marked Commission Exhibits for identification 204-A through F, 205-A through F, 206-A through F, 207-A through F, and 208-A through F, were received in evidence.)

By Mr. Dias:

Q. Mr. Glenn, I hand you Commission Exhibits 209-A through Z-10 and ask you to identify those, please. A. This is another one of the documents originally requested under the May 27 subpoena and finally included in the agreement reached. It is an unofficial document which is quite fairly (4339) evident by the fact that it doesn't have a form number. It is a record that we found in the pursuance of the development of material for the Commission to be in existence in only one division in our company, apparently on an experimental basis in the Denver division. It is entitled "Throughput of company-owned and third-party stations."

This group of sheets here is that material for the year 1956, by months.

Q. May I point out to you the name in the left-hand corner. That is the salesman, is it? A. I recognize some of those men by name as salesmen.

Q. They are salesmen? A. Yes.

Mr. Dias: I offer these in evidence at this time, your Honor.

(4340) Mr. Lorenzen: We would like to make an objection to the materiality and relevancy of all of these documents. They don't seem to deal with anything involved in this proceeding.

Your Honor will notice the columns headed "Gasoline Sales"—that certainly is not involved in this case.

"Oil Sales"—that is not involved in this case.

"Lube Jobs"—that is not involved in this case.

And "TBA Sales."

As Mr. Dias has quite properly identified these documents, they have reference to the reports concerning which there was testimony in Omaha. That testimony indicated that these TBA sales are not sales of sponsored or Firestone or Goodrich merchandise at all but are the estimates reached by salesmen and the dealers as to the total amount of TBA which that dealer sells.

So that there isn't any way that I can see that any of these documents can have anything to do with the issues of this case, which are limited to questions of how much TBA the dealer buys from Goodrich or Firestone.

It doesn't seem to me to have any connection with that.

Mr. Dias: If you intend to rule adversely, I would like to be heard before you rule. In my opinion, this is another form of policing, your Honor, or a possible form.

(4341) If a company knows how much TBA is going through a station, regardless of whether it is sponsored or not, I believe it is a simple matter for them to compute the amount of sponsored products that the particular station is buying, and from that arrive at some statement as to whether or not the station is adhering to the sponsored program or buying the big bulk of their products from outside sources.

I think the gasoline sales are important. Certainly respondents have made a point of the ratio of gasoline sales to TBA, and I think these reports serve several purposes. I think they show whether or not a particular operator is operating as Texaco feels in an efficient manner, and that is gauged undoubtedly by the volume of gasoline sales and the volume of TBA that goes through the station.

The fact that there may be some lube jobs or oil sales on that, I don't see that that makes the thing unacceptable.

That is my position on it, that it can be used as a form of policing.

Mr. Lorenzen: I am addressing myself only to that one point. There has been no evidence whatever in this case, in spite of extensive testimony, that any policing of any kind takes place. And to offer a row of statistics and some sort of hearsay evidence that some kind of policing takes place, I don't think that is the way to establish policing.

(4342) If anything like that is going on, certainly among our 38,000 dealers, somebody could be put on the stand to say there is such a thing as policing. But there hasn't been one bit of evidence to that effect.

So I don't see how this set of figures has any probative value on that particular issue.

Hearing Examiner Kolb: Was there any testimony in this case with reference to the TBA sales in connection with the sales of gasoline?

Mr. Dias: Yes. We find it quite often through here.

Mr. Lorenzen: No, I don't believe there has been any testimony to that effect.

Mr. Dias: I think Mr. Wolf—

Mr. Lorenzen: Calculations can be made to that effect.

Mr. Dias: I think they have all talked about ratios, and quotas—not quotas, but certainly ratios, so many dollars worth of TBA to every thousand gallons of gasoline, and so on. It has been referred to any number of times.

Mr. Lorenzen: There is one reference to that effect, and that is in connection with this letter which was sent out in 1952, having to do with how small an amount of TBA of Firestone and Goodrich Companies generally is sold to these Texaco stations compared to this profit computer which a company, not the Texaco Company, got up as a general measure (4343) in the industry of how much TBA a dealer should expect to sell per thousand gallons of gasoline in order to make a good profit on the operation.

That certainly hasn't anything to do with policing.

Hearing Examiner Kolb: Doesn't this follow through on the same thing, the question of the ratio between TBA products and gasoline?

Mr. Lorenzen: Between total TBA and gasoline the computation could be made. There certainly is

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

A. I don't think that entered into the conversation why he couldn't buy.

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(4287) Q. Do you sell to any Texaco stations? A. Yes, I do.

Q. That buy only on a spot or quick sale basis? A. I do.

Q. Are these the ones that you prefer not to name? A. That is right.

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Q. Can you name any other instances, Mr. Scott, other stations where you have endeavored to sell? A. Yes, sir, I have a list here, that I have picked up from memory.

Q. Go ahead. A. Killingsworth Service Station, on Peachtree Road.

Q. About when were you there? A. In October, I guess, 1956.

Q. Did this station have—were they selling tires? (4288) A. Yes.

Q. What line? A. I didn't get inside. The man met me at the outside.

Q. Did you endeavor to sell him? A. Oh, yes.

Q. What reason, if any, did he give you for not buying?

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

A. He was carrying the line that he had been carrying awhile and he was satisfied with it. And he couldn't of course take on any other line. As I remember he didn't give any reason.

By Mr. Boyd:

Q. Did he tell you what the line was that he was carrying? A. No, he didn't. All I saw was on the front, which was recaps.

Q. How about some other instances? A. That is all I have.

* * *

(4289) Q. Have you called on these stations since the times that you told me; in other words, Franklin, I believe you said you called there every two or three months, every two months? A. I haven't called on any of those that I named there, I don't believe, since.

Q. Since the times you gave us? A. Since the time that I gave you there. I don't think I have.

* * *

Cross-examination by Mr. Barton:

Q. You say you called on L. C. Smith sometime last summer? A. About July or August as well as I remember is the last time I called.

Q. He was selling B. F. Goodrich? A. That is right.

(4290) Q. And you say he gave you an answer like all the rest of these that you have called on, is that right? A. Well, he was just fairly well satisfied with what he was selling and he couldn't take on another line. Or words to that effect.

Q. How many customers do you have? A. I don't keep them down that way. I would say about 75.

Q. How often do you call on them? A. Some I call on every week, some every two weeks, some once a month.

Q. When a man is handling a competitive brand of tires, do you usually get him as a customer the first time

George H. Glenn, Recalled, for Commission—Direct

My attack is that that report is based on what the dealer says is on his books, and that therefore that is, without some supporting evidence, not competent.

Mr. Dias: Obviously, Texaco in that section relied on it, otherwise they wouldn't have bothered with them.

Hearing Examiner Kolb: I will overrule the objection and receive the documents in evidence as Commission's Exhibits 209-A through 209-Z-10.

(Whereupon, the documents referred to, heretofore marked Commission's Exhibits 209-A through 209-Z-10 for identification, were received in evidence.)

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(4349) *By Mr. Dias:*

Q. As to each of these, were these records compiled from official Texaco records? A. Compiled in the sense that we don't maintain any record like any of those you have there, but we had to go to sources where the individual pieces of information were available and assemble them.

Q. But they are official Texaco records? A. Yes, sir.

Q. They were compiled by you or under your direction? A. Under my direction. Two of them; you didn't show me the others.

Q. Does your statement apply to 210-A through E and also 211 and 212? A. That they were prepared under my direction?

Q. Yes, and from official Texaco records? A. Not as such. Assembled from various records. We don't maintain any records just like this.

Q. In that form? A. No, sir.

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George H. Glenn, Recalled, for Commission—Direct

(4357) Q. Mr. Glenn, will you tell us what 213-A and -B purport to be, and how they were compiled, whether by you or under your direction and so on? A. Exhibit 213-A and -B is a response to 8-A and -B under the agreement reached under the subpoena of May 27th ASA sheet covering Goodrich, and BSA sheet covering Firestone.

And it is a special report made to respond to 8-A and -B. We don't carry information in this form. But it was assembled under my direction from a mass of reports that we do have. It gives the dollar volume of TBA sales made by Goodrich and Firestone respectively to Texaco outlets for the years 1952, '53, '54, '55 and '56 by divisions and territories expressed in dollars, and further broken down into classifications of C, D, E, and B.

But it does not, of course, reflect the total TBA purchases (4358) by those classes of accounts but merely the quantity purchased, that we have record of as having been purchased from Goodrich or Firestone.

Q. Were those records compiled from Texaco records? A. As I said in the first place, from records that we have, but are not a copy of any one record.

Mr. Dias: Your Honor, I offer 213-A and -B in evidence.

Mr. Lorenzen: The only objection is the Firestone objection to Exhibit 213-B.

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(4360) S. C. BARTLETT was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Dias:

Q. Mr. Bartlett, this will be mainly to clarify the record in connection with Texaco's relationship with Firestone. You have testified previously as to certain relationships with Goodrich, and primarily I want to learn whether or not Texaco's relationship with Firestone is comparable under this TBA program as it is with Goodrich. Now, in view of that—

Mr. Barton: Talk a little louder.
Mr. Dias: I will try to do that.

By Mr. Dias:

Q. You testified in connection with Goodrich, you knew of no advance notice to Goodrich that a new station was opening, (4361) that is, that Texaco furnished no information to Goodrich about the opening of new stations or the changing of operators in an old existing station. Is there any type notice given to Firestone in that regard? A. Not to my knowledge; no.

Q. In connection with that, are both rubber companies treated alike by Texas as far as notification of new dealers, new stations and so on? A. I would say in that respect, yes, sir.

Q. What services does Texaco perform for Firestone under this TBA arrangement? A. You wish just a general statement?

Q. Yes, sir; first of all, is it the same they do for Goodrich or does it vary in any way, and if so, how? A. I, perhaps, should describe it. Of course, in the first place, in connection with new accounts or any accounts, we have,

our sales people have occasion to discuss the situation with dealers and make certain recommendations at times as to the line of tires that would best suit his needs and his own interest, and then later on, our sales people have a good deal to do with the sales effort of the dealer, that is, instructing him or teaching him or giving him education along the lines of better merchandising practices that will improve his earning picture, because, as I have stated before, our primary objective is that our dealer becomes a successful dealer or remains a (4362) successful dealer. In so working with the dealer, we have occasion, of course, to assist him, we think, in his merchandising practices and proficiencies and we feel that is a contribution not only to our dealer success but to the TBA supplier, whoever he might be, enjoys part or all of that dealer's business.

He and at all times, of course, we, emphasize the independence of the dealer, his right of choice in whatever line he might handle or in whatever way he might pursue his merchandising activities. Again, I repeat that our primary objective is to bring about a satisfactory operation in their place of business from the standpoint of our primary business which is, of course, petroleum.

Q. How do you approach a new dealer? Let's take the instance of a new dealer, how do you approach him, how do you advise him that you have these two programs? Do you tell him you have the two and tell him to express a choice or how does that come out? A. I am not intimately acquainted with that—

Q. If not, I will ask Mr. Wolf later.

You are familiar with the TBA situation in the home office, are you not? A. In what?

Q. In the home office in New York? A. Well, somewhat; yes, sir.

Q. You have these two rubber companies that you work with, (4363) do you have separate personnel in the

home office that work with one rubber company and then another group that work with the opposite rubber company? A. No.

Q. The same group that are involved in TBA work with both rubber companies; is that correct? A. I would say that is right.

Q. Is that true of all personnel throughout the Texas Company or do you have special lists for one or the other? A. One of the other tire companies.

Q. One of the other tire companies, yes? A. We have no special lists that relate one as against the other or as compared to the other.

(4364) Q. If a man is primarily engaged in TBA work or Texas man primarily engaged in TBA work or whatever the percentage of time is that he spends on TBA work that is spent on Goodrich and Firestone, is that correct? A. Or on any other line that seems to fit in the dealer's picture.

Q. We did have a question earlier in the testimony about the inventory guide, but I think that has been clarified. You did receive these—I am sorry, the exhibit is gone. Well, maybe you saw it, the manual or inventory guide marked Firestone, and also a catalogue of Firestone which outlined all their products with certain deletions. Do you recall that subject? A. I recall seeing it from the chair.

Q. Yes, sir, the last time you were here, you weren't permitted to mention the Firestone side of the picture, but there is no question now you receive those from Firestone, do you not, for dissemination among your dealers, those that buy Firestone products? A. You mean these catalogues?

Q. Firestone catalogues, Firestone inventory guides? A. I don't know that we receive them, perhaps it would be that Firestone disseminates those among our dealers.

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(4365) *Cross-examination by Mr. Lorenzen:*

Q. Mr. Bartlett, I think Mr. Dias put a little too strongly the testimony about not giving companies any lists of stations that may be operated or stations at which there are going to be new dealers. I think your testimony was and I think the evidence shows that you have no company policy in that connection? A. No established practice.

Q. But as a matter of local dealing, it may well be that the local people as between themselves do have such things? A. They well might.

Q. But you as a Texas district manager may, or TBA representative may conceivably give a friend of his who is over either Firestone or Goodrich or both, a list ahead of time showing him the new stations contemplated? A. It is possible.

Q. That may or may not happen? (4366) A. That is possible; yes, sir.

Q. You didn't mean to imply in your testimony that it never happened, simply that you had no policy that way? A. That is right.

* * *

(4367) Q. This morning, these other exhibits which were put in, No. 182 to 201, dealt with your deferred credit plan and with a change made on the Texaco credit card in the year 1955. Now are you acquainted with that change? A. Yes, sir.

Q. Would you state the occasion for making the change in the credit card at that time? A. I would be glad to. It is covered in previous testimony, but I will cover it again.

Q. If it is all in there, we don't want—can you just tell us briefly what the occasion was? A. The occasion for the

change was that as it became (4368) necessary, due to the demand of our dealers and to meet competition, to establish a deferred credit plan, realizing that this would be costly, we decided that it was only right and logical that if we were to grant these extended terms that it should be confined to those two lines on which we received some commisison or compensation. That was the sole reason for making the change at that time.

Q. Did you have anything to do with drafting this type of announcement (indicating) to dealers which is included in Exhibit 181 marked this morning? A. (After inspection). Yes, sir, it was done by members of my staff, with my knowledge.

Q. Did the staff give notification to Texas dealers about the policy by which you have just testified? A. Yes, this was sent out, under division managers' signatures in the divisions but it does cover the announcement of the plan to our dealers.

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(4369) *Redirect examination by Mr. Dias:*

Q. On that last exhibit you looked at, 191, did that draft of the announcement go throughout your organization in the United States? A. I believe so, to each division officer.

Q. They in turn redisseminated it? A. To the dealers.

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(Witness excused.)

Ben Halsell, Recalled, for Commission—Direct

(4370) BEN HALSELL was called as a witness for the Commission, and having been previously duly sworn, testified as follows:

Further direct examination by Mr. Dias:

Q. Mr. Halsell, is your position and duties the same as you last testified? A. Yes.

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(4371) Mr. Dias: At any rate, I am now going to discuss 46-E through J and ask you, Mr. Halsell, if you can tell us what those documents purport to be?

The Witness: Well, this is a Texaco form, S-47. Texas Company lists the names of the Texaco dealers who have been approved by Firestone for commission payment. And with the name goes the address and in those righthand columns are the dollar values of Firestone tires and tubes, and second, batteries, and home and auto supplies that individual dealer purchases in a given month.

By Mr. Dias:

Q. How do these records find their way in to Texaco records? A. This record is prepared somewhat in blank by Texaco and sent to the Firestone supply plant through its district office, where as Firestone then inserts the sales figures that apply to the individual account for the month in question.

Q. And are these regular monthly figures submitted regularly every month? A. This is a regular procedure, yes.

Q. The procedure is still in effect, is it not? A. Yes.

Q. Is it based upon those sums shown in those last two (4372) columns that the Texas Company's commission is based; is that correct? A. Yes, to the extent that these figures are incorrect in the beginning and later adjusted to correct figures.

Q. Who puts the figures in there? Does the rubber company insert the dollar amounts? A. Yes.

Q. What causes the adjustments, returns perhaps? A. Returns or records of theirs that reach them in an incorrect state from the store, which made the delivery.

Q. What happens if they pay you—as I understand, they pay you a commission, do they not? A. Yes.

Q. What happens if the correction isn't made until a subsequent month or two? A. Well, supposedly an adjustment is made.

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(4374) *By Mr. Dias:*

Q. Mr. Halsell, we can talk about Firestone now. Do your salesmen operate with Firestone personnel the same way that you previously testified they do with the Goodrich personnel? A. I wouldn't say exactly the same way, but there is a (4375) similarity in their function.

Q. All right, will you tell us how it differs then? A. It differs by areas in that in one area, you will have a Firestone supply point which is nearby, and therefore is in a better geographical position to give the dealer service, whereas in another situation, you might find that Goodrich occupied that position.

Q. But in so far as the salesman cooperating with the rubber company represented, by that, I mean you remember the procedure of the salesman— A. In a matter of overall policy, overall operation, there is a similarity in that the salesman respects the dealers right of choice of product, it is never a coersive action. There is a desire always

with either Firestone or Goodrich accounts to help the man to be a better merchant.

Q. Does the Texas Company salesman accompany the Firestone Company representative, for example, in calling on station operators? A. I beg your pardon.

Q. Does your Texas Company salesman accompany the Firestone representative in calling upon— A. Oh, occasionally; yes, sir.

Q. And as I recall, the salesmen do the same thing for Goodrich representatives? A. Yes, sir, in certain situations.

(4376) Q. Would it be the same salesman or do you have some salesmen who work with one company and other salesmen who work with another? A. One salesman may work with two supply companies.

Q. Both rubber companies? A. Yes, or more, depending on the particular situation that surrounds that dealer's competitive problem.

Q. For example, on those exhibits that went in this morning on the blank report of Omaha, I noticed some names of salesmen, Wolf, I believe, and Williams, perhaps, one or two others, taking Wolf because that happens to be a name that comes to mind, just as a hypothetical case, just in his territory, there are Texaco stations that handle Firestone products, and Texaco stations that handle Goodrich products, would Mr. Wolf be the man to introduce the Firestone representative to those stations handling Firestone products or would he be the man who introduced Goodrich products to the man handling Goodrich products? A. If Mr. Wolf is a Texaco salesman.

Q. In that particular area? A. In that particular area, he would bring about the introduction. Not in every case, but in some instances.

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(4377) Q. You previously testified about dealer meetings and you stated that the Goodrich representatives attended some of those meetings; do you recall that? A. Yes, sir.

Q. Do Firestone representatives also attend those meetings, those dealer meetings? A. Firestone representatives attend some of those meetings.

Q. Do the Firestone and Goodrich representatives attend the same meetings? A. At times, they do.

Q. Now, you testified heretofore that the Texaco Company, I suppose field officers, talked to new dealers about Goodrich and they also talked to them about Firestone? A. Yes.

Q. You mentioned earlier that your TBA people, I think it was the representative TBA promotion—do I give him his right title—travels in the field and sometimes goes to the Goodrich Company home offices, to the factory to better acquaint himself with the Goodrich method of production and so on, and then I suppose explains those things to the dealers.

Do the salesmen or does that TBA representative do the same or perform the same functions in connection with Firestone? (4378) A. The representative TBA promotion does everything he can do to familiarize himself with the entire rubber industry and in that sense he does work with Firestone.

Q. Now, take the case of a new dealer or a new station opening up, as I understand it, your people suggest that the Goodrich line or Firestone line is a good one to buy in TBA. How do you bring about that first meeting between the new dealer, or the new operator and representative of the rubber company? A. Well, I think I testified before that there is more than one way of accomplishing that. There might be a personal introduction; the Texaco sales-

man to introduce Firestone and Goodrich to the Texaco dealer. Or, the Firestone or the Goodrich representative in that area having seen the construction of a building in that area, might on his own initiative determine who the dealer is to be and go forward then without our introduction and solicited business.

Q. Does it also ever happen or is it a normal thing to introduce both the Goodrich and the Firestone man to a new dealer; does that ever happen? A. Both the Goodrich and Firestone?

Q. Yes. A. That is possible, too. Usually, there is a preference by the dealer for one or the other, depending, as I said before, on the nearness of supply, on the aggressiveness or the efficiency of local people of one organization against the (4379) other, depending on the competitive situation that might exist in a given location. There might be a nearby Firestone store in competition with this new dealer. In that case, he would perhaps lean the Goodrich way or the opposite condition might exist.

Q. I think you perhaps—I may have asked this in describing document 46-E through -J; yes. Does Texas use those records, too, to verify the amounts that they get from Firestone. In other words— A. Oh, yes, we have to do that because there are many opportunities for errors there.

Q. And when Texas checks its figures, do they check the figures, check the amounts they receive against those appearing on 46-E to -J, or do they have other figures that they use to compute the amount that is due them? A. I can't think of any other figures that you might have in mind.

Q. Would this be their only source of supply to check the accuracy of the amounts that are paid by Firestone or Goodrich? A. To check these figures?

Ben Halsell, Recalled, for Commission—Direct

Q. No. As I understand it, monthly, Texas, as division office received a check from one or both of the rubber companies? A. Yes.

(4380) Q. Now, in determining whether or not the check includes all that is due them, do they compute it from Commission Exhibit 46-A through -J, as the case may be? A. The information that appears on these forms is the basis for that checking process.

Q. But, aren't those amounts supplied by the rubber companies? A. These amounts are supplied by the rubber companies. They are inserted on S-47 by the rubber companies.

Q. Then, I take it that all Texas does is check for perhaps typographical errors or errors of addition or subtraction or something of that sort? A. Well, any kind of error that might have occurred.

Q. The point I am trying to determine is, is there any other way that Texas can check the accuracy of the amounts that are reported to them on that particular form? A. The obvious way to do it is to check with the dealer and determine with the dealer what he signed for and what he has bought.

Q. Now, I think you did tell us the last time how you received payment from Goodrich. Would you explain the system of payment by Firestone to Texas? A. Oh, as far as I know, I think the system there is the same. There is a monthly accounting and the check is sent to the division office of the Texas Company by the rubber company.

Q. By the rubber company, and are the Firestone checks (4381) similar to the Goodrich checks except in the local division office charged to their particular account, or does it go to a home office? A. Yes, I think so.

Q. You think it is kept in the division? A. In the division.

Mr. Dias: I have nothing further for Mr. Halsell.

Ben Halsell, Recalled, for Commission—Cross, Redirect

Cross examination by Mr. Lorenzen:

Q. Mr. Halsell, this Exhibit 46 is an accounting record, is it not? A. Yes.

Q. Now, you testified that one obvious way to check it would be to check it with a dealer? A. I did.

Q. Now, how does that come about? That is, one of the local people gets this 146 thing that something is out of whack, he can check it? A. Dealers at time buy from more than one supply point and this report may specify the products purchased from one supply point to the exclusion of products purchased from the second or possibly the third supply point. And in as much as the dealer can supply information on his entire purchases, that comparison is made.

Q. So that if the local man thinks something like that may (4382) be amiss in one of these cases, that is the method he has of checking it? A. That is right; we check him for accuracy of commission statement.

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(4383) *Redirect examination by Mr. Dias:*

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Q. Which of the Texaco outlets enjoy credit card privileges? A. You mean which Texaco outlets are nominated as those which the credit card holder might patronize?

Q. Not patronize, but who among the outlets or which type outlet uses credit cards? In other words, would the bulk plants have credit cards? A. No.

Q. Would the consignees have credit cards, have credit card privileges, I mean? A. Well, if a consignee of a Texas company happens to hold a credit card, he then is entitled to make credit purchases (4384) on that card.

Q. Now, I haven't made myself clear. At a Texaco station where you present your credit card? A. Yes, sir.

Q. They honor it there? A. Yes, sir.

Q. I consider that a privilege that they can accept credit cards. A. Yes.

Q. Is it only retail service stations that have those credit card privileges or do bulk plants, consignees, and that type outlet also have them? A. Our credit cards are good at all land service stations and at all, I believe, marine service stations, but the card is not good for a credit, for a purchase at a wholesale distribution point, such as a bulk consignee would be, or a distributor.

Q. So that in effect, they are only good at retail outlets, whether they are marine or otherwise? A. Yes.

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(4385) M. A. WOLFE was called as a witness for the Commission and, previously having been duly sworn, was further examined and testified as follows:

Direct examination by Mr. Dias:

Q. Mr. Wolfe, are you still special representative of TBA sales? A. Yes, sir.

Q. And have your duties changed in any way since we talked to you last? A. No.

Q. I want to hand you Commission Exhibit for identification 43, and tell us if you will please, what that is? A. (After inspection) This exhibit is Firestone's form S757. The title of it is "Changes in oil company listings." Do you want me to go on and describe the whole thing?

Q. What is the purpose of it? What does it do? Who furnishes the form? (4386) A. First it denotes the Firestone district involved, the oil company involved and the oil company division involved, the type of account, the name of the dealer, his trade name and his address, and in those cases where it is a replacement of a dealer, it

shows the dealer's name that was replaced in the station. It shows the effective date of the dealer's occupancy of the station. It shows the oil company representative's number, code number, and provides a space for Firestone's store, city or territory number, the regular supply point assigned by Firestone to this particular account and when necessary emergency supply point is also shown. It shows the date that Firestone assigned a franchise or contract with the dealer and their estimate of the potential annual volume of Firestone products that this dealer will handle in total dollars, the percentage of that volume in tires and the percentage in batteries, and the percentage in home and auto supplies.

It also provides space for them to show the brands handled other than Firestone, broken down between tires, batteries, and home and auto supplies. It shows the principal business of this particular dealership and provides space for other comments and at the bottom provides space for their district manager to approve or not approve.

Q. Now is that fom provided by Firestone or is that a Texas form? (4387) A. This is a Firestone form.

Q. And who fills it out, Firestone or Texaco? A. Well, as indicated in the top of the form, it can be issued by the oil company or by the Firestone district and it also shows that the reason for issuing is the addition, as it is spelled out here, the addition, succession, deletion, or other reason for issuing the form.

Q. Do I understand then that Firestone supplies Texaco with quantities of those and then when the occasion demands, Texaco fills it out and sends them to Firestone, is that correct? A. Yes, sir, Firestone furnishes our division office with a supply of these forms and when necessary, we initiate the form and send it to Firestone.

Q. And then on occasion Firestone itself computes the form and sends them in to Texas, is that correct? A. Yes.

M. A. Wolfe, Recalled, for Commission—Direct

Q. And is this form still in use? A. Well, that form number is still in use, that particular form might have been revised some—

Q. Substantially? A. Not substantially, I wouldn't think.

Q. In effect you have the same type of information, whether it be in that exact form or some other form, is that correct? A. Yes, sir.

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(4388) *By Mr. Dias:*

Q. Now as special representative, TBA, do you work with both rubber companies? A. Yes, sir.

Q. Do you spend 100 percent of your time on TBA solely? A. Yes, sir, practically. I am never involved in any other part of our company business except that relates to the tire company problem.

Q. I see, and just what is it that you do in connection with Firestone? A. Well, I study their promotional programs and I try to disseminate the information and the principal features of their promotional programs and selling campaigns to our organization in our divisions with the hope that they will in turn take it right to our dealers and other accounts.

Q. Are you in charge of, are you directly superior to these (4389) field TBA representatives? A. I am not in charge of those men. They are under the supervision of our division management. Insofar as being superior to them, I cover the entire country and work with all of our divisions, I work with the men, the representatives, TBA promotion in the division and with our other division management personnel.

Q. Are you responsible for formulating the policies that these TBA representatives follow? A. I have nothing to do with formulating a policy, no.

M. A. Wolfe, Recalled, for Commission—Direct

Q. Do you have—you are stationed in the home office, are you not? A. Yes, sir.

Q. Do you have a staff of assistants, clerical help or anything of that sort working on TBA? A. Not a staff, I think as I testified before, I only have one person, clerical help at the office there.

Q. And does that help that you mentioned, does he or she work on both Goodrich and Firestone, whatever comes up in the TBA field, whether it be Firestone or Goodrich? A. She handles whatever I ask her to handle for either company.

Q. I see. Do you spend more time with one rubber company than the other? A. Well, you would have to ask me at what particular time, (4390) I would think, because it depends on where I am working and what I am trying to get done.

Q. Well, what would be some of your problems that would cause a difference in your duties? A. Well, in working with the home office, for instance, of the rubber company, I might have more problems that have been sent in to my office from the field, say, to handle with one than I would the other. Or that there might be more promotional programs in the making or that we thought could be made on certain phases on the operation in the field whereby I might not spend the same time with each company because their programs might be different.

Q. What are some of the problems that might come to you from the field? A. We have information that is sent in to us that certain markets might not have the strongest type of supply point, maybe, or that the existing supply point wasn't functioning like our dealers thought they should for them. We take those problems to the management.

Q. Of the respective rubber companies? A. Of the respective rubber companies and try to work it out as best

we can. We have on promotional programs, we have reaction from the field that I discuss with the rubber companies.

(4391) Q. What type of promotion programs would they be? A. The same as campaigns and just merchandising programs that they devise for service station type deals.

Q. Does Texas engage in cooperative advertising or any type of advertising with Firestone in conjunction with Firestone? A. Do you mean does the Texas Company help pay for that advertising?

Q. Yes. At service station level or nationally? A. No, sir, not to my knowledge.

Q. As I understand the program, the Texas or Texas stations attempt to tie in particular local sales with national advertising of one rubber company or another, do they not? A. Yes. We encourage the dealer to tie in his local advertising with the advertising programs of the rubber companies. They have their own scheme of advertising at local levels.

Q. By "they" you mean the rubber companies? A. Rubber companies.

Q. Do you know anything about these jumbo cards; for example, throw-aways, as they call them, handed out normally by the service station operator in his particular neighborhood? A. B. F. Goodrich Company devised a mailing piece that they call a jumbo card. I suppose that is what you have reference to?

(4392) Q. Yes. A. Yes, I am familiar with that.

Q. Does Texas Company itself do anything along the same line to promote the products of one or the other of the rubber companies? A. We have a follow-up system that we furnish a dealer that wants to use it and included in that is mail cards, post cards, there are several of those cards on different subjects, and included in that a group of

cards are meaning B. F. Goodrich TBA and one that means Firestone TBA.

Q. Now, on something of that sort, do the rubber companies contribute to the cost of the dissemination of that type card? A. No, sir.

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(4394) *Cross-examination by Mr. Barton:*

Q. Mr. Wolfe, these jumbo cards put out by B. F. Goodrich, these are advertising tires and accessories, are they not? A. Yes.

Q. Is it a sales problem so far as Goodrich is concerned, getting these mailing pieces utilized by the service stations, so that their products will be advertised to the public. Isn't that it? A. That is right.

Q. And the function which your department and the Texas salesmen perform is to sell the service stations on the idea of engaging in direct mailing of these particular pieces; isn't it? A. Right.

(4395) Q. And by and large the Texas salesmen do a competent job in promoting the use of those mailing pieces of B. F. Goodrich Company, do they not? A. We think we do a pretty good job.

• • •

Redirect examination by Mr. Dias:

Q. What do these cards look like? Do they have the B. F. Goodrich name all over them, or in prominent place on them? A. Yes.

Q. So when they advertise tires, batteries and accessories, it is Goodrich tires, batteries, and accessories? A. Yes.

• • •

George H. Glenn, Recalled, for Commission—Cross

GEORGE H. GLENN resumed the stand and, having been previously duly sworn, testified further as follows:

Cross-examination by Mr. Lorenzen:

Q. Mr. Glenn, you testified as to some of the exhibits (4396) which were put in this morning that they were special compilations made up for the Commission or at the request of counsel that they were not copies of any records kept in that form by the Texas Company.

I want to call your attention to some of the other exhibits which were put in on your direct examination and ask you whether or not that is also the case as to these exhibits.

Will you look at Exhibit 115 and tell us whether that is a Texas record as such or a compilation? A. (After inspection) This is Commission's Exhibit 115-A and it is not a Texas Company record as such but is a compilation of figures from several sources.

Q. How about 117? A. (After inspection) That again is not a regular Texas Company record but after much difficulty was compiled from such records.

Q. Is 119 a Texas Company record? A. No, sir, it is not a regular Texas Company record and again was compiled especially at the request of the Commission in response to one of their demands.

Mr. Dias: Requests.

The Witness: Requests.

By Mr. Lorenzen:

Q. Will you look at 121 and tell me whether that is a (4397) Texas Company record? A. (After inspection) It is not a Texas Company record as such but again compiled at the request of the Commission in this form.

Q. 123 is the next one? A. No, sir, again not a regular Texas Company record, but compiled specifically upon request for this occasion.

Q. I am going to ask you about—I will ask you to gather Exhibits 204, 205, 206, 207, 208, and to various letters assigned to portions of those exhibits, and ask you whether those are copies of the Texas Company records or compilations? A. These are not copies of Texas Company records but rather a compilation of information taken from several sources and especially consolidated for the type of report that the Commission requested.

(4398) *By Mr. Dias:*

Q. Did that deal through 204 through, or just 204? A. Four, five, six, seven, eight, and A through F on each one of them.

Mr. Dias: That was your testimony; all right.

By Mr. Lorenzen:

Q. I show you Exhibits 210, 211 and 212, and ask you whether those are copies of Texas Company records or compilations made by you for the Commission in this case? A. (After inspection) On 210-A to E, is a special record prepared at the request of the Commission and is not a regular Texas Company record. That applies equally to 211 and 212.

Q. All of the exhibits on which I have asked you this afternoon, however, are compiled from the Texas Company records? A. Yes, sir.

Q. Now, this Exhibit 209-A to Z-10, in respect to the column headed TBA Sales is, as I understand it, not made up from a Texas Company record? A. (After inspection) As I attempted to indicate this morning, this record is not one that we particularly compiled at the request of the

Commission but rather had copies made of in the only one of the 15 divisions of the company where they maintain or carry such a record and the information is not based on data that is available in the Texas Company records.

Q. Now in arguing the admissibility of the exhibits showing (4399) the gasoline sales this morning, that is 210-A to E, and 211, counsel stated that he wanted it, among other things, for the purpose of making a comparison between the gasoline sales gallonage figures and the dollar TBA figures which are shown on these other exhibits to which I have called your attention and also some of the older exhibits which have been put in heretofore.

Now, will you state whether a comparison of that type can be made? A. Well, No. 1, it is not a practice in our company to make such a comparison. We never do. From the standpoint of the figures that are shown on these exhibits here, we have quite carefully tried to point out that especially in the case of type B accounts, that the volume represented for them is volume which passes through that type of account and as such may or may not depending upon the circumstances be reflected also in C and D, so that a percentage proportion of that category might represent a duplication.

Q. Otherwise, are figures of gasoline gallons and dollars of TBA sales comparable? A. No, that is the particular reason we don't use that system because on the one hand, you are talking about units of gallons which fortunately for us haven't changed over the period of years, whereas in the TBA, we are talking about dollars which have, as we all know, changed by reason of inflation and (4400) increases or decreases, changes in prices, so forth and so on, so to use a rather hackneyed expression, you are dealing in apples and oranges when you try to compare gallons and dollars.

Q. Are there any other factors affecting these TBA sales dollar figures on the exhibits other than information which appears on the exhibits themselves? A. Now let's see which exhibit are we referring to in that case?

Q. Well, look at as an example, look at the over-all volume exhibit, I think it is 117 and 119. A. (After inspection) And would you repeat your question, please?

(Question read.)

The Witness: Well, one of the factors that you may have in mind is the question of whether this includes all of the TBA which our dealers may purchase which of course is not the case. This applies only to the TBA that we have record of that they purchased from Firestone or Goodrich. I will look again.

* * *

Q. Can you compare the increase in dollars in TBA sales on those two exhibits with the increase in gallonage shown on the gasoline exhibit which is 211? A. Well again, we are in the same area as I previously mentioned of discussing the question of gallons and units in (4401) the TBA and dollars, and on that basis, they are not truly comparable and the situation as it applies to gasoline sales through consignees rather than purchases made by consignees because they don't buy any is equally applicable.

Q. Is it possible to make a comparative study which allows for all of the various differences between dollar figures and gallonage figures? A. Well, from a standpoint of establishing the related value of C volume and D volume of gasoline business and in turn the relationship of C volume and D volume of TBA business.

Q. But such a study has not yet been made or offered in evidence? A. No, but out of all of the figures that have now

been furnished to the Commission, if I may indulge for a moment in the kind of work that is my chief responsibility, if you have figures of this kind together, you naturally try to blend them or try to analyze them to determine what they mean and this sort of information based on both gallonage and TBA dollar value, as well as number of accounts brings out of course the fact that our number of C accounts during the period in question here from '52 to '56 have increased by some 19 percent and a fraction, I don't remember the exact number, whereas at the same time the dealer accounts have decreased in number by 8.85 percent. At the same time, the proportion naturally of Cs in number to Ds in number we find that the Cs have increased as (4402) to the total by some 6 percent. Then as to the volume of gasoline during that period the volume passing through the C accounts has increased 31 and approximately 31 percent, whereas that for the Ds, the volume for the D accounts has decreased 2.34 percent.

And as would naturally be expected, the volume of TBA has followed that same trend with your TBA volume for the C accounts representing the approximate same percentage to the total as does the gasoline and the change in the percentage between the C and Ds following the same trend as it does on the gasoline.

And relatively taking a C and a D account as a pair and adding the two together, their relative relationship between '52 and '56 has again shown the same evidence of an increase in the value of the C, a decrease in the value of the D, and likewise, using that same comparison, you will find the same result as it applies to gasoline. So that using all of the information that is here, or somewhere in the data that has been provided, and following a practice that is part of my job and listing, you come up with that sort of a finding that the TBA and the gasoline have followed closely together as far as a relationship is concerned but not nec-

essarily of course in the fact not as applicable to all TBA, but rather only that part that might be purchased from the so-called sponsored companies.

(4403) Q. That is a result to which you come, not in trying to compare dollars as such with gallons as such, but in comparing all of the figures— A. All of the figures that are made available.

Q. (Continuing) —that are in there and trying to reduce them to a common denominator? A. A common denominator.

* * *

(4412)

Hearing Examiner Kolb: On the record.

Mr. Dias: I would like to have marked for identification as Commission Exhibits 214-A through E the list of specifications attached to the Continental subpoena dated May 16, 1957.

(The document referred to was marked Commission Exhibit 214-A through E for identification.)

Mr. Dias: As Commission Exhibit 215, the Conoco response to Item 1-A of Specification I, showing the number of Conoco lessees during the years 1952 through June 30, 1956.

I offer 215.

Mr. Lorenzen: This is the first piece of documentary evidence relating to the Continental Oil Company which is offered in evidence in this case, and so I think I ought to state our objection to this whole line of exhibits at this time, and perhaps I may have an understanding that the objection will go to all the exhibits offered at this time relating to the Continental Oil Company.

Generally these exhibits consist of statistical information from the Continental Oil Company, leases, forms, and intra-company communications of the Continental Oil Company, to none of which is the Texas Company a party; none of which have any relation to the Texas Company; no employees or officers of the Texas Company have had anything to do with any of these (4413) exhibits; the name of the Texas Company doesn't appear in any of them; we think that none of this evidence is competent as against the Texas Company. It is not material or relevant to any issue relating to the adjudication of whether or not the Texas Company is engaged in any type of unfair competition in connection with carrying out its obligations and duties under its contract with the Goodrich Company which alone is here involved.

So we think that it has no probative value at all, that an admission of these documents and a basing of any adjudication thereon would violate both the Rules of the Commission as to probative evidence and also the Administrative Procedure Act. We think that it would be depriving the Texas Company of the usual protection of due processes of law to permit this evidence in as against the Texas Company. A large part of it, I may point out, is completely hearsay, double hearsay or quadruple hearsay in many cases.

In my objection to competence, I want it understood that I have agreed with counsel supporting the complaint that he need not produce a witness to come and say that this particular item is a compilation made from the books.

My objections to competency I think would be just as effective even if such a witness were pro-

duced, and it goes to the substance and not the form in which this evidence is produced.

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(4415) Hearing Examiner Kolb: No. Let the record show that standing objection to all the documents of Conoco, on the basis that the Conoco information has no bearing upon the issues in this proceeding.

• • •

(4427) Mr. Lorenzen: I would like to state an objection to all of these documents on the ground that they are purely intra-company papers and documents to which the Texas Company is not a party and which are in no way binding on the Texas Company or competent against it.

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(4451) Mr. Dias: Your Honor, at this time I would like to re-offer some Goodrich documents that were previously rejected. The rejections appear at Pages 412 and 413 of the record.

At this time I would like to offer Commission's Exhibit 71.

Mr. Barton: I have the general objection, your Honor. This is a paper with respect to the contract with Jenney Manufacturing Company.

Mr. Lorenzen: May it be understood that the same objection made to the Continental Oil Company document this morning, the same general objection will also relate to the (4452) Jenney Manufacturing Company for the reasons stated in the course of that objection.

Hearing Examiner Kolb: That is your general objection?

Colloquy

Mr. Lorenzen: Yes. If I say "general objection" to the documents about to be offered, it will be understood to mean the same general objection which we had to the Continental documents.

Hearing Examiner Kolb: The objection will be overruled.

The document will be received in evidence as Commission's Exhibit 71, subject to a motion to strike by The Texas Company.

(Whereupon, the document referred to, heretofore marked Commission's Exhibit 71 for identification, was received in evidence.)

Hearing Examiner Kolb: Who is Jenney?

Mr. Barton: Another oil company. It does business with Goodrich.

Mr. Dias: I offer Commission's Exhibit 72.

Mr. Barton: Same objection.

Mr. Lorenzen: Same objection, and the intra-company objection.

Hearing Examiner Kolb: The objections will be overruled.

(4453) The document will be received in evidence as Commission's Exhibit 72, subject to a motion to strike by The Texas Company.

(Whereupon, the document referred to, heretofore marked Commission's Exhibit 72 for identification, was received in evidence.)

Mr. Dias: I offer Commission's Exhibit 73.

Mr. Lorenzen: This exhibit relates to the Shell-American Petroleum Company.

May I have it understood that we have the same general objections as were made in the case of the Continental Oil Company documents.

Colloquy

Hearing Examiner Kolb: The objection will be overruled.

The document will be received in evidence as Commission's Exhibit 73, subject to a motion to strike by the Texas Company.

(Whereupon, the document referred to, heretofore marked Commission's Exhibit 73 for identification, was received in evidence.)

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(4454) Mr. Dias: I offer Commission's Exhibit 77-A and B.

Mr. Barton: I have just the general objection, your Honor.

Mr. Lorenzen: The general objection made to the other Continental Oil Company documents.

Hearing Examiner Kolb: The objections will be overruled.

The document will be received in evidence as (4455) Commission's Exhibit 77-A and B, subject to a motion to strike by The Texas Company.

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Mr. Dias: I offer 78-A and B.

Mr. Lorenzen: The general objection, and the intra-company objection.

Mr. Barton: I have the general objection.

Hearing Examiner Kolb: The objections will be overruled.

The document will be received in evidence as Commission's Exhibit 78-A and B, subject to a motion to strike by The Texas Company.

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Colloquy

(4458) Mr. Dias: I offer Commission's Exhibit 82-A and B.

Mr. Barton: I have the general objection. It is a copy of the agreement of the Ohio Oil Company.

Mr. Lorenzen: Same objection to this document relating to the Ohio Oil Company as was made in connection with the Continental Oil Company documents.

Hearing Examiner Kolb: The objections will be overruled.

The document will be received in evidence as Commission's Exhibit 82-A and B, subject to a motion to strike by The Texas Company.

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Mr. Dias: I offer Commission's Exhibit 83-A and B.

Mr. Lorenzen: The same objection. The hearsay objection—I think this one should be excluded also under the ruling made this morning with respect to 241.

I don't know just what it is. It seems to be somebody's account of minutes of some kind of a meeting which they had at the Ohio Oil Company.

I will withdraw the special point. This comes (4459) under other than the Exhibit 241 ruling. I will state the general objection and the intra-company and general hearsay objections which I have heretofore made.

Hearing Examiner Kolb: The objections will be overruled.

The document will be received in evidence as Commission's Exhibit 83-A and B, subject to a motion to strike by the Texas Company.

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Colloquy

(4464) Mr. Dias: I offer Commission Exhibit 91-A through -C.

Mr. Barton: I have no objection other than a general objection.

Mr. Lorenzen: I suppose the general objection doesn't apply to that portion of 91-C, which deals with the Texas company. But in addition it purports to deal with Continental Oil, Shell-American, Jenney Oil Company, and Ohio Oil Company, and I would like a general objection to go to any figures or statistics or information other than relating to Texas Company.

Hearing Examiner Kolb: Are these all mixed together?

Mr. Barton: Yes, your Honor.

Mr. Dias: The tabulation is on one page.

Hearing Examiner Kolb: The objection will be (4465) overruled. The document will be received in evidence as Commission Exhibit 91-A to -C, inclusive, subject to motion to strike on the part of Texas as to that portion which deals with other oil companies.

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Mr. Dias: I offer Commission Exhibit 92. I might say that this was partially admitted the last time, and I assume it had to do with the Texas Company.

Mr. Barton: That is right.

Mr. Dias: I would like to offer the exhibit in its entirety on all the oil companies.

Mr. Barton: I have a general objection.

Mr. Lorenzen: General objection to the additional portions of the Exhibit 92.

Hearing Examiner Kolb: The objection will be overruled. The document will be received in evi-

dence as Commission Exhibit 92, subject to a motion to strike on the part of Texas as to that portion pertaining to other oil companies.

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(4466) Mr. Dias: I don't believe there is anything excluded.

Mr. Lorenzen: If we are not estopped on dates —it will be quicker to make the objection than to hunt for it—if we are not estopped on dates, if this offers figures back of 1952, we make, I think, what is known as the ancient history objection to any figures going back beyond 1952.

There is some misunderstanding as to how much was being offered on 92 a month ago. Information as to the Texas Company had been admitted, but it was not clear whether that included the tabulations going back as far as 1946. Now, Mr. Dias is re-offering the exhibit as stated, that he wants to offer the entire exhibit, including anything which may have been excluded before.

In order to save our objection to any charges made against the Texas Company before 1952, I just want to state that again also.

• • •

(4467) Mr. Dias: I offer Commission Exhibit 132.

Mr. Lorenzen: General objection to other companies listed on this exhibit except the Texas Company.

Mr. Barton: General objection.

Hearing Examiner Kolb: Can those be separated?

Mr. Barton: No, your Honor, they cannot be. It is one page. As a matter of fact, the information

with regard to the Texas Company has already been put into evidence in another exhibit. The same information with respect to the Texas Company has been placed in evidence in another exhibit heretofore.

Mr. Lorenzen: The figures are separately stated. They could be cut off.

Hearing Examiner Kolb: The objections are overruled. The document will be received in evidence as Commission Exhibit 132, subject to a motion to strike by Texas as to the portion (4468) of the document which applies to other oil companies.

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Mr. Dias: I offer Commission Exhibit 136.

Mr. Lorenzen: General objection to all information on this exhibit except that relating to the Texas Company.

Mr. Barton: I have a general objection also.

Hearing Examiner Kolb: The objections will be overruled, subject to a motion to strike by Texas as to matters pertaining to other oil companies.

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(4474) JOSEPH A. HOBAN was recalled as a witness for the Commission and, previously having been duly sworn, was further examined and testified as follows:

Direct examination by Mr. Dias:

Q. Mr. Hoban, will you name the oil companies with which Goodrich has an override or sales commission arrangement? A. The Texas Company, the Continental Oil Company, the Ohio Oil Company, the Shell-American Petroleum Company, the Jenney Oil Company, the Emblem Oil Company.

Joseph A. Hoban, Recalled, for Commission—Direct

Q. Are there any others? A. No, sir, that is all.

Q. Are you familiar with the contracts that you have with those companies? A. Yes, sir; I think so.

Q. We know that there is a formal contract in the record as to the arrangement between Texas—

Mr. Royall: Your Honor, would it save time if we object to all testimony relating to any other oil companies, or do you want us to make objections each time?

(4475) Mr. Dias: I have no objection.

Hearing Examiner Kolb: Let the record show that Texas Company has a standing objection to all questions with referenec to other oil companies.

By Mr. Dias:

Q. We know that you have a formal contract—they are in the record, as a matter of fact—with Texas, Continental, and Ohio. And by "formal contract" I mean the usual two-page letter, it is usually in that form. Do you have similar written arrangements with each of the other three —Shell-American, Jenney, and Emblem? A. Not in the form that you speak of. They are smaller local type operations and we did not go to the trouble of formalizing an exchange of contract between our companies. We do have written operating instructions setting forth our relationship and the rates of sales commission, and other details that have gone to our organization and have gone to them, which would show the complete understanding. There is no formal contract other than the implementation by written instruction between those smaller companies.

Q. That was my understanding.

How do these arrangements with the other companies operate? First of all, tell me this: Do the terms vary in any way from those—talking about Shell-American, Jen-

ney, and Emblem—do the terms of those contracts vary in any way (4476) from the Texas contract?

Are you familiar with it? A. Yes, I am familiar with it. I want to be sure that I understand what you are asking. Are you asking about the rates of the commission only?

Q. Yes. A. To my knowledge there is no difference in rates of commission between any of our sales commission customers.

Q. If you will, please, let me show you Commission Exhibit 3-A and 3-B, which is the Texas contract. Since the first page deals with the rates which you tell me are substantially the same as all others, will you direct your attention to the last paragraphs on page 3-B. A. Yes, sir. What is your question?

Q. My question is, do your contracts, shall we say these informal contracts with the other three—Jenney, Emblem, and Shell-American, are the terms and conditions with those companies the same as they are with the Texas Company? A. They would be if the conditions were exactly the same, but in the case of the Jenney Oil Company practically all of their operations are either owned, leased, or well-established retail dealers. They operate only in metropolitan Boston. As a consequence of that they are not involved in the question of 7½ percent on consignees and things of that kind. Our understandings on all those things would be the same if the (4477) conditions were the same, Mr. Dias.

Q. That is the thing that bothers me. If the conditions were the same, I don't think I understand that. A. The reason, for instance, consignees with the Texas Company, there isn't such a classification with Jenney as a consignee. Their business is dealers. That is the reason it is not exactly the same.

Joseph A. Hoban, Recalled, for Commission—Direct

Q. How about Emblem Oil Company? A. Emblem is a little local arrangement. We sold them many years on an outright purchase basis, and we, for competitive reasons, moved to this sales commission plan. They have a small number of stations and they are all retail stations. We have no wholesalers or anything involved, or consignees involved in that relationship. It is just a little local oil company.

Q. Can you tell us where the rates of commission—what the range of rates of commission is? A. That would be all ten percent.

Q. How about Shell-American? A. Shell-American woud be all ten percent; dealer operations with them.

Q. And Ohio Oil? A. Ohio Oil I think we would have all three rates of commission involved with them.

Q. How about the duties of those respective oil companies? (4478) Are they similar to those of Texas, that is, the services they perform to earn these commissions? A. Their obligations are identical. The manner in which they perform varies by company.

Q. How are their outlets served? Are there designated supply points in each instance with each of the oil companies? A. Very similar to the arrangements that I outlined to you with the Texas Company. They are supplied by what would be the most convenient or nearest supply point that we have. That could be a B. F. Goodrich store, it could be an independent dealer set up as a supply point, or it could conceivably be our district in some cases. We serve from any of those three general classifications.

Q. Do Goodrich salesmen call on the outlets of those respective oil companies? A. Indeed they do, sir, every one of them that we sell are called on, and every one has a contract with B. F. Goodrich. A tire memorandum of agreement, which is our tire contract, is signed with each individual dealer.

Joseph A. Hoban, Recalled, for Commission—Direct

Q. I don't believe we asked you this the last time. How are your salesmen compensated? Do they work on a commission basis? A. No, sir. Our salesmen are compensated on a monthly salary plus bonus arrangement paid annually.

Q. How is that bonus determined? A. We have a definite set of yardsticks which begin with (4479) attainment against assigned quota. Following the attainment against assigned quota we have the expense of the salesman, his traveling and any other expense involved in his operation. We have a profit evaluation where he sells premium quality goods to a larger degree than he does second and third line goods. It adds to his bonus.

We have a cooperation classification. Does the salesman get his reports in on time and is his relationship with the district such that he rates a high mark in clearing his business promptly and in cooperating with requests for calls and so forth.

If you want the entire details of that I would have to say that I will get it for you. Those are the high points of the manner in which we arrive at the bonus for the salesmen.

Q. Does the salesman receive commissions on TBA sales to any of those six oil companies? A. We pay no commissions to our salesmen of any kind. What we do is pay them a flat salary, $400 or $500 a month, whatever it might be. Then he operates on an annual bonus. And the annual bonus, as I have outlined it to you, is established with a sales quota for the number of cars that are in his particular territory, past history and all. It is arrived at in conjunction with the district and zone and the Akron management, the district zone and Akron management. After that is arrived at then these yardsticks of evaluation are used to (4480) arrive at the amount of the salesman's bonus.

Joseph A. Hoban, Recalled, for Commission—Direct

Q. In no instance would there be a certain percentage applied to his credit for, we will say, sales of certain items within the TBA field? A. No, sir.

Q. Does Goodrich have field deliverymen, or service men of any type, serving these oil company outlets? A. I don't know that I explained the detail to you, the supply point arrangements.

Q. Suppose you do that. A. All right. When we sign a contract with an independent Texaco dealer we generally set up a most convenient supply point for him because in this service station business the accounts are small. The manner in which you are able to get the maximum amount of business is to have your particular tires and tubes and accessory merchandise close to the account so that he can quickly get a tire or set of tires at a nearby point. So we establish "X" supply point. Generally speaking that is an independent dealer who principally does, or to a hundred percent in most of the cases, handles wholesale tire business for us. And he would supply anywhere from 25 to 100 or more service stations and car agents and small dealers in a given area.

That independent dealer would be the one that would call occasionally and particularly deliver the merchandise to (4481) the Texaco or other oil company dealer.

Q. Does Goodrich pay that particular dealer or supply point a special commission, or any commission? A. No, sir, no commission enters into the relationship. The supply point is a wholesaler. He buys from us the tires and tubes and accessory merchandise, batteries and the complete B. F. Goodrich line, he buys it on a regular program that we have established for dealers and what is known as a "WA" or wholesale classification.

His volume, of course, is large, because he is servicing, as I tell you, from 25 to maybe 150 small dealers. So the difference between the price that he purchases the merchan-

dise from us and the price that he sells is his gross profit. And he operates out of that difference in his buying price and his selling price and makes his profit out of that.

Q. You used Texaco as an example. I take it that is just a hypothetical instance, and the same thing applies to each of the other oil companies? A. Yes, sir, same identical arrangement applies to all of them.

Q. I have run into the term "casings." What is a casing? A. A casing is a tire.

Q. That is a tire? A. Yes, sir, it is another word describing a tire.

Q. In connection with tires alone, casings, are any special (4482) service or sales commissions paid to Goodrich personnel? A. No, sir, there are no sales commissions paid on any merchandise other than I have outlined to you, the opportunity for the B. F. Goodrich salesman to earn his annual bonus on total sales of all commodities.

Q. Does the name "T. C. Yarnell" mean anything to you? A. Oh, yes, sir. I know him very well indeed.

Q. Who is he and where is he located? A. He is located in Detroit at the zone office in one of the large automotive buildings in Detroit.

Q. You are trying to think of his address? A. I am only trying to tell you the building in Detroit in which his office is. It is one of the big automotive business buildings there. He is zone manager for an area that includes a good many of our districts and zones, such as Detroit, Chicago, Cleveland, and other districts and zones. He is a tire replacement zone manager located in Detroit.

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(4488) Q. You don't recall the name? A. No, sir.

Our policy on that matter is very clear, very definite. We never at any time have paid sales commission on con-

sumption business. The oil companies are set up in a certain classification and they buy entirely on an earned bonus basis for their consumption business, whether you are speaking of the Texas Company or whether you are speaking of one of our other customers.

Q. An earned bonus basis, you say? A. Yes.

Q. Is that quantity purchases? A. Yes, sir.

* * *

(4490) Q. And on Commission Exhibit 268-G, will you tell me whether or not—we have a little difficulty here, we have only the 1957 and 1953 catalogues—are those inclusions and exceptions the same through the years since the contracts were in existence, or have they been modified to any great extent? Will you look them over and consider the categories and tell me whether or not the categories are substantially the same? A. I see only one item here that would have been included during some period, and that is home radios. Small table radios, according to my recollection at various times have been included. All other items have been excluded at all times.

You notice your classification called "Home Radio." Small table radios, as opposed to consoles, have been included over a number of years at different times, and I think maybe still are.

I speak of small table radios. They may not be now, but they have been over some years.

Q. The items not subject to payment of commission are wheels, that is, with reference to automobile wheels? A. Yes. Rims.

Q. You have a section in the book dealing with wheel goods and it is bicycles. A. That has nothing to do with it.

(4491) Q. Rims and parts; what does the parts refer to? A. Nuts and bolts in connection with the rim.

Q. In connection with wheels? A. Yes.

Joseph A. Hoban, Recalled, for Commission—Cross

Q. How about accessories? What accessories are included? Is there anything in the catalogues? A. Yes; accessories are included.

Q. I didn't mean accessories. I meant repair items, replacement items, such as jacks and— A. Those are supply items. They have never been included.

Q. How about such items as ignition points and repair items of that general nature? A. We have never sold ignition points, sir.

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Cross examination by Mr. Barion:

(4492) Q. Mr. Hoban, the sales commission plan includes repair of materials for tires, that is, camelback and things of that kind, doesn't it? A. Tread rubber.

Q. Yes. A. Yes, sir. Tread rubber.

Q. And the sales commission plan, there is a sales commission paid on such products? A. Yes, sir. That is part of the accessories, like fan belts and tread rubber. We consider tread rubber in the classification of an accessory item, such as fan belts and radiators.

Q. Your B. F. Goodrich salesman has a district, doesn't he; in which he handles how many accounts? From 50 to a hundred accounts? A. You are speaking of our territory manager?

Q. Territory manager. A. The territory manager would rarely have that many direct accounts. It varies, of course. I would say the minimum a salesman would have would be 25 or 30, and possibly the highest number would be a hundred.

Q. And the B. F. Goodrich territory manager has responsibility for those direct accounts? A. Yes, sir.

Q. And also he works with the accounts who buy from those direct accounts, doesn't he? (4493) A. Yes, sir, with their associate dealers. He works with all of them.

Q. And by and large the Texas service station and the other service stations of the other oil companies are associate dealers, aren't they? A. We have both direct dealers and associate dealers. The majority, of course, are associate dealers.

Q. And in these places and in these situations where you have a sales commission agreement with an oil company, the role of the B. F. Goodrich territorial salesman, his job is materially assisted by the oil company salesman who carried the promotional program to the service stations; is it not? A. Oh, yes, indeed. In my previous testimony I went into considerable detail to point out the merchandising assistance that the petroleum company salesman and merchandising personnel give to us. It works two ways. I don't know that you wish me to go into details of it again. But it works two ways.

First, their frequency of contact is so much more than a B. F. Goodrich salesman. They are into the dealers place so frequently that they are able to keep him constantly alerted to the opportunities to sell more of our goods. Texaco, for example, the merchandise salesman very definitely increase the sales of B. F. Goodrich tires and other products through the dealer's station by keeping the Texaco dealer alerted. And the other thing of considerable advantage to us is that by (4494) their frequent contact our particular territory manager doesn't have to call so frequently as he would if he didn't have that assistance. So, we spread him a little farther in covering other accounts.

Q. There has been some reference to the jumbo cards, the mailing piece, by Mr. Dias. Would you explain what those are? A. I went into it at great length on my previous testimony to the leader type merchandise, and the advantages that that has to a small neighborhood Texaco dealer as an example of our petroleum accounts, and where the jumbo card comes into play is this:

We go to a great deal of trouble in first testing merchandise in a given number of stations, what we call leader merchandise, to find out whether at a certain definite price it will bring extra traffic into the dealer's place of business, so that he can have new faces and new opportunities to make permanent customers. If we find the items after we have tested them as being very successful in bringing new faces into service stations, we go the next year usually to all of our service station customers with those leader items.

We are national advertisers, the B. F. Goodrich Company. We had for many years the Burns and Allen Texas program, and we are in national magazines across the country.

While at the time that this particular promotion would break, we would have that leader item featured on our national (4495) Texas program, or in our national advertising, and then in order to be able to have the neighborhood dealer cash in on the national advertising, we would have a jumbo postcard which would identify him very definitely in his petroleum connection and the services that he has to offer in petroleum, but in a large way it would offer this particular, unusually priced, special or leader piece of merchandise.

He would subscribe to that and maybe in his given neighborhood area he might send out 200 of those jumbo postcards, right at the time that the advertising is appearing in the Saturday Evening Post or the national Texas show is announcing this item.

So, it puts to work, as I explained before, the national advertising at the local neighborhood Texas service station dealer's place of business, and very successfully.

Q. That program is carried on in connection with all of the sales commission arrangements which you have? A. All of the sales commission customers; yes, sir.

Joseph A. Hoban, Recalled, for Commission—Cross

Q. In that situation the jumbo cards are partially paid for by the service station dealer, are they not? A. Oh, yes, sir. He pays for the promotion.

Q. He buys the cards? A. Yes, sir.

Q. The B. F. Goodrich Company prepares the materials and that is purchased by the participating customer? (4496) A. That's right, sir. He gets back out of the profit that he makes out of the selling of the leader merchandise more than the cost of the promotion; so, it works out very well.

* * *

Q. Mr. Hoban, who makes the Miller line of tires? A. The Miller line of tires are manufactured and have been for well over 20 years by the B. F. Goodrich Company. The B. F. Goodrich Company acquired the Miller Rubber Company back about 1930. The Miller line of tires is part of what we call our associated tire division and have been marketed by B. F. Goodrich since the acquisition of Miller about 1930.

Q. And prior to the entry of the sales arrangement agreement with Ohio Oil Company, what brand of tires were being handled by Ohio Oil Company? A. Miller brand of tires, manufactured by B. F. Goodrich.

Q. And they were purchasing B. F. Goodrich, is that right? A. Yes, sir.

Q. And re-selling them to their dealers? A. Yes, sir.

* * *

(4498) Q. Mr. Hoban, in connection with the territorial salesmen, is my understanding correct that they have in general 25 to 50 direct accounts in their territory? A. Yes.

Q. But there will be in that territory a geographical territory in which they cover several hundred dealers who

handle B. F. Goodrich merchandise, and who purchase in part through those 25 or 30 direct accounts, isn't that right? A. Yes. I would say you are right except I wish that we had quite that several hundred. I wish that we could have those additional accounts, because we could use that business. I would think, if you would speak of 25 to 50 direct accounts, salesmen handling, and speak of 100 to 150 associate dealers, you are about as high as I could go along with you, although there may be one case in the country to support you where a man might have a couple of hundred of these things, or three hundred.

Q. And the bonus which that territorial salesman receives in addition to his salary is not geared particularly to the sales which are made of B. F. Goodrich merchandise to an oil company which happened to have a sales commission agreement, is it? A. No, sir. There is no connection at all, as far as the salesman is concerned, with the sales commission program. He is given an area and that area has so many cars in it, (4499) Mr. Barton, and on a basis of the car registration plus our previous years of attainment against the potential, we assign him a quota. Where he gets that, whether it happens to be in one territory a hundred percent from independent dealers not connected in any way with sales commission, or in another territory whether 50 percent of it flows through oil companies that happen to be on commission, he has nothing to do with it. He works his territory and takes advantage of whatever exists there. In some places, particularly in New England, we have to live without any supporting business from petroleum companies. We have to sell car agents and tire dealers and farm dealers and implement dealers and get our business entirely through other channels. But the salesman in no way has any concern about whether an oil company service arrangement or sale commission arrangement in fact—he has nothing to do with that.

He goes ahead and sells them as an independent dealer one over one as fast as he can interest them and sign them as a B. F. Goodrich dealer. Then there is no distinction as far as he is concerned or we are concerned. They are all B. F. Goodrich dealers.

Mr. Barton: I think that is all.
Mr. Dias: Does Texaco have any question?
Mr. Royall: No.

(4500) *Redirect examination by Mr. Dias:*

Q. Is a territorial sales manager a salesman? A. That is a glorified name for our tire salesmen.

Q. How often do they call on their accounts? A. I think I tried to explain to you that you can't answer that question with any given one week or two weeks or once a month or anything like that. It depends entirely on the area of the country that you are talking about. In a metropolitan city I would think at least every ten days our salesman would be seeing his accounts. In a sparsely settled area of Washington and Utah and Colorado, we would be lucky to get around there once every six weeks.

Q. That is the State of Washington? A. The States of Washington, Colorado, Utah, Minnesota, North and South Dakota, if he got around there once every six weeks he would be doing well. In between—every ten days or so in a metropolitan area, sometimes more frequently—you would go all the way to this every-six-weeks call, but in between, in the middle section of the country and southern sections of the country, he would be calling every ten days to two weeks.

Q. You also stated that these territorial managers, or salesmen, call on 25 to 50 direct accounts, and I think you rightly corrected an over-enthusiastic estimate of 200 (4501) associate dealers to 100 to 150? A. Yes, sir.

Q. Do I take it from that that also there are instances where there are less than a hundred customers that they call on, associate dealers? A. Yes, sir. You see there might be less. Take the State of Maine as a good example. In the State of Maine we don't happen to have any appreciable amount of service station business. So there our salesman might conceivably be calling on 25 direct accounts and possibly only 50 associate accounts of his tire dealers.

Q. What would you think would be the median figure of associate accounts called on by the territory? A. Called on by them?

Q. Yes. A. They try to call on all the associate dealers, not with any regularity, but I would say in the course of a year a territory manager will have called once or more on every associate dealer.

Is that the question you are asking?

Q. Not exactly. Going back to this 100 to 150 accounts, was it your testimony that the 100 to 150 associate dealers that the salesmen call on, is that over a year's time or is that periodically every week, month, or what? A. It is periodically. For instance, the 25 to 50 direct (4502) accounts—it varies as I told you from let us say once a week to once every six weeks depending on the geographical area that the man covers, whether it is metropolitan, midwest, southern, or whether it is far stick territory.

Then under the man the number of associate accounts vary depending on the type distribution he has. If you go into an area where we have a large congestion of petroleum type business in a metropolitan city, he would call on those associate accounts maybe every month. If you go—

Q. A full hundred to 150 or a lesser number? A. He might not call on every one of them that particular month, but he would average in a metropolitan area making calls

on associate dealers about every month, whereas if it was out in a wide area he might be very fortunate if he got around there from once to two or three times a year to associate dealers. The supply point would be, after the contract had been signed and all, the supply point would be picking up the orders and delivering the merchandise.

Mr. Dias: That is all that I have.

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Mr. Royall: Your Honor, will you rule on the motion relating to this witness?

Hearing Examiner Kolb: The objections of the Texas Company to the testimony will be overruled, and the evidence will be received, subject to a motion to strike. That is as to (4503) testimony relative to other oil companies.

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(4535) HENRY M. LIVINGSTON was thereupon called as a witness for the Respondents and, having been first duly sworn, testified as follows:

Direct examination by Mr. Royall:

Q. Mr. Livingston, what is your name? A. Henry M. Livingston.

Q. And where do you live? A. At 106 East Forest Hill, Peoria, Illinois.

Q. What is your occupation there? A. Service station operator.

(4536) Q. Is it a Texaco Company filling station? A. Yes, sir.

Q. Where is it located? A. At 3036 North Knoxville, Peoria, Illinois.

Q. What is your average monthly gasoline gallonage there? A. Approximately thirty thousand.

Q. Are you a lessee of the Texas Company? A. Since '52—April, '52.

Q. Is a particular tire company named as—is a particular tire company sponsoring your station, and is it Goodrich? A. No, sir.

Q. Has Texas proposed to you or suggested to you sponsorship of Goodrich products? A. Yes, they do.

Q. Did you at any time agree to buy Goodrich products? A. Yes, sir.

Q. And do you buy some Goodrich products? A. Now?

Q. Yes. A. No, sir.

Q. Now, do you carry a rather full range of TBA in your station? A. Yes, sir.

Q. Do you buy from Goodrich small items from time to time, or do you buy any now? (4537) A. No, sir, we don't.

Q. Did you at one time buy part of your batteries and part of your thermostats from Goodrich? A. Yes, sir.

Q. Now, from whom do you buy your tires? A. Peoria Tire & Vulcanizing; the biggest percentage of them.

Q. And what brand of tires do they sell? A. U. S. Royal.

Q. Where do you buy your batteries? A. We buy our batteries through the Globe Auto Supply.

Q. And what is their product? A. Their battery product is Red Diamond. That's—I might add that the biggest bulk of our batteries is purchased there.

Q. Yes, sir. And do you buy batteries, any batteries, from Goodrich? A. No, sir.

Q. Now, what are some of the other suppliers from whom you purchase tires, batteries and accessories? A. Well, we'll buy an occasional—we'll have an occasional purchase through Firestone, and perhaps an occasional through Goodrich, and an occasional Goodyear; and acces-

sories we purchase from Globe Auto, Peoria Electric Appliance, Vork Auto Supply, and—

Q. Do you purchase any from—did you give the name Peoria Machine & Parts? (4538) A. Peoria Machine & Parts—yes, that's another.

Q. All right, sir. Now, does Texas Company representatives know the products you buy, your TBA products you buy? A. Yes, they do.

Q. And have they known that over a period of time you've been buying them? A. Yes, I think they have.

Q. How long have you been buying these non-sponsored products, that is, products that are not Goodrich, or not Firestone? A. Well, I'd say three to four years.

Q. Now, has the fact that you have purchased these non-sponsored items affected your relationship with the Texas Company adversely in any way? A. Not to my knowledge, sir.

Q. Has there been any—have there been any efforts to force you to buy them, buy sponsored products? A. No.

Q. Have there been any threats in connection with the fact that you buy so many non-sponsored products? A. No.

Q. Has there been any change in your lease as a result of those purchases? A. No.

Q. Has there been any suggestion of a change in your—from Texas, any suggestion from Texas, of any change in your (4539) lease on that account? A. No.

Q. Now, Mr. Livingston, does Texas render any assistance to you in connection with your sale of TBA? A. Yes, I'd say they do.

Q. What are some of the ways in which they assist you? A. Well, there is the spring and fall dealer meetings, as well as the meetings at other intervals, where the merchandising of TBA are discussed, at those particular meetings; and their various publications that are mailed periodically, which are all very helpful.

Q. Have these matters in which Texas helped you—have they continued up to the present time and during the entire period of your purchase of non-sponsored goods? A. You mean, do I still receive them?

Q. Yes. A. Yes; sure.

Q. And you have at all times, haven't you? A. Sure.

Q. Now, from your experience in this station, and your observation, does a TBA program—is the TBA program helpful or necessary to the operation of a modern filling station, service station? A. Yes.

Q. Do you know whether it is helpful in the sale of gasoline? (4540) A. Yes, I conclude that it is; sure.

Q. I don't think I've asked you this. Are all the products that you carry displayed in your station? A. Yes; all that we have room for.

Q. Are they visible to anyone who comes in your station? A. Oh, sure.

Q. I hand you six photographs—will you assign numbers to them, your Honor?

Hearing Examiner Kolb: Mark them Respondent's Exhibits Nos. 37-A through F for identification.

(The photographs referred to were marked Respondent's Exhibits 37-A through F for identification.)

By Mr. Royall:

Q. I hand you—

Mr. Dias: May I see them first?

Mr. Royall: Oh, yes. We have here, Mr. Dias, the same pictures with notation on the back showing the products that are carried. It would shorten the evidence if it would not be necessary to examine the

witness or to call the attention of the Examiner to the products.

Mr. Dias: I think you better ask him. I might look at these while you're examining him. Let me make sure we have them in the same order.

Mr. Royall: I want to give them back and ask him about them.

(4541) Off the record, if I may.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Royall: I've got to give those to the witness and read from the back of those. That's why I was trying to save time.

This one should have been offered too. I beg your pardon. Will you just add that?

Hearing Examiner Kolb: Is that the same station?

Mr. Royall: Yes.

Hearing Examiner Kolb: Two more or one more?

Mr. Royall: One more.

Hearing Examiner Kolb: Mark it Respondent's Exhibit 37-G for identification, then.

(The photograph referred to was marked Respondent's Exhibit 37-G for identification.)

Mr. Royall: The witness will appear to identify that too, Your Honor. He will do so, if you desire.

By Mr. Royall:

Q. This is also a picture of your station, is it not? A. Yes, sir.

Mr. Royall: That refers to, Your Honor—37-G. It is reoffered now.

Hearing Examiner Kolb: Off the record.
(4542) (Discussion off the record.)
Hearing Examiner Kolb: Proceed.

By Mr. Royall:

Q. Mr. Livingston, are these pictures, Exhibits 37-A to G, correct pictures of your station and the goods displayed and shown therein? A. Yes, they're certainly identical—that one.

Q. Well, these are the same ones? A. Yes. These.

Q. Are they representative of your station and these products, and the showing of them over the past several years? A. Yes.

Q. I see.

Your Honor, we offer these pictures in evidence.

Mr. Dias: Well, may I ask the witness a few questions about them?

Mr. Royall: Yes, sir.

Mr. Dias: Mr. Livingston, when were these pictures taken?

The Witness: Well, I'd say approximately six weeks ago—six to eight weeks. I just don't think I remember—

Mr. Dias: And do you know who took them? Did you take the pictures yourself?

The Witness: No, I didn't.

Mr. Dias: Do you know who did take them?

(4543) The Witness: Mr. Hanson.

Mr. Dias: And who is Mr. Hanson?

The Witness: Well, he's a Texas Company representative in some respect. I don't know what his title is.

Mr. Dias: Isn't he your salesman?

The Witness: No, sir.

Mr. Dias: Had you ever seen him before?

The Witness: Yes.

Mr. Dias: And you don't know his title?

The Witness: No, I don't.

Mr. Dias: Did he explain to you why the pictures were being taken, or did he just walk in and take them?

The Witness: No, explained to me.

Mr. Dias: And what did he say about it?

The Witness: He just said that he'd like to have permission to take several pictures in there in view of some evidence, if I recall, or that he might like to have in the future, or if that was—he wanted to be sure that was our regular display. In other words, he didn't—he more or less asked for permission to take the pictures. As I questioned him and asked him why—

Mr. Dias: All right. No objection.

* * *

(4547) Q. The question is, what items on there, shown on this first picture, were not purchased from Goodrich or Firestone. A. Well, there isn't any of these items on here that are purchased from either Goodrich or Firestone.

Q. Now, what are the items appearing on there? A. What are the items?

Q. Yes, sir. A. Well, Red Diamond batteries, and there's several accessories, such as exhaust deflectors, license plate brackets, and so forth, there.

Q. Now, on the second picture, what are the principal items there that were not purchased from Goodrich or Firestone. A. Well, there's also Red Diamond batteries there, and I see some anti-freeze there that's—they're not purchased from either of the two sources.

Q. Is U. S. Royal tubes on there? A. There are U. S. Royal tubes. They're not purchased from Goodrich or Firestone.

Q. And on the third one, what are some of the principal items not purchased from Goodrich or Firestone? A. Well, I've got Merit mufflers here that are not purchased from either Firestone or Goodrich, and—that's about all I see there.

Q. Now, on the third—the next picture, 37-D, what items (4548) on there, what principal items are on there not purchased from Goodrich or Firestone? A. Well, as near as I can see, there's tires that are not purchased from them, either Goodrich or Firestone, and some hoses there—this happens to be garden hoses—that are not purchased from Goodrich or Firestone; windshield wipers, blades, that are not purchased from Firestone.

Q. Now, from No. E, which is the next one, name some of the principal items. If you've already named them do not name them again, but any new items, principal items, that are not purchased from Goodrich or Firestone. A. Well, the principal items here are filters, which are not purchased—oil filters and air filters—which are not purchased from Goodrich or Firestone.

Q. Now, No. F, that's the next one. What items are shown there that are not purchased from Goodrich or Firestone? A. Fan belts, Gates fan belts, which are not purchased from Goodrich or Firestone.

Q. Now, does the last picture represent the appearance of your station now and for several years past? A. Well, except for the sign out there in the front. We've had that sign up there perhaps eighteen months.

Q. I see. There is a sign about mufflers? A. Yes.

Q. But aside from that, does that represent the appearance of (4549) your station over a period of years? A. Yes, it does.

Q. Thank you, sir. Now, has any Texas representative at any time requested you to remove or to hide any of these products which you display in your station? A. No, sir.

Q. Mr. Livingston, do you consider yourself to be entirely free and independent in purchasing such TBA as you wish to purchase? A. Yes.

Q. And from such sources you wish to purchase? A. Yes, sir.

Q. Has that independence and freedom of choice been challenged at any time by any representative of the Texas Company—the right, your right, to do it? A. Well, I don't exactly understand what you mean by "challenged."

Q. I mean, have they discussed with you whether you are free or not, or whether you are—have the right to buy what you want? A. Oh, yes. They've pointed out that it's our privilege to buy from whom we would like to buy.

Q. Now, Mr. Livingston, have you had offers of other stations of large oil companies? A. Yes.

(4550) Q. Do you know from your experience in the business whether it is difficult for the large oil companies to get good station operators? A. My conclusion would be, yes, it is difficult.

Q. Is it difficult to—is it difficult, on the other hand, for a good station operator to get a station? A. No, I wouldn't say it would be difficult.

Q. Is your station doing well? A. Yes.

Q. And is it doing well on TBA? A. Yes.

Q. Has your success on TBA reflected itself in your gasoline sales? A. Yes.

* * *

Cross examination by Mr. Dias:

Q. Mr. Livingston, you just mentioned that good operators are hard to find. How long has that condition existed in Peoria? A. Well, sir, my conclusion on that is what I gather myself from the rumors that I hear. If I were to have a position of that kind, looking for operators, I might be surprised. But that's just my conclusion, and I'd say it's existed just about as long as I've been interested in this type of business.

Q. Is there any reason for that? Is there a big industry (4551) in Peoria that takes up prospective station operators? Is that the reason you reach that conclusion? A. No, that isn't the reason I've reached the conclusion. My reason for reaching the conclusion is that perhaps the prospective station operator is expected to put in perhaps longer hours and money that perhaps he hasn't got, and so forth.

Q. Well, how much money, for example, does it cost to open up a station? A. Well, I'd say a station of my—the station that I've got now would probably cost about eight to ten thousand dollars.

Q. Is that what you invested in it when you opened up? A. No, sir.

Q. I see. How much did you invest in it? A. I'd say $2,500.00.

Q. And what was that for? Was that for stock, including gas? A. That was for practically all inventory I might say.

Q. Was this a new station that you took over? A. No, sir.

Q. What type of TBA was in the station when you took over? A. Well, if I recall right, it was Goodrich TBA, a few tires, and a few accessories, and such as that.

Q. Do you recall your negotiations with Texas Company to obtain the station? A. Pretty much so.

Q. Do you recall that they suggested that you purchase either (4552) Goodrich or Firestone? A. Yes, I recall that.

Q. And if I understand your testimony, apparently you purchased Goodrich to begin with, is that correct? A. Yes.

Q. Can you tell us how long you continued to purchase Goodrich? A. Oh, I'd say approximately two years.

Q. Commencing in '52 until about— A. April of '52, I think it was.

Q. When you moved in did you supplement the inventory that you found in the station? Did you buy additional tires, batteries, accessories, and so on? A. Not right away. We were in a rather peculiar circumstance there. In other words, the area in that particular—the roads in that particular area were closed due to some highway construction, and it was shortly, within maybe six, eight months after that, we did increase our inventory with Goodrich.

Q. Who was your Goodrich supplier in that location? A. Well, all I ever knew him by was B. F. Goodrich, that's all.

Q. Was it a Goodrich store? A. Yes.

Q. Oh, I see. And where are they located? A. South Washintgon.

Q. Was that fairly close to your place of business? (4553) A. Yes, it's a short distance.

Q. And how did they deliver their merchandise to you? Did they have a regular TBA truck? A. Yes, they have a TBA truck, and sometimes with a personal representative's car.

Q. Which personal representative? Goodrich? A. Yes.

Q. How about Texas? Did the Texas representative ever come around with him? A. Not to my recollection.

Q. Now, you continued to purchase Goodrich for about two years, and then you discontinued. Why did you dis-

continue? A. Well, we had a lot of difficulty in obtaining merchandise, various sizes, and of different tires, and different batteries, and—in other words, the delivery was—you might sum it up by saying that the delivery was very poor and they just couldn't supply the merchandise and the quantities of merchandise that we wanted.

Q. Did you mention that fact to Texaco at all? A. Oh, yes. We had quite—several discussions about it.

Q. With whom in Texaco? With whom did you discuss that? A. Well, I discussed it with—with the exception of the first representative that ever called on me, who I think was a fellow by the name of Tom Hughes, Texas Company—I've never discussed with him too much but from then on with two, (4554) three or four Texas Company representatives. I've talked it over very thoroughly with them. They in turn made efforts to clear up the situation.

Q. Well, did you finally tell them that you couldn't do business with Goodrich because of the poor service, and so on? A. Yes.

Q. Did they recommend that you try Firestone? A. Yes.

Q. And did you try Firestone? A. Well, I—I'd say, yes, we tried them.

Q. And where was the Firestone supplier located? A. He's located on West Main Street.

Q. Is that close to your place of business? A. About the same distance.

Q. How was their service? A. Well, their service, from what I could gather, what little experience I had with them, wasn't any better than what I'd dumped, you might say.

Q. What was your gasoline gallonage around that time? Do you recall? A. Well, our gasoline gallonage has increased—in those years I've been in there, let's say, has increased anywhere from—anywhere from perhaps 8,000 to—I would take it back a year and a half ago—to 25,000.

Q. Today you're doing 25,000 a month? (4555). A. Today we're doing approximately thirty.

Q. I see. Well, when was it you were doing 8,000? A. Well, that's when we first took the station over.

Q. Then in the next two years where did you build it to? Can you give us some rough idea? A. I'd say in the next two years we built it to approximately 17,000—15,000 to 17,000.

Q. That was about the time that you were having difficulty with the Goodrich and Firestone suppliers? A. Yes.

Q. Do you know—do you do any repair work on that station? A. Yes. You mean on the station or in the station?

Q. In the station. Yes. A. Yes. That is, light work. We do light work. We don't have any—

Q. Can you recount for us the situation when you finally decided to give up on both Goodrich and Firestone as poor sources of supply? Was there any discussion between you and the Texas people? A. Yes. As I said before, there was quite a lot of discussion. The Texas Company representative was very interested in our, say, obstinate decision, and wanted to know the real facts. He pointed out that they would like to have seen us continue with Goodrich and/or Firestone. But inasmuch as they couldn't do (4556) anything for us, why—well, that didn't leave any alternative.

Q. I see. What sort of hours—you mentioned hours before, that that might be a controlling factor in getting an operator. What sort of hours do you maintain in your station? A. Well, are you speaking of at the present? What we've been experiencing?

Q. Yes. Well, let's start right at the beginning. When you opened your station what hours— A. Well, when we first opened the station, of course, the hours were long and I'd say anywhere from ten to fourteen hours a day.

Q. And was that your own choosing or was that suggested when you took over the station? A. No, that was our own choosing.

Q. I see. And thereafter what sort of hours did you maintain? A. Well, we were at 7:00 to 10:00, to that's approximately thirteen hours, fifteen hours.

Q. And are those the hours you are maintaining now? A. Yes.

Q. Getting back again to the time when you first opened your station, unlike the present time, was there Goodrich decals and signs advertising the Goodrich TBA products? A. At the first?

Q. Yes. A. Yes.

(4557) Q. And you maintained that while you dealt with Goodrich, of course? A. Yes.

Q. What is your TBA volume at present, Mr. Livingston? Do you have any idea? A. Well, I'd say 25%. That's—25% of our volume, approximately, our gross volume of business, is TBA. That's not counting gasoline and petroleum.

Q. Now, included in TBA, do you include mufflers and hard parts, repair parts? A. Yes.

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(4558) Q. Well, just confine your answer then to tires, batteries, filters, radiator hose, or belts, spark plugs— A. I'd say—it's hard to give you—it would have to be an awful long approximate figure, because it's without—

Q. Well, do you do a substantial amount of business in that? A. Yes, I'd say "substantial" and cover it.

Q. And would substantial be $1,000.00 a month, $2,000.00 a month? That is, just some rough idea of the amount of business you do in those items. A. Well, I'd say—now, you're including tires and batteries?

Q. Yes. A. I'd say 800 to 1,000.

Q. I see. Are these new— A. A month.

Q. Excuse me. Did you have something further? A. A month, I'd say.

Q. Oh, a month. Yes. A. Yes.

Q. Do you handle only new tires? A. No.

Q. Well, do you handle new tires too? A. Yes.

(4559) Q. You handle new tires and recaps both? A. Yes.

Q. Do you do any recapping at the station? A. No, we don't do any recapping. We handle used tires. I thought that's what you were referring to.

Q. Well, I want to find that out too.

May I see Exhibit 37-A?

That machine on Respondent's Exhibit 37-A, is a credit machine, isn't it, to stamp— A. Yes, that's an imprinter.

Q. Imprinter for the credit card? A. Yes.

Q. You only charge gasoline on that, do you not? A. No, I occasionally put down other items on there.

Q. Such as Royal tires? A. Yes.

Q. Batteries? A. Yes.

Q. And all these other items? A. Yes. I occasionally put them on there. I might say this, that I wouldn't let the fact that I'm going to lose a sale stand in my way on it. If I couldn't sell the merchandise any other way than on a Texas credit card I'd put it on there.

Q. Well, do you note on the credit slip then that this is a U. S. tire, or a— (4560) A. No, I don't.

Q. You do not. What do you call it? A. Oh, I call it a Goodrich or a Firestone. And I have left it blank.

Q. I see. Well, why don't you just put U. S. Royal on the thing if that's what you sold? A. Well, I do know what it says on the back of the credit card, and perhaps the reason I don't is I might meet with some opposition if I did put it on there. As I say, I wouldn't want to lose the

sale. I've never been reprimanded on it, so I just continue to do it.

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(4561) Q. You mentioned these dealer meetings, they discussed TBA sales, and spring and fall dealer meetings, and others. Are Goodrich and Firestone products mentioned during those meetings? A. Yes.

Q. And have you ever seen representatives of Goodrich and or Firestone at those meetings? A. Yes.

Q. Are they usually there? A. Yes, I'd say they are usually there.

Mr. Dias: I believe that's all.

Redirect examination by Mr. Royall:

Q. One or two questions, Mr. Livingston. Do you know whether or not entering other items of TBA on Texas credit cards is a common practice? A. From what I hear I understand it is.

Q. And in your case, Texas Company knows you do not buy Goodrich and Firestone tires, do they not? A. Yes.

Q. And have they ever protested at any time on your entry (4562) on a credit card, of tires? A. No.

Q. Never have? A. No.

Q. Now, the decals that you had for Goodrich, where did you get them, from the Goodrich Company? A. No, they were already on there.

Q. Already on there? A. Yes.

Q. Now, Peoria is in the Chicago Division, is it not, and Mr. Hansen came to see you from Chicago, did he not? A. Yes, sir.

Q. When did you start buying U. S. Royal tires, at the end of two years of operation? A. Well, that—I'd have to

trust my memory an awful lot, but I'd say it was at the end of—at the end of my first two years or perhaps before.

Q. Before. I see. And you didn't buy Firestone tires for any appreciable period, did you? A. No, sir.

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(4564) HENRY M. LIVINGSTON was thereupon recalled as a witness for the Respondent and, having been previously duly sworn, testified further as follows:

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Recross examination by Mr. Diqs:

Q. When you went in, in 1952, you signed one of these leases—Commission Exhibit 18—is that correct? A. Yes, sir.

Q. And it ran for one year, did it? A. To my knowledge, it did.

Q. And have you renewed it each year, or are you still operating under the same lease? (4565) A. As near as I can recollect, the first lease that I signed, I signed when I went in in 1952. I don't remember seeing another piece of paper until we moved across the street, at which time I had another one.

Q. You mean you are not in the same station now that you were in when you first went in? A. No.

Q. Tell us a little bit about that, will you? I thought you were in this same station all along. A. We are in the same corner, but not in the same location. In other words, when I first leased from the Texas Company in April of 1952, I remained there until real estate negotiations were made to move the Texaco location from there to directly south, across the street.

Q. And how long a period expired? In other words, you went in in April of 1952, into the old station. When did you go into the new station? A. I will make it easy for myself; I have been in the new station two years last August. What is that? About two and a half years we have been in the new station.

Q. I see. And when you went into the new station, what did you do with the supplies that you had in your old station—T. B. A. supplies? A. We just moved everything across the street.

(4566) Q. At that time did you have Goodrich TBA? A. We had some.

Q. It was prior to the time you moved, though, that you started to discontinue Goodrich and Firestone. A. Started, yes.

Q. I notice in this lease, too, there is a fixed sum per month and an additional amount per gallon. Has your rent been increased over the years? A. Well, I can't answer that particular type of question. We are operating on what is to us a gallonage basis rent figure.

Q. Your rent is figured strictly on the gallon? A. Well, not exactly. There is a maximum there.

Q. Well, do you pay a flat amount per month, plus so much per gallon? Is that the way you do it? A. That is the way we have been operating up to now.

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(4567) Q. What equipment on that station is owned by Texaco? Is it all the equipment? Exhibit 18 refers to certain property; the lease refers to buildings, improvements, fixtures, tools, equipment, facilities. What type of material, such as that, are in your station? (4568) A. Well, the only thing that is owned by the Texas Company is, let us say, the compressors and any fixed piece of equipment, such as pumps. Outside of that, they don't own—

Q. You own all the rest, other than those that are fixed, is that it? A. Yes.

Q. I see. A. And I think the office furniture belongs to the Texas Company. I am sure of that. The desk and a couple of chairs, and perhaps the furnishings in the rest rooms.

Q. You do not own any part of the property. A. No, sir.

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Redirect examination by Mr. Royall:

Q. As I understand it, they gave you a new lease some years after you had taken over U. S. Rubber and other non-sponsored goods, did they not? A. Yes, sir.

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(4569) EDWARD J. MIDDEN was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Give you full name to the stenographer. A. Edward J. Midden.

Q. Where do you live? A. 913 South Passfield, Springfield, Illinois.

Q. And what is your occupation? A. Service station operator.

Q. What is the location of your station? A. The correct address is 644 West Monroe.

Q. And what town in Illinois is it in? A. Springfield, Illinois.

Q. Is that in the Chicago Division? A. Yes, sir.

Q. Are you ever visited by Mr. Hansen? A. Yes, sir.

Q. And is he the TBA man from the Chicago Division? A. Yes, sir.

Q. Do you lease any of the property at this station from the Texas Company? A. I lease the station from Texaco, yes, sir.

Q. Do you have one of the standard form leases? (4570) A. I couldn't tell you; I have never seen it. I mean I have seen it, but I don't remember it.

Q. How long have—tell me how long it has been since you have had a look at your lease? A. Well, I signed one when I went in ten years ago, and then they put on another bay, and I signed another lease; but I must be very lax, because I don't remember the lease at all.

Q. In between have you had any occasion to look at it or negotiate a new one—I mean negotiate about the lease? A. No, sir.

Q. I show you Exhibit 18 in this case, and I ask you particularly whether you know if your lease contained a provision such as this one, which reads: "This lease shall remain in full force and effect for the period of one year, beginning—"—then a date—"—ending—"—then a date —"—and thereafter from year to year, subject to the termination by either party at the end of the first year or any subsequent year on ten-day notice." A. I couldn't tell you, because I know they gave me a lease, but I didn't really pay any attention to it.

Q. Is it your understanding that it is on a year-to-year basis? A. That is what I understand, yes, sir.

(4571) Q. How long have you been a lessee of the Texas Company at this location? A. It will be ten years next October the 1st.

Q. Was that an existing station at the time you took it over? A. Yes, sir.

Q. Was there any TBA in the station at the time you took it over? A. Yes, sir.

Q. Do you happen to have any recollection as to what kind of TBA was in there? A. Let's see. They had Goodyear, Goodrich, and Gates tires—just a few. They had 122 batteries—all dead.

Q. What kind? A. Am-Plus. And I took about 25 Gates belts, 50 tailpipes out to the junk yard and sold them. It was old stock. It was just a conglomeration.

Q. Did you buy that conglomeration of TBA from your predecessor? A. I bought it from his wife.

Q. What happened to the lessee? A. He died three months prior to when I bought the station.

Q. Did the Texas Company representative know that you were buying all of this TBA, including the 122 Am-Plus batteries? (4572) A. Yes, sir.

Q. Did he raise any objections to it? A. No, sir; in fact he was tickled to get rid of them for her. She was in pretty bad shape.

Q. And did you sell those Am-Plus batteries at the station? A. Yes, sir. I worked them up, and read all I could on the batteries, charged them, discharged them, and I got out pretty good on them.

Q. What is the gallonage of your station now? A. Between 28,000 and 30,000.

Q. Is that a month? A. A month, yes.

Q. Do you—well, that's an average. A. Yes, sir.

Q. Do you handle it—TBA—in that station now? A. Yes, sir.

Q. Your experience did not discourage you, then? A. No, sir.

Q. Will you tell us the reasons for handling TBA? A. Well, without TBA it would be pretty hard to make a good living in a service station; and the more you can do on a person's car when you get the car in there, the more satisfied they are going to be, and naturally the more money you are going to make.

(4573) Q. Do you figure that it increases your gasoline sales, too? A. Oh, definitely.

Q. That is, getting the cars in there for TBA helps you sell the gasoline. A. It works both ways.

Q. During the time when you have been in that station of yours, have you understood that the Texas Company recommends that its dealers handle either Firestone or Goodrich or both lines of TBA? A. Yes, sir.

Q. Will you tell me has it also been your understanding that you could handle any type of TBA you chose? A. Yes, sir.

Q. And you have had both of those understandings throughout the time you have been in the station. A. Yes, sir.

Q. Has anybody from the Texas Company ever indicated to you during the time you have been in that station that it was not the policy of the Texas Company that you might handle any TBA you wanted to handle? A. Indicated—

Q. Perhaps that question is a little complicated. Let me take it back. Has anyone of the Texas Company told you that if you did not handle the sponsored line of (4574) TBA your lease would be cancelled? A. No, sir.

Q. Or that the Texas Company would treat you badly in any other way? A. No, sir.

Q. That they would refuse to pave your driveway? A. No, sir.

Q. Or refuse to paint your station? A. No, sir.

Q. Nothing like that has happened. A. No, sir.

Q. Will you tell us, insofar as you can remember, the suppliers from whom you now buy your TBA? A. Well, I buy most from Harwood Auto Supply.

Q. And that is not either a Goodrich or Firestone dealer, is it? A. No, sir. I buy from Goodrich. A very little bit, once in a while, from Firestone; very little bit from Good-

year and U. S. Royal. And then my big other supplies, outside of the tire stores, are Harwood Auto Supply, Springfield Auto Supply, Gietel Brothers, and Sieg Automotive.

Q. You also do a little bit of business with Staab Battery Company, don't you? A. Yes.

(4575) Q. Do you buy substantially all your batteries from them? A. Practically all. Possibly one per cent of Willard, and ninety-nine per cent of Staab.

Q. Now, I think perhaps the record is not quite clear on this: After you said you bought from B. F. Goodrich, you said "very little." I think you meant very little from Goodyear and— A. Practically nothing, but I have bought from them.

Q. But you do buy most of your tires from Goodrich. A. Most of my tires from Goodrich. But if a person indicates that they want another type of tire, I will get whatever they want, including Atlas.

Q. And you have sold them Atlas? A. I have sold Atlas.

Q. When you do that, do you keep those other tires at your station? A. Yes. I had an Atlas there I got stuck with once. It was there for about almost a year.

Q. What finally happened to it? A. I tried to sell it to one of the Texaco boys, but it didn't work. I finally sold it at cost.

Q. During that year that the Texas Company representative came around, the year that the tire was in your station, did he, the Texas Company representative, ever ask you to get that tire out of the tire rack? A. No, he didn't.

(4576) Q. Or did he ever ask you to get rid of it? A. No, he didn't.

Q. Has anything like that been said to you about your Staab batteries or Gates fan belts? A. No, sir.

Q. Or about any of this non-sponsored TBA? A. No, sir.

Q. Has any threat been made to you that your lease would not be renewed if you did not get rid of this stuff? A. No, sir.

Q. Now, do you have all of the TBA which you handle openly displayed in your station? A. Yes, sir.

Q. And do you have the brand names openly displayed in your station? A. Yes, sir.

Mr. Lorenzen: I ask to have these photographs marked Exhibit 38-A, -B, -C, -D, -E, -F, -G.

Hearing Examiner Kolb: They may be so marked.

(The photographs referred to were marked Respondent's Exhibits 38-A, -B, -C, -D, -E, -F, -G for identification.)

By Mr. Lorenzen:

Q. Will you look at these pictures, Mr. Midden, Exhibits 38-A through -G, and tell me whether you recognize (4577) those as being pictures taken in and about your station? A. Yes, sir; they are.

Q. Who took those pictures? A. Mr. Hansen.

Q. He is the TBA representative of the Texas Company, do you know? A. Yes, sir.

Q. At the time those pictures were taken, did you know that the Texas Company wanted them to use in connection with some evidence? A. Yes, sir.

Q. Was any special preparation made at all in your station before those pictures were taken? A. No, sir.

Q. Is that exactly the way your station looked at the time Mr. Hansen came in? A. Yes, sir.

Q. And would you say that is typical of the way your station has looked over the past few years? A. Yes, sir.

Q. I don't mean the identical display; but that is the type of setup, is that right? A. Yes, sir.

Q. Now, do you have any Goodrich decals in your window which do not show in these pictures? (4578) A. No, sir.

Q. But you have a big lot there, do you not? A. Yes, sir.

Q. And on the way down in one end of your lot, you do have a Goodrich sign, do you not? A. Yes, sir.

Q. That does not show in these pictures. A. No, sir.

Q. Because the sign is not close to your station. A. About a half a block.

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(4579) Q. Exhibit 38-A is a sign which shows you handle Walker Mufflers, is that right? A. Yes, sir.

Q. And there are mufflers that are also sold in the Firestone line, is that correct? Do you know that? A. I don't know that.

Q. And Exhibit 38-B shows what? Gates Radiator Hoses? A. Gates Radiator Hoses, yes.

Q. And that is a Gates sign on top of your rack. A. Yes, sir.

(4580) Q. It has "Gates" on there perfectly clear, hasn't it? A. Yes, sir.

Q. And in Exhibit 38-C? A. Zerex and Prestone.

Q. And you do not get either Zerex or Prestone from a Goodrich or a Firestone supplier, is that right? A. No, sir.

Q. This work bench, which shows the additional Staab battery, Exhibit 38-D, is the picture about which you testified when Mr. Dias asked you questions just now, is that correct? A. Yes, sir.

Q. Exhibit 38-E shows your display rack, does it? A. Yes, sir.

Q. For Staab Batteries. A. Yes, sir.

Q. Do you display any Goodrich or Firestone batteries? A. No, sir. I have one Willard on there.

Q. Yes. In addition to the Staab, on Exhibit 38-E, you have one Willard. A. Yes, sir.

Q. And the name of that appears plainly on the display and in the photograph, does it not? A. Yes, sir.

Q. On Exhibit 38-F you have what is known as an additive. (4581) A. Yes, sir.

Q. Wynn Furniture Proofing, is that right? A. Yes, sir.

Q. That is not a chemical that you obtain either from Firestone or from Goodrich, is it? A. No, sir.

Q. And that sign is right out in front of your store, is it not? A. Every day, yes, sir.

Q. Then you have some Willard Battery Cables. A. Right.

Q. And those are not bought from either Firestone or from Goodrich. A. No, sir.

Q. Those are displayed, as Exhibit 38-G shows, on a rack with large letters, "Willard," on it, is that correct, Mr. Midden? A. Yes, sir.

Q. Taking all of your TBA—and I am excluding from that now anything like repair parts; don't take clutches or ignition parts or carburetors when you try to figure this out—can you tell us about what per cent of all of your TBA sales are in tires and batteries? A. Oh, I would say it would run about eight to ten per cent tires and batteries; each; and then about (4582) eighty per cent others.

Q. And substantially all of that eighty per cent others —that is accessories—is bought from some place other than Firestone and Goodrich. A. Yes, sir.

Q. And all of your batteries are bought from a source other than Firestone or Goodrich. A. Yes, sir.

Q. Does the Texas salesman representatives who call on you of course know that you display all of this TBA? A. Oh, yes.

Q. Have they ever told you to remove it? A. No, sir.

Q. Have you ever been told to hide it? A. No, sir.

Q. Put it under the counter? A. No, sir.

Q. Or has it ever been said that your lease would be cancelled if you did not stop displaying it? A. No, sir.

Q. You do handle the Goodrich tires. A. Yes, sir.

Q. Do you find that your customers have a demand for tires of a known national name? A. Yes, I think so.

(4583) Q. Do you find those easier to sell? A. Yes, sir.

Q. In addition to Goodrich, there are some other tires that would meet that qualification, are there not? A. I think I could sell equally well Goodrich, Goodyear or Firestone.

Q. And why did you select the Goodrich instead of the Firestone or the Goodyear? A. Well, before I was in business I always had Goodrich tires on my car, and I just preferred Goodrich tires.

Q. Are you sold on them? A. Yes, sir.

Q. Do you find they are easier to sell when you are sold on them? A. I couldn't sell anything if I wasn't sold on it.

Q. Is that the reason why you handle the Goodrich line? A. Yes, sir.

Q. Do you find that the Texas Company is of any help to you in merchandising your TBA? A. Oh, yes.

Q. Will you tell us what they do for you? A. They have national advertising and television, radio, and we have our Spring and Fall dealers meetings and our meetings in between; and we can get any help from the salesmen that we need.

Q. Do you get it? (4584) A. Yes, sir.

Q. Has any of that help ever been denied to you because you handled Staab Batteries and all these unsponsored accessories? A. No, sir.

Q. When you leased that station, the lessee ahead of you was also a Texaco dealer, was he not? A. Yes, sir.

Q. And he, too, leased from the Texaco Company. A. Yes, sir.

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Cross-examination by Mr. Dias:

Q. Mr. Midden, you stated that you took the station over ten years ago, is that correct? A. Ten years ago next October 1st.

Q. That is the same station you have been in continuously; you are just talking about the one station. A. Yes, sir.

Q. I take it that it was pretty much run down when you bought it. A. Yes, sir.

Q. That was 1948, was it? A. Yes, sir.

(4585) Q. Can you tell us a little bit about your negotiations for that station? Did you discuss the taking up, the purchasing of the station with the Texaco people? A. Yes, sir.

Q. Did they recommend then, at that time, that you purchase either Goodrich or Firestone TBA? A. Yes, sir.

Q. Which one did you choose? A. Goodrich.

Q. You chose Goodrich. Were supplies hard to obtain at that time? A. There was some supplies hard to get, yes, sir.

Q. For example, which ones in particular? A. Well, tires were pretty hard to get at that time; and batteries were coming back in pretty good at that time.

Q. How about hose and belts and that type of thing? A. That was all coming in pretty good. Tires were the hardest things to get at that time, if I remember correctly.

Q. After you moved in, did you purchase a supply of Goodrich TBA? A. No.

Q. You did not. A. No, sir.

(4586) Q. You just took on tires at that time. A. Just tires.

Q. Do you recall your gallonage when you first moved in there? A. It was around 13,000 or 14,000.

Q. And have you built that up? A. Yes, sir.

Q. Did you build it up the first year? A. It went up every year steadily until I reached 30,000 gallons about two years ago; and I sort of leveled off.

Q. Is Springfield considered part of Metropolitan Chicago? A. I wouldn't think so.

Q. About how far is it from Chicago? I don't know about that. A. Two hundred miles.

Q. Now, you mentioned that when you took over the station you found all those dead batteries. Did the Texaco people tell you they were dead? A. I knew about it before I bought them.

Q. You knew the condition of the station before you moved in? A. Yes, sir.

Q. You stated that you could not make a living without (4587) TBA. Have you ever run a station without TBA? A. No, but I know some fellows who tried.

Q. Is that so? But it has never happened to you. A. No sir.

Q. Hasn't Texaco told you that you have to carry TBA in order to make a living? A. They suggested that I would make a better living.

Q. I think you stated that you buy tires for a customer if he happens to want something other than that you have. A. Yes, sir.

Q. And I think you stated that you never hide them around the station. A. No, sir.

Q. There wouldn't be any occasion to hide them if you went out to buy one for the customer, put it on, and he then took off with it—drove off, would there? A. I meant that a lot of times I will get them in and it will be a week before he comes in for the tire.

Q. Do you enjoy the credit card privileges, too? A. I sure do.

Q. Do you charge this non-sponsored TBA? A. I haven't, but I don't think I would be above it.

Q. I see. A. Let me clear that up. Now, I have charged other (4588) things on the regular credit card, not the extended credit. I have gone ahead and charged on that, but I have never charged anything on the extended credit.

Q. I was not talking about the extended credit; I mean the usual five- or ten-dollar bill. A. Oh, sure. I put that on the credit card.

Q. Do you chalk it up as a "Goodrich tire"? A. No. I just put "tire" on there. It doesn't designate whether it is Goodrich or Firestone.

Q. How about some of these Staab batteries? A. They all go in there.

Q. You indicate that they are Staab batteries? A. No, there is no reason to do that.

Q. You do not mention it that way; it is just a "battery." A. I didn't know you were supposed to do that on the regular credit card.

Q. I think you stated that one of the reasons, or that some of the help that Texas Company gives you is that they do some national advertising. Now, how does that help you individually? A. Well, the more people you get into your station, the better it is. Then it is up to you to sell them. But we get a lot of comments when there is a

big TV show, and people come in. And we have our streamers (4589) and so forth, and give away items that they furnish. It all helps.

Q. But they do not help you in particular to sell Star Batteries, let us say. A. Well, I think they do. Maybe they don't, but if they get in there, why—

Q. Are you the only Texaco station in Springfield? A. No; there is about fifteen.

Q. Fifteen others. Are good operators hard to come by in Springfield? A. Yes, sir.

Q. Has that condition existed for any length of time? A. It has existed for quite some time.

Q. Is there any big industry there that takes up prospective operators? A. Yes. We have Allis-Chalmers and Sangamo Electric. They make meters and sonar equipment.

Q. Now, getting back to to the time that you first took over the station, you started purchasing from Goodrich, as I understand it. A. Yes, sir.

Q. Where is the Goodrich supplier? Who is the Goodrich supplier at that point? A. B. F. Goodrich store.

Q. And that is a store? (4590) A. Yes, sir.

Q. Where are they located in relationship to your station? A. At the time I opened they were approximately seventeen blocks away, in the downtown area.

Q. Are these other suppliers closer to your place of business? A. Yes, sir.

Q. Do any of them patronize your gas station? A. Yes, sir.

Q. Which ones? A. Harwood trades there quite a bit, and Gietel very little—just once or twice a month.

Q. How about the Star Battery people? A. They trade with me once in a while. They do a couple of tanksful a month.

Q. Do you do any repair work for them? A. Staab sends me generator work a lot of times.

Q. What all do you do at your station? A. We do all the generator and ignition work and normal station work. No overhaul work.

Q. No overhaul work? A. No, sir.

Q. How about the Goodrich store? Do they ever give you personal business, such as gas? A. Never have.

(4591) Q. Do you ever buy any batteries and accessories from Goodrich? A. I have occasionally bought. When I am down there for tires or something, if I need a couple of filters, or if I am low on some polish, I will buy some.

Q. Getting back to the time you first moved into your station, did you buy more from Goodrich at the time you moved in, at that time, than you do presently? A. No.

Q. I think you mentioned that you bought some supplies from Firestone. It was a little, apparently. A. Yes, sir.

Q. What is the source of supply there? A. Firestone store.

Q. And where is it located? A. It is about three blocks from Goodrich.

Q. Farther away from there? A. No, sir; a block closer, on an angle. But it is a block closer.

Q. You own no part of that station, is that correct. I am talking about the property. A. No, sir.

Q. What about the equipment on or in and about the station? A. Well, other than the office furniture, of course the lift, the compressor, and so on, everything in the station—all tools and equipment—are mine.

(4592) Mr. Dias: I think that is all.

Redirect examination by Mr. Lorenzen:

Q. Just a couple of things, Mr. Midden. When you say you went down to the Goodrich store occasionally to get something when you were low, is that what you would call "picking up"? A. What I meant was that if I happened to be low and I was going after some tires, then instead of going around to another place, I would just pick it up there.

Q. That is what is known in the trade as "Picking it up," is it not? A. Picking it up.

Q. You were asked whether you were the only Texaco station in Springfield, and I think you said about fifteen others. A. Fifteen others, yes.

Q. Do you happen to go into the other Texaco stations, those that are located near you? A. Oh, yes.

Q. What have you noticed with respect to whether or not they have non-sponsored TBA on display? A. Well, the three—

Mr. Dias: I will object to this unless we (4593) get the names and the times he was in there.

Mr. Lorenzen: All right.

By Mr. Lorenzen:

Q. Give us the names. A. Joe Matthys, South Grand and Glenwood, has Gates Hose; Stu Hines, McArthur and Edwards, has Willard Batteries; Carl Weitsl, at Jefferson and Walnut, has Willard Batteries. And I have been in their stations—all of them—within the past month.

Q. Are those the ones closest to you? A. Yes, sir. Two of them are just about three blocks away, and the others are about six blocks.

Q. Are you acquainted with the other stations? A. Yes. I know, outside of a couple of new operators, about every one in town.

Q. Do you know what they handle in the way of TBA? A. Well, I would hate to commit myself on the rest of them, because I don't get in there as much as these three.

Q. By the way, are you the president of the local dealers' association? A. Vice-president.

Q. And that is the Gasoline Retailers Association? A. It is called the Associated Service Station Dealers.

Q. That includes all service stations, and is not (4594) limited to Texaco. A. Yes, sir.

Mr. Lorenzen: That is all.

Recross-examination by Mr. Dias:

Q. Returning to Mr. Matthys at South Grand and Glenwood, what else does he have in there besides Gates hose? A. What else?

Q. What kind of tires? A. He has Goodrich tires and Goodrich batteries.

Q. Do you know anything about his filters? A. He has Fram Oil Filters.

Q. Do you know how long he has been carrying Gates hose? Could you tell us that? A. No, sir.

Q. And Stu Hines? A. Stu Hines has Firestone tires and Firestone belts and hoses.

Q. How about batteries? A. Batteries is Willard.

Q. And would you tell me again what the filter was? A. Stu has Fram, and some Wix.

Q. And Mr. Weitsl? A. Mr. Weitsl has Firestone; he has Firestone tires and he has some Firestone and some Gates hoses and batteries.

(4595) Q. How about filters? A. Filters is mostly Fram.

Q. Do each of these gentlemen have the large advertisement in the form of a sign outside their stations, advertising respectively Goodrich and Firestone? A. Each one has some sort of advertising.

Q. Window valences and that sort of thing? A. You mean the thing across the top of the window?

Q. Yes. A. Yes, sir. Carl Weitsl has "Firestone" on his. Stu Hines has an old-style station; he doesn't have anything on it. He has the canopy over there, and the windows wouldn't take it.

Q. Does he have the outside sign, then, showing "Firestone?" A. Yes, sir; he has an outside sign.

Q. And Matthys? A. Matthys has a sign.

Q. "Goodrich?" A. Yes, sir.

* * *

(4598) H. E. SMILEY was thereupon called as a witness for and on behalf of the Respondent, and being first duly sworn, was examined and testified as follows:

Direct examination by Mr. Royall:

Q. State your name, please. A. H. E. Smiley.

Q. And your address. A. 1616 South 79th Avenue, Omaha, Nebraska.

Q. Are you engaged in the service station business in that town? A. Yes.

(4599) Q. Are you a lessee of the Texas Company under the usual form of lease? A. Yes, sir.

Q. How long have you been a dealer in a Texaco station? A. Over 25 years.

Q. And how long have you been at your present location? A. About 15½.

Q. What is your monthly gallonage, approximately? A. Oh, around 25,000.

Q. Now, do you carry a sponsored brand of TBA, that is, one sponsored by the Texas Company? A. I handle a Goodrich product, Goodrich tires, yes.

Q. Who made the selection of that company? A. I did.

Q. What is that? A. I did.

Q. And at the time that you made that selection state whether or not you committed yourself in any way to buy any sponsored goods or any amount of sponsored goods? A. No, sir, I did not.

Q. Did you receive, four or five years ago, a letter like this that I hand you, and I will have to have it identified in a minute; did you ever receive a letter like this that I hand you except for the names and dates.

Mr. Royall: Mark this, please.

(4600) (The paper referred to above was marked Respondent's Exhibit 39 for identification.)

A. Yes, sir; I have received those in the past.

By Mr. Royall:

Q. You do not have the exact letter which you received, do you, sir? A. No, sir, I do not.

Mr. Royall: Your Honor, we would like to offer this in evidence except for the dates and names which are not applicable to Mr. Smiley.

Mr. Dias: Do I understand you received a letter similar to this, is that the situation?

The Witness: Yes.

Mr. Dias: Do you know when you received them?

The Witness: I received them in the past. I don't receive them any more because I don't purchase oil in that quantity discount. I buy it in carload lots so that I am not entitled to an extra discount.

By Mr. Royall:

Q. Did you receive them over several years in this form? A. Yes.

Q. Dating back four or five years ago? A. Yes, sir.

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(4601) Hearing Examiner Kolb: When was the last date you got that letter, if you recall?

The Witness: I would say it was approximately four years ago.

Hearing Examiner Kolb: And that is the letter you received, except for the names of the parties on it?

The Witness: Yes; maybe I can explain to your satisfaction a little bit; at the end of each year, or what (4602) would naturally be the termination of your lease they would send you 6 cents a gallon back for every gallon of oil you purchased, and a cent a pound for each pound of grease you bought. As soon as I started buying in carload lots that didn't apply so I didn't get any more letters but this is the form that they would use to send your check with at the end of the year.

Hearing Examiner Kolb: The objection is overruled. The document is received in evidence as Respondent's Exhibit 39.

(The paper referred to, heretofore marked for identification Respondent's Exhibit 39, was received in evidence.)

Mr. Royall: Now, your Honor, I would like to call to your attention a very short portion of this letter—

Mr. Dias: The last paragraph.

Mr. Royall: —the last two sentences of the last paragraph: "You are free, as you know, to select any brand of TBA merchandise which you may elect and our only interest is to help you market that merchandise at a profit to you so that your business will be more successful in every way. You are handling high quality petroleum products in there and the

earnings that can be developed through a line of quality TBA merchandise should be very (4603) important to you in the operation of your station."

By Mr. Royall:

Q. Now, Mr. Smiley, did you discuss at any time with the Texas Company representatives the matter referred to in that letter, that is, relating to your freedom to purchase any brand you wish; did you discuss that at times? A. Yes, sir.

Q. When were those discussions? A. Oh, generally when a salesman would call on me.

Q. And were there any discussions at dealers' meetings? A. Well, not as an individual but as a whole group.

Q. As a whole group. What, if anything, would the Texas Company say about the matter of your freedom of choice? A. Well, they just told us that they would like to have us promote the sale of TBA merchandise and that they assumed that we would want a major brand.

Q. Did they recommend Firestone or Goodrich? A. Yes.

Q. And did they say anything about who should make the choice between them or any other brand? A. They told us that that was our own prerogative.

Q. Did you consider yourself required to buy any particular brand? A. No, sir.

Q. Now, as between Firestone and Goodrich, you designated (4604) Firestone, did you? A. No, sir,—Goodrich.

Q. And do you carry some Goodrich products? A. I carry Goodrich tires.

Q. And are most of your tires Goodrich tires? A. Yes, sir.

Q. What percent would you estimate? A. Almost 100 percent.

Q. Now, do you carry other Goodrich products? A. No, we have nothing else with the Goodrich name on it.

Q. With the Goodrich name,—but do you carry items sold by the Goodrich distributor; do you carry bulbs, caps, car rugs, cleaners? A. Yes, we buy those from Frost Industries.

Q. Is that a Goodrich affiliate? A. Well, they are a distributor for Goodrich products.

Q. And do you buy waxes and polishes? A. Some.

Q. And wiper blades? A. Yes, sir.

Q. Do you recall any other products that you buy from Goodrich or from its distributor? A. Not right offhand, I can't, no, sir.

Q. Where do you buy your batteries? (4605) A. We buy those from Carl Anderson and Kuehn-Baymiller.

Q. None from Goodrich? A. No.

Q. Can you give us the names of—I will ask it in this way: Do you buy your other accessories partly from the Sidles Company, partly from Carl Anderson, partly from Kuehn-Baymiller, partly from Al's Auto Supply, partly from Monskey-Lewis? A. From all except Monskey-Lewis; they have gone out of business.

Q. But from the others you do buy the major part of your other accessories? A. Yes, sir.

Q. Do you recall any others from whom you buy? A. Well, we buy from Storz Supply, Clark Supply, Hulac-Chevrolet.

Q. What percentage of your TBA business, approximately what percentage consists of accessories as distinguished from tires and batteries? A. About 40 percent.

Q. And what percentage of your total TBA is batteries? A. Probably about 12 to 15 percent.

Q. Does the Texas Company assist you in your TBA program? A. Yes, sir.

(4606) Q. Can you recount some of the things they do to assist you? A. Well, yes, just this last spring there was one instance; they brought out quite a number of folders pertaining to the draining and flushing of radiators, getting winter anti-freeze out of there, and so on; our dealer magazine helps us quite a little bit in our TBA business, also their advertising, — it all tends to help.

Q. Do they assist you in any way in the merchandising of your products? A. Yes, sir; they do that; in the displaying of merchandise, better arrangements; in case they have a suggestion that they think would work out better, and it suits us, we do it that way.

Q. Do they give you advise and assistance in the matter of your record-keeping? A. Oh, yes.

Q. Now, is that assistance and any other they may render you furnished to you by the Texas Company on all your TBA, whether sponsored or unsponsored? A. Yes, sir.

Q. Have those activities been helpful to you in your TBA sales? A. Definitely.

Q. Have they tended to increase those sales? (4607) A. I would say they have, yes.

Q. And with the increase of your TBA sales what has been the effect on the gasoline sales? A. Well, our gasoline volume has steadily increased. Every month we show an increase over the previous year.

Q. Now, I forgot to ask you a moment ago: Do you buy any spark plugs from Goodrich? A. No, sir.

Q. Do you buy any battery cables, fan belts, or radiator hose? A. No, sir.

Q. Now, where are your non-sponsored goods displayed? A. In our office, in our service bays, as well as outside the building, weather permitting.

Q. Is it displayed in a manner in which it can be easily observed by those entering and coming into the station? A. Yes, sir.

Q. Have you ever hidden any merchandise? A. We have no place to hide it. We don't hide it.

Q. Have your Texas salesmen seen your non-sponsored merchandise? A. Yes, sir.

Q. Have they requested you to remove or conceal it? A. No, sir.

(4608) Mr. Royall: Will you mark this for identification as Respondent's Exhibit 40?

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Q. Mr. Smiley, does that picture correctly depict or show merchandise in your service station? A. Yes, sir.

Q Is that typical and representative? A. Yes, we always display our merchandise that way.

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Q. Is that representative of the display you have had over the course of the years? A. Yes, sir.

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(4609) The Witness: Those are Goodrich tires.

Mr. Dias: And the tire standing up at the right-hand corner, is that a Goodrich tire?

The Witness: That is a Goodrich tire also.

Mr. Dias: You don't know when it was taken?

The Witness: No, sir. I know it was taken but it was taken after we were closed and I don't know who took it or even the approximate date. I didn't find out about it until afterwards.

Mr. Dias: Do you mean this was shot through your window?

The Witness: Yes.

Mr. Dias: The picture was taken through your window?

The Witness: Yes.

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(4610) Q. Do you consider and believe, yourself, that you have a right to buy sponsored TBA of any kind you wish to? A. Definitely.

Q. And from any source? A. Yes.

(4611) Q. And do you act on that belief? A. Yes, sir.

Q. And do you buy the things you want from whom you want? A. Any time I can buy quality merchandise from anyone at a better price, that is where I buy it.

Q. Has anyone ever threatened to change or cancel your lease because of these non-sponsored items you buy? A. No, sir.

Q. Has the Texas Company ever tried to force you in any way to buy sponsored items? A. No.

Q. What are your reasons for selecting Goodrich tires? A. Well, primarily I think they are the best but when they came out with this tubeless tire they sold me on their product right there.

Q. Is there any advantage in carrying a tire well-advertised, and with an established customer demand? A. Yes, sir; I couldn't afford to advertise the way Goodrich advertises their tires. That certainly reaches all my customers.

Q. What other leading brands that fall within the category just mentioned are well-advertised and stress the customer demand? A. Well, there is Firestone, Goodyear, possibly U. S.

Q. And Goodrich? (4612) A. And Goodrich, yes, sir.

Q. What is the advantage of handling the established line of that kind? A. Well, first of all your customer acceptance. That is the biggest advantage, right there. The product is half sold before you try to sell it.

Q. What tire do you believe has the best customer demand in your area? A. Goodrich.

Q. And what about the Goodrich system of national adjustment, adjustment anywhere? A. That is a very big

item. We make our own adjustments. We don't have to contact the distributor or the company, either one.

* * *

Q. What about the matter of service to customers? A. Service to the customers?

Q. Yes. (4613) A. Well, we have always maintained that they got better service out of Goodrich tires than any other tire and Customers' Report, in a recent issue, bears us out.

Q. Are there several independent distributors in the Omaha area? A. For Goodrich, you mean?

Q. Of other tires; and TBA, in general? A. Yes.

Q. Do you buy from some of them? A. Sure.

Q. Have you had an opportunity to compare the service rendered by those other distributors and the service rendered by the distributors of Goodrich tires? A. Yes, sir.

Q. What is your opinion as between those two? A. Well, the service we get from Frost's, as far as our tires are concerned, and any other merchandise we buy from them can't be beat; it is very satisfactory.

Q. Is there any requirement by Texas, either in its lease or otherwise, for you to put up a Goodrich decal? A. No, sir.

Q. Do you have signs advertising Goodrich? A. We have decals on the windows. Those are the only signs we have.

Q. Where do they come from? (4614) A. Well, we had to call up Frost's and arrange to have them get them for us.

Q. And they were furnished to you by Frost, were they? A. Yes, sir.

Q. Is there a difficulty, sometimes, in getting them? A. Yes, sir.

Q. Now, is there any requirement by Texas in its lease or otherwise, as to the hours during which your service station shall be kept open? A. No, sir.

Q. Who determines that? A. I do.

Q. And on what basis? A. Well, when the business is there, that is when we should be open.

Q. Have you been offered other service stations by leading oil companies? A. Yes, sir.

Q. Do you know whether or not there are empty Texaco stations that have no operators? A. Yes, sir.

Q. From your general knowledge of your business, do you know whether or not the oil companies, the large oil companies, have a difficult time in getting good operators for their stations? (4615) A. Yes, sir.

Q. Do they? A. They sure do.

Q. What relation does your TBA operation bear to the profit your station makes? A. Well, without our TBA program we just wouldn't make any money; that is all.

Q. And I think I have already asked you, but I will ask you again: Does the progress of TBA in a station assist in the sales of gasoline? A. Very definitely.

* * *

Cross examination by Mr. Dias:

Q. Mr. Smiley, when did you first know you were going to testify in this case? A. Two or three weeks ago. I think that is about the correct time.

Q. And I think I missed the address that you gave to Mr. Royall. Will you give me the address of your station again? A. Yes; 50th and Underwood.

Q. Is that your only station? (4616) A. Well, it is the only one I operate. I own another service station but—

Q. Is it a Texaco station also? A. I leased it to the Texaco Company.

Q. How about this one at 50th and Underwood; do you own that property and lease it to Texaco? A. No, I lease the service station.

Q. From the Texas Company? A. Yes.

Q. What about the other station; where is that located? A. 7502 Pacific.

Q. Didn't you operate that at one time, yourself? A. No, I didn't operate it. I helped finance a fellow to operate it.

Q. You never operated that one, yourself; I mean you were never in that station? A. No.

Q. Wasn't that also known as Smiley's? A. Yes.

Q. Was that station operated concurrently with the one at 50th and Underwood? A. I ran the one at 50th and Underwood.

Q. You have been there in that location for 15 years, did you say? A. Yes.

(4617) Q. During what period of time was the station at 7502 Pacific operated? Is it still there? A. It is still there.

Q. How long has that station been at that location? A. About four years.

Q. Did you build a station on it or do you just own the property, which? A. I own the property and built the service station also.

Q. You leased the whole business to the Texas Company? A. Yes.

Q. And the Texas Company leases it to an operator, is that the situation? A. Yes, sir.

Q. Did you tell us from whom you purchased batteries? A. Carl Anderson, Kuehn-Baymiller.

Q. And how long have you purchased batteries from Carl Anderson? A. 20 years.

Q. How do you split your purchases between the two; do you buy as much from the one as from the other; that

is, from Carl Anderson as from Kuehn-Baymiller? A. I try to, yes.

Q. Can you give me some idea as to your annual purchase of batteries from Carl Anderson? A. I don't exactly break it down that way.

(4618) Q. Well, can you do it unit-wise? Is there a certain amount— A. No, I buy other things from the Andersons and I don't separate the batteries from the other items I buy from them.

Q. Does Anderson carry one or two different types of batteries? A. One that I know of.

Q. What is that you buy? A. That is Auto-Lite.

Q. And what battery do you purchase from Kuehn-Baymiller? A. Auto-Lite.

Q. Is there any reason why you buy the same battery from two different companies? A. No, only that I am on a preferred distributor buying program with Electric Auto-Lite Company and I can purchase from any distributor they have at that price.

Q. You say you are on a preferred list, are you? A. Yes, sir.

Q. Will you explain that a little bit for us? A. Well, if you buy in large enough quantities you have a better buying price that way and I generally buy my batteries 100 at a time.

Q. And you get this preferred price directly from Auto-Lite, is that it, through Anderson. (4619) A. I get the price direct from Anderson but I understand they are rebated for that type of sale.

Q. In addition to the property at 7502 Pacific you have some other property, do you not; don't you have some property at 4918 Underwood? A. Yes.

Q. And don't you have a garage on that property? A. Yes.

Q. And you operate that garage in conjunction with your service station? A. No.

Q. You do not? A. I operate that under a corporation.

Q. But I mean you are primarily connected with the garage? A. I run them both but I don't operate them together.

Q. I understand that, but you do repair work in the garage, do you? A. Yes, sir.

Q. And can you tell us what these batteries and other items that you purchase through your station, are they used in your garage in any way? A. No, sir.

Q. You purchase separately for your garage purposes? A. That is right.

Q. What other items do you purchase from Anderson? (4620) A. Oh, we buy shock absorbers, fuel bulbs, ignition parts, sparkplugs, battery cables.

Q. And from Kuehn-Baymiller? A. Approximately the same type of things, mufflers also. That is, from Kuehn-Baymiller.

Q. Would it be fair to say that most of your purchases from Anderson and Kuehn-Baymiller aside from these batteries are in the hard parts, the repair items? A. No, we get sparkplugs, mufflers, tail pipes—all of those are quite important items.

Q. They are mostly repair items, aren't they, except the plugs? A. No, I think mufflers are classed as accessory items. I know Firestone handles those in their line. That is pretty much an every-day item.

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Q. I wouldn't be interested except insofar as it might be another service station. I think you said you purchased from Storz; do you purchase from them regularly? A. Yes.

(4621) Q. Do you have a regular open account there? A. Yes.

Q. What do you purchase from Storz? (4622) A. Oh, thermostats, fuel pumps, radiator hose.

Q. Then you've been purchasing continuously? A. Well, there was a period there, for a while, that we didn't have a salesman calling on us. I don't know the reason for that, but there was a period there when we didn't buy from them.

Q. Quite a long period, wasn't it—1953 on? A. I can't tell you exactly. I know the last year and a half I bought quite a bit.

Q. You started purchasing within the last year, year and a half? A. Yes.

Q. And can you give us some idea of your volume with Anderson? A. Well, I'd say it's probably in the neighborhood of around—between $5,000.00 and $6,000.00.

Q. $5,000.00 and $6,000.00? A. Yes.

Q. Do you have an open account there? A. Yes.

Q. Is it just pickup business? A. No. We don't make any pickups.

Q. Never make any pickups at Anderson? A. No, sir.

Q. If I suggested the figure of $580.00 during 1956, would (4623) you say that was inaccurate? A. Yes, I believe I would.

Q. And about $1,300.00 during 1957 with Anderson? A. I'm quite sure that's wrong.

Q. Is there any way you could check those figures? A. Sure, I could, on my income tax return. Wait a minute now. There was one year when we were closed—I'll take that back—we were closed for about six months that one year, '56 I believe it was. I think that's right.

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(4624) Q. And then you claim that you—your station then was completed—incidentally, what was it closed for, do you recall? A. Rebuilding.

Q. I see. Completely rehabilitated, was it? A. Yes.

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(4625) Q. Do you know offhand what type of TBA is handled in that 7500 Pacific Street Station of yours—or, the one leased from Texaco? A. I believe he handles Goodrich.

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(4626) Q. And I think you stated that you made some purchases from Sidles. Can you tell us in a general way what it was that you—or, what you have been purchasing from Sidles? A. Oh, mufflers, tail pipes, some shock absorbers, floor mats.

Q. Station supplies, equipment, did you buy some of that? A. Yes, I have.

Q. And can you give us some idea of what your purchases from Sidles amounted to in 1957? A. It was very small. I can't tell you exactly. I think it was in the neighborhood of two or three hundred dollars.

Q. Now, are you talking about TBA items as we commonly talk of them, that is, tires, batteries, spark plugs, filters, fan belts, hose, chemicals, wiper blades, and that sort of thing? A. Yes.

Q. How about hard parts, or repair parts, such as mufflers, tail pipes, station supplies, equipment, that sort of thing? A. Well, I generally don't buy anything more from them than—well, something I can't get somewhere else. Sidles's (4627) service department is very poor.

Q. If I suggested to you that your purchases of these mufflers and pipes and hard parts, station supplies, and equipment during 1957 amounted to $800.00, would that sound exorbitant to you? A. That's more than I thought, if it's so.

Q. And correspondingly your purchases of radiator hose or fan belts amounted to $3.06, and chemicals, $10.80, wiper blades, $4.50. Does that sound closer to— A. Could possibly be.

Q. Do you think the figures on these parts, these hard parts, are inaccurate, do you—that it would not run up to $780.00, $790.00? A. Well, it's pretty hard to say without my checking my records on that to refresh my memory, but I didn't think I bought that much from Sidles.

Q. Have you been dealing with Sidles for any length of time? A. Yes, sir.

Q. Has your pattern of purchasing been more or less consistent with Sidles? That is, have you been buying roughly the same type thing from Sidles all along? A. Pretty much, yes.

Q. Do you think you might remember your 1954 purchases from that company? A. I'm sure I wouldn't.

(4628) Q. Do you know whether or not your purchases were more or less than at that time? A. I think they were a little bit more. The main reason for that is they've recently built a new building and they're rather disorganized. I don't know why. But our service and deliveries from them has been very unsatisfactory.

Q. Are they located farther away from your store than the Frost Industries, for example? A. No, sir. They're closer than Frost.

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(4629) Q. Are you a distribution point for any of the TBA items? A. No, sir.

Q. You stated that the percentage of accessories of your TBA—let me put it this way, 40% of your sales of TBA consist of accessories, is that correct? A. Yes.

Q. What do you classify as accessories? A. Well, fan belts, radiator hose, battery cables, shock absorbers, bulbs, floor mats, cool cushions, mufflers.

(4630) Q. Any pipes? A. Tail pipes? Yes, sir.

Q. Well— A. Oil filters.

Q. Oil filters? A. And air filters.

Q. Is that about it? A. I would say so. Did I mention spark plugs?

Q. No, I don't believe you did. A. They should be in there also.

Q. All right. Now, what is your dollar volume of sales, so that we can figure out what this 40% amounts to. In other words, 40% of what? What dollar volume? A. Well, of our—do you mean our total yearly volume? Is that it?

Q. Well, I don't know. You said the figure of 40% of your TBA sales amounted to—I mean of accessories. Now, 40% of what figure? A. Of our gross business.

Q. Of your gross business on TBA in general? Tires, batteries— A. Tires, batteries and accessories, yes.

Q. Can you give us some idea of what your gross business is in TBA? Take 1957. A. Well, I would say it would amount to around $35,000.00.

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(4631) Q. All right, sir. Then 40% of the $35,000.00 would consist of these accessories which you named. What part of that percentage would be attributable to shock absorbers, and tail pipes, mufflers—do you have any idea? Are they a big item in your station? A. Shock absorbers are quite a large item.

Q. And how about mufflers and tail pipes? A. Mufflers and tail pipes? Well, our dollar volume on that is not too large because they're not too expensive an item.

Q. How about your shock absorbers? They are an expensive item, are they? A. Well, yes. We sell shock absorbers for around $35.00.

Q. And can you give us some idea of how many of those you install in a year's time, taking 1957 as an example?

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(4633) Q. Can you give us some idea of your current inventory in your station, tires, batteries, and accessories? A. In dollar volume I would be a little hesitant on that, but I would say it would run in the neighborhood of around $6,000.00.

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Q. How much of that is represented by tires? (4634) A. Probably about—maybe $4,000.00.

Q. And is that your regular inventory, your normal tire inventory? A. Yes, sir.

Q. And those are Goodrich tires, are they not? A. Yes, sir.

Q. You mentioned that Texaco assists you in your TBA program, and you mentioned the Dealer Magazine. Is that a magazine published by Texaco? A. Yes, sir.

Q. And you also mentioned that they assist you in your record keeping. Can you tell us what that entails? A. Well, the biggest thing they have, and one of the best they have, is a follow-up system that is given to us, a lot of us in the past having used it—which is very effective. Any work that has been done on a customer's car, you have a complete record of it. There are various phases in there, different headings, for all types of work—far more than what some of the stations do. And we keep that record up to date. We know just exactly what's been done to a customer's car, what service is coming up, what doesn't need to be performed. It's very complete.

Q. Well, is that a system that they show to you and then you yourself keep it up, or do they keep it up for you? A. No. We used to keep it up. We got to be quite large. (4635) Now we have a man that comes in and keeps it up for us, gets all the follow-up cards and everything.

Q. Is that a Texaco representative, the man that comes in? A. No. But the Texas Company furnishes all of the

follow-up cards. There's probably two or three dozen different types.

Q. And is that the only type of record keeping you were referring to? A. Well, as far as the Texas Company helping us with—

Q. Yes. A. As far as I—other than our volume sales and unit sales, as far as lubrication and oil sales.

Q. TBA, do they keep track of that? A. Yes.

Q. This Respondent's Exhibit 40, this picture that was taken through your window, how long have those items been in that same position? I mean, have you changed your station about in any way? A. Oh, we change our display around periodically, but we never change the battery display other than different types of batteries, so that they will look different.

Q. Well, then, does Respondent's Exhibit 40 depict the condition of your station and your stock as it was for a period of time? A. Yes, sir.

Q. It hasn't just been rearranged or anything of that sort? A. No, sir.

(4636) Q. Do you have a Goodrich sign outside your station? A. No, sir.

Q. That is, one of those oval signs? A. No, sir.

Q. You do not? A. No.

Q. Now, do you have one of those annual leases with Texaco Company? A. Yes, sir.

Q. And is it the same—it's the lease that you signed when you first went in and it's renewed each year, is that right? A. Yes.

Q. Have you ever bought tires from Sidles or any of those other distributors in Omaha? A. Yes, I've bought some tires from Sidles. I've bought some from Firestone, and I've bought some from Goodyear. I bought some from U. S.

Q. Now, in selling those tires and in selling these other TBA items, have you ever sold those on credit? A. Yes, sir.

Q. And have you charged them—charged those items on the Texaco credit card? A. Yes, sir.

Q. And have you indicated on the credit slips that they were other than Goodrich items? (4637) A. I generally don't even name the type I sell. I just put down the size, and—

Q. Tire, whatever it may be, without mentioning names? A. That's right.

Q. I take it that the station operator situation in Omaha is pretty bad. You said that there are empty Texaco stations? A. Yes.

Q. And operators are hard to find? A. Yes, sir.

Q. Can you tell us how long that situation has existed? A. Well, it's existed for several years, because the ads in local newspapers—there's always ads there for service station operators.

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(4639) *Redirect examination by Mr. Royall:*

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Q. Mr. Dias read you a long list of items that were bought from Anderson, Baymiller, Sidles and Storz. None of the items of that character that he mentioned were bought from Goodrich, were they? A. No, sir.

Q. The—did the Texas Company ever criticize you or threaten you for the purchase of those items that Mr. Dias read to you? A. No, sir.

Q. In addition to those he asked you about, did you buy Gates fan belts from Baymiller? A. Yes, sir.

Q. He asked you about certain items under accessories, coming within the word accessories. Did you undertake to give him every minute item in that list? (4640) A. No, sir.

Q. Is thermostats, waxes, polishes, and wiper blades, for example, part of accessories? A. Yes, sir.

Q. Are the amount of inventory on hand at any particular time and the amount of sales, of specific items during a year necessarily in the same proportion? A. No, not necessarily.

Q. I see. These records suggested to you by Texas Company and part of the forms furnished to you by Texas Company, were they available and used for non-sponsored TBA as well as other TBA? A. Yes, sir.

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Recross examination by Mr. Dias:

Q. Mr. Royall mentioned thermostats, waxes, polishes and these other accessories. Is it my understanding that you buy nothing from Frost except tires? Is that all you buy from Frost? A. No, no. I buy some waxes, gasoline cans, some floor mats.

Q. How about fan belts, hose? A. No.

Q. None of those? (4641) A. No.

Q. Oil filters? A. Yes, I buy some filters from them, and I also buy batteries I had from them.

Q. You buy no batteries from Frost? A. No, sir.

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(4642) WILLIAM V. BROOKS was thereupon called as a witness for the Respondents and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Mr. Brooks, did you give your full name to the stenographer? A. Yes, I did.

Q. And did you tell him where you lived? A. No, I didn't.

Q. Would you? A. 1402 Hancock, Bellevue, Nebraska.

Q. What is your occupation? A. I run a service station and garage business.

Q. What type of gasoline do you sell? A. I sell Skelly.

Q. And this particular station or garage, is it owned by you? A. I own the premises, yes.

Q. When did you become a Skelly dealer? A. I acquired that business in September of 1955.

Q. And did you—when did you begin operating it? A. September 1955.

Q. Before that time did you have any connection with the Texas Company? A. Yes, sir.

(4643) Q. And what was that connection? A. I leased a Texaco service station at 13th and Harrison in Omaha, from July of 1950 through most of December of '55, an overlap there.

Q. Where was that located? A. 13th and Harrison, Omaha.

Q. And did you have an interest in another Texaco station also? A. I also had another Texaco station at—right across the street from the premises I now own, at Mission and Fort Crooks in Bellevue.

Q. And that—you had that interest from December '55 to September '56? A. No, sir, I had that from about March of '55 until September of '56. I had all three of them for a while.

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(4644) Q. Before that—before 1950, did you have any connection with Firestone? A. I was an employee of Firestone Tire and Rubber Company.

Q. Were you a salesman? A. I was a salesman and store manager at various times.

Q. In those capacities did you sell Firestone products to gasoline sub-stations? A. I did.

Q. Including some stations that sold Texaco gasoline? A. Yes.

Q. Did you have to sell the Texaco stations the Firestone products or were they delivered to you? A. I had to sell them the same as the rest of my customers.

Q. Did you find that the Texas employees were helpful to you in any way in connection with your selling Firestone TBA to the stations? A. Yes, sir, they were helpful.

Q. But who did the selling? A. I had to sell them.

Q. And you yourself did the selling to the Texaco stations? A. Yes, sir.

Q. Now, by the way, when you are endeavoring to sell a service station, or were trying to sell them, Firestone TBA, and you found they were handling some other line of TBA, could you (4645) accomplish that change over by making one call on them? A. No, sir.

Q. Did you ever accomplish it by making nothing more than a telephone call? A. No, sir.

Q. How many calls would you say it would take for you to win over a service station account to your line where he is handling something else?

* * *

(4646) The Witness: Well, many times eight or ten, and many times as many as I wanted to call. I'd never do more than split his business, get a portion of it.

By Mr. Lorenzen:

Q. Now, by the way, was one of the accounts to whom you sold the account of a Texaco dealer by the name of Zaloudeck? A. Yes, sir.

Q. Where was his station located? A. It would be at 13th and Deer Park in Omaha.

Q. And is—what's his full name? A. Jim.

Q. It's Jim, but I want to get his—your Honor, do you have a record of that witness? I'd like to just be sure it's the same man, James Zaloudeck in Omaha.

Hearing Examiner Kolb: James L. Zaloudeck, I guess, yes.

By Mr. Lorenzen:

Q. Is that the James L. Zaloudeck? A. I believe that is right.

Q. And he was a Texaco dealer in Omaha at one time? A. Yes, sir.

Q. Then do you know—he stopped being a Texaco dealer and for a while he was a Mobile dealer? A. Yes, sir.

Q. That's the same man? (4647) A. That's right.

Q. During what years were you his salesman? A. I called on him from the fall of 1949 until the middle of summer of 1950, when I went to—went into business for myself.

Q. During that time did you ever hear any Texas Company employees threaten him with reference to his TBA purchases? A. No, sir.

Q. There was some testimony by him, the date is not clearly fixed, it appears about pages 1241 to 1244, and the final upshot of it is that while he handled Auto-Lite batteries, he is supposed to have told this witness that he was going to have to stop handling those and display Firestone batteries because the Firestone representative had told him that that's what he had to do. Now, I want to know whether during the time you were his Firestone representative, your ever told him anything like that? A. No, sir. Jim and I were very good friends. He handled my products when I was on the territory.

Q. And you never made any threat to him of any kind? A. No, sir. He serviced my cars too, two of them, and that—I mean, we had a mutual arrangement.

Q. By mutual arrangement you mean he serviced your cars and in exchange he bought your products? A. Right.

(4648) Q. And that was the Firestone line? A. Right.

Q. Now, when you decided to go into business yourself, you mean you took a lease on this Texas station in Omaha? A. Yes, sir.

Q. Now, at that time had you reached any conclusion about the TBA you were going to handle? A. Well, I took the Texaco station as an outlet for TBA. That was basically why I went into business, for TBA, rather than gasoline.

Q. And what TBA were you going to handle? A. Firestone.

Q. That was the TBA which you had been selling? A. Yes, sir.

Q. Do you know whether at the time you obtained this lease you were acquainted with the Texas Company's TBA policy and the program? A. I feel that I was acquainted with it, yes, sir.

Q. You knew they recommended Firestone and Goodrich to their dealers? A. Yes, sir. At that time Firestone, alone, I believe. I don't believe Goodrich at that time.

Q. Well, that's because there was no Goodrich supply point, was there? (4649) A. No, there was not.

Q. At that time neither Goodrich—the nearest Goodrich supplier was several hundred miles away, down in Kansas City, is that right? A. I am not aware about that. At least it wasn't in my mind to handle Goodrich.

Q. The Goodrich supply has come in since. A. Yes.

Q. That was not in existence at the time. A. Not as a Goodrich supply point.

Q. Did you also know whether or not the Texas dealers could buy TBA from any other place they wanted to? A. Will you restate the question, please?

Q. You said you knew the policy of the Texas Company. It was to recommend Firestone, in your case. A. Yes, sir.

Q. And I wanted to know whether you knew anything about the Texas Company's policy about buying from other sources than Firestone. A. Well, I ran against that while I was selling, yes.

Q. You knew that the Texas Company dealers could buy from any place? A. Yes, sir. There is a dealer present —Mr. Smiley—whose business I could never get, except split.

Q. Did you try to get it? (4650) A. Yes.

Q. But you did not succeed. A. I split it. With U. S.

Q. He handled U. S. Tires? A. At that time.

Q. And you only succeeded in selling a part of your line, is that right? A. That's right.

Q. Were any threats ever made, as far as you know, against Mr. Smiley by any Texas Company people to get him to buy your products instead of U. S.? A. No, sir. He and I became good friends, and that is why I sold him.

Q. Then you did start in your station handling the Firestone line, is that right? A. Yes, sir.

Q. Did you buy TBA from any other source? A. Well, yes. I suppose I bought from some other sources. A very small amount.

Q. You were a Firestone dealer? A. Basically I was a Firestone dealer, went into business to handle Firestone. There wasn't any reason for me to handle from any other sources unless there was some time—unless there was something I couldn't immediately get from Firestone.

(4651) Q. You bought some things from United Auto? A. Those were usually chrome items I couldn't buy from Firestone, or I could usually get a better dollar and cents buy.

Q. Where you could get a better dollar and cent buy you bought from them. A. Yes, sir.

Q. Those items included spark plugs, did they not? A. No spark plugs from United Auto.

Q. How about waxes and polishes? A. Yes, sir.

Q. Cleaners? A. Yes, sir.

Q. Did you buy anything from Sidles? A. I didn't buy anything from Sidles until they had a change in salesmen; then I bought substantially from them. Not in TBA so-called, but in parts, ignitions, brakes—that sort of thing.

Q. Didn't you buy Gates? A. I did buy Gates hose from Sidles.

Q. Didn't you buy all your radiator hose? A. All of my radiator and fan belts from Sidles.

Q. Those were plainly marked with a Gates label, were they not? A. Yes, sir.

(4652) Q. And displayed by you? A. Yes, sir.

Q. You made no effort to hide them. A. No, sir.

Q. Did anyone ever, from Texas Company, tell you to hide those? A. No, sir.

Q. Hide any non-sponsored items of TBA? A. No, sir.

Q. Did they ever tell you the Texas Company would be better to you if you handled all sponsored items? A. No, sir.

Q. Now, you also bought seat covers, did you not, from the Omaha Custom Cover Company? A. Yes, sir.

Q. And that is 100 per cent. A. Yes, sir.

Q. But none of those from the Firestone line. A. No, sir.

Q. Did you buy anything from the Auto Electric Company? A. I bought from them for a while, and then they had a change of salesmen and I dropped them; and later, in 1955, when I opened up my own garage, I now buy from them quite substantially in ignitions and plugs and that type of thing.

Q. How about Wynn's additive? (4653) A. I buy from the—I buy that from the Remde Distributing Company in Omaha.

Q. You bought that from the same company while you had the Texaco station did you not? A. Yes, sir; that is the only supply point on that.

Q. And you displayed that additive, did you not? A. Yes, I did.

Q. Was it your understanding that you could buy it, the TBA, from any source you wanted to buy from? A. It was.

Q. While you were a Texaco dealer? A. It was.

Q. Did you, in choosing the TBA you bought, choose the line which you thought would be most profitable to you? A. Yes, sir. That is why I selected it.

Q. That was the basis for your selection. A. Yes, sir.

Q. Did any pressure or any threat by the Texas Company have anything to do with your selection? A. No, sir.

Q. What do you find with respect to the customers' demand for tires with reference to whether they ask for a particular trade name or want a well-known trade mark tire or something else? (4654) A. I feel by far that most of your sales will be to a well-known brand, such as the one I handle—Firestone.

Q. Do you agree with Mr. Smiley that the Goodrich tires are the best tires in the business? A. I believe I will have to disagree with him.

Q. Do you think that your choice of Firestone makes for the best tires? A. Yes, sir.

Q. The ones most easily salable? A. Yes, sir.

Q. And that is why you handled them. A. Yes, sir.

Q. And you continued to handle Firestone since you went with Skelly, did you not? A. Yes, sir.

Q. In addition to you handle a few Hood tires? A. A few Hood tires.

Q. Will you tell us why you handle those? A. Well, some of my Skelly customers, when I moved into that building, do prefer Hood. For them I do handle them.

Q. How about batteries? Do you find that customers ask for batteries by trade name, the same way they do for tires? A. No, sir.

(4655) Q. How do you sell batteries? A. In other words, a customer comes in and we check his car and find he needs a battery; we put in a battery—period.

Q. And he accepts your judgment on that. A. Yes, sir.

Q. Now, how about when you started in to sell batteries; did you stock some wet charge batteries? A. Firestone Wet Charge, yes, sir.

Q. There came a time when Firestone came to dry charge, did they not? A. Yes, sir.

Q. After that you did stock nothing but dry charge. A. Nothing but dry charge.

Q. Did you find that was more satisfactory from your viewpoint? A. I could carry more dollar stock with less inventory tied up.

Q. No suggestion was ever made to you that you are supposed to hide any TBA. A. No, sir.

Q. That was not on the sponsored list—anything of that kind. A. No, sir.

Q. While you were a Texaco dealer, did you find that the Texas Company gave you any assistance in merchandising (4656) TBA? A. I felt they gave me a lot of assistance in merchandising, yes.

Q. What type of assistance? A. Through sales meetings, through the help of their company display man that used to come around, who would set up my counters for me if I so desired, or re-arrange them into more attractive displays. Through my banners, or through their banners, I mean, that they send out in their display cartons which say "Drain your Anti-Freeze now and put in Anti-Rust" and that type of thing.

Q. Do you or did you find and do you now find that TBA is necessary to your service station business? A. To my business it is very necessary. As I said, that is why I went into business, to handle TBA.

Q. Do you find you make a profit on your own TBA sales? A. Yes, sir.

Q. Does it also attract customers for your gasoline sales? A. Yes, sir; it does add. I think, likewise, gasoline attracts customers for my TBA.

Q. You did buy from Carl Anderson and Company while you were a Texaco dealer, did you not? A. Very little, as I recall.

Q. Did you buy from a salesman by the name of Garvey? (4657) A. I did buy from Bob Garvey while he was on territory. His wife happened to be a friend of mine.

Q. He was an Anderson Company salesman? A. He was an Anderson Company salesman, yes.

Q. Did you continue buying from Anderson when you obtained your own station? A. I don't recall. I buy but very little from them, and I may have been buying from them a short while after I opened my own station while Garvey was still on territory. I don't recall if he left prior to my buying my own station or not.

Q. Since Garvey has left, do you buy anything from Garvey? A. Very little. His wife was a Firestone employee. That is how I come to know Garvey.

Q. Then is the Anderson Company in the TBA business the same way as the Firestone Company? A. No. I would say that their lines are very nearly all different. Anderson handles more ignition, brakes, and repair parts; while Firestone handles more the accessory line. There may be a few items that do conflict.

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(4658) *Cross examination by Mr. Dias:*

Q. Mr. Brooks, what items did you buy from Carl Anderson? Weren't they in the ignition line and that type of thing? A. Very probably. I just don't recall exactly. I have a shop man that does most of that buying for me.

Q. You mentioned, too, that at the time you were selling Firestone there was no Goodrich supply point in all of Omaha. Is that right? A. I don't know. At least I didn't feel that Goodrich was any competition to me in my sale of tires. Not as much as U. S. and some of the other rubber companies.

Q. Could you place the time that that situation existed, that Goodrich was not a factor in the Omaha market? A. Well, I was on territory for Firestone from the Fall of 1949 into—excuse me; that is the Fall of 1948 through the middle of the Summer, until I opened my own station in July 1950.

Q. I see. What is the Firestone supply point in your area? Bellview, for example? A. Well, I am a district dealer. I buy out of Kansas City and out of the district warehouse. There is a Firestone at 20th and Harning.

Q. The Firestone store at 20th and Harning is the (4659) primary supply point, is that correct? A. What do you mean by "primary"?

Q. For the Texaco stations that buy Firestone products. Normally they get their products from that Firestone store, is that right? A. I would say probably most of them do. I am not aware, though. I know the ones I called on I did not call on from the Firestone store. I called on the larger ones through the district office.

Q. You were employed by the district office, rather than the store, is that it? A. Yes.

Q. I see. Now, are you a distributor for Firestone? Is that the situation? A. Well, I don't know if I am a distribu-

tor. At one time I had three stations of my own. In other words, the two leased stations, plus my own. And I had a couple of other small dealers that did buy some from me.

Q. While you had those three stations, where did you get your Firestone supplies? A. My tires from the Omaha District Office; and my accessories and batteries from the Kansas City warehouse.

Q. In other words, you bought direct rather than through the Firestone store. (4660) A. Yes, sir.

Q. And you say you handled some of the others—you were a supply point for some of the Texaco stations, is that correct? A. No, sir; other than the two I leased.

Q. Yes. A. No other Texaco stations.

Q. But other type stations. A. Small stations that bought two or three tires at a time. I would be able to deliver them some tires.

Q. Where were your purchases delivered? Were they delivered to your Texaco in Bellview? A. The Texaco in Bellview, yes.

Q. Did you, in turn, then furnish the supplies duly needed at the Skelly station across the road and the one in Omaha at 13th and Harrison? A. Yes, sir.

Q. Did you also handle appliances there at the Bellview station, the Bellview Texaco station? A. They were purchased through the Bellview Texaco. However, my store was across the street at the Skelly. It is a large building.

Q. But the purchases were made through Bellview Texaco, is that right? A. Since that is where my contract with Firestone already existed.

(4661) Q. And those appliances were Firestone appliances, is that correct? A. Yes, sir.

Q. Did you sell those appliances on Texaco credit cards? A. I never sold any appliances on credit cards. I never had it come up.

Q. I see. All right. Can you tell us why you discontinued your Texaco station? A. Yes, sir. I wanted to have a bigger building. And, as I said before, I previously went in business to merchandise TBA rather than gasoline, and I was becoming financially able to move into a bigger building, and had the opportunity to buy this one.

Q. Was your concentration on TBA—did it reach a point where your gasoline sales dropped some? A. No, sir. My gasoline sales kept building.

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(4662) CECIL BAIRD was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

(4663) *Direct examination by Mr. Royall:*

Q. What is your name? A. Cecil Baird.

Q. What is the address and location of your service station? A. The address is 2934 West Broadway, Council Bluffs, Iowa.

Q. You are a lessee under the usual form of Texas Company lease? A. Yes. Third party.

Q. How long have you been a lessee? A. A little over seven years.

Q. What is your monthly gallonage? A. Approximately 18,000 gallons a month.

Q. Now, what brand of sponsored goods do you handle? A. Firestone.

Q. When did you first start to handle Firestone goods? At the time your station opened? A. I started in the beginning with Firestone.

Q. Did you have any conversation with Texas Company at that time about the recommendation they made? A. Not that I recall, no, sir.

Q. Who selected the Firestone line? A. Well, it was my selection on the recommendation of (4664) a friend of mine, who was in the business. He had been very successful with Firestone and I knew nothing about merchandise, and I went right along with his counsel and advice.

Q. Did you commit yourself in any way then, or later, to buy any particular amount or buy any sponsored goods from Firestone? A. What was the first part of that?

Q. Did you agree with the Texas Company to buy sponsored goods? A. No, sir.

Q. From Firestone? A. No, sir.

Q. Did you consider yourself an independent and free agent in the purchase of TBA wherever you wanted to purchase it. Do you so consider yourself? A. I certainly do.

Q. Has Texas Company in any way sought to force you to buy TBA from Firestone? A. No.

Q. Or from anyone else? A. No.

Q. Did you display your merchandise, both sponsored and unsponsored, in your station? A. Yes.

(4665) Q. Did you conceal any of it? A. No, sir.

Q. From whom did you or from whom do you now buy your batteries and tires? A. I now buy batteries and tires exclusively from Firestone Tire and Rubber Company.

Q. Do you buy anything from the Sidles Company? A. Yes, sir.

Q. Does that include about half of your caps and about half of your radiator hose? A. At one time yes; at the present time it includes most of them.

Q. Most of them. Does it include about half of your thermostats? A. Yes.

Q. Do you also buy from Sidles Company anti-freeze, filters, spark plugs, and wiper blades? A. Yes, in some quantities.

Q. Some quantities; that's right. Now, do you also buy from the Council Bluffs Auto Parts Company? A. Yes, sir.

Q. Do you buy about half of your caps from them? A. Yes. No, not caps. I don't believe so.

Q. Did you buy—? A. I did at one time, yes.

Q. And I believe you said you changed. (4666) A. Yes.

Mr. Dias: What is a cap?

The Witness: Pressure radiator caps.

By Mr. Royall:

Q. Any seat covers you buy you buy from them, do you? A. That's right.

Q. And do you buy about half of your thermostats or did you buy about half of your thermostats? A. Yes.

Q. Now, these items that I have just mentioned—excuse me; strike that. Do you also buy from the Council Bluffs Auto Parts anti-freeze, some of your spark plugs, and some of your wiper blades? A. Yes.

Q. From whom do you buy your mufflers and tailpipes? A. Mostly all together from Sidles Company.

Q. Do you buy anything from Storz? A. Sometimes.

Q. Some accessories? A. Yes.

Q. Do you buy from Paxton and Gallagher? A. Yes.

Q. Do you buy from them a part of your bulbs? A. Yes. A considerable amount of them.

Q. Nearly a hundred percent, right? (4667) A. Nearly so.

Q. And you buy about half of your car rugs from them, do you not? A. Yes.

Q. And you buy eighty per cent of your fan belts from them, or approximately that amount. A. No. I do on radiator hose, but not fan belts.

Q. That's right. Now, on cleaners, do you buy cleaners from them? A. In the supply line, yes.

Q. And you buy also some spark plugs from them, do you not? A. Yes.

Q. Do you buy accessories from Ballinger Automotive Service? A. Yes.

Q. And does that include a number of products? A. Yes, it does.

Q. Do you buy about half of your spark plugs from the United Auto Supply Company? A. It is a higher percentage than that now.

Q. What would it be? A. It would be about ninety per cent.

Q. And your waxes and polishes? A. Most of that is from the United Auto Supply.

(4668) Q. You buy some accessories from the Dutch Mill Distributing Company and the Warren Douglas Chemical Company and the Bardahl Oil Company? A. Yes.

Q. Now, none of those companies I mentioned sell Firestone products, do they? A. Not to my knowledge.

Q. Yes, sir. And the products you buy from them are not Firestone products. A. No.

Q. What part of your total TBA is in accessories such as I have asked you about? A. Approximately two-thirds.

Q. I believe you stated you displayed that TBA, sir. A. Yes.

Q. And you keep it where it can be seen? A. Yes.

Q. Has Texas Company or any Texas Company official or salesman ever told you not to display it or to conceal it? A. No, never have.

Q. Now, some items, small items, are also, whether sponsored or unsponsored, are sometimes or usually stored indoors, are they not? A. That's right.

Q. That is something that applies to filters, sir, is (4669) it not? A. Yes.

Q. And sometimes to spark plugs—no; perhaps not. A. Maybe I misunderstand when you say "indoors."

Q. I mean not put on your shelves. A. Filters are always on display. Spark plugs are under lock.

Q. Yes, that is what my question had reference to: under lock. Now, has any salesman ever threatened you about a cancellation of your lease because of your large purchases of accessories? A. No, sir.

Q. Has any salesman or official of or any representative of the Texas Company ever told you you must purchase TBA as they direct or request? A. No, sir.

Q. Now, does the Texas Company assist you in any way in your TBA sales and promotion? A. Yes, they do, directly and they do it indirectly too.

Q. What do they do directly? A. Well, they have helped many times on displaying of merchandise and in suggesting of outdoor displays. They have gone with me as a representative, door to door solicitation. They have worked on the drive with me (4670) from time to time, helping sell the customer add-on items when they buy gasoline at the pumps. They helped through their dealer meetings, as well as through their publications, through their window advertising, the spots and streamers, and their weatherproof banners.

Q. Have all those matters helped you in your TBA sales? A. Yes, it certainly has.

Q. Have they advised you as to methods of merchandising? A. Yes, they advise quite frequently.

Q. And do they render that service, both for sponsored and for unsponsored goods? A. Yes.

Q. I believe you gave an explanation of why you selected Firestone. Do you still prefer Firestone to any other of the brands? I am talking about tires. A. In their rubber line I do.

Q. As to Firestone tires, do you? A. Yes.

Q. Are you familiar with their service, the service that they render? A. Yes.

Q. Is that satisfactory to you? A. Yes.

Q. Do you consider that service better than the service rendered by other brands? (4671) A. No, I don't think I could say that.

Q. All right, sir. Now, is there any restriction imposed on you by lease or otherwise on the hours that you must keep your station open? Are you limited? A. No, there is no restrictions of any kind. It is suggested that I be entirely competitive. Of course, my hours are my own selection.

Q. Now, has your TBA increased? A. Yes.

Q. And has your gasoline sales increased? A. Well, considerably, yes.

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Cross-examination by Mr. Dias:

Q. What is your source of supply of Firestone products? A. The Firestone district.

Q. District store or warehouse? A. That is the warehouse. The Kansas City warehouse on home and auto supplies, and the other on tires and tubes.

Q. You stated your preference for Firestone tires. Would you mind telling us why you prefer Firestone tires? A. Well, I stated in the beginning that I was not a merchandiser. I didn't know anything about any of the products and I selected Firestone on the advice of a friend who is handling Firestone and was very successful.

(4672) Q. Does their national advertising have anything to do with your choice? A. No; it didn't have anything to do with my choice.

Q. Did you say that you buy your batteries and tires exclusively from Firestone? A. I do now. I didn't always.

Q. I missed the date that you started in business. Would you mind letting me have that again please? A. It was sometime in the month of June, 1951.

Q. And you have been at the same location ever since then, have you? A. Yes.

Q. Are conditions in Council Bluffs the same as they are in Omaha, as to finding operators for stations? A. Very much the same. That is because they are adjacent to each other.

Q. You stated that you have a third-party lease. What does that mean? A. Well, that is a standard lease that you have looked at there, I think.

Q. You do not own the property and lease it to Texas and rent it back, do you? A. No. An investor owns the property. He leases to the Texas Company. They lease to the dealer.

Q. Do you handle anything else in the Firestone line (4673) other than the batteries and tires? A. Oh yes. I have fan belts exclusively. I buy a number of chemicals and additives from them, the same as I do the local supplier.

Q. So that while you buy the batteries and tires exclusively from Firestone, you also handle other items in there, in their TBA line, is that correct? A. Yes, and even in the same brand name they distribute it, but get it from local suppliers.

Q. What is their brand of filter, for example? A. They have two brands of filters, at the present time.

Q. Firestone has? A. Firestone is one brand, and the other brand is A-C.

Q. And, as I understand it, you buy your A-C filters from another source. A. I do. Local.

Q. Who would that be? A. Sidles.

Q. Do you do repair work at your place of business? A. In a sense, yes.

Q. You give Sidles quite a bit of business in the so-called hard parts, do you not? That is, mufflers, pipes, and ignitions? A. Yes. Most of that is the Ballinger Automotive ignitions.

Q. You also said that accessories represent two- (4674) thirds of your TBA. What is your current inventory of TBA items? Do you have any idea as to that? A. It would have to be approximate. Approximately $3,000 in the accessories line.

Q. Not in the accessories. I mean the total—tires, and accessories. What would be your total inventory. A. Around $6,000.

Q. And of that, then, I take it that tires and batteries represent $3,000 of the total. It would represent about half of your inventory. A. Yes.

Q. Is that your normal operating inventory? A. Except towards year-end.

Q. What happens at year end? A. We try to reduce our inventory way down.

Q. Then, in addition to tires and batteries which represent about $3,000, or half of your inventory, there are these other items that you purchase from Firestone, is that correct, that is also part of your TBA inventory. They are included in the total of $6,000. A. Oh, yes.

Q. Then can you tell me what you mean when you say that two-thirds of your total TBA is in the accessory line? Do you mean two-thirds of your sales are accessories? (4675) A. That is what I mean to say.

Q. Is that the dollar volume of sales that you mean? A. Yes.

Q. In other words, tires and batteries do not move. Tires and batteries just don't sell. A. Maybe I should put it this way: I am not the tire and battery salesman that I am on the other line.

Q. I see. What are your TBA sales monthly, let us say? Can you give us some estimate of that? A. Probably average around $1,500 a month.

Q. Then is it your testimony that a thousand dollars of that $1,500 is in accessories? A. Yes, sir.

Q. Which would include these filters and other items that you also buy from Firestone. A. Yes.

Q. But your operating inventory is about a total of $6,000 worth of TBA, of which half, at least, is tires and batteries, is that correct? A. I think so.

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(4676) LARRY O'BRIEN was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Give your name to the reporter. A. Larry O'Brien.

Q. Where do you live? A. Lincoln, Nebraska.

Q. What business are you in? A. Service station.

Q. Where is that station located? A. 2101 South 10th, Lincoln, Nebraska.

Q. How long have you had a business at that location? A. A little over six years.

Q. Do you lease that station from someone? A. From the Texas Oil Company.

Q. And you have been a lessee for the whole time? A. Yes, sir.

Q. Do you know whether your lease is the same kind of lease we have been talking about, that is, the kind that renews itself every year? A. Automatically renewed, yes.

Q. And it is subject to ten-day cancellation at the (4677) end of any year. A. By either party, yes.

Q. But at the end of any year, is that right? A. Yes.

Q. And approximately what is your gasoline volume at the station now? A. Around 20,000.

Q. At one time was it higher? I mean lower? A. Yes, it was.

Q. What was it when you took it over? A. Around 12,000.

Q. Then you built it up to around 28,000, did you? A. Yes.

Q. And now it has fallen off a bit. A. Fallen off a bit, yes.

Q. During the time that you have been at this station have you handled TBA? A. Yes.

Q. Will you tell us the reasons for handling TBA? A. Well, I believe the public demands it when they come in there in their car and you have got to have the two worked together—the gas and the TBA—to make a little money on the TBA as well as on the gasoline.

Q. Since you have been in the station, have you had an understanding as to what the Texas Company's TBA (4678) policy and program is? A. Yes.

Q. And what has been your understanding? A. Well, that I am free to buy where I choose and they would like to have you stay with the major brands. But I am free to buy where I choose at the best price.

Q. In addition to that, they do, I hope, recommend to you Firestone and Goodrich, don't they? A. Yes, they do.

Q. And that recommendation has been made to you? A. Yes.

Q. Now, have you, since you have been a dealer, acted in accordance with that understanding, that you could buy wherever you choose? A. Yes.

Q. Has anyone from the Texas Company ever told you that if you did not buy sponsored line of TBA—that is Firestone and Goodrich—that your lease might not be renewed at the end of one year? A. No, sir.

Q. Did anything like that ever happen? A. No, sir.

Q. Or did they tell you that they would regard you with less favor in some other way, such as not paving your driveway or painting the station, or something like (4679) that? A. No.

Q. Nothing like that has ever happened. Now, your habit of buying TBA has changed somewhat in the course of the years, hasn't it? A. Some.

Q. At one time you bought quite a good deal of Firestone, did you not? A. Yes.

Q. Now, tell us, there came a time when you discontinued that, did there not? A. Yes.

Q. About when was that? A. Oh, I would say about a year and a half ago or two years probably.

Q. What was the occasion for discontinuing that? A. Well, the supply was the main reason.

Q. That is, you were not as happy about the supply situation as some of these other witnesses have been, is that correct? A. That's right.

Q. And you had a disagreement with the supply point. A. With the local supply point.

Q. With the local supply point. A. Yes.

Q. At that time what line did you change to? (4680) A. Well, in tires I went to Inland Tires, and as far as batteries, I went to Delco batteries.

Q. From whom did you buy it? A. F. D. Wilson Sales Company.

Q. During much of this time, have you also handled Gates fan belts? A. Yes. I think practically all the time I handled Gates fan belts.

Q. Did you have those openly displayed? A. Yes.

Q. On a Gates display rack? A. Yes.

Q. With the Gates name on it? A. Yes.

Q. And the Gates name on the sleeves of the fan belts? A. Yes.

Q. During the time that you handled Inland Tires and Delco Batteries, did you have those openly displayed? A. Yes.

Q. With signs? A. Yes, on the inside of the station.

Q. That is, the Inland Tire Company was displayed in a stand marked "Inland," is that right? A. Yes.

Q. Where anybody could see? A. That's right.

(4681) Q. I show you an exhibit which has been marked Exhibit 19 for identification, and I ask you whether that is a fair picture showing your display of Gates fan belts. A. It is.

Q. Is that the way it has been for a number of years? A. Yes.

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(4682) (The photo referred to, heretofore marked for identification Respondent's Exhibit 19, was received in evidence.)

By Mr. Lorenzen:

Q. You did not make any special arrangement to have this picture taken, did you? A. No, sir.

Hearing Examiner Kolb: The picture is in evidence, Mr. Lorenzen. There is no need for any further elaboration on it.

Mr. Lorenzen: I ask to have this picture marked for identification as Respondent Exhibit 41.

(The photo referred to was marked Respondent's Exhibit 41 for identification.)

By Mr. Lorenzen:

Q. I show you Exhibit 41 and ask you if that is a fair representation of your display of Inland Tires and Delco Batteries during the time when you were handling them. A. Yes, sir; it is.

Q. Do you know about when that picture was taken? A. About the same time the fan belt picture was taken, I believe.

(4683) Q. Under the same circumstances as the fan belt picture is that correct? A. Yes, sir.

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Q. For how long a time did you continue to sell the Delco Batteries and Inland Tires? A. Well, sir, I still have some of them there.

Q. Are they still openly in display? A. Yes, sir.

Q. Where they can be seen? A. Yes, sir.

Q. There came a time, however, did there not, when you decided to go back to selling more Firestone Tires and batteries, is that right? A. Yes, sir.

(4684) Q. Will you tell us how that came about? A. Well, I would say they had a good salesman.

Q. Firestone had a good salesman? A. Must have had. But instead of going through the local store, I buy direct from the Kansas City warehouse.

Q. Do you get a better deal financially on them? A. Better price.

Q. Are your deliveries now satisfactory? A. Yes.

Q. Will you tell us whether you make more or less money on selling Firestone batteries now as against Delco? A. Well, I believe I do, for the reason that they are easier to sell.

Q. And how about Firestone Tires and—Firestone tires as against Inland tires? A. They are definitely easier to sell. You make more money on them.

Q. Do you also buy and display—I will take that back. About when did you go back to this buying from Firestone and buying from the warehouse? A. Oh, I would say about a year ago.

Q. Now you buy a substantial number of your batteries and tires from Firestone. A. Yes, sir.

(4685) Q. What else do you buy from Firestone in the TBA line? A. A very small item, or very small items such as wax and polishes, and once in a while I will pick up at the local store.

Q. That is on a pick-up basis. A. Yes.

Q. From whom do you buy the balance of your accessories? A. From Wilson Sales Company mostly.

Q. You buy most of your accessories from them, do you not? A. Yes, sir.

Q. That includes fan belts, filters and radiator hose? Also battery cables, bulbs, spark plugs, thermostats? A. Yes.

Q. Waxes and polishes? A. Most of them are bought there.

Q. Wiper blades? A. Yes.

Q. Do you buy anything from Sidles? A. I buy there when Wilson runs out of what I need.

Q. How about L. J. Messer? A. I buy some things down there called the hard line—tailpipes and mufflers, once in a while.

Q. Do you buy any snow tires from him now? A. Just in cases where I didn't have them in the Firestone line.

(4686) Q. How about Carl Anderson? A. I buy some brakes and anti-freeze from Carl Anderson.

Q. Do you also buy from Wilson some anti-freeze and some additives and chemicals? A. Yes.

Q. Do you openly display all of your TBA? A. Oh, yes.

Q. Has any Texas Company representative ever told you to hide any of the TBA which you do not buy or did not buy from Firestone? A. Never.

Q. How about your tires and Delco batteries? A. He was sitting there in the office all the time I had them, and he didn't say anything.

Q. You were never threatened. A. No.

Q. There were never any threats to cancel your lease on account of that situation. A. No.

Q. Did you make up your own mind to go back to Firestone when they put on this better salesman? A. Yes.

Q. Was that the result of any threats made to you by the Texas Company? A. No. It was the better buying price and easier (4687) selling merchandise.

Q. Do you stock any batteries now other than dry charge? A. No, sir.

Q. Do you find those preferable over the wet charge battery? A. Yes.

Q. Do you consider yourself as free to choose whatever TBA merchandise you think you can make the most money on? A. Yes, I do.

Q. And have you acted that way? A. Yes, I have.

Q. In your sales? A. Yes, I have.

Q. Taking your total TBA sales—just a lump sum—what per cent of your TBA sales do you think are in tires? A. I would say about a third of them.

Q. And what per cent do you think is in batteries? A. Oh, that would be a very small percentage of it. Probably twenty per cent. Ten per cent in there. It would be someplace in there.

Q. And the balance would make it 60 or 70 per cent in the accessories. A. Accessories.

Q. And you say most of those you buy from the Wilson Company. (4688) A. Yes.

Q. Well, I don't know what happened to my arithmetic; I took a third and added ten or twenty per cent, and I came out forty or fifty which leaves fifty or sixty per cent in accessories. It is not 60 or 70 per cent.

Now, do you think your batteries are over ten per cent or substantially over, or not? A. No, I don't think it would be substantially over.

Q. So we would get about thirty-three and a third per cent in tires and maybe ten per cent in batteries and the balance is in accessories, is that right? A. Yes.

Mr. Lorenzen: I won't add it up this time. That is all.

Cross examination by Mr. Dias:

Q. Did you say that the Firestone tires were easier to sell? A. I believe they are.

Q. What makes them easier to sell? Better quality or what? A. They are nationally advertised, and I get—I believe they are better quality tires than the Inland tires. The Inland tires, are not really—when you sell a tire that is not nationally advertised, you have to cut the price on them.

(4689) Q. Wouldn't the same hold true for batteries? A. No. I think different on that.

Q. The Firestone battery isn't necessarily nationally advertised, is it? Except for the fact that it carries the Firestone name? A. No.

Q. Do you recall ever seeing national advertising devoted exclusively to Firestone batteries? A. No, I don't think I have.

Q. Have you ever seen national advertising devoted exclusively to Auto-Lite or Delco, for example? A. Yes, I have.

Q. And doesn't Wilson handle Delco? A. Yes.

Q. When did you state that you started in the station, Mr. O'Brien? A. About 1952.

Q. And from that time up until what would be the middle of 1956 you handled Firestone and dropped Firestone. A. Yes.

Q. And resumed Firestone when? A. About six months later.

Q. In other words, you were off the Firestone line for about six months. A. Although I still had some in stock.

(4690) Q. Did you tell me the month during 1952 that you started at the station? A. It was in April.

Q. And can you place the month that you discontinued the Firestone line? A. No, I can't, right to the month, no. It was approximately a year and a half ago.

Q. Do you do any repair work at the station? A. Yes.

Q. Do you do any retreading? A. No.

Q. Does this picture show retreading? There is part of the word cut off. This Respondent's Exhibit 19 is what I am speaking of. Do you notice this here (indicating) on this valence—there is "T-r-e-a-d-i-n-g." Is that just an advertising for retreading work, or do you do it? A. That is just advertising. I believe that is a decal on the window on the outside.

Q. What brand is that advertising? A. That is Firestone.

Q. Do you have quite a few Firestone signs out and about the station? A. Yes.

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(4691) Q. Did you tell us what you bought from Sidles? A. Well, not naming one particular thing. Just what Wilson happens to be out of. Like different pieces of radiator hose or fan belts. They both all handle the same line.

Q. Generally speaking, your purchases are from either Wilson or Firestone, is that correct? A. Yes.

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Redirect examination by Mr. Lorenzen:

Q. You got these signs that you have, these Firestone signs, from Firestone, did you not? A. After a battle I did.

Q. You had to ask for them. A. I did.

Q. You had a tough time getting them? A. Yes.

Q. Texas had nothing to do with that. A. No.

Q. Now, you testified that you thought differently about batteries than tires. Do you mean the customers would accept your recommendation on the batteries? A. They would accept my judgment more so on batteries than on tires.

Mr. Lorenzen: That is all.

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(4692) TONY BONACCI was thereupon called as a witness for the Respondents and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Give your full name to the reporter. A. Tony Bonacci.

Q. Where do you live? A. 7071 Charles Street, Omaha, Nebraska.

Q. What is your business? A. I'm a service station operator.

Q. Where? A. 16th and Webster, Omaha, Nebraska.

Q. Do you lease that service station from the Texas Company? A. Yes.

Q. And are you on one of these leases that has a yearly renewal clause in it? A. Yes.

Q. Subject to cancellation at the end of any year? A. Yes.

Q. Now, how long have you been a lessee? A. Twenty-five and a half years.

Q. And at the location where you are now, how long have you been there? (4693) A. Eighteen and a half years.

Q. About what is the gasoline volume of your station? A. From twelve to fourteen thousand a month.

Q. Do you handle TBA? A. Yes.

Q. What do you think about the necessity for handling TBA at your service station? A. Well, I find it necessary that I handle TBA to make a living out of it.

Q. Do you make money on the TBA? A. Yes.

Q. Do you find it desirable to handle it for your gasoline customers? A. Yes.

Q. Do you find it helps your gasoline sales? A. Yes, it does.

Q. Now, have you had an understanding of the Texas Company's TBA policy and program while you have been a dealer? A. Yes.

Q. I guess we don't have to go back twenty-five years, but let's talk about the last ten at least. What has been that understanding? A. That they recommend that I sell or handle only National Brand TBA and they recommended Firestone or Goodrich, but I was free to stock any TBA I wanted.

(4694) Q. You understood you were free to do that, did you? A. Yes.

Q. And have you acted in accordance with that understanding during the time you have been a dealer? A. Yes.

Q. Now, has anybody from the Texas Company ever told you that they didn't mean what they said and that in fact you had to buy from either Firestone or Goodrich? A. No. No one has ever said that to me.

Q. Did they ever tell you that if you didn't buy from Firestone or Goodrich your lease would be cancelled? A. No.

Q. Or that they'd treat you badly in any other way? A. No.

Q. Will you tell us from whom you buy your TBA? A. I buy from—some from Firestone on 20th and Harney, and I buy some from Sidles's Company, and I buy some from Boylan Tire.

Q. Do you buy anything from Carl Anderson? A. Yes.

Q. What do you buy from them? A. Ignition parts and a few batteries, Delco Batteries—pardon me. Let me correct myself. From Sidles I buy ignition parts.

Q. We are talking about Anderson for the minute. And you said (4695) you bought some ignition parts. A. Yes, and Zerex anti-freeze.

Q. Do you buy any batteries from them? A. Yes, I bought a few batteries.

Q. Were they Auto-Lite? A. Auto-Lite.

Q. Do you buy anything from Al's Auto Supply? A. Yes.

Q. What do you buy from them? A. I buy national batteries. I have bought Exide batteries from them when they were handling them.

Q. And they discontinued Exide? A. Yes.

Q. And went to National? A. Yes.

Q. And you stayed with Al's and bought National? A. Yes.

Q. About what percentage of the batteries that you handle do you buy from Al's? A. I'd say about fifty per cent. You mean of the batteries only?

Q. Yes. A. About fifty per cent.

Q. Do you buy any batteries from Sidles? A. Yes, just a few. Maybe ten per cent.

(4696) Q. What do you buy from them, Delco? A. Yes, Delco batteries.

Q. And the balance you buy from Firestone, do you? A. Yes.

Q. You buy most of your tires from Firestone? A. Well, no, not most of them. I'd say about half.

Q. And from whom do you buy the other half? A. From Boylan Tire and Goodyear.

Q. Well, now, the tires that you buy from Boylan are mostly recapped tires, aren't they? A. Yes.

Q. And the tires that you buy from Firestone are mostly the new tires? A. New tires.

Q. Will you tell us why you buy Firestone instead of some other brand? A. I find that it's always easier for me to sell. It has the public acceptance.

Q. Is it in your neighborhood that Firestone is near the top, is it? A. Yes, I think so.

Q. What do you buy from Sidles? In addition to those Delco batteries? A. I buy all of my oil filters and I buy

some water pumps and shock absorbers, wiper blades, and rust inhibitor and (4697) rizlone, and Casite.

Q. That's what is known as an additive or chemical, is it, Casite? A. Yes.

Q. And the anti-freeze you buy is Prestone, is it? A. Yes, Prestone.

Q. Do you display that Prestone during the season when you sell it? A. Yes.

Q. And where is it? A. Well, during the fall and the beginning of the season, I have it inside and outside.

Q. How about your Delco and National batteries. Where do you keep those on display? A. In the inside and outside.

Q. Do you keep them in the window? A. Yes.

Q. Where anybody can see them? A. Oh, yes.

Q. With the name on the battery case? A. Yes.

Q. Now, going back to Sidles, do you buy fan belts from them? A. Oh, yes, a hundred per cent fan belts.

Q. And radiator hose a hundred per cent? (4698) A. Yes.

Q. Spark plugs a hundred per cent? A. Yes.

Q. Thermostats? A. Yes.

Q. All of your thermostats? A. Yes.

Q. Do you display your Gates fan belts? A. Yes.

Q. That is what you buy from them, Gates? A. Gates.

Q. Do you display it on a display rack? A. Yes.

Q. Does your display rack look just about like this one of Mr. O'Brien's shown on Exhibit No. 10? A. Yes. My hose rack is similar to this.

Q. Your hose rack is similar to it also? A. Yes.

Q. And it has the name Gates on it? A. That's right.

Q. And the fan belts identified had the name Gates on the display? A. Yes.

Q. And the hose also? A. Yes.

(4699) Q. You also buy seat covers, do you not, from the Omaha Seat Cover Company? A. Yes, I have been but they are just going out of business now, or they have gone out of business about a week ago.

Q. But before that you bought a hundred per cent from them? A. Yes.

Q. Now, of all of your TBA, about how much do you think is in tires? What per cent of the TBA that you sell do you think is in tires? A. About thirty per cent.

Q. And about how much is in batteries? A. About ten per cent.

Q. I think that leaves sixty per cent? A. Yes.

Q. And if it does, is that in accessories? A. Yes.

Q. Now, what do you find about your customer's demand in tires. Do they demand something that has a national name and national advertising? A. Yes.

Q. You do find that to be so? A. Yes.

Q. What about batteries. What do you find the customer's state of mind to be there? (4700) A. Well, on batteries it's not quite so. I could sell—I find that I could sell Delco batteries easier than I could sell Firestone.

Q. Then why do you handle any Firestone batteries? A. Well, I have some customers that ask for Firestone.

Q. And do you handle the Firestone in order to satisfy those customers? A. Yes.

Q. And you handle the Delcos for others? A. Yes.

Q. What about National, is that a price proposition? A. Yes, it is. I get a real good price on those and I use that for competitive—

Q. That's a cheaper line? A. Yes.

Q. Now, how about stocking of batteries. Do you stock any wet charge batteries? A. No. No wet charge.

Q. All dry charge? A. Yes.

Q. Do you find that more satisfactory? A. Yes.

Q. What do you estimate the total amount of TBA which you buy from Firestone direct? A. About fifteen per cent.

(4701) Q. And the balance from some source other than Firestone? A. Yes.

Q. Now, do you openly display all of your TBA? (4702) A. Yes, I do.

Q. No matter whether you buy it from Firestone or anyone else? A. I display everything.

Q. Has anyone from the Texas Company told you to hide it? A. No.

Q. Have they ever told you that they would cancel your lease if you didn't stop displaying it? A. No.

Q. Or that they would treat you badly in some other way? A. No.

Q. Do the Texas people know you handle this non-sponsored TBA? A. Yes.

Q. Do you get any help from the Texas Company in your merchandising of TBA? A. Yes, I do.

Q. What kind of help do you get? A. Well, the salesman comes and stops in and helps me merchandise—merchandising, and in the follow-up, he helps me with that. And I get streamers from them. And I got a lot of help from these dealers' meetings that we hold spring and fall, and monthly too, monthly meetings.

Q. Do you find that helps in the sale of both the sponsored and non-sponsored TBA? A. Yes.

Q. Has any representative of the Texas Company ever told you (4703) they wouldn't help you sell your non-sponsored TBA? A. No.

Q. And they do help you in all the TBA, is that right? A. Yes, they do.

Q. You still buy from the Sidles Company, do you not? A. Yes.

Q. At one time did you buy more from the Sidles Company than you do now? A. I probably have. I bought from the Sidles Company now for about twenty years.

Q. And they are your main supplier of accessories, are they not? A. Yes.

Q. Does the Sidles man call on you? A. Yes.

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Cross examination by Mr. Dias:

Q. Mr. Bonacci, you have been a Texas Company lessee for twenty-five years? A. Yes.

Q. Has their policy over the years changed in connection with TBA? (4704) A. I haven't noticed any change.

Q. You state that you still buy from Sidles. Are you still purchasing Delco batteries from Sidles? A. Yes.

Q. How many batteries would you guess you used during a year's time? A. Delcos?

Q. Any battery. A. How many batteries in all? I would say about fifty batteries.

Q. And of that fifty I take it that some would be this National that you buy from Al's Auto? A. Yes.

Q. About how many would be Delco? A. I would say about five per cent.

Q. In other words, in a year's time you would only sell about two Delco, is that correct—three? A. About five.

Q. Five. Ten per cent, then? A. Ten per cent.

Q. And when you buy Delco batteries you always get them from Sidles, do you? A. Yes.

Q. What does a Delco battery cost you roughly? A. Well, they range in price. Group 1 will cost me about (4705) $16.00.

Q. And you buy about five 1's a year from Sidles? A. Yes.

Q. How many have you bought this year? A. I would say about two. I sell most of my batteries in the fall, going into the winter.

Q. I see. Have you Delcos from Sidles this year? A. I think I bought a couple.

Q. You are not sure of that though, are you? A. Well, I don't know. I don't remember. But I know I must have bought two of them this year.

Q. Do you do repair work at your station? A. Just real light repair work.

Q. Do you purchase so-called hard parts from Sidles? A. Yes.

Q. What would you consider as hard parts? A. Tail pipes, and mufflers and shock absorbers.

Q. How about equipment? Do you purchase equipment from Sidles? A. Yes.

Q. You made quite a large purchase of equipment this year from Sidles? A. This year? I don't know. Not this year, I don't think. I did—well, I bought some headlight adjusters.

Q. What would something like that cost? Is that expensive equipment? (4706) A. No. It's $59.00 for a package deal, with some seal beams with it.

Q. Isn't it the case that you usually buy more so-called hard parts and things of that sort from Sidles than batteries and filters, etcetera; dollarwise, not unitwise. Dollarwise aren't your purchases more in that line than in batteries and accessories? A. Oh, I would say around fifty-fifty. I buy all my filters from them.

Q. And from Carl Anderson—what do you buy from Anderson? A. I pick up some ignition parts, not many, and I buy Zerex there, and maybe just a couple of Auto-Lite batteries during the course of the year.

Q. When would you say is the last time you did business with Anderson? A. Let's see—I don't remember.

Q. It was several years back, as a matter of fact, wasn't it? A. I don't remember.

Q. How about Storz? Do you purchase from Storz at all? A. Very little. I buy most of my ignition parts from Motor Electric.

Q. Is that an Anderson competitor? A. Yes.

Q. Now, on this estimate of 60% of TBA accessories, what percentage of that, of the accessory sales—first, what is (4707) your dollar volume of sales, TBA, for the year? A. Say about nine thousand.

Q. That would mean somewhere around $5,400.00 would be in accessories—60% of nine thousand, roughly speaking? A. Yes.

Q. Of that $5,400.00, how much of that would be devoted to, oh, shock absorbers, mufflers, tail pipes, and that sort of thing? A. I would say about fifty per cent.

Q. What other items do you buy from the Firestone District Store? That is your supply point, is it not? A. Yes.

Q. You buy your new tires from Firestone? A. Yes.

Q. Do you buy any Firestone batteries? A. Just a few. Not too many.

Q. Do you buy any of their filters? A. No. I buy all my filters from Sidles.

Q. How about hose and belts? A. That comes from Sidles.

Q. Did you say that you bought all your anti-freeze from Sidles? A. Oh, no.

Q. Could you tell us how much you bought from them? Take '57. Would it be a case, two cases? (4708) A. Well, I bought more than that from him. I bought I think about fifteen cases.

Q. Fifteen cases. What does that sell for, a case, approximately? A. Well, they cost me $2.12.

Q. $2.12 a case? A. gallon.

Q. How many gallons to a case? A. Six gallons to a case.

Q. Are you sure you didn't buy just one case in '57 from Sidles? A. I think I bought fifteen. I think I bought an order of ten, and an order of five.

Q. Can you tell us where else you buy anti-freeze? A. I buy PT from Texaco.

Q. And do you buy your anticipated needs for the full season and then fill in from others? Is that the way you operate it? A. Well, I usually start out with about twenty or thirty cases.

Q. And that is PT? A. No, I mean altogether.

Q. Altogether? A. Then I keep ordering it from then on.

Q. And you order from whom, from Texas or the individual? A. From Sidles, or from Texaco. Carl Anderson.

Q. Do you carry any Goodrich tires in the station? (4709) A. No.

Q. You do not? A. No.

Q. Don't you have some Goodrich tires in the station, with one of those cardboard streamers advertising Goodrich? Don't you have them right in the station? A. I don't handle Goodrich at all.

Q. You don't have any? Do you have the credit card, one of those credit card machines? A. Yes.

Q. Do you use the credit card on all TBA merchandise you sell? A. Anything I put on the card runs through the credit card.

Q. Whether it is Goodrich or Firestone, or not? A. Yes.

Q. Have you ever been reprimanded for that ? A. No.

Q. Do the credit slips show that they are other than Goodrich or Firestone? A. I don't write the name in there, just put the number of tires, and the size, and the price.

Mr. Dias: I have nothing further.

Redirect examination by Mr. Lorenzen:

Q. Now, you don't identify the brand name even if it is Firestone, do you? (4710) A. No.

Q. Actually there isn't enough space on one of those charge slips to put the name? A. That's right. I wouldn't even be able to put it in if I did want to.

Q. So everything is unidentified, whether it's Firestone or anything else? A. That's right.

Q. Now, do you know that the Firestone line includes tail pipes and mufflers? A. Yes, I know that Firestone handles tail pipes and mufflers.

Q. But you don't buy those from Firestone? A. No.

Q. You buy those from Sidles? A. Yes.

Q. How about shock absorbers? Are they in the line too? A. Yes. Firestone handles shock absorbers, but I buy mine from Sidles.

Q. So that all the items which were included in your accessory estimate about which Mr. Dias asked you are items which are also included in the Firestone line? A. Yes.

Q. And then when you gave me an estimate that only—I think it was around 20%, 20% or 25% of all of your TBA was bought from the Firestone store, it was made on that basis, (4711) was it? A. Well, I think—I didn't think it was that high.

Q. I think you said fifteen, is that right? A. Yes.

Q. And the balance of it is bought from someone else? A. Yes.

Q. And that was on the basis of including the mufflers and tail pipes and shock absorbers in your estimate of accessories? A. Yes.

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(4716) M. A. BUNTZ was thereupon called as a witness for the Respondents and, having been first duly sworn, was examined and testified as follows:

(4717) *Direct examination by Mr. Royall*:

Q. What is your full name? A. M. A. Buntz.

Q. And what company do you work for and what position do you hold with that company? A. Firestone Tire and Rubber Company. My position is stores supervisor.

Q. What territory do you work in? A. I headquarter in Omaha and the area that I supervise consists of, roughly, two-thirds of Nebraska, a portion of South Dakota and about the western third of Iowa.

Q. How long have you been in that position? A. About two and one-half years.

Q. And how long have you been with Firestone? A. Approximately 13 years.

Q. Are you familiar with the agreement between Firestone and the Texas Company with reference to TBA? A. Yes, sir.

Q. Are you familiar with how that agreement is being carried out in your territory? A. Yes, sir.

Q. By Firestone? A. Yes, sir.

Q. In the course of your activities have you had occasion (4718) to visit the various service stations in the area? A. Yes, sir.

Q. Do you do that periodically or repeatedly, or how do you do it? A. Well, now, periodically; a couple years ago I did it quite regularly.

Q. When was that; at what time? A. Prior to April 30, 1956.

Q. What position were you in then? A. Manager of our 20th and Harney, Omaha, Nebraska, store.

Q. How long had you had that position? A. I was there close to two years, not quite.

Q. Who sells Firestone products to the Texas stations in your territory? A. Well, in addition to our 20th and Harney Store being a supply point we sell direct, which would be through our district warehouse in Omaha and our Kansas City warehouse but right in the Omaha city area, the metropolitan area; that is the source of Firestone products.

Q. Are sales made from the places and by the persons you have just described, or are they made by Texas Company? A. They are made primarily by the Firestone people.

Q. Does the Texas Company recommend Firestone to the stations with which you have a sponsorship arrangement with (4719) the Texas Company? A. Yes, sir.

Q. Despite that recommendation—do you have to put out effort to sell? A. A lot of it; a lot of it.

Q. And do you have to do that continuously? A. Absolutely, yes, sir.

Q. Sometimes the recommendation is not followed, is that right? A. That is for sure, yes, sir.

Q. In fact, as to many matters it is not followed on many products, is that right? A. That is right.

Q. In the contact with the dealers in the Omaha district have you personally known or have you learned of any pressure put on dealers to buy your TBA, pressure from the Texas Company?

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(4720) A. No. sir.

By Mr. Royall:

Q. Do you have or have you been informed of any coercion or forcing—

Mr. Dias: I object to the latter as hearsay.

By Mr. Royall:

Q. (continued) —by—

Mr. Royall: May I finish the question?
Hearing Examiner Kolb: Yes.

By Mr. Royall:

Q. (continued) —by Texas or any assertion of any power to control the purchases?

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A. No, sir.

By Mr. Royall:

Q. Do you know or have you heard of any threats of cancellation by the Texas Company in connection with any TBA transactions at all?

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(4721) A. Absolutely not.

By Mr. Royall:

Q. Have you heard of any discrimination against any dealer—

Mr. Dias: I object.

By Mr. Royall:

Q. (continued) —or do you know of any discrimination by any Texas dealer by reason of any TBA discrimination?

Mr. Dias: I object.
Hearing Examiner Kolb: Overruled.

A. No, sir.

M. A. Buntz, for Respondents—Direct

By Mr. Royall:

Q. Is and has your relationship with the dealers that handle Firestone products been a close and continuous one? A. Yes, sir.

Q. In your opinion if there had been any of the matters I have just asked you about by Texas Company in your opinion would you have been informed of it? A. Yes, sir.

Q. Now, have you in the course of your employment jointly visited Texaco stations which have been designated under sponsorship by Firestone; have you visited them jointly with Texas representatives? A. Yes, sir.

(4722) Q. On such trips have you at any time seen any evidence of any pressure—. A. No, sir.

Q. —force, threats, discrimination, undue influence on the station by Texas personnel? A. Absolutely not.

Q. Have you heard at that time or at any other time or know of any threats of any type of retaliation by the Texas— A. No, sir.

Q. —Company in connection with any TBA transactions? A. No, sir.

Q. Or in connection with the handling of non-sponsored goods? A. No, sir.

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(4723) Q. Mr. Buntz, have you from time to time heard Texas dealers express themselves as to their feeling of independence and their right to select, themselves, from whom and how much TBA they will purchase? A. Yes, sir.

Q. Have you, by chance, heard some of them boast of their independence? A. That is right.

Q. Was that at times when you were seeking to sell them? (4724) A. Unfortunately, yes.

Q. Now, Mr. Buntz, has Firestone done well in its sale of Firestone tires in your district? A. Exceptionally well, yes.

Q. Do you know how their success is, as related to the other districts in the United States? A. It is one of the leading districts in the country, the Omaha district.

Q. Has that been true for some years? A. Yes, sir.

Q. In general, what action on the part of Firestone has been necessary to achieve that result in your district? A. Well, first of all I think it is the quality of the product which is the best in the business, and our advertising program and probably one of the things is we think we are the best salesmen and I include myself in that.

Q. Does the matter of tire service—service on your tires enter into it? A. Very definitely; that is one of the most important ones.

Q. Will you describe briefly in what way you think your service with Firestone products is exceptional? A. Well, in the first place we have the largest facilities, warehouse facilities, that is, in the Omaha area. (4725) We have a more complete line of products, and for that reason naturally we can give better service to our dealers than our competition who do not have those facilities.

Q. Does the question of promptness of delivery contribute to your success in that area? A. Yes, sir.

Q. Does the existence of a dependable and constant supply of the needed products play a part? A. Yes, sir.

Q. Now, as you have travelled around your district and contacted the service stations have you observed whether or not there are non-Firestone and non-sponsored tires in these stations? A. Yes, sir.

Q. You have been interested in that, have you not, sir? A. Very definitely, yes, sir.

Q. That provides an opportunity for salesmanship where that condition exists, does it not? A. Yes; that is absolutely right.

Q. Have you a considered judgment as to how many of the Texas stations with which you deal,—what percentage of the Texas stations with which you deal have some stock of non-sponsored tires,—have you an opinion? A. Yes.

Q. What is that percentage? (4726) A. It is approximately 50 percent.

Q. Would that figure vary in the case of batteries? A. It is roughly the same figure.

Q. Now, what about accessories,—what percent would have non-sponsored accessories? A. They would all have non-sponsored,—100 percent.

Q. Have you ever seen a Texas station in your district which did not have some non-sponsored accessories? A. No, sir.

Q. Now, these various non-sponsored products about which I have inquired,—are they visible in the stations? A. Surely.

Q. Have you seen displays in the stations? A. Yes, sir.

Q. In the case of joint calls which you have made with Texas representatives to these stations where there are non-sponsored goods visible to you, have you ever heard a Texas representative ask the removal of the display of non-sponsored goods? A. No, sir.

Q. Have you ever heard a Texas representative suggest that the non-sponsored goods be concealed? A. No, sir.

Q. Have you ever heard any threat of any kind made by the Texas Company to a dealer because of the display or (4727) stocking of non-sponsored goods? A. No, sir.

* * *

Q. Do you know, Mr. Buntz, the value and cost of the various TBA items that are sold? A. Yes, sir.

Q. And do you know well the value or the sale price of the non-sponsored goods that are sold? A. Yes, sir.

(4728) Q. Do you have to keep up with those prices as a matter of your salesmanship? A. That is right.

Q. Are you able from your view of the stores as you go around to get a good opinion, one satisfactory to yourself, as to the value within reasonable limits of the stock in the various stores? A. Yes, sir.

Q. Are you, through your visits to these stores, in a position to make a reasonably accurate estimate and do you have a reasonably accurate opinion within a reasonable margin of error of the value of the non-sponsored goods, non-sponsored accessories, in proportion to the entire stock of the accessories in the stores in your district? A. Yes, sir.

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(4729) Q. Will you tell me what, in your opinion, is the percentage of non-sponsored accessories in relation to the total accessories carried in the Texas stations within your territory?

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(4732) Q. Will you answer the question? A. 75 per cent.

Hearing Examiner Kolb: Is what?

The Witness: Is non-sponsored.

By Mr. Royall:

Q. Do you have an opinion as to a similar percentage as to all TBA—that is, tires, batteries, and accessories? A. Roughly.

Q. What would that be? A. In the neighborhood of 40 percent.

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(4733) Q. Now, Mr. Buntz, I believe you have previously testified, am I correct in this,—if not, correct me,—

that in the sale of sponsored TBA your district is one of the leading ones in the country? A. That is right.

Q. You do not know how much more the non-sponsored goods would be in territories aside from your district? A. No.

Q. Do you know? A. I do not know.

Hearing Examiner Kolb: Do I understand by that question and answer that the witness is testifying to sales to Texas service stations or to Firestone generally?

Mr. Royall: I understood he said the sales to Texas.

Hearing Examiner Kolb: I thought he said he was the leading division in Firestone sales.

Mr. Royall: TBA.

Hearing Examiner Kolb: To Texas stations or generally?

The Witness: I was thinking it was in reference to the Texas stations.

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(4734) Q. Mr. Buntz, is the Texas Company of any assistance to your company in your company's sale of TBA merchandise in your district? A. Sure.

Q. Can you give some illustrations of how that company helps in the sale? A. Well, with their merchandise programs and their mailing programs and displays and promotions. There are various types, numerous helps that we have with our company in selling the TBA items, yes, sir.

Q. Does that also include their method of record-keeping and their dealers' magazine? A. Sure.

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Q. Do you know Mr. Clem Acamo? A. Yes, sir, I do.

Q. Did you at any time make a call on him, a joint call (4735) together with a Texas representative? A. I did.

Q. Was it for the purpose of trying to sell sponsored seat cushions? A. That is right.

Q. Where did he buy them? A. He didn't buy them from us; he bought them from our competition.

Q. Now, there is in the testimony given by the Complainant, on page 1196 of the record a representative of Sidles testified: "that Mr. Acamo had cartridges in the back room". Will you tell us where cartridges are normally kept by service stations? A. In the back room.

* * *

Q. Now, Mr. Buntz, do you know whether Mr. Acamo had two stations in your district in 1951? A. Yes.

Q. And did he dispose of or sever his connection with one and just leave him one in 1954? A. That is right, yes.

Q. Now, the station that he did not have from 1954 on, was that a station that bought, largely, repair parts? (4736) A. I didn't understand.

Q. Largely repair parts? A. Which station?

Q. The one he got rid of? A. That is right. That is the one that did a lot of repairing like that.

Q. And does Anderson and Company sell, largely, repair parts? A. That is right.

Q. Now, do you know whether or not Acamo buys and has bought tubes from Weiner Tire and Auto Supply Company? A. Yes, sir.

Q. He has? A. He has.

Q. Do you know whether he has bought plugs, shock absorbers, brake linings, and brake parts from Kuehn-Baymiller? A. Yes, I do. He has bought them from them.

Q. Has he bought sparkplugs and Fram filters from Sidles? A. Yes.

Q. And has he bought chemicals from Al's Auto Parts? A. Yes, sir.

Q. Do you know a Harley Fisher? A. I sure do.

Q. Does he buy from you Firestone tires and batteries (4737) on a pickup basis? A. He did.

Q. He did? A. Yes.

Q. Do you know whether or not he bought Corn Belt tubes? A. Yes.

Q. That is a non-sponsored item, is it not? A. Yes.

* * *

Q. How do you know Mr. Fisher has bought Corn Belt tubes? A. I have seen him in his place of business and I have (4738) seen the salesman called on him.

Q. Has he also bought belts and hose, and anti-freeze from Storz? A. Yes.

Q. How do you know that? A. I have seen him in his station.

Q. And do you know who handles those various items I have talked to you about, in that area? A. Yes.

Q. Now, there were some questions in yesterday's hearing that were directed at what items are included in TBA and I would like to ask you whether or not Firestone TBA includes mufflers, tail pipes, and shock absorbers? A. It does.

Q. Does it also include brake lining? A. Yes.

Q. Do you know Edward Schulte? A. I do.

Q. There is testimony, at pages 1390 and 1391, from a representative of Storz Supply Company that Edward Schulte did not openly stock tires or batteries; is that correct? A. He didn't stock any tires.

Q. He didn't stock anything? A. No.

Q. What size dealer was he? (4739) A. Very small.

Q. What kind or type of station did he have? A. It was one of the older type stations with limited office or display space.

Q. Did he buy his tires on a pickup basis? A. Strictly.

Q. Have you ever seen temporarily any unsponsored tires in that station? A. Yes, sir.

Q. What were they? A. It was the Century tire.

Q. They were not concealed from you, were they? A. No, sir.

Q. Now, in addition to the sales of TBA to the Texas Company stations, do you make sales to station operators who are not on the sponsorship agreement? A. We sure do.

Q. Do you make sales to service station dealers who are under sponsorship of products other than Firestone?

Mr. Dias: I object. It has no part in this case, your Honor.

Hearing Examiner Kolb: The objection will be sustained.

By Mr. Royall:

Q. Do you seek and obtain TBA business from stations (4740) sponsored by Goodrich?

Mr. Dias: I object.

Hearing Examiner Kolb: What is the basis of the objection?

Mr. Dias: I don't believe the— I will withdraw the objection.

Hearing Examiner Kolb: You may answer.

A. No.

By Mr. Royall:

Q. Do you seek and obtain business from service stations which are sponsored by Goodrich? A. Yes.

Q. To your knowledge is there any agreement between Firestone and Goodrich for either to lay off the other one?

A. Absolutely not. They are our biggest competitor and we are after them, I will tell you that.

Q. And is that true of other sponsored lines? A. Yes, sir.

Q. That is, they may not be biggest but they are competitors? A. Yes; we are after all of them.

Q. Were you in court yesterday when the Omaha Texaco dealers testified? A. I was.

Q. Are you familiar with those dealers and their (4741) stations? A. Practically every one of them, yes.

Q. Did the testimony of those dealers represent a fair and typical cross-section of the Texas stations in the Omaha district?

Mr. Dias: I object.

Hearing Examiner Kolb: Overruled.

A. It sure did. It was very representative and typical.

By Mr. Royall:

Q. Taken together, does the testimony of those witnesses give an accurate picture of the Omaha district in matters covered by their testimony?

Mr. Dias: I object.

Hearing Examiner Kolb: Overruled.

A. Yes.

* * *

(4742) *Cross-examination by Mr. Dias:*

Q. Mr. Buntz, those station operators that testified yesterday, which ones in particular were you familiar with—Mr. Smiley? A. Yes, sir.

Q. Baird? A. Yes.

Q. O'Brien? A. He would be the only one—I've been in his place, but I'm not as familiar with him as the rest.

Q. He's at Lincoln? A. Right.

Q. Your territory does not extend to Lincoln? A. It extends to Lincoln, but he was a direct dealer, as I stated—store supervisor.

Q. What is a direct dealer? A. A direct dealer is one that sold by territory salesman, and his merchandise is delivered from our district warehouse on tires and tubes, in Omaha, and then the batteries and accessories from Kansas City.

Q. Well, wasn't Mr. Brooks in the same position? A. Well, I know Mr. Brooks very well. In fact, I went to high school with him, and I worked for him when he was a store manager. So I've known Bill for years, and for that reason (4743) I knew his operation very well.

Q. He too buys from Kansas City? A. That's right.

Q. Incidentally, on those sales from the warehouses, does Texaco receive a commission on those TBA purchases? A. It makes no difference where they come from. If they're part of our sponsored items it's my understanding, at least, that—I'm sure it's the same from the warehouses as it would be from the supply points, yes.

Q. How about Mr. Bonacci? Are you familiar with his station? A. Tony? Sure.

Q. Is he an approved Firestone dealer? In other words, was his station submitted to Firestone for approval under this commission plan? A. Well, we tried to sell him just like any other dealer, yes.

Q. No, my question is, was his name submitted to Firestone to be approved under this commission plan. A. I assume so. He's been a dealer for years—prior to my coming with the company. I assume so. I couldn't answer that.

Q. Do you know whether or not sales of Firestone products to Bonacci—rather, whether or not Texaco receives commissions on Firestone sales to him? A. Sure.

Q. What sort of a station is that that he has? Do you recall? A. Well, yes. He's located at 16th and Webster. It's a (4744) downtown location in the City of Omaha.

Q. And is that a new or an old station? A. Oh, it's relatively new. It's a good, modern station.

Q. Has he been in there about fifteen years or more? A. At least.

Q. Was the station rehabilitated at one time? A. I don't know for sure. I believe so. I'm not sure.

Q. You mentioned that various items in the Firestone TBA line—will you tell us which of the products in the Firestone TBA line do not carry the Firestone name? Let's start with mufflers, for example. A. They carry the Firestone name.

Q. That is Firestone? A. That's right.

Q. And how about tailpipes? A. That's—they do also.

Q. And shocks? A. No, sir.

Q. What are the shocks? A. Monroe.

Q. Monroe? A. Right.

Q. And brake lining? A. Firestone.

Q. How about filters? (4745) A. We have Firestone and A-C.

Q. I assume that your batteries carry the Firestone name? A. They do.

Q. Plugs? A. We have Firestone, Auto-Lite and A-C.

Q. And windshield wiper equipment, Mr. Buntz? A. We have Trico.

Q. I believe that you stated you were thoroughly familiar with all the prices on these items, including those of your competitors? A. That's right.

Q. Well, assuming that you had a dollar figure. Could you estimate the amount of material that that represented —tires, batteries and accessories, so on? A. (No response.)

Q. Is my question clear? A. Not completely, no.

Q. Let us assume that you've had a resale price on tires. Let us assume that a figure before you was $1,000.00 worth of tires sold during a month. Could you estimate from that the number of tires that might include? A. Oh, roughly, yes.

Q. The same would be true of batteries? A. Yes.

Q. And would the same be true of any of the accessories line? (4746) A. No, I couldn't take a dollar figure and give you a unit deal on accessories.

Q. Well, not a unit deal, but could you estimate the approximate wholesale value? A. I think so, yes.

Q. That would be true of tires, batteries and accessories? A. I think so, yes.

Q. You mentioned that you sell to every Texaco station that you possibly can, and also you mentioned that—getting over here to these percentages of 75% of accessories, and non-sponsored—and 40% of overall TBA non-sponsored— A. That's right.

Q. What do you consider the non-sponsored product to be? Would Goodrich be, as far as you are concerned, a non-sponsored product? A. Well, yes, it would be, to answer your question.

Q. As far as Firestone is concerned Goodrich is a non-sponsored product? A. They all are as far as I'm concerned.

Q. Now, if you will, please, will you tell us exactly what your duties are in your current position—and as I understand it, you've been in your current position for two and a half years, is that correct? A. That's correct.

Q. Will you tell us what your duties are in that position? (4747) A. Well, with regard to what we're talking about here, or just in general?

Q. Well, in general, and certainly insofar as they touch upon sales of TBA. A. Well, my primary responsibility is the supervision of the sixteen company stores and five retail

shops in the Omaha district. I am directly responsible for the overall operation.

Q. Of the Omaha stores? A. That's right.

Q. And that's been true since—I didn't mean Omaha stores, I meant the Firestone stores in your area. A. That's right.

Q. And that's been true since— A. About May 1 of '56.

Q. May, '56? A. Yes.

Q. All right. Now, during that period what would be the reason for your visiting stations? A. Well, for the reason I'm also responsible for the supply point stores, of which we have several in the Omaha district; and certainly I supervise overall operations, and the petroleum TBA business represents a big potential. And I talk to our salesmen, and make calls with our salesmen, and try and get as much of that business as we can, naturally.

Q. And how many such stores are there in Omaha and in Lincoln? (4748) A. Well, in Omaha we have primarily the 20th and Harney store set up as our supply point store. Our South Omaha store does serve a few.

In Lincoln we have the one big store that handles our supply point, or our TBA oil company dealers.

Q. You have no independent distributors handling designated supply points of Firestone? A. We do have. However, I don't work with them. I mean, that's out of the scope of my job.

Q. Are they located in Omaha? Are there such stores as distributors in Omaha and Lincoln? A. Not of any size to speak of.

Q. Well, are there any? A. Yes, sir, there are.

Q. How many? A. Oh, I don't know. There's a couple, two or three, I think. But they're immaterial.

Q. And the Texas Company stations obtain their Firestone TBA supplies from those sources? A. No. The Texaco stations are all served by the Firestone Company

through stores, or on a direct basis, as I told you previously.

Q. I see. Now, how often in your present capacity do you actually visit stations? A. Oh, it will vary from maybe a couple of times a month to— (4749) in some of the outlying areas to maybe once a year.

Q. And do you cover every Texaco station in Omaha and Lincoln, and your entire area for which you are responsible, that often? A. In a period of a year I make the rounds, yes.

Q. In the period of a year you would see each station how often approximately? A. Well, as I said, in Omaha I would see them much more frequently, and in Lincoln, because those are big areas where I spend most of my time.

Q. But how often is More Frequently? A. I'd say on an average of once a month probably.

Q. You go to each station once a month, is that correct? A. Approximately. I couldn't tell you exactly.

Q. Well, approximately how many are there? A. Well, there are somewhere in the neighborhood of thirty stations, thirty-five.

Q. And what do you do when you visit the stations? A. There is only one purpose I have in mind, that's selling merchandise.

Q. Well, do the stores, the Firestone stores, maintain a corps of salesmen to call on these Texaco stations? A. Sure.

Q. How many salesmen for example do you have in the Harney store? (4750) A. Well, we have two that's directly pinned down to what we call dealer sales, and we have two others that call on dealers, plus the store manager. Actually about five people that in the course of their duties would call on dealers.

Q. And during the course of a year you'd go around with each of those visiting various stations, is that— A.

Well, there's actually two of them I work with that do the—handle the Texas accounts.

Q. Then at least once a month you go out with one or both of them and cover all the stations? A. I don't have to go out with the dealer—or, the salesman, because I was in the store for about two years and I know a lot of dealers personally and have had them in my home—and sometimes I get a tank of gas—and we have to sell all the time, and we do a little selling then.

Q. My point is, how often do you personally, physically go into each and every store, each and every Texaco station, in Omaha? A. About once—as I told you, about once a month. But it would necessarily be with a salesman.

Q. You might go in there independently? A. That's right.

Q. So that each and every station is visited every year by you at least twelve times, is that correct? A. In the confines, more or less, of the Omaha and Lincoln (4751) area, yes.

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(4752) Q. Now, as manager of the Harney and South Omaha stores, did you have occasion to go out and visit the stations there? A. Oh, that was one of my biggest jobs.

Q. That was your primary job, was it? A. That's right.

Q. And the last time you were operating in that capacity, was May of '56? A. Well, April 30 of '56.

Q. And how often did you call on the stations then? A. Oh, gee, some of those dealers—I don't think I ever got into any of them more than once a week—but some of them I averaged once a week.

Q. Now, these stations that you visit with the—these (4753) stations, Texaco stations, that you visit with the Texaco personnel, how often do you do that? A. Not very often.

Q. And who in the Texas Company, or what class of personnel, would that be? A. Why, I've made calls with —there's not many, as I said, but most of them were through salesmen. I made calls with some of their people, other people, however.

Q. Such as? A. Oh, Spike Burgess.

Q. What is his title? A. Well, at that time he was— I really don't know specifically his title. State manager, or something like that.

Q. Well, what was the purpose of the visit? A. Well, to sell merchandise. That's all I'm interested in.

Q. Well, were you introducing Mr. Burgess, or was he introducing you to these various—. A. In most cases it's —a lot of times for the purpose of introduction. It may be for the purpose of planning a promotion. They are basically all from the standpoint of either selling to or selling for the dealer merchandise, and if we get the dealer selling it, why, it's no problem for us to sell it.

Q. Now, was it on those occasions that you heard Texaco dealers boast of their independence, as you testified before? (4754) A. There, and at other times.

Q. Now, how did that come about that they boasted of their independence? A. Well, I mean, if you try to sell them something and they can say, "Well, I got a better deal from somebody else, I don't have to buy from you—" —and they didn't buy.

Q. And that is what you consider boasting? A. Yes. And the fact that they bought proved it to me.

Q. And that was in the presence of Mr. Burgess, was it? A. Yes, sir.

Q. All right. Now, can you name one or two dealers that operate in that fashion in your presence? A. Oh, yes. I can name several.

Q. All right. A. Tom Acamo is a good example. Tony Bonacci, he's really independent, if that's what you want

to call it. Cecil Baird, Clarence Carroll, Bob Shell—there's—well, all of them are, I couldn't just say that just one or two were independent. I'd say they all were.

Q. Now, specifically, when did Mr. Acamo tell you that he wouldn't buy and didn't have to buy in the presence of Mr. Burgess? A. You mean the date?

Q. The date, yes. A. I can't give it to you.

(4755) Q. Well, month, year—roughly. A. You mean the month or the year? Is that what you mean?

Q. What year? A. I don't know. It's been—it's been a year ago, maybe.

Q. And roughly when? You mean about a year ago—A. It was this time of the year.

Q. July of '57? A. I'm trusting my memory.

Q. And what in particular was involved, do you recall? A. We were trying to sell him a seat cushion deal.

Q. Is that the only thing? A. At that particular time, that's right.

Q. All right. Now, what about Mr. Bonacci? A. Well, I didn't call on Mr. Bonacci with Mr. Burgess, if that's what you're asking.

Q. Yes. A. No, I didn't. I didn't call on him.

Q. How about Mr. Baird? A. I didn't call on him. I didn't make many calls with Mr. Burgess.

Q. That same is true of Carroll, is it? A. That's right. Most of the time, why, it was we fellows out there fighting with competition to try to get business. We didn't do too well.

Q. Now, I believe you stated that in your opinion 50% of the (4756) Texaco stations have non-sponsored TBA, is that correct? A. Well, I think I said that was with tires and batteries, and even more on accessories.

Q. Well, yes, but—you've got three percentage figures here that I'm trying to arrive at for your basis. In other words, first you said there is about 50% of the Texaco

stations have non-sponsored TBA, or tires and batteries? A. Tires and batteries, that's right.

Q. Then you said that in your opinion 75% of the accessories is non-sponsored, is that correct? A. That's right.

Q. And 40% of all TBA is—and that I wasn't clear on—non-sponsored, or— A. Yes.

Q. That was non-sponsored? A. Yes.

Q. All right. Now, how do you arrive at those percentages? Let's start with your opinion in regard to the 50% of Texaco stations having non-sponsored tires and batteries. A. Well, you see, to start with, as I told you, I work with salesmen, supervise them, and the only thing I'm concerned about is the non-sponsored, which to me is competitive merchandise. Because if we're selling the Firestone, why, that doesn't concern me. I'm after the business that we're not getting. So for that reason, that's all I look for, is the (4757) competitive merchandise, as we call it. And to answer—what was your question again?

Q. Well, the question was, how do you arrive at your opinion that 50% of the Texaco stations have non-sponsored tires and batteries. A. Well, I check them, as I said, getting into them and finding out what our salesmen are getting.

Q. Now, those 50% have non-sponsored tires and batteries. Does that mean that 50% of the Texaco stations carry non-sponsored tires and batteries exclusively? Is that you— A. No.

Q. Of these 50% do they carry—do some or all of them carry some Firestone? A. Say that just once more.

Mr. Dias: Will you read that back?

(Question read.)

A. I'd say so.

Q. And would you say that— A. I would say not all. I would say some, that's the way I'd answer it.

Q. Well, as to those who are carrying some sponsored Firestone tires and batteries, would you say that they are carrying a good number of Firestone tires and batteries? A. I would say so.

Q. All these stations that you visited that have Firestone (4758) tires and batteries, and so on, do they have Firestone valances and curb signs, in other words, Firestone advertising, about the station? A. Some of them do. Some of them we think should have more, but they don't want it, so we don't put it up.

Q. Well, didn't—you were here yesterday, were you not? A. Yes, I was.

Q. Didn't one of the witnesses state he had a fight about this advertising material? A. Well, sometimes, I'm sorry to say, we have trouble getting it, and some of the dealers like to use our valances because they know that it will help pull business into their stations. But that shouldn't be the case. We were at fault there.

Q. All right. Now, as to the 75% figure—well, first of all, you stated that 100% of the stations, the Texas Company stations, have non-sponsored accessories? A. That's true.

Q. Is it your testimony that those stations have no Firestone TBA? A. No.

Q. I'm sorry—no Firestone accessories. A. No.

Q. Is it your statement then that all Firestone stations have at least some non-sponsored accessories? A. No.

(4759) Q. Is it your—what do you mean by that? A. Well, I mean that there's some Firestone stations that carry none of our accessories. In other words, they just don't carry any.

Q. All right. Then we get down to the 75% figure. Is that then—do you derive your 75% figure, that 75% of the accessories in Texaco stations are non-sponsored— A. That's right. They're competitive.

Q. Now, you mean that 75% of the Texaco stations carry non-sponsored accessories, or do you mean that as to each station, about 75% of their accessories are non-sponsored? A. Well, what I had in mind was that 75% of the accessories sales made to Texas service stations were non-sponsored. And I think that's conservative.

Q. But you do sell some Firestone accessories to all—most of the stations? A. Most. Not all.

Q. And on this overall TBA, the 40% figure, how do you arrive at that estimate? A. Well, as I said, by getting into the stations and looking at their stock.

Q. But you claim there were—what, about 30 Texaco stations, in the area? A. That's right.

Q. Now, of the 30 do you—is it your testimony that 40% of (4760) the 30 carry your Firestone TBA in general, or is it your testimony that 40% of the TBA that goes through those 30 stations is Firestone TBA? A. No, I—it was my testimony that 40% of the TBA sold those dealers was non-sponsored, of the total TBA.

Q. Of the total TBA 40% is non-sponsored? A. That's right.

Q. You mentioned various ways that Texaco assists Firestone. Texaco also notifies you, I mean Firestone, when new stations are opening up or dealers are changing, do they not? A. Not necessarily. They should. But we try to find out a lot of times before they ever get to us, because if you can get close to those guys, it's better off to you to sell them. You can get them buttoned up before competition does. Why, you get more business that way.

Q. Yes. Now, in those instances where you do get the information? Do you see them at the time, or before they open their stations? A. We try to.

Q. And that's the ideal time to catch them? A. Yes, that's right.

Q. Now, are there some instances where you, the Firestone representative, learn the identity of new—of the new operator of a new station, even before Texaco? A. That's right.

(4761) Q. And you close your transaction with them on that of your own without any help from Texaco? A. Oh, yes. We don't always have Texas Company help in closing the deal. That's right.

Q. Does Texaco then get a commisison on the sales that you make in those instances? A. I don't know. I guess they do. I don't know.

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(4762) *By Mr. Dias:*

Q. Did you state in connection with one of the Texaco operators that it was normal to carry the filters in the back room? A. Yes, sir.

Q. Where is the back room, as you understand it, in the service station? A. It is a stock room more or less that they keep merchandise in which normally is displayed in the regular office, if that is what you want to call it, of the station.

Q. I see.

I show you a picture of Mr. O'Brien's station, Respondent's Exhibit 19. Would you call that the back room of the station? A. No, not necessarily. I had specific reference to what is back behind the office, it was back off the service bay; this is in the service bay.

Q. And in the service bay is the proper place or the usual place to carry filters, is that correct? A. No, in the back stock room, because, as I said, it is not an item that is sold on impulse. You have to sell an oil filter, so for that reason there is no use having them out where people see them.

Q. Now during the time that Acamo was buying tubes (4763) from—Weiner, I believe it was? A. Weiner.

Q. —and other items from other suppliers, other supply sources, how did you know that? A. We saw them in stock in his station.

Q. Were you personally calling on him at that time? A. That is right, and he has always bought a lot of stuff like that, you see.

Q. I think you stated that Mr. —Schulte, was it? A. Right.

Q. Or Schultz? A. Schulte, that is right.

Q. Mr. Schulte doesn't stock Firestone tires at all, he bought them on a piek up basis? A. That is the way he was with everybody.

Q. That includes the Century tire? A. That is right.

Q. So on that basis the chances are he buys them and puts them on the car immediately, isn't that so? A. Generally speaking, yes.

Q. That is, within a day or two? A. Yes, that is right. That is the way he generally operates. He just doesn't do much stocking of anything.

Q. When you visited these various stations, did (4764) you inform them you were coming or did they know you were coming? A. Not necessarily, no.

Q. Do any of your Firestone stores handle Texaco products? A. Yes.

Q. Which ones?

Mr. Royall: What was the question?

Mr. Dias: I asked him if Firestone stores handle Texaco products.

By Mr. Dias:

Q. Which ones? A. Omaha.

Q. Is that the 20th Street? A. Yes.

Q. 20th and Harney? A. That is right.

And Lincoln does.

Q. Lincoln? A. We have several of them in Lincoln, together with other companies.

Q. They have pumps, have they? A. That is right.

Mr. Dias: I believe that is all.

(4765) *Redirect examination by Mr. Royall:*

Q. I have a couple of questions, Mr. Buntz. In Omaha and Lincoln, your territory, you are a great deal more successful in selling tires, Goodrich's, are you not? A. Yes, sir.

Q. You were asked about the Firestone name being on certain Firestone products and others not carrying the name. Does that make any difference at all in the matter of commission?

It is a Firestone product and the commission is paid? A. To my knowledge, yes.

Q. Whether the name is on it or not? A. It makes no difference.

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(4766) NORMAN L. JACOBSON was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Would you give your full name, Mr. Jacobson? A. Norman L. Jacobson.

Q. Where do you live? A. 10217 St. Lawrence.

Q. What business are you in? A. I run a Texaco service station at 119th and Western, Blue Island, Illinois.

Q. You have a lease, do you, for that station? A. Yes, sir.

Q. One of those leases that renews itself each year? A. Yes, sir.

Q. How long have you been there? A. I have been there almost five years now.

Q. Can you tell us about what is the gasoline gallonage of your station? A. Right now I am selling about 29,000 gallons per (4767) month.

Q. That is doing better than it did when you went into it? A. Yes, sir.

Q. Do you handle any TBA in that station? A. Yes, sir, a complete line.

Q. Will you tell us the reason for handling TBA? A. The reason for handling TBA is to create more business to get people to come in the station so I can handle them and take care of them.

Q. Do you think it helps you attract customers for the sale of gasoline? A. Yes, sir, very much so.

Q. Do you make money on the TBA items? A. Just 40 per cent, sir.

Q. So in your case you have got a good mark-up? A. Yes, sir.

Q. And it is a profitable business? A. Yes, sir.

Q. Did you have any conversation with the zone manager of the Texas Company at the time when you obtained your lease for that station? A. Yes, sir, I talked to Mr. Knight for quite a bit.

Q. Mr. who? (4768) A. Mr. Knight.

Q. That is Donald Knight? A. Yes, sir.

Q. At the time when you were signing the lease, was there any discussion about TBA? A. Yes, sir, there was a discussion about TBA. Mr. Knight said he would like me to handle B. F. Goodrich if it is possible, but I could make my own choice as far as TBA is concerned, so I

could make out the best with my customers. It was an old established station that handled B. F. Goodrich products, so I continued the B. F. Goodrich products line.

Q. Was anything said about Firestone? A. No, sir.

Q. Was anything said about your handling Goodrich because it was a neighborhood station and the customers had gotten used to Goodrich? A. Yes, sir, because when I took over it was established for a year before I bought it, and it was a B. F. Goodrich station.

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(4769) Q. You stated that Mr. Knight told you that in spite of his recommendation, you could choose whatever you want, choose whatever TBA you wanted? A. Yes, sir.

Q. Has anybody employed by the Texas Company at any time since that conversation told you that Mr. Knight didn't mean what he said? A. No, sir.

Q. Did anybody tell you that you had to handle B. F. Goodrich or the Firestone line of TBA? A. No, sir.

Q. Did anyone tell you that your lease would be canceled or wouldn't be renewed if you didn't handle the Firestone or the Goodrich line? A. No, sir.

Q. Did they say they would treat you badly in some other way if you didn't stick to Goodrich? A. No, sir.

Q. Nothing like that has happened to you? A. No, sir.

(4770) Q. Now tell me from whom do you buy your TBA items? A. I have three sources of supply that I buy TBA from. One is Kenrose Automotive at 111th Street; Capital Auto Parts; and J&E Auto Parts.

Q. Now this Kenrose dealer handles Goodrich, the Goodrich line, does he? A. Yes, sir, he handles the Goodrich line but he also handles Firestone, Delco, Auto-Lite and other products, too.

Q. In addition to buying Goodrich products from him, do you buy a good number of items which are not in the Goodrich line? A. Yes, sir.

Q. You know that on those the Texas Company doesn't get any credit? A. I don't think so.

Q. Now also among the things you buy from him are some anti-freeze? A. I buy Prestone, Zerex and Zerone from him.

Q. And those are not in the Goodrich line? A. No, sir.

Q. In addition to Goodrich batteries, what kind of batteries do you buy from him? A. I buy Auto-Lite and Delco-Remy batteries also.

Q. What kind of fan belts do you buy from him? (4771) A. I buy a complete line of fan belts. I formerly had B. F. Goodrich in there but I had them all taken out and I had Gates put in about three and a half years ago.

Q. When you made that change did the Texaco salesman threaten you or in any way tell you that it would be displeased, that the company would be displeased with you if you didn't stick to the Goodrich? A. No, sir.

Q. Nothing like that happened? A. No, sir.

Mr. Dias: I object to that, your Honor, as leading. These are long questions which are leading, in effect, and I suggest that the witness testify. He can be asked what if anything was said.

Mr. Lorenzen: We have to negative specifically the inference that was—

Hearing Examiner Kolb: We have a negative, I think, and it is shortening the examination to some extent without particularly leading the witness.

By Mr. Lorenzen:

Q. How about filters? A. I handle three types of filters right now. I (4772) have got A-C, Brahm, and I have Atlas.

Q. So that part of your filters are in the Goodrich line and part are not? A. That is right.

Q. How about radiator hose? A. All of them are Gates.

Q. How about spark plugs? A. I handle all types of spark plugs. I have got Auto-Lite, A-C, and Chadwins.

Q. So that again part of them are in the Goodrich line and part are not? A. That is right, yes, sir.

Q. How about thermostats? A. I handle Dahl thermostats.

Q. And those are not in the Goodrich line? A. No, sir.

Q. How about waxes and polishes? A. I handle every kind of wax there is, almost. I have got about thirty-five different kinds.

Q. And the same is true of additives and chemicals? A. Yes, sir, I have all different types.

Q. Now you handle Goodrich tires? A. Yes, sir.

Q. Do you also handle other kinds of tires? A. I will handle any type of tire I can make a buck (4773) on. I have been selling Firestone, Goodyear, and I have sold some U. S. Royal.

Q. How about mufflers and tail pipes, do you handle any of those? A. I handle them.

Q. Shock absorbers? A. Yes, I do.

Q. What kind do you sell? A. Air mufflers and McCord tail pipe mufflers, and Monroe shocks.

Q. They are not in the Firestone line or the Goodrich line? A. I don't think so. I don't believe they are.

Q. You say you handle any kind of a tire you can make a buck on. Do you buy other makes of tires than Goodrich? A. Oh, yes, I buy Firestones, and I bought, when they had sales on them, Goodyear tires. I made some adjustments on U. S. Royals, and where a customer come in with a bad tire, I take the old tire and give him some adjustment and go to U. S. Royal and get a U. S. Royal tire which is on sale and put those in stock.

Q. You put them in stock where they are openly visible, anybody can see them? A. That is right.

(4774) Q. Does that apply to all of your TBA? A. Yes, sir, all of my stock.

Q. Do you hide any of it? A. No, sir.

Q. Have you ever been told by your Texas Company representative to hide any TBA? A. No, sir, never.

Q. Or that the Texas Company would cancel your lease or otherwise treat you badly if you didn't hide it? A. No, sir, they never said that.

Q. Or throw it out of the station? A. No, sir.

Q. Now in addition to Kenrose, you have bought some Goodyear tires from South Side Tire, did you say? A. Yes, sir.

Q. And you buy some TBA, you say, from Capital Auto Parts? A. Yes, sir.

Q. What do you buy from them? A. I buy some thermostats and filters. I have a complete line of Niehoff equipment for ignitions, I have about $500 worth, and they completely supply that, Niehoff.

Q. How about C-K Auto Parts? A. I buy brakes, shock absorbers, rebuilt generators, (4775) things like that off of them.

Q. Do you buy any additives and chemicals from them? A. Very few.

Q. How about any wagon peddlers, do you patronize those at all? A. Yes, I do. I patronize one called C. V. Sales. Every Friday he comes around and I buy about $30 worth a week of additives, different additives.

Mr. Dias: I didn't hear what you buy from him?

The Witness: Additives.

By Mr. Lorenzen:

Q. Now you say you buy from J&E. What do you buy from them? A. I buy additives, thermostats, Kool-Vent seat covers and brake fluid, whatever they have a buy on.

They come around and it is about $30 a week I spend with that company.

Q. Tell me generally what makes up your mind in so far as selecting the TBA which you handle? A. I try to buy on a basis where I can get an extra discount on something so I can make a dollar with it, and it has got to be a nationally advertised product that they are having a special on or something of the sort.

(4776) Q. And has that been your general motivation in buying TBA? A. That is right.

Q. Has your choice been dictated or compelled in any way by representatives of the Texas Company? A. No, sir.

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Q. I show you four pictures which have been marked as 42-A through D and ask you whether you recognize those as being pictures taken in your station? A. Yes, sir.

Q. Do you know approximately when those pictures were taken? A. Well, the large picture was taken sometime I think in February and the other ones were taken about a month ago.

Q. Who took them? A. A representative of the Texas Company.

Q. Did you know he was taking them? (4777) A. Yes, sir, I did.

Q. Did you do anything to alter your station or change it from the way it normally looked? A. No, sir.

Q. Is that the way your station looks and has looked in general for the past—I don't know whether it is years, but I suppose you do change your display? A. No, it has looked like that for three years now.

Q. It has looked substantially like that? A. That is right.

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(4778) Q. Those pictures show some of the merchandise about which I have asked you, the Gates fan belts on the Gates' racks, and is that Auto-Lite batteries? A. Yes, sir.

Q. By the way, do you have two sets of these Gates' racks, one on each side? A. One on each side of the grease rack.

Q. One on each side of the grease rack. So that these pictures are not duplicates, they are taken one on each side? A. That is right.

Q. Taking all of your TBA together, and now I am talking about tires and batteries and the type of accessories we have been talking about, not repair parts, try to put out of your mind these ignition parts and clutches or carburetors, things like that, and just kind of think of the other TBA items, tell me about what per cent of your total TBA you think is in tires and tubes? A. I would say about 25 per cent.

(4779) Q. What part of that same business do you think is in batteries? A. Close to 25 per cent. Maybe it wouldn't be that. Yes, it would be that high, about 25 per cent.

Q. I think I dare add that one up, that is 50 per cent? A. Yes.

Q. And the balance, the other 50 per cent, then, would be in what we call accessories? A. Yes.

Q. Could you estimate about what part of your total TBA sales are in the Goodrich line? A. It can't be more than 40 per cent.

Mr. Dias: I am sorry, I didn't hear that.

The Witness: About 40 per cent, it can't be more than that.

By Mr. Lorenzen:

Q. You say you didn't think it was more than 40 per cent? A. No, no more than 40 per cent.

Q. Will you state whether you get any help in merchandising your TBA from the Texas Company? A. Yes, I do. He comes out and helps me with displays and things like that around the station. He brings out signs, posters, and everything like that to (4780) help me to display and sell my merchandise for advertising.

Q. Do you attend any dealers' meetings? A. Yes, sir, I attend them all.

Q. Do you find that you get any help out of those? A. Yes, sir, I think they are very helpful.

Q. In connection with TBA merchandise? A. That is right, sir.

Q. Do the representatives refuse to help you in connection with the TBA that is your business outside of the Goodrich line? A. No, they have never refused me yet, sir. They have always been helpful to me in every way.

Q. You find that they help you and that the help you get from the Texas Company applies to all of your TBA? A. That is right.

Q. Is your station known as Bob & Norm's? A. Yes, sir.

Q. Who does the buying of the TBA for your station? A. I do all of it, sir.

Q. Do you recall whether Mr. Joseph C. Arey, a salesman for the South Tire Service, was ever in your shop? A. Yes, sir, he was in there.

Q. Do you remember that he was in there talking to (4781) you? A. Yes, sir.

Q. And talking to your partner Mr. Schultz? A. Yes, sir.

Q. Now while Mr. Arey was ever in there, was he ever told that you wouldn't dare buy or display Goodyear tires? A. That was never said in our station, sir, never stated.

Q. At the time when Mr. Arey was in there, do you know whether there were on display tires other than Goodrich? A. Yes, sir.

Q. What were they? A. I had four Goodyear tires on display at the time because I had bought some previously from him to sell and he had been out to see me to ask me why I wasn't stocking more of them.

Q. You also bought Goodyear tires from him since then? A. Yes, sir, I have after that time.

Q. Does anyone in the Berry Tire Company call on you, Mr. Jacobson? A. No, sir.

Q. Does anyone from the Shannon-Son Tire & Supply (4782) Company call on you? A. No, sir.

Q. Does anybody from Jennings Auto Supply call on you? A. No, sir.

Q. Does anybody from Motor & Axel Parts Service, Incorporated call on you? A. No, sir.

Q. Does anyone from Evanston Auto Company call on you? A. No, sir.

Q. Does that apply also to its affiliated company, the Lake County Auto Company? A. I don't know them, sir, and no one calls.

Q. No one from those places calls on you? A. No, sir.

Q. Now does someone from J&E Auto Supply call on you? A. Yes, he calls every week and I buy every week, too.

Q. And that is one of your other substantial sources of TBA as you testified? A. Yes, sir.

Q. You have also testified that as to South Tire Service, you have bought from him and you are still doing it when you want Goodyear tires? (4783) A. Yes, sir.

Q. When you said that some of the things that were helpful to you as the furnishing to you of signs and posters by the Texas Company, you didn't mean that the Texas Company furnished you Firestone signs and Goodrich signs? A. No, sir.

Q. You get those from Firestone and Goodrich, do you not? A. That is right.

Q. Have you had any difficulty in getting decals? A. Yes, sir, decals that you put on the window, I had to wait, I think, six months. Six months I waited for them to be put on the last time when I had them on about two years ago, and I have been trying to get them now again to replace them because they are all getting raggedy and cracked and peeled. It is a hard job to get ahold of those decal signs and put them back on windows.

Q. You are the one who asked for them? A. Yes, sir.

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Cross-examination by Mr. Dias:

Q. Do you know the date, Mr. Jacobson, that Mr. (4784) Arey was in your station? A. No, sir.

Q. That is, that you testified to before? A. No, sir.

Q. That conversation was mentioned before, you don't know when that took place or allegedly took place? A. I never heard it take place in my place of business. Mr. Arey was in there three or four times to see me.

Q. When was that, do you recall? A. At different times. The first time that Mr. Arey ever heard of me, I called him on the phone and asked him to deliver some Goodyear tires. Then he come out to make calls.

Q. Do you recall when that was? A. No I don't, sir.

Q. During these dealers' meetings that you attend, who all are present, are they all of the local dealers? A. All of the local dealers and sales representatives and the guest speaker.

Q. The sales representative from what company? A. The Texas Corporation.

Q. Who are the guest speakers? Who are the typical guest speakers? A. Different men that know something about oil and (4785) additives, and so forth.

Q. Do you have any representatives from Goodrich or Firestone? A. Yes, sir.

Q. Do they discuss TBA? A. Yes, sir.

Q. You mentioned that no salesman from Berry or Shannon-Son and several others called on you. Are you in their sales territory, do you know? A. I don't think so.

Q. As a matter of fact, you are out quite a ways, aren't you? A. Yes, I am out in Blue Island.

Q. Where? A. Blue Island.

Q. Those pictures, as I recall, Respondent's Exhibits 42-A to D, do not show any Goodrich merchandise or advertising in and about the station. You have such advertising, do you not? A. Just on the outside of the windows, and there is a sign out along the fence.

Q. Along the fence? A. Yes.

Q. Can you give us some idea of the size of that Goodrich sign? (4786) A. Three by one foot.

Q. Three foot by one foot? A. That is right.

Q. Do you have, even if it is torn, a sign in your window? You do, do you not, a Goodrich sign? A. I have decals.

Q. I notice, too, that you use the charge system. You have Texaco's credit system, do you? A. Yes, sir.

Q. Do you charge these non-sponsored items? A. Yes, sir.

Q. Do you specify that they are non-sponsored? A. No, sir.

Q. Up until the time that they put in the charga-plate, I suppose you call it, was it necessary to indicate on the slip the type of merchandise that was sold? A. It was on

the deferred payment plan, I think, sir, but not on the regular cards, if I am not mistaken.

Q. We will talk first about the regular cards. A. No, the regular cards, I don't think it was on accessories or whatever I would sell, I would put the type of item.

Q. And you didn't specify the brand name of the item? (4787) A. No, sir.

Q. Was there any reason for that? A. No, sir.

Q. The card itself is limited to Goodrich and Firestone, is it not? A. I wouldn't know for sure.

Q. You don't know what the products are limited to on the credit? A. No.

Q. I believe you said that you make about 40 per cent on your TBA. Is that the average mark-up on tires, batteries, and accessories? A. No, sir, that is the average mark-up on the TBA outside of tires, batteries, and tubes, and things like that; that is on your merchandise.

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(4789) Q. When we say TBA, we mean tires, batteries and accessories, the full business. Now what do you make on tires, batteries and accessories? If it varies by each of those categories, say that, and then we will continue. A. It varies by each of the categories. 15 per cent on tires, maybe, and 15 or 20 per cent on batteries, but you make 40 per cent on merchandise, merchandise specifically.

Q. I see, and that would be accessories of various types? A. That is right.

Q. And that includes filters, does it, and all accessories? A. That is right.

Q. Do you carry a stock of Goodrich tires? A. Yes, sir.

Q. What do you consider a stock? A. I have about 22 to 25 tires.

(4790) Q. How big are your racks? A. I have one rack which carries 12 tires and two more that carry five

and I have racks inside the building that will carry as high as 20 tires.

Q. What other brands of tires do you carry a full stock of? A. I have been carrying Firestone also.

Q. In other words, you carry a full stock of Firestone tires and a full stock of Goodrich tires? A. It is up and down, the stock is up and down. You never stock a double amount of everything. You stock one at one time and when you got a price on Firestone you get a price on Goodyear or you get a price on U. S. Royal, you will buy them.

Q. I think I understand, but what I am trying to determine is when you maintain a basic stock in your station, what items do you have in the tire line, what brand? A. My basic stock would be of B. F. Goodrich.

Q. B. F. Goodrich? A. That is right.

Q. Do you at other times carry a full stock of Firestone? A. Once in a while, yes.

Q. Do you ever carry a full stock of Dunlops? (4791) A. I never bought any Dunlops in my life.

Q. Century? A. No, sir.

Q. Cooper? A. No, sir.

Q. Do you have any idea of your present inventory in tires, batteries and accessories? A. It would be about $5,000.

Q. $5,000? A. Wait a minute, no, that is for everything in the station.

Q. I mean everything that can be sold such as tires, batteries and accessories. A. That is right, sure, it must be close to four or five thousand dollars.

Q. Can you estimate how much of that is Goodrich dollar-wise? A. It would be maybe about $1500.

Q. $1500? A. Yes, sir.

Q. You stated that you purchased from various peddlers, wagon peddlers, is that correct? A. Yes, sir.

Q. How many of those call on you? A. I only have one calling on me right now.

(4792) Q. In addition to that one, I missed some of these names. You have Kenrose, and Kenrose is the Goodrich man, is that right? A. I don't know if he is the Goodrich man or not, but he handles Goodrich. He also handles Delco-Remy, Auto-Lite and other stocks.

Q. And then you have Capital? A. That is right.

Q. And J&E? A. That is right.

Q. There were a couple of others in there, were there not? Who else do you deal with? A. That is my main three, the main three suppliers, Kenrose, Capital, and J&E. Then there is this here—

Q. This wagon peddler? A. This wagon peddler, yes.

Q. Did you say something about C-K? A. C-K Motors, yes, he is parts mostly.

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Q. Do you buy any Goodrich batteries? A. Yes, sir.

(4793) Q. Do you stock Goodrich batteries and these Auto-Lites that you mentioned? A. Yes, sir.

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Redirect examination by Mr. Lorenzen:

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Q. And whichever one of these jobbers testified that they did business on the south side of Chicago, that would include Blue Island, wouldn't it? A. Yes, sir, because I am right across the street from Chicago.

Mr. Dias: What?

The Witness: I am across the street from Chicago.

Mr. Lorenzen: He is right on the city line.

Mr. Dias: I see. All right.

By Mr. Lorenzen:

Q. Now Mr. Dias asked you about some Goodrich signs (4794) that you had there. Do you find those helpful in attracting business? A. Yes, sir, they are very helpful.

Q. Is that the basis for your having Goodrich supply you with them? A. Yes. I only had a sign on one side and I asked them to put it on the front side so I would catch them both ways, 119th Street, and also on Western Avenue, so they would know I was a stocking dealer, too.

Q. Will you tell us why you don't stock these tires which Mr. Dias mentioned to you, Dunlop, Century, and Cooper? A. I think Goodrich is a better tire, more acceptable to the people because it is a nationally advertised product and it is easier for me to make adjustments on a tire like that.

Q. Now with respect to your charge card, I mean this charge that Mr. Dias was asking you about or discussing with you, as I understand you, you don't specify by name any part or product? A. No, sir.

Q. And that applies to whether it is Goodrich or anything else? A. That is right.

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(4795) ROSS RITTENHOUSE was thereupon called as a witness for the Respondent, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your name to the reporter? A. Ross Rittenhouse, R-i-t-t-e-n-h-o-u-s-e.

Q. Where do you live? A. 2314 Gideon, Zion, Illinois.

Q. Will you tell us what your business is? A. I am in the Texaco service station business.

Q. Where is your station located? A. 29th and Sheridan Road, Zion.

Q. Do you have a lease from the Texas Company? A. Yes.

Q. Is it one of these leases that renews itself at the end of each year? A. Yes, that is right.

Q. How long have you been a lessee at this station? A. Nine year the first day of September this year.

Q. Do you handle TBA? (4796) A. Yes.

Q. Do you find it helpful in your business? A. Yes, it is very helpful in my business.

Q. Both from the point of view of making money in TBA and selling gasoline? A. Yes, and it attributes quite a little to it.

Q. During the time you have been a lessee dealer, have you bought your TBA from whatever source you thought was the best business for you? A. Yes, I have handled Firestone and I have handled three other brands of tires, and most any type of accessory, anything that I wish to buy.

Q. Have you understood that that was in accordance with the Texas Company's TBA policy? A. Well, I have never heard anything contrary to that. When I went into business, Mr. Paulsen, the previous owner, explained everything to me. The salesman was going on a vacation and he introduced me and he was leaving right away on a vacation, and Mr. Paulsen give me all the set-up and his estimation was that we could buy wherever we wanted. He himself was in the Firestone business, he was handling Firestone, and he said that it had very good acceptance, he had good luck with it, and the station was stocked with that when I bought it, so I had never heard anything contrary to (4797) that. I had good luck with it, I stayed with it until I found that I could get a better price and then I switched to Cooper, Armstrong, and Pennsylvania tires in the tire line, and I found that they didn't sell very well. I got a better price but I had to cut my

price accordingly and consequently made approximately the same profit, but I was selling less tires, and didn't have the acceptance of the public.

Q. So then did you change? Did there come a time when you changed back to Firestone? A. I did change back to Firestone. They naturally were curious why I was handling them.

Q. Can you speak up just a little bit more? A. Yes.

They asked me and I said, "Well, I am getting a better buying price, I am buying cheaper from these other sources." So I quoted the prices I was buying from the other sources and the salesman, Paul O'Neill, said that he would try to see if Firestone wouldn't help me out toward that line, and it wasn't long until they came along with a better price and it was comparative to the price of the cheaper brand of tire, and my buying price was better, so I switched back to Firestone which I have had good luck with.

Q. During the time when you were handling these (4798) Cooper and Pennsylvania and Armstrong tires, did anyone from the Texas Company threaten you with cancellation of your lease? A. No, none whatsoever.

Q. Did anyone suggest that you would be treated badly in some other way if you didn't stop handling these Cooper and Pennsylvania and Armstrong tires? A. No, sir.

Q. Was the choice to go back to handling the better known Firestone tire your own choice or was it forced on you by the Texas Company? A. Well, it definitely was my own choice. I was persuaded by my own figures. When my sales had dropped off on my tires, naturally I knew I could sell just as many tires at a good price if I got the price from Firestone.

Q. Now you have also handled some batteries other than Firestone, haven't you? A. Yes, I have handled Bowers and I do pick up other batteries if I happen to

be out of batteries at the present time, I pick them up at local houses, local parts houses.

Q. Will you tell me in general from whom you buy your accessories for this station? A. Mainly Zion Auto Parts, Grand Automotive in Waukegan (4799) and some from Al Wenner's Texaco in Waukegan.

Q. Would you say that nearly all of your accessories other than the Firestone tires—we won't talk about those for the moment—are bought from Zion Auto Parts or Grand Automotive? A. Yes, mainly. That is my two largest supply points.

Q. Neither one of those is a Firestone or Goodrich supply point, is that correct? A. No, sir, neither one.

Q. Among other things that you buy from these houses are a complete line of Gates fan belts? A. I buy Gates from Grand Automotive.

Q. Do you display the Gates? A. Yes, we have a large display of Gates fan belts.

Q. What kind of radiator hoses do you have? A. We have Modak.

Q. That is not in the Firestone or Goodrich line, is it? A. Not to my knowledge it isn't. I have never seen it.

Q. From whom do you get it? A. Zion Auto Parts.

Q. You buy Purolator filters? A. Yes, I buy Purolator filters from Zion Auto Parts.

Q. Are all of your TBA items, regardless of brand (4800) or where you get them, openly displayed? A. Yes, sir, everything is out in the open.

Q. And it is labeled, is it? A. Yes, sir, everything is labeled.

Q. Your Modak hoses are displayed on a Modak supply rack? A. Yes, they have racks and labels on each item, it is specified.

Q. Has anyone from the Texas company ever told you to hide or get any of these products out of your station? A. No; none at all.

Q. This fellow Paulsen you said was the former owner? A. Yes, that is right.

Q. He was the man who had leased the station before you did? A. That is right.

Q. He was the one who told you about the success he had with Firestone? A. Yes, that is right. They left everything up to him because the salesman was leaving town and O'Neill assured me that he would give me all of the information on everything, and then the final lease would be signed and settled with the office, of course.

Q. That is the Texas salesman just introduced you and (4801) left? A. He introduced me to Mr. Paulsen and left it up to him to tell me about the station and the running of it and all.

Q. And that is how you came to be a Texas lessee? A. That is right.

Q. Do you find that you get any help from the Texas Company in the merchandising of your TBA? A. Yes, we have had help. We had meetings, the salesman would even help me to the extent of cutting weeds and dusting shelves around. He was very helpful. Then they have meetings quite often.

Q. You attend the sales meetings? A. I only missed one in nine years.

Q. Do you find those a help? Are they helpful in selling TBA? A. Very helpful. I wish they had more.

Q. Does that apply to all of your TBA whether sponsored or non-sponsored? A. Yes, sir, all of the meetings seem to be on the order of helping us to make more money for ourselves and make us more successful dealers, and they don't specify how to do it.

Q. So you use the tips which you get from those meetings in selling the sponsored TBA as well as the (4802) non-sponsored? A. That is right. I wish they had more of them

Q. Mr. Rittenhouse, you sell Haviland oil, do you? A. Yes, an awful lot of it.

Q. Do you feel you make more money on that than you do on other oil? A. Yes, I have handled other brands of oil and not handling any amount of it, we don't get a price on it.

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Q. Mr. Rittenhouse, so you couldn't get as good a price on the Quaker State as you do on the Haviland? A. No, there is about $2.00 difference in my buying (4803) price and it retails for the same price.

Q. So it is the fact, then, that you display your Haviland and you don't display your Quaker State? A. That is right.

Q. And is that the reason for your failure to display the Quaker State? A. That is right.

Q. You are north of Chicago, are you? A. Yes, about 45 miles.

Q. Let me read you this list of dealers and ask you whether any of them call on you:

Evanston Auto Company and Lake County Auto Company? A. No, they don't.

Q. Motor and Axel Parts Service, Incorporated? A. No, sir.

Q. Jennings Auto Supply? A. No, sir.

Q. J&E Auto Supply Company, Inc.? A. No.

Q. Shannon-Son Tire & Supply? A. No, sir.

Q. South Tire Service? A. No.

Q. Berry Tire Company? (4804) A. No.

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(4805) *Cross examination by Mr. Dias:*

Q. You mentioned, as I recall it, a Mr. O'Neill. Is he a Texaco or a Firestone salesman? A. A Texaco representative.

Q. Do I understand that you now carry Firestone tires (4806) and batteries? A. I use both products, yes.

Q. Do you buy any of their accessories? A. Very few at the present time.

Q. What is it that you buy from them? A. Just occasionally a seat cover or whatever item we know we are going to need. If we know we are going to need it and we are in the vicinity of the Firestone store, why we pick it up, seat covers, cool cushions, and various little accessories, rear view mirrors.

Q. What about Al Wenner, what do you buy from him? A. He is the Firestone outlet or store. There is two of them in Waukegan and he happens to be one of them. He is a Firestone dealer.

Q. Is that where you get your tires and batteries? A. I get some from him and some from Washington Tire & Battery.

Q. Who are they? A. They are also a Firestone outlet.

Q. Where are they located? A. They are located in Waukegan also, they are both in Waukegan.

Q. When did you say you took over from Paulsen? How do you spell that name? A. P-a-u-l-s-e-n.

(4807) Q. When did you say you took over from Paulsen? When was it you took over from him? A. September 1, 1949.

Q. Did you say that you bought your supplies from him? That is, whatever he had left over, you purchased it, is that correct? A. Yes, sir, I purchased his stock.

Q. Do you recall how much that was? A. That was, I would say, around about $3500 to $4000 worth of actual inventory, tires, accessories and batteries, outside of the machinery.

Q. Was that Firestone mainly? A. I would say that it was probably 75 per cent Firestone.

Q. Was your transaction in buying that stock just between you and Paulsen? Did you write a check to him for the amount or how was that handled? A. Yes, that is right.

Q. Neither Firestone nor Texas were involved in that transaction? A. No, they weren't involved in the transaction, only just for signing the lease.

Q. Yes, but I mean in that transfer of stock from Paulsen to you, there was no agreement or no negotiations conducted with Firestone or Texas? (4808) A. No, the deal was made between Paulsen and myself.

Q. At that time did you buy any additional material from Firestone? A. I did from that point on for some time, yes.

Q. No, but I mean before you opened the doors for business? A. No.

Q. Just operated on the stock you had purchased? A. Yes. He had a very rounded out stock.

Q. You operated on the stock you purchased from Paulsen? A. Yes.

Q. How often did you say—I think you said you missed one of these sales meetings in more than nine years, is that correct? A. Yes, that is right.

Q. How often are they conducted in a year's time, do you know? A. I would say there are probably five on the average, five or six meetings a year.

Q. During those meetings or at those meetings are there any representatives of Firestone present? A. Occasionally there will be a meeting, that is when it is a large meeting, and they will have a display there or something of that sort.

(4809) Q. What is a large meeting? A. When they include the Chicago and the Waukegan area, that is with more dealers.

Q. Do they discuss TBA at that time? A. Well, only the importance of making ourselves more money and all.

Q. Do they discuss the merits of Firestone? A. No. No, there is nothing discussed about that at all. That is secondary to our meeting. The primary purpose is movies and talks on our products in the petroleum industry.

Q. What sort of movies are shown? A. Well, various movies of oil and products, knowledge of our own products.

Q. Haven't I seen some pictures of TBA items, new TBA items, movie strips of those, have you ever seen that type? A. No, I have never seen any.

Q. You haven't seen those? A. Nothing on TBA.

Q. You state that you don't display your Quaker State oil and what is the reason again? A. Well, the Quaker State oil is only requested by a few customers, and we keep it under the shelf because it costs me $2.00 more a case than the Haviland oil (4810) and it retails for the same price; therefore I make more money off of the Haviland oil.

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(4811) VINCENT H. ALLEN, a witness called on behalf of the Respondents, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you state your name? A. Vincent H. Allen.

Q. Where do you live? A. Glen Ellyn, Illinois.

Q. What is your business? A. Gasoline and oil, Texaco Service.

Q. Do you have a lease? A. I have.

Q. How long since you have seen it? A. Goodness knows; I haven't seen it in a good many years.

Q. Do you know whether it is one of those standard-form leases that has a clause in it about being cancellable at the end of each year? A. No, I don't.

Q. As far as you know are you in there from year to year? (4812) A. It automatically renews itself.

Q. Each year? A. Each year.

Q. And that has been going on for 25 years, has it? A. 24, to be exact.

Q. You have been a dealer at that location all that time, have you? A. I have.

Q. About what is the gallonage of your station? A. It runs anywhere from 9,000 to 17,000.

Q. Do you handle any TBA? A. I do.

Q. Will you tell us the reasons why you handle it? A. To make money.

Q. Do you make money on the TBA items themselves? A. Yes, sir.

Q. Do you feel it helps attract customers to your station? A. Yes, I do.

Q. For gasoline sales, among other things? A. That's right.

Q. What is your understanding of the Texas Company's TBA policy and program, generally? A. Well, I suppose they would recommend me to handle the Firestone or Goodrich TBA but they have never said (4813) anything to me about handling any other line.

Q. That is, you feel that you could handle any other line, if you wanted to? A. I have done so.

Q. In fact, you handle no sponsored line at all, do you? A. No.

Q. So you have been acting on what you understood the policy to be? A. Right.

Q. Has anyone from the Texas Company ever told you that Texas Company wouldn't renew your lease if you continued to handle this non-sponsored merchandise? A. No; no one has ever said a word to me about it.

Q. Or told you that they wouldn't look on you unkindly or treat you badly? A. No.

Q. Nothing like that has ever happened? A. No, sir.

Q. From whom do you buy your TBA? A. I buy all my tires and tubes from Berry Tire Company; my batteries from Berry Tire Company, and some accessories.

Q. In addition to that company, do you have any other TBA suppliers? A. Yes, Universal Automotive Company, J. C. Olles Wagon (4814) Supply and Wheaton Auto Parts, of Wheaton, Illinois.

Q. Who is the salesman from the Berry Tire Company who calls on you? A. James Abnernathy.

Q. He calls on you once a week, does he? A. Every Monday.

Q. And you buy from him? A. If I need it, yes.

Q. What sort of tires do you buy from him? A. Dunlop.

Q. Do you stock those Dunlop tires? A. I do.

Q. What sort of batteries do you buy from him? A. What is the question?

Q. What kind of batteries— A. Auto-Lite.

Mr. Lorenzen: I have here three photographs which I would like to have marked as Respondent's Exhibits 43-A, -B, and -C.

Hearing Examiner Kolb: They may be marked.

(The papers referred to above were marked Respondent's Exhibits 43-A, 43-B and 43-C, for identification.)

By Mr. Lorenzen:

Q. I show you exhibits marked 43-A, -B and -C, and ask (4815) you whether those are pictures taken in your Texaco Service Station (handing photographs to witness). A. They are.

Q. Do you know about when those pictures were taken? A. The last meeting we had,—a little after the last meeting. I couldn't tell you about these, in particular.

Q. By meeting you mean when I came out and had a talk with you, in May? A. That is about the time, yes.

Q. And I think a couple of those pictures were taken before that time? A. I believe these pictures here were taken before that time.

Q. By "here", you refer to 43-B and -C? A. Right.

Q. And 43-A, was taken after that time? A. That is right.

Q. Did you make any special preparations whatever in your station before any of those pictures were taken? A. None.

Q. And that is just the way your station looked at the time your pictures were taken and has looked before and after? A. That is right.

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(4817) Q. Exhibit 43-D shows a clock and the legend on it isn't clear. Can you tell me whether that clock advertises any kind of a product? A. It is Auto-Lite, something; now whether it is batteries or spark plugs, I couldn't tell you.

Q. Anyway, it is an Auto-Lite clock? A. It is an Auto-Lite clock.

Q. And Exhibit 43-C shows you a regular display of Auto-Lite batteries, is that correct? A. That is right.

Q. And Exhibit 43-B shows you a tire rack? A. That is right.

Q. And what sort of tires are in there? A. Dunlop.

Q. And the name appears on the paper label and on the legend, does it not? A. On the labels and legend, yes.

Q. And this Exhibit 43-A shows a Dunlop Gold Seal sign; where is that located? A. In the lube bay area.

Q. And it is visible, is it? A. Yes.

Q. Through the window? A. One side of the door. You have to open the door or close it. If you come from

the lube bay you can see it (4818) or you can come in from the street and see it.

Q. Aside from those signs you have no signs on your station whatever, do you, except the Texaco sign? A. That is all.

Q. And you are located in a high-class residential neighborhood, are you? A. It is right down in the downtown area.

Q. Of a suburb? A. Of a suburb, yes.

Q. No factories nor industry? A. None at all.

Q. In addition to the Dunlop and Auto-Lite products you handle all Gates fan belts and Thermoid? A. Yes.

Q. And Gates radiator hose? A. Right.

Q. And all of the other products you buy from the Berry Tire Company, and Olles, and others are not in either the Firestone or Goodrich line, so far as you know? A. None of them, no.

Q. Do you stock any batteries now other than dry charge? A. No, I have nothing else.

Q. Do the Texas Company employes know that you handle these Dunlop tires and Gates fan belts and Auto-Lite batteries? (4819) A. I guess they saw them there when they came in. They haven't said anything to me about it, though.

Q. Have they ever said a word for you to hide them or take them out of there? A. No, not a word was said.

Q. And that you would have to take the signs down or they would cancel your lease? A. Nothing like that.

Q. Nothing like that? A. No.

Q. In your many years as a Texaco dealer have you gone to the Texaco dealers' meetings? A. In the time since I have been there, I don't think I have missed more than two.

Q. That means you have attended several hundred of such meetings? A. In my time, yes.

Q. Have other Texaco dealers in this neighborhood also attended those meetings? A. Well, pretty near everybody around me, yes.

Q. During all of these dealer meetings at any time has any employee of the Texas Company suggested or intimated or said in any way that the Texas Company required its dealers to handle either the Firestone or Goodrich line of TBA? (4820) A. I never heard anything like that ever said.

Q. And has any pressure ever been put on the dealers, so far as you know, at those meetings, to handle the Firestone and Goodrich line? A. None whatsoever, that I know of.

Q. During that time have any of the other dealers who attended those meetings ever said to you that any sort of pressure has been put on them to buy either the Firestone or Goodrich TBA? A. None whatever.

Q. Now, do you find that these dealer meetings are helpful to you in merchandising your TBA? A. Oh, you learn a good deal from them, yes.

Q. And that is helpful to you in merchandising your Dunlop tires and your Auto-Lite batteries? A. Right.

Q. And also your other line of TBA? A. That is right.

Q. Do you get any other sort of assistance from the Texas Company in connection with merchandising TBA? A. Anything I am in a quandary about I will ask them and they will help me.

Q. They will help you? A. They will help me, yes.

Q. Do you get the dealer magazine? (4821) A. The Texaco Dealer, yes.

Q. Do you find anything that is helpful in there? A. Yes, sir; you bet.

Q. Do your employes attend these dealer meetings also? A. Yes.

Q. You ask them to, do you? A. I do.

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Cross-examination by Mr. Dias:

Q. Do you operate under a lease? A. Yes.

Q. The lease specifies a certain rental, does it not? A. One cent a gallon and $50 a month for two bays. When they put those bays on the station I paid $50 a month toward those.

Q. When did they put the bays in? A. About ten or twelve years ago.

Q. Has your rent varied since then? A. Never. Of course, the more gasoline I would sell the more I would pay at one cent a gallon.

Q. The price per gallon remained the same, one cent per gallon? A. That is right.

(4822) Q. And $50 extra for the bay? A. Yes, that modification is one cent.

Q. Do you know whether or not the Texas company owns that property? A. They do not.

Q. Do you know who does? A. Yes; a Mrs. Eileen Dodge of Aurora, Colorado, which is a suburb of Denver.

Q. Is that a Mrs. Dodge? A. Yes.

Q. Do you know Mrs. Dodge? A. Very well.

Q. How well do you know her? A. Oh, I have been in Glen Ellyn forty-two years and I have known her practically since I have been in the gas station.

Q. Are you related to her in any way? A. Not at all.

Q. Have you known her for 42 years? A. No, I won't say I have known her for 42 years but I have known her ever since I have been in that gas station.

Q. And that has been 24 years? A. Yes.

Q. She owns the property? (4823) A. She does.

Q. And she leases it to Texas? A. Yes.

Q. And Texas in turn leases it to you? A. That is right.

* * *

Redirect examination by Mr. Lorenzen:

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(4824) Q. Evanston Auto Supply,—doesn't it cover about the same territories as the Berry Tire Company? A. I wouldn't know about that.

Q. They don't call on you anyway? A. No.

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STANTON SWANK was called as a witness on behalf of Respondents, and being first duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your name and address to the reporter? (4825) A. I have given my name. It is Stanton Swank. I live in River Grove, Illinois.

Q. What is your business? A. I operate a service station in Oak Park, Texaco Service.

Q. And you hold that under the usual form lease, do you? A. I believe it is the usual form. It is a third lease.

Q. The same kind Mr. Allen has, I guess. A. I am the third party in this lease; I believe it is the same type.

Q. Somebody else owns the property; they lease it to the Texas Company, and the Texas Company leases it to you? A. That is right.

Q. And you are no relative to whoever owns the underlying lease? A. No.

Q. And your lease is one of these that renews itself each year? A. Yes, it is.

Q. How long have you been the lessee? A. 2½ years.

Q. Before that what did you do? A. I worked for the previous operator for approximately four years.

Q. And about what is the gallonage of your station now? (4826) A. It is about 45,000 gallons per month.

Q. What was it when you took over? A. 26,000 a month.

Q. So you have done a good job? A. We have done a good job.

Q. Do you handle any TBA? A. Yes, we do.

Q. Will you tell us your reasons for handling it? A. I handle it to provide a more complete service to our customers and for the profit involved in selling TBA.

Q. Do you find that it is helpful to you in attracting customers for your gasoline? A. Yes, I do.

Q. You don't stock much, do you, in the line of tires, at least? A. No.

Q. Very little? A. Very little.

Q. What was your understanding as to whether the Texas Company recommended any particular type of TBA to those dealers? A. I knew they suggested we handle a good line of TBA, either B. F. Goodrich or Firestone; they recommended them but I also knew that it was entirely up to us as to what (4827) we wanted to handle.

Q. Did you get that knowledge when you took over the station or did you have it when you were working for the man who was ahead of you? A. Well, a little of both. I knew how he operated and I talked briefly with the salesman when we took the place over, too.

Q. Has anyone from the Texas Company since ever threatened you or intimated to you that if you didn't handle the Goodrich or Firestone line your lease would be cancelled or you would be treated badly in any other way? A. No.

Q. Nothing like that has ever happened to you? A. No, it never has.

Q. You do handle some Goodrich tires, do you not? A. Yes.

Q. Actually—how many tires do you stock? A. It varies from half a dozen to a dozen, approximately.

Q. And can you estimate about what percent of your tire sales come out of stock and what percent are on a pick-up basis? A. Out of stock sales I think would be under 20 percent. Most of our sales we go and pick them up. We are in an area where we are very close to three sources of supplies on tires.

(4828) Q. Are your pickup tires sales limited to Goodrich? A. No.

Q. What kind of tires do you sell? A. I usually look and see what kind of tires the man has been driving on and he asks me often what kind of tires I suggest, and when I say: What have you been using? I asked him what kind of service he got out of his present brand. If he says: I like the Goodrich or Firestone, — whatever it might be, I suggest he buy the same brand again.

Q. And do you then go and pick up that brand? A. Yes.

Q. And even if it isn't Goodrich you get him what he has on his car that he has been satisfied with? A. Yes.

Q. Does that mean you pick up a number of Goodyear tires? A. Quite a few Goodyear tires, yes.

Q. From whom do you buy those? A. Either Racine Auto Supply or Suburban Tire and Auto Supply.

Q. That is in Oak Park? A. Yes, and for a while we bought tires from the Goodyear truck; they called on our station.

Q. You bought quite a substantial number at that time, did you not? (4829) A. Yes, we did.

Q. Would you estimate what percent of your total tire sales were off that Goodyear truck? A. Well, in the six months' time that he called on us I would say it was 40 percent of our sales were of Goodyear tires.

Q. And then what happened? Did they discontinue that? A. They discontinued calling on us. They discontinued the whole truck operation.

Q. So then you couldn't buy from them any more? A. No.

Q. Did you get a good buy from them when they had that truck operation? A. A very good buy, yes.

Q. Is that what motivated you to buy from them? A. That is what did it, yes.

Q. Do you buy from the B. & M. Auto Supply? A. Yes.

Q. That is a wagon jobber? A. Yes.

Q. Do you buy filters from him? A. Yes, we do.

Q. And cleaners, car rugs, caps, bulbs, — that sort of thing? A. Yes, we do.

(4830) Q. Generally, a line of what we have been calling accessories in this case? A. Yes.

Q. And you also buy some of those from Chicago Auto Parts, is that right? A. Yes.

Q. What is the battery situation; you handle some Goodrich, do you? A. We did for a while. Right now we don't have any. We stock a line of National batteries.

Q. And that is a less expensive line, is it? A. No, I believe it is a better line of batteries.

Q. You think that is a better line? A. Yes.

Q. So you buy it in preference to the Goodrich batteries, is that right? A. Yes.

Q. And do you think you make more money handling the National than the Goodrich? A. I think we make a fair profit, plus selling the customer a quality battery, and we will have less kick-back or less trouble with it.

Q. And that is the reason why you select the National battery? A. That is right.

(4831) Q. Do you display it openly? A. Yes, we do.

Q. And has the Texas Company ever threatened to cancel your lease or to treat you badly in any way if you didn't stop handling this National battery? A. No, they haven't.

Q. Do you display all of your TBA no matter from what source? A. All that we have room to display, yes.

Q. Do you hide anything because you are afraid to let the Texas salesman have a look at it? A. No.

* * * *

(4832) Q. Suppose your total TBA amounted to $4,000? A. Yes.

Q. Can you tell me how much of that you think is in accessories as distinguished from tires and batteries? A. I misunderstood. I thought you said how much of my total sales is accessories.

Q. No; taking in sales of gasoline, you mean? A. Yes.

Q. Do you understand the question now? A. No, I am not sure what you are asking me about.

Q. Well, do you know about how much your total TBA sales were? A. Yes.

Q. In dollars? A. For a year?

Q. About how much were they? A. I would say about $1500 a month.

(4833) Q. Let us take it by the month, then. In an average month about how much of that, in dollars, do you think is in accessories? A. I would say— Do you mean taking the batteries and tires out; is that it?

Q. Yes; let us take the tires, tubes and batteries out of it? A. I would say 75 percent of our TBA sales is accessories.

Q. So that means somewhat in excess of $1,000 would be in accessories? A. Yes.

Q. And the balance would be in tires and tubes and batteries? A. That is right.

Q. Now, can you tell me about what percent of all of your tires, batteries and accessories are bought from either Goodrich or Firestone supply points? A. About 60 percent.

Q. How much? A. 60 percent.

Q. Are bought from a Firestone or Goodrich supply point, is that correct? A. Yes.

* * *

(4834) Q. Are the Biltmore Tire Supply Company people the only place in which you buy tires? A. Yes.

Q. And all the rest of it is bought from other suppliers, is that right? A. Right.

Q. If you take that $1500 a month how much of that do you think you buy from Biltmore and how much of that do you think you buy from the others? A. Lately I haven't purchased much at all from Biltmore.

Q. So then that 60 percent would be kind of high if you haven't bought— A. Lately we have been buying quite a bit of Firestone, very little from Biltmore.

Q. You have been buying more from Firestone? A. This is just recently since the Goodyear truck has discontinued calling on us.

Q. Oh, you went to Firestone when Goodyear stopped? A. We give Firestone more of our business, yes.

Q. That makes the difference? A. Yes.

(4835) Q. I guess these figures were taken when you were buying from the Goodyear truck? A. Yes.

* * *

Q. I show you Respondent's Exhibit 44 for identification and ask you whether you recognize that as being a display in your station? A. I do.

Q. Do you know about when that picture was taken? A. I believe within the last two months.

Q. By whom was it taken? A. An employe of the Texas Company.

Q. Was any special preparation made before that picture was taken? A. No.

Q. Is that just the way your station has looked for some time before and about what it looks like now? A. That is correct.

Q. And that display of National batteries shown in the picture is still there? A. Yes, it is.

Q. And it was there as long as you handled National, is (4836) that right? A. Yes, it has been, yes.

Mr. Lorenzen: I offer the picture in evidence.

Mr. Dias: No objection.

Hearing Examiner Kolb: The photograph may be received as Respondent's Exhibit 44.

(The photograph referred to, heretofore marked for identification Respondent's Exhibit 44, was received in evidence.)

By Mr. Lorenzen:

Q. Do you also handle Prestone in your station? A. Yes.

Q. And this Wynn's Additive? A. Yes, we do.

Q. Do you attend any of these dealer meetings? A. Yes, I do.

Q. Do you find that what happens at those meetings assists you in selling TBA merchandise? A. Yes, I do.

Q. Do you receive any other help from the Texas Company in your TBA sales? A. We do, yes.

Q. What sort of help? A. For example, the Texas Company salesman has worked at our station a number of times and he sells, or tries (4837) to sell our customers many accessories in our TBA line. They give us, suggest selling methods for all TBA.

Q. Do you find that is helpful? A. Yes, I do.

Q. Do you still have some Goodyear tubes in your station? A. Yes, we do.

Q. Are they displayed in the Goodyear box marked with the label? A. Yes, they are.

Q. Where anybody can see them? A. Yes, sir.

Q. Have you ever bought anything from Mr. Carl Olson who is the salesman for the Berry Tire Company? A. Yes, we have.

* * *

Cross examination by Mr. Dias:

Q. Did you handle Goodrich at one time, Mr. Swank, — tires, batteries, accessories, and so forth? A. We have sold them. We have never handled them exclusively.

Q. Have you ever stocked them more than you are doing recently in the last year or so? A. At no time did our stock exceed more than three or (4838) four tires or batteries.

Q. Where did you get— How about Goodrich accessories; where did you buy those, at Biltmore? A. We bought a very small amount of our accessories from Biltmore. We did buy some from Biltmore.

Q. Incidentally, how long have you been in business? A. 2½ years.

Q. Is your station what is known as Eddie and Stan's? A. It was until Eddie left me last October, and I have another partner now.

Q. What is your present partner's name? A. Vince.

Q. You are now know as Stan and Vince, is that right? A. That is right.

Q. When did you go into business as Stan and Vince? A. October 1, 1957.

Q. And you did operate for a while as Eddie and Stan's? A. For approximately 18 months.

Q. And can you tell us when that was? A. From March of 1956 until October of 1957.

Q. Now, is March of 1956 the first time that you personally owned or had a share in the business, is that right? A. That is right.

Q. And prior to that time you worked as an employe for (4839) the prior owner, is that correct? A. That is right.

Q. How long had you been with the prior owner? A. For a total of about four years but it wasn't continuously this last time.

Q. In other words from 1952, off and on, you worked for a total of four years? A. For a total of four years, yes.

Q. Do you recall the TBA that he carried? A. Yes.

Q. What was that? A. I think he sold more Goodrich than anything else.

Q. Then, when you bought the station from him, was there a stock of TBA in the station that you purchased from him? A. Yes, a very small stock.

Q. And what did that consist of? A. Well, it was no more than— Do you mean of just tires and—

Q. Tires and batteries? A. I would say at the most three tires and possibly six batteries.

Q. And were they Goodrich? A. Yes.

Q. What about accessories? A. They were assorted accessories.

(4840) Q. Now, after you took over, did you immediately start buying other than Goodrich TBA? A. Yes.

Q. Or did you carry the Goodrich line for a while? A. We started buying whatever we felt would sell.

Q. As your stock was depleted you filled in where you saw fit, is that it? A. Yes.

Q. Where did you say that you got these National batteries? A. From a man named Ed Byrd; he is a distributor for National.

Q. When was it that you started handling National? A. I think immediately after we opened or we purchased the place from the previous owner.

Q. Did you say that you never maintained a stock of batteries either? A. No, other than these Nationals, we never did.

Q. How many batteries do you keep in the station at a time? A. Eleven.

Q. Do you recall the purchase of some Auto-Lite batteries back in June or July of 1956? A. Yes, I do.

Q. Do you remember where you got them? (4841) A. I believe we bought them from Carl Olson who worked for the Berry Tire Company.

Q. Was there anything unusual about that transaction that you recall? A. I can't think of anything unusual about it, no.

Q. Do you recall that you stacked the batteries with their trade names to the rear? A. I can't recall that, no.

Q. You don't recall it? A. No.

Q. Do you remember how many batteries there were that you purchased at that time? A. I think we purchased six.

Q. And do you recall that you were reprimanded by the Texas Company salesman and for that reason turned the batteries with the name to the rear; do you recall that? A. No, I don't.

Q. How well do you know Carl Olson? A. Not very well.

Q. Do you buy anything at all from him? A. No, he hasn't called on us for, I would say, a year and a half.

Q. When did you start purchasing Firestone? A. Well, we purchased Firestone whenever a customer would specify it.

(4842) Q. I understood from your testimony, though, that you are going in a little heavily for it now. A. Yes, in the last six months we have been called on regularly by a Firestone representative. He is a congenial fellow and we purchase more from him now.

Q. As a matter of fact, you have more Firestone than Goodrich in your station right now, haven't you? A. Yes, our buying habits change quite often.

Q. Do you have any other brand tires in your station, new? A. I don't believe so.

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HERBERT BOLTE, called as a witness on behalf of the Respondents, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give us your name? A. Herbert Bolte.

Q. What is your address? (4843) A. 2218 Sherman Avenue, Evanston, Illinois.

Q. What is your business? A. I am a gas station operator for Texaco.

Q. Do you have a lease? A. I have a lease, yes, sir.

Q. One of these leases that is renewable or renews itself at the end of every year? A. At the end of each year.

Q. How long have you been in there? A. It will be two years in August.

Q. About what is the yearly gallonage of your station? A. The yearly average would be about 18,000, by the month.

Q. Do you handle TBA? A. I do.

Q. State your reasons for handling it? A. To increase customer relations and to get in customers, and also to benefit by the profit off the TBA.

Q. It is a money-making item, is it? A. Strictly; you have to have it.

Q. Does it help you sell gasoline? A. It does.

Q. Did you understand that the Texas Company recommended Firestone and Goodrich TBA to those dealers? A. I did when I talked to Suffert.

(4844) Q. He was some kind of a Texaco Company manager, wasn't he? A. He was.

Q. He is dead now? A. He is deceased, yes.

Q. What did you understand about whether you had to buy the Firestone and Goodrich, or whether you could buy something else? A. No, they recommended that you either handle Goodrich or Firestone, and that is all he said to me, and he said the salesman will be around to explain anything to you; if you run into any trouble, he said, he will talk to you.

Q. Have you acted ever since on the assumption that you could buy anything you wanted to? A. Yes, I have.

Q. And you have, in fact, done so, haven't you? A. I have.

Q. Has anyone from the Texas Company ever told you that you had to buy only Firestone or Goodrich and if you didn't your lease would be canceled? A. Absolutely not, no.

Q. Or that they would treat you badly in some other way? A. No, not one bit.

Q. From whom do you buy your TBA? A. I get most of the TBA, or, rather, the tires and (4845) batteries, right now I have buying from—that is, what few batteries I have been getting, tires I have been getting from Northwest Tire in Arlington Heights and a few batteries, and Evanston Auto supplies me with ignition parts and Motive Parts supplies me with sparkplugs and mufflers, and also Miller Auto Supply supplies me with some mufflers and other TBA that I might need, and I have a wagon peddler that supplies me with a lot of my shelf fast-moving items like waxes.

Q. Those are TBA? A. Yes. Wiper blades I handle from Anderson.

Q. You handle all Gates fan belts, do you? A. Yes, Gates.

Q. What is the principal battery you handle? A. The principal battery I have been handling has been Delco.

Q. And the tires which you get from Northwest Tire Supply and Firestone? A. They are Firestone.

Q. You don't buy anything— A. I handle maybe just a few other cheaper batteries and that is about all.

Q. In addition to the Delco which you handle most? A. The Delco I handle about 90 percent of those.

Q. Except for the tires and the few Firestone batteries, (4846) do you handle any other TBA in the Firestone line? A. No; that is about it.

Q. And everything else that you buy is from these other suppliers you have mentioned? A. Some of the others.

Q. Do you display all your TBA? A. Yes.

Q. You wouldn't try to hide any of it? A. Not unless I have no room for it and I have to put it some place to get it out of the way.

Q. How long have you been handling those Delco batteries? A. I have been handling the Delco batteries just about the last year and a half.

Q. Do you have a sign in front of your station advertising Delco? A. Yes, Goodrich, Delco and Firestone, and I had the sign company take them down when they were rebuilding.

Q. Your station has just been rebuilt? A. Yes; it is better now.

Q. It is reconstructed? A. It is now a modern three-bay station; it is beautiful.

Q. That rebuilding took place while you were handling batteries? (4847) A. Yes.

Q. They started that rebuilding when you had Delco battery signs? A. They were in the front of the station; I took them down so that they wouldn't get injured by the crews working there. I took them down until they could be placed up again.

Q. They are just finishing the rebuilding? A. Yes.

Q. And the signs are going up? A. Yes.

Q. That includes Delco, Firestone and Goodrich? A. Yes.

Q. There is no understanding that you would have to stop selling Delco? A. No.

Q. And that you would have to stop advertising it by the sign? A. Nothing.

Q. Nothing has been said about that whatever? A. Nothing has been said to me.

Q. Do your accessories make up a substantial part of your TBA sales? A. Oh, yes.

Q. I am not going to get into percentages; we got so (4848) tangled up last time. A. I know; it is not so important, I guess, anyway.

Q. Do you stock any other than dry charge batteries? A. No; no wet batteries at all.

Q. Has anyone from the Texas Company told you that you mustn't display your TBA that is not in the Firestone and Goodrich line? A. No.

Q. Has anyone told you that they would cancel your lease if you did it? A. No, sir.

Q. What was the gasoline gallonage of your station when you took it over? A. Oh, it was down, I think, around 10,000, something like that.

Q. And what is your gasoline gallonage now? A. I average about 18,000, the year around.

Q. Is the Texas Company of any assistance to you in merchandising your TBA? A. Yes, they have been—For one time with the Texaco Magazine and a few of the meetings I have been to—I haven't been able to make many of them but I have made a few.

Q. And do you find you get any hints that are helpful in selling TBA? (4849) A. You get hints from the salesmen and talking to the other fellows. I think it is pretty

nice to get together with dealers and find out what they are selling with these individual selling points which are very good.

Q. Is that helpful to you in selling this TBA, whether it is in the Firestone or Goodrich line, or whether it isn't? A. It is the complete line, yes, sir.

Q. Do you know what kind of tires the Berry Tire Company sells and handles? A. It handles the Dunlop and also one brand called Imperial of which I have bought a few when I needed them. They have some good buys on them at times, and the only reason I bought them is for people who are looking for something like that, and I let them know it isn't a tire they can get adjusted to too easily on the road, probably, like the Firestone and Goodrich line.

Q. It is a cheaper line? A. It is a cheaper line, I think. In some cases it is. Not in the case of some of our better tires but they have a tire which you can advise in this line of tires and you can pass it on to the customer.

Q. What about the Dunlop tire; you don't buy any of those from the Berry Company? A. I never handled those.

(4850) Q. What is your reason for not handling those? A. I want to sell the name brand tire; wherever they go something can be done with that tire. It can be adjusted in practically every little town, at every Firestone store, and there is a Firestone outlet in practically every place you go.

Q. Is the reason you don't buy that Dunlop tire from the Berry Company because you are scared to do it on account of the Texas Company? A. No.

Q. That has nothing to do with it? A. No; I don't want to have my customers get dissatisfied in case they get out on the road and something couldn't be adjusted for the car.

Q. Did you have a conversation with the man at the Berry Tire in which you told him that? A. Yes, he is no longer with them there.

Q. What percentage of all your tire sales do you think is made out of stock and what do you think is made on a pickup basis? A. I would say around 65 or 70 percent, probably, is pickup. For me it is.

Q. So that for 65 or 70 percent do you pick up whatever kind of tire the customer demands? A. Whatever they ask.

(4851) Q. And if it is not Firestone you get what he wants, is that right? A. I would get any major brand he wants outside of Atlas or something like that.

Q. Otherwise you would get him any major brand he asks for? A. I do, yes, sir.

Mr. Lorenzen: That is all.

Hearing Examiner Kolb: Cross examine.

Cross examination by Mr. Dias:

Q. Can you describe your old station? A. It was a two-bay station, about 30 years old, and it had small windows; actually I never put anything up in the windows of that, because if I had I would have had to have the lights on all day and not only that, there was a lot of condensation through the station over a period of years, — everything would sweat and everything would fall off the windows if you put them on it anyway, so I just let them down. I didn't have too much space for displaying anything in the station outside of batteries.

Q. Was your name every submitted to Goodrich or Firestone as a prospective TBA seller? By that I mean you didn't have facilities to handle TBA, did you, at your old station? (4852) A. Well, I had a tire rack but when I bought the place there were so many used tires on it there

wasn't any place to put a lot. I couldn't stock too many although I could have stocked some if I had wanted to.

Q. When did you go in there? When is the first time you went into the station? A. In August of 1956.

Q. Did you buy out the prior owner? A. I did.

Q. Did you buy his stock? A. Everything.

Q. When you took over, did you buy the new stock? A. No, not at first. I didn't buy hardly anything at all.

Q. What kind of stock did you have in there, in the way of TBA? A. He had a general line of TBA, Dahl thermostats, and Anderson wiper blades, and he had A-C and Champion spark plugs, and a few Goodrich batteries, I am sure of that, and I am sure there was one or two; I was trying to think, before, — I think there were one or two Auto-Lites in there. I am not positive but I think there was because I know I sold one of them.

Q. Did you see any new Goodrich tires in the station? A. No, the fellow who was in there was in pretty bad shape with home troubles, domestic troubles, I should say, (4853) and he was one of those fellows who didn't have too much to go and fool around in the tire business. He told me that himself when I asked him why he didn't have any.

Q. You didn't buy any new stock until how long after you were in there? A. I think it was a couple months after I got in there.

Q. When you started to buy, what brand did you buy? A. First I went into Goodrich. I was buying from Biltmore and would get most of my tires and batteries from Biltmore. I was working sort of on a budget myself so I was buying things as I needed them, although I ended up stocking a few batteries.

Q. Were they from Biltmore? A. Yes.

Q. Goodrich batteries from Biltmore? A. Yes.

Q. And the same is true of the tires you had? A. Yes.

Q. Did you buy accessories from Biltmore? A. Very little. I was buying sparkplugs for a while.

Q. Goodrich plugs? A. No; those were Champions.

Q. How soon after that, then, did you start buying other lines? A. Well, I went into Delco, I think; I ran into a little (4854) trouble getting some Goodrich batteries when it was real cold in 1957, I think it was, — in January of 1957, and I got into Delco in that year.

Q. What sort of trouble did you have in 1957? A. We had a pretty cold January and batteries were scarce, the small batteries. I started to get Delcos; a fellow had them set up and I called in to see if he could get me batteries and I got them.

Q. Did you explain to the Texas Company the lack of batteries from Goodrich? A. No.

Q. Where did you buy, or where have you been buying your mufflers? A. Mostly from either Miller Auto Supply; most of them from Motive Parts; the AP muffler, they call it.

Q. And filters? A. Miller Auto Supply.

Q. Was Miller Auto Supply the man you used to work for? A. No, I worked for Motive Parts.

Q. What do you buy from Motive Parts? A. Mostly mufflers or tail pipes, sparkplugs, and some equipment I might need.

Q. Do you do some repair work at the station? A. Yes, sir; minor repairs.

Q. Will you have more room for that now that your (4855) station is rehabilitated? A. Repair work?

Q. Yes. A. A little bit, yes.

Q. What exactly has been done to your station? A. They have torn down the old building and put up a new one.

Q. A new building? A. Yes, the old one is gone.

Q. Do you have more driveway space and that sort of thing now? A. Yes.

Q. When did they start on that? A. It was started, I think, last May.

Q. You mean a year ago? A. No, just about April or May; it is just about completed.

Q. Can they tear a station down and put it up that soon? A. They have the steel pre-fabs for the station.

Q. That is May of 1958? A. Yes, last May; last April.

Q. When did you first hear about this lawsuit? A. When did I first hear about it?

Q. Yes. A. A couple months ago. I heard something about it quite (4856) a while back, in the paper.

Q. When did you know you were going to testify? A. When did I know?

Q. Yes. A. When I knew I was going to testify was yesterday, that I was going to testify today.

Q. You must have known some time earlier? A. Yes, I had a talk with one of the men.

Q. How long ago was that? A. I believe that has been a couple of months ago; right around that.

Mr. Dias: I have nothing further.

Hearing Examiner Kolb: Is that all?

Mr. Lorenzen: That is all.

Hearing Examiner Kolb: We will have a short recess.

(Recess had.)

(4857) Hearing Examiner Kolb: The hearing will come to order.

JOSEPH NOVAK, JR., was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

By Mr. Lorenzen:

Q. Will you tell us where you live, Mr. Novak?

Hearing Examiner Kolb: Better get his name first.

The Witness: Joseph Novak, Jr., 3800 West 69th Street.

By Mr. Lorenzen:

Q. And what is your business? A. Joe's Service Station—Texaco.

Q. Where is that located? A. 74th and Morgan.

Q. Chicago? A. Chicago, Illinois.

Q. You have a lease from the Texas Company? A. Yes, sir.

Q. It's one of these leases that is renewable or renews itself at the end of each year? A. It's an automatic renewal lease.

Q. At the end of each year? A. After each year.

Q. And it can be canceled at the end of each year on ten days' notice? (4858) A. That's right.

Q. You started in at this station about when? A. '51, sir.

Q. That's about seven years ago? A. Yes, sir.

Q. Now, at that time your lease was not with the Texas Company, was it? A. No, sir.

Q. With whom was it? A. Northwest Gas & Oil.

Q. Was that company what's known as a distributor? A. Yes, sir.

Q. And it was a distributor for Texas Company gasoline? A. That's right.

Q. And then when did you get your lease from the Texas Company? A. About three years ago, I think it is.

Q. So you handled the same gasoline for the whole six years? A. That's right.

Q. The only difference was that your lease was what is—with a distributor for part of the time, and it's with the Texas Company now? A. That's right.

Q. About what is the monthly gallonage of your station on the average? (4859) A. Average around 22,000.

Q. Do you handle TBA? A. Yes, sir.

Q. Will you tell us the reason for handling it? A. Well, it's a profit to me to handle TBA.

Q. You make money on the TBA itself? A. That's right, sir.

Q. Do you feel it helps you in your gasoline sales? A. Yes, sir. When they stop at the pumps, I have it displayed in the window, and they see something—they ask, and I sell.

Q. That's the TBA? A. That's the TBA.

Q. Do you feel you would sell less gasoline if you didn't sell any TBA at all? A. Well, no, I still sell gasoline, but I make a better profit by having TBA.

Q. Do you find the motorists demand what they call one stop service? A. Yes, sir.

Q. And that means you got to handle TBA, doesn't it? A. Yes, sir.

Q. Now, during the seven years you've been a Texaco dealer have you had an understanding as to what the Texas Company's TBA program and TBA policy has been? A. Yes, sir.

(4860) Q. Will you tell me what you understood it to be? A. Well, they went along and they told me to go along and to keep the stations clean, to handle TBA, and to treat the customers very well.

Q. Well, now, in TBA, did they tell you anything about whether they recommended anything—any particular line? A. Well, they recommended—they said to me, buy B. F. Goodrich, or Firestone, or whatever the customers wanted.

Q. Well, did they tell you had to handle one or the other or that you could handle what you wanted? A. No, sir. They didn't tell me anything that way.

Q. Did you understand that you could handle what you wanted? A. Yes, sir.

Q. And in fact, have you done it? A. Yes, sir.

Q. In fact, right now you don't buy any sponsored TBA, do you? A. No, sir. Just Firestone tires, that's all I buy.

Q. And you don't buy those from an authorized Firestone dealer, do you? A. No, sir.

Q. So you buy nothing on which the Texas Company gets any commissions? A. No, sir.

Q. Has anyone from the Texas Company ever told you that they would cancel your lease if you didn't start buying from some (4861) designated Firestone or Goodrich supply point? A. No, sir.

Q. Nothing like that? A. No, sir.

Q. You've never been threatened? A. No, sir.

Q. They've never told you that they would treat you badly on account of the way you bought your TBA? A. No, sir.

Q. Now, from whom do you buy your TBA? A. Well, my batteries I buy, and my spark plugs, mufflers, tail pipes, I buy from Chicago Auto Parts.

Q. And that goes also, does it, for fan belts? A. Fan belts, yes. Gates fan belts.

Q. And batteries? A. That's right.

Q. You mentioned those, did you? A. Yes.

Q. Anti-freeze? You buy some from them? A. Yes, sir.

Q. And additives and chemicals? A. Comes from Chicago Auto Parts.

Q. And did I ask you about fan belts? A. That's right.

Q. Filters? (4862) A. Well, the filters I buy, and a list of accessories, like mirrors and extension pipes, and so forth—I buy from two jobbers.

Q. And who are they? A. Charles Glass, and Carmen.

Q. Now, do you like the Firestone tire? A. Yes, I do.

Q. At one time did you buy it from a Firestone distributor? A. Yes, I used to do quite a bit of business with Firestone, when they were at 78th and Halsted, because I used to do their work. So I bought all their merchandise. Then they moved to 66th and Halsted, under new management, and since they moved there they changed their policy and do their work in the other stations and only send me work that the other stations couldn't do. So we had a dispute and I stopped handling their products.

Q. But you still like the Firestone tire? A. Yes. That's the only tire I do sell, is Firestone.

Q. And you buy that now from what kind of a company? A. Krug Tire Company—about a half a block away from it.

Q. Now, what's the name of the batteries that you handle? A. Delco.

Q. Do you keep those openly in your station? A. Yes, sir.

Q. Do you display all of your TBA items? (4863) A. All of my merchandise can be seen.

Q. What kind of fan belts have you got? A. Gates.

Q. And radiator hose? A. Gates.

Mr. Lorenzen: I ask to have these two pictures marked as Exhibits 45-A and B.

Hearing Examiner Kolb: May be so marked.

(The photographs referred to were marked Respondent's Exhibits 45-A and 45-B for identification.)

By Mr. Lorenzen:

Q. Mr. Novak, are Exhibits 45-A and B pictures of a display of Delco batteries and advertising in your station? A. That's right. Both in the station.

Q. When were those pictures taken? A. The exact date I don't know, but it was some time in May.

Q. Who took them? A. It was a Texaco salesman.

Q. Was any special preparation made of your station when the pictures were taken? A. No, sir. I didn't even know they were coming around.

Q. And so that's just like your station looked? A. Just as it is now, too.

Q. And is that just about the way your display was before that? A. Yes, sir.

Q. And has been since? (4864) A. Yes, sir.

Mr. Lorenzen: I offer the pictures in evidence.

Mr. Dias: No objection.

Hearing Examiner Kolb: The photographs will be received in evidence as Respondent's Exhibits 45-A and B.

(The photographs referred to, heretofore marked for identification Respondent's Exhibits 45-A and 45-B, were received in evidence.)

By Mr. Lorenzen:

Q. Do you display any Goodyear tubes in your station? A. Yes, sir.

Q. You've got those in boxes labeled "Goodyear"? A. Yes, sir.

Q. And they're on your shelves where anybody can see them? A. Yes, sir.

Q. Now, has anyone from the Texas Company ever told you to hide your Delco batteries, or Goodyear tubes, or Gates fan belts? A. No, sir.

Q. Have they ever made any kind of a threat to you about that display of merchandise? A. No, sir.

Q. None whatever? A. No, sir.

Q. Do you stock any batteries other than dry charge? (4865) A. No—dry charge batteries.

Q. I don't have to do any percentages with you. You just don't buy anything from the Firestone or Goodrich supply points, do you? A. At the present time, no.

Q. Now, do you get any assistance in merchandising or selling your TBA from the Texas Company? A. Well, a salesman comes around, he tells me different things once in a while, what's new coming on the market, and so forth.

Q. Do you attend dealers' meetings? A. Yes, sir.

Q. Do you get any help there in connection with merchandising your TBA? A. Yes, sir, I do.

Q. And do you get the Dealer Magazine? A. Yes, sir.

Q. And do you get any help out of that? A. Yes, sir. I enjoy reading it.

Q. And that's the Texaco magazine I'm talking about. A. That's right, sir.

Q. And the meetings I'm talking about are those of Texaco dealers. A. That's right.

Q. Sponsored by the Texas Company. (4866) A. That's right.

Q. Now, Mr. Edelson of the J. E. Auto Supply Company testified in this case that he couldn't sell you, and he implied that that inability to sell you had something to do with the Texas Company's policy. Will you tell me what your dealings with the J. E. Auto Supply Company have been and why you don't buy from them? A. Well,

the reason I don't buy from them is a personal reason. At one time a salesman named Paul Prep worked for J & E, and I knew him, and that's when I first went into business.

And he came over trying to sell me, and I says, "Okay, Paul," but I says, "I don't have cash because everything is in the business. So set me up with a charge account." And he says, "Fine, Joe. Give me a week or so and I'll have you set up."

So I waited, and meanwhile Chicago Auto set me up with a charge account in no time at all. And finally Paul came around, and he says, "Joe, I got you set up. How can I help you out?" So we ordered about $90.00 or so of merchandise. And the following day the driver brought it out. And he brought the merchandise, and I checked it in, and then I was going to sign for it. And the driver says, "No, I'm sorry," he says, "This is C. O. D."

I says, "Well, I'm sorry, I don't have that kind of money (4867) on me." I told him, "I think there must have been a mistake. You better call your boss." So he called up, and one of the bosses answered the phone. So he told the driver it's strictly C. O. D.

So I asked the driver, "Please let me talk to him." So I talked to him over the phone, and I told him that, "Gee, I says, Paul okayed my charge account, and why is it you want C. O. D. now?" And he answered, "Well, Joe, you see, you're first starting this business, and we can't afford to gamble with you."

Well, by that time I was hurt. So I told him that if he can't help me out now when I need the help, that—"take your merchandise back and don't ever come around my station any more," that I would never buy from him. And to this day I still don't buy from him.

Q. And is that the reason you don't buy from him? A. That's right, sir.

Q. And has nothing to do with anything that anybody from the Texas Company ever said to you? A. No, sir.

Q. Now, you made this arrangement with J. E. Auto Supply, and you got a charge account with this Capital Auto Parts very soon— A. Chicago Auto Parts.

Q. Capital? A. No, Chicago.

(4868) Q. Oh, Chicago Auto Parts—soon after you said you went into business, is that right? A. That's right, sir.

Q. Now, by that you meant soon after you got a lease on this station, is that right? A. That's right, sir.

Q. I don't know, I'm a little gun shy, Mr. Novak. Do you think I can do a little percentages with you?

What about—what percent of all of your TBA—and I'm just talking about TBA—what percent of all your TBA do you think is in tire sales? A. In tire sales? Oh, about, say, around 40%.

Q. And that is if you sold $450.00 a month, you'd figure about $200.00 of that is in tires? A. Yes, sir.

Q. And how much do you say is in accessories? A. Oh, about twenty-five.

Q. You've been very successful in your tire sales within the last year or two, haven't you? A. That's right, sir.

Q. And so you've bought them up quite a lot? A. That's right.

Q. And those were the Firestone tires? A. That's right.

Q. That you bought from Mr. Krug? (4869) A. That's right.

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Cross-examination by Mr. Dias:

Q. You understand that Texas receives a sales commission from Firestone on products sold to Texaco stations? A. Yes, sir.

Q. You understand about that? A. Yes, sir.

Q. On these purchases from the Krug Tire Company, do you of your own knowledge know that on your purchases of tires from that company, that Texas does not receive a commission? A. Yes, sir, I know that.

Q. How do you know that? A. What? Well, that we read it in the papers. I read it in my papers myself where Texaco got so much money from Ben F. (4870) Goodrich and Firestone.

Q. Well, why would that exclude Krug? Doesn't Krug sell Firestone? A. Well, Krug is an independent dealer himself. He's been there for years.

Q. How do you spell his name? A. K-r-u-g—Krug Tire. He's been there very, very long.

Q. He's been there—does Krug handle anything besides tires? A. No, sir. Strictly tires. Shop, repairing tires, selling tires; and he handles Universal batteries.

Q. Do you buy any of his Universal batteries? A. No, sir.

Q. Could you describe your station for us, Mr. Novak? Is it one of the new stations? A. No, sir. It's an old station.

Q. How old is it about? A. Well, gee, it's hard to say, sir. It's been there an awful long time before I got there, I'll tell you that. I'm there seven years, and it must be about twenty-five or better years old.

Q. Do you have much room in there for the storage of TBA? A. Yes, sir.

Q. Where, in the show room? A. Well, I have the—one room place, with a big plate (4871) glass, and I display everything. You can see it right from the drive.

Q. Do you have any wash rooms and that sort of thing in the station? A. I just have one, sir.

Q. Do you keep any supplies in there? A. In the wash room? No. I can't. It's just a small one that—I can't even—just a small one.

Q. Do you know whether or not your name was—that is, your station—has been submitted to the Goodrich or Firestone people as a possible outlet for TBA? A. I don't know that, sir.

Q. Were you ever rejected by Goodrich or Firestone as a dealer? A. No, sir.

Q. Now, you mentioned the fact that J & E did not extend credit. Were you talking about the—when you first went into business back in '51, was it, or '55? A. '51, sir.

Q. Back in '51. And to whom did you make your payments then for rent? To the Northwest Gas? A. Yes, sir.

Q. Did they collect their rent each month? A. I sent a check into them every month.

Q. Did you ever ask them for credit? (4872) A. No, I never bothered with credit.

Q. When you took over the station, what sort of TBA was in it? A. Well, it was pretty well run down, sir, and there wasn't very much of anything. In fact, it took me a long time to get on my feet. It took me almost three years to get on my feet.

Q. And was that then when you got the lease from the Texas Company—about another year later, wasn't it? A. That's right.

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LAWRENCE STARR was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Barton:

Q. Will you give your name to the reporter, please? A. Lawrence Starr.

Q. And what is your address, sir? A. 1140 Morse Avenue.

Q. What is your business affiliation? (4873) A. Biltmore Tire Company.

Q. Where is the Biltmore Tire Company located? A. 2011 West Division Street, Chicago.

Q. What is the business of Biltmore Tire Company? A. Biltmore Tire is interested in selling tires, batteries, accessories, Havelin motor oil, Marfak grease, to new car dealers, used car dealers, service stations, garages, truck companies, and anybody who will have them.

Q. And how long has Biltmore Tire been in operation? A. Thirty-five years.

Q. Who formed it? A. A gentleman by the name of Lawrence Starr. That's not me.

Q. What's his relation to you? A. An uncle.

Q. I see. Will you trace the development of Biltmore Tire? A. Well, as I say, it was started 35 years ago, in a store about, oh, it was a half of a store, 25 x 125. We had half of a store. And over the years we accumulated that store, and a garage adjoining the building, plus another building, and warehouse building, and up to its present state. We remodeled about eight years ago.

Q. And who are the participants in the business? A. Well, there's 35 employees, of which there are six Starrs there, and—

Q. With two "r's"? (4874) A. Yes. S-t-a-r-r. And we have five salesmen, we have an office force of four girls, and a head bookkeeper, and we have truck drivers, and delivery men, and service personnel for tire mounting and seat cover mounting.

Q. Over how wide an area does Biltmore Tire operate? A. We cover the entire metropolitan Chicago area, and including up into Libertyville, Illinois, Gary, Indiana, Elgin, Aurora, St. Charles, and all the northern suburbs, Wilmette, Glencoe, Highland Park.

Q. And how many customers does Biltmore Tire have in that area all told? A. I'd say we have an active list of about 700.

Q. 700 customers? A. They're active.

Q. For the various products which you sell? A. That's right.

Q. And the products which you sell are— A. Tires—

Q. What brand tires? A. B. F. Goodrich Tires.

Q. And do you—what batteries do you sell? A. B. F. Goodrich batteries.

Q. And what accessories do you sell? A. Well—brand names?

Q. Well, in general. (4875) A. We carry a complete line of auto accessories, and polishes, waxes, also Havelin motor oil and Marfak grease.

Q. And of these 700 customers, how many are service station customers? A. I would say just a little over 100.

Q. And how many of those are Texas service station customers? A. About half.

Q. About 50? A. Right.

Q. Now, how is this area divided up, the Chicago metropolitan area, among you and your brothers, and father, and uncle? A. Well, actually we have one man who is not a Starr calling on the outside. We have one gentleman—

Q. His name is what? A. Otto Wittendorfer. We have a gentleman by the name of Al Adams, who covers the west side of Chicago for us, and the north side is covered by myself and my father, who is Jake Starr. And there is Pat Starr, who handles our national fleet business.

Q. I see. Where does Bob Starr work? A. Bob Starr and Irving Starr operate the inside of the place.

Q. It's a family business, isn't it? A. I would say so, yes.

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(4876) Q. And for the past few years what has been your responsibility? A. Mainly calling on the north side of Chicago.

Q. By that what do you mean, "the north side"? A. Soliciting business—well, from Diversey north really.

Q. Diversey Street— A. Is 2800 north.

Q. And you call on out through Evanston— A. Evanston, Wilmette, Glencoe, plus the north side of Chicago.

Q. I see. And in that area how many customers do you have? A. About 120.

Q. Whom you're calling on? A. Right.

Q. And how many service stations in that area? A. Twelve.

Q. Twelve? (4877) A. That I call on.

Q. You call on twelve service stations? A. Yes, sir.

Q. And how many of those are Texas service stations? A. Six, I believe.

Q. Now, in connection with this case, a gentleman by the name of Mr. Dwyer from Barry Tire Company testified at page 907 of the record, and the burden of his testimony was that he represented, I believe, Barry Tire, and he sold Dunlop tires, and—the burden of his testimony is he lost a customer in Evanston named Swifty's in the sale of Dunlop tires to B. F. Goodrich and Biltmore around 1956.

Now, will you explain to His Honor the circumstances under which you—first of all, did you acquire Swifty's as a customer around 1956? A. Yes.

Q. For tires? A. Yes, we did.

Q. Now, will you explain to His Honor the circumstances under which you got that account? A. Well, starting in about 1954 I started to call in that area, and he being in that area I stopped at Swifty's Texaco. And it took, oh, three or four or five calls before he even got to know my name. I mean, before he would talk to me.

And I didn't make a call there every week. When I say three (4878) or four calls, I made a stop, and maybe a month later I'd wind up going back, and over a period of a year I would say it was that those first four or five calls were made.

And after that time, getting to know the man a little better, I found out that I couldn't sell him Goodrich tires because he was buying Dunlop tires cheaper than I was asking him to buy Goodrich tires for. So I went back to Biltmore Tire Company and I talked it over with Irving Starr, who is our sales manager, and Irv and I came to the conclusion that if I offered him Goodrich tires at the same price that he was buying Dunlop tires, that I felt confident enough that the man would be smart enough if he could buy a major brand tire for the same price as an off brand, that he would make the switch.

So on that basis I went back out to see him, and I presented the program to him, told him just what we would sell him Goodrich tires for, and he agreed. I mean, he felt that, prices being equal, it was much to his advantage to handle a major brand tire. And from that time up until the present time I've been selling him Goodrich tires.

Q. And were there any other circumstances which related to this change? A. Yes.

Q. At that time? A. At the time—I say, after about the fifth call, when (4879) I finally got him to admit that he was buying tires at a cheaper price, and I came back to him and told him about our Goodrich setup, he was complaining to me about the adjustment policy of Dunlop. He had sent a tire in to Barry and waited a reasonable length of time and then called Barry up, and Barry said, well, they would check it. And another month went by, and he called back, and they had misplaced the tire entirely. And he was kind of upset about that, and he asked me what type of a program we had as far as adjustments were concerned.

And our program is such that if we pick up a tire today —I mean, if a man called us, a station, or—called us and said they had a tire that he wanted picked up for adjustment, our truck would pick it up tomorrow. And when that truck driver brought it back to Biltmore Tire Company, Bob Starr, who handles our adjustments, would then immediately determine if that tire was defective and if it warranted adjustment, or if it didn't. And the following day that man, the service station operator, would get a call and Bob would tell him, now this is the deal, the tire is 10% worn, and the adjustment is so much money. Or, the tire does not come under the heading of warranty, and we have to return it. And it would be expedited immediately. I mean, doing business with six or seven hundred people, we can't accumulate tires. We must handle it completely, immediately, for our own benefit.

(4880) Q. Do you find that that service is a sales point in this area? A. I think it's a great aid, yes, I do. In fact, if I'm making a call on a station and they happen to have a tire that they've taken in, I'll make the adjustment at the time I make the call.

Q. What really are you talking about, "an adjustment"? The customer comes in and— A. The customer comes in with either a tire that he has bought from the service station, or an original equipment tire. I mean, he sees the man has a B. F. Goodrich identification, and if he has Goodrich tires on his car and something has gone wrong with one of the tires, he pulls into that station. He says, "I'd like to have this—is there anything that you can do with this tire?" So the service station operator tells him, "Well, I'll have our distributor pick the tire up," and we'll see what we can do for the man.

Q. What does he do in the meantime? Puts the spare on? A. He puts the spare on. And we prefer to pick the tire up off the wheel so we don't lose the wheel. We have him

dismount the tire, and then we pick it up and determine if the tire is defective, either through workmanship or material. And then, based on the wear of the tire, it's replaced to him on a prorated basis.

Q. In other words, that's a service that a customer, ultimate (4881) customer, of the B. F. Goodrich Tire can obtain from any dealer or any service station who handles his tire? A. Any B. F. Goodrich dealer in the United States.

Q. In other words, one of your customers who handles Goodrich tires, if he buys a tire there he can get an adjustment if the circumstances warrant? A. That's right. And even if he hasn't bought the tire.

Q. Pardon? A. And even if he hasn't bought the tire from one of our stations or ourselves, just as long as he has a B. F. Goodrich tire on the car, it's got a name and a serial number, and if it comes under the heading of a defect it is replaced to the man.

Q. Now, what's the nature—does Mr.—who is the owner of Swifty's? Kischer, isn't it? A. "Swifty." That's the way I know him.

Q. Does he own that property? A. No.

Q. Well, is he a lessee of the Texas Company, do you know? A. No. He leases from the owner.

Q. I see. In other words, he leases the property from the owner and then— A. And then releases to the Texas Company, which releases back to him, I guess, and —

Q. I see. (4882) A. That's the arrangemnt.

Q. Now, what type of batteries does he handle? A. Delco.

Q. Who does he acquire those from? A. Evanston Auto.

Q. Evanston Auto is located close to him, is it? A. Yes, within six or seven blocks.

Q. And what kind of accessories does he handle? A. Well, he handles a major line of polishes, of—he handles all types of spark plugs, he handles A-C filter, he handles various types of additives.

Q. Who does he acquire them from? A. Mostly from Evanston Auto, I believe.

Q. Do you sell him any accessories or batteries? A. I have never sold him an accessory or a battery.

Q. And, now, in connection with your contacts in the area in selling service stations, do you use any different efforts or sales practices in selling to the Texas stations than you use in selling to other service stations? A. No.

Q. What is the sales program that you have to go into in connection with the sale of tires to an account? A. Well, if I'm going in cold to a new stop, I introduce myself and the company I represent, and I try to give them a little background of Biltmore Tire Company, because we're very (4883) proud of the fact that we're in business for the length of time that we are in business, and we're an established concern. And I try to stress to the operator that he's buying from an established firm, not from a wagon jobber or a wagon peddler, and that has certain benefits. And then I try to sell the man on my products, B. F. Goodrich products, B. F. Goodrich batteries, and—

Q. You don't usually do that on the first call, or on the telephone, do you? A. Oh, man—no, sir.

Q. It's a matter of— A. I have to be extremely lucky to go in the first time and sell a man; unless you've got an exclusive product, that would be the only time that I can see going in to make a first call and selling a man the first time.

Q. You mean where you had the first dry charge battery, or the— A. Or the only dry charge battery.

Q. Yes. Or the tubeless tire in the early days. A. That's right. It takes four, five calls. I say it takes four calls before he even knows your name. I mean, you may know the man's name you're calling on, but you tell him, I'm Lorrie Starr from Biltmore—he's listening to you, in one ear, out the other. And after about the fifth time telling him that he realizes maybe you're Lorrie Starr from Biltmore.

(4884) Q. Now, in connection with your selling to these Texas service stations and other service stations in the area which you cover, do you notice any difference in the reaction resulting from the assistance, merchandising assistance, you obtain from Texas Company? A. Well, the merchandising program of the Texas Company is an aid. There is no question about it. And I would say the selling other than Texas stations, it is a little more difficult, yes.

Q. You mean the promotion of products in the station? A. That's right.

Q. And in that connection, how many different tire sizes are there that you handle? A. Well, just to give you an idea, 670 x 15, which is our most popular tire size today—B. F. Goodrich Tires at the present time has 19 different 670 x 15 tires available to the customer. That's not counting any discontinued sizes—I mean, any discontinued tires that they might have where they changed the tread design from time to time. But currently there are 19-670 x 15's that I am in a position to sell a service station.

Q. And what other kinds of sizes, other than 670 x 15? A. That's 670, 710, 768, 820; then you have your 14-inch tires on your '57 and '56 cars, 750 x 14, 808 x 15, 909 x 15, and you still have a few calls for 616 and 650 x 16. That about encompasses the passenger car business, not going into trucks or anything.

(4885) Q. Mr. Starr, by virtue of the fact of all these different sizes, what problems are there in connection with the service station business? A. It's becoming a major problem with us. The service station can't stock tires consequently, due to all these different sizes and types, and we have to be in a position to give many services when he needs it. He may call up and say I need four tires, and the customer's coming in this afternoon, I'd like to get them. So we have to put four tires in a vehicle and send it out

to him. And sometimes it becomes pretty frantic. We have seven trucks and fourteen passenger car tires around our place of business, and at times we run out of vehicles to deliver. I mean, it just becomes that frantic. So it's a question of you have to be able to give a man service in order to even begin to hold his business.

Q. What would be your—you call on these Texas service stations in your area regularly, don't you? A. Yes, sir, once a week.

Q. And in the past you called on Texas service stations in other parts of the City in the area? A. Yes, sir.

Q. What is your estimate of the amount of sponsored products which those Texas service stations to whom you sell, Biltmore sells, is of the total TBA which they handle? A. I would say from 20 to 25%.

(4886) Q. And in that calculation are you including in total TBA repair parts and— A. Well, we don't sell any parts.

Q. And hard parts? A. We do not sell parts or mufflers, or brake linings, or any such things.

Q. So you are not including those items in the estimate of total TBA? A. No, just what you asked me, in TBA.

Q. Just the type of TBA that you sell? A. That I sell, right.

Q. Mr. Starr, have you ever heard of a Texas dealer buying from Biltmore because he had to buy from you? A. Absolutely not.

Q. You are familiar with the Texas Company policy with respect to the TBA which the dealer may handle? A. Yes.

Q. And is it your experience that the Texas lessee dealers in the Chicago area understand that policy and operate in accordance with it? A. I think so.

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(4887) Q. Well, have you ever heard of the Texas Company making any threats to stations which refuse to handle sponsored TBA? A. No, sir.

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Cross examination by Mr. Dias:

Q. In your estimate of the amount of sponsored TBA handled by these stations, do you consider Firestone a sponsored brand—as far as being a Goodrich dealer—anything that is not Goodrich as non-sponsored? A. That's correct.

Q. Are there competing Goodrich distributors in your territory? A. Yes, sir.

Q. Are they distributors such as yourself, designated supply (4888) points for these Texaco stations? A. I don't know whether it's designated supply—they are competing dealers.

Q. Do they handle Goodrich tires, batteries and accessories? A. Yes, sir.

Q. Can you name some of them, please? A. In my immediate territory that I'm calling on?

Q. No, your company's territory. A. Pavlik, McGowan Tire and Battery.

Q. How about Warwick & Lambie, are they in your territory? A. Yes, in Biltmore's territory. Not in my personal territory.

Q. That's what I'm talking about. I'm talking about Biltmore. A. Yes, sir.

Q. Gardner-Kinsley, is it, or Kinzell? A. Yes, sir—Kinsley.

Q. They are all also Goodrich distributors, are they not? A. Yes, sir.

Q. Have you—referring now to your stations in your own territory, what TBA generally do the—or tires, rather,

do the twelve Texaco stations handle? Six I understand handle Goodrich, is that correct? A. Six, yes.

Q. And the other six, what do the other six handle? A. Firestone, Dunlop, Goodyear.

(4889) Q. Isn't it a fact that primarily they handle Firestone, those that do not handle Goodrich? A. No. I don't think so.

Q. How about the remaining Texaco stations in the Company's trade area? Isn't it a fact that most of them that do not handle Goodrich are handling Firestone tires? A. I would say that's so.

Q. How about batteries? Is that true with Firestone batteries? A. No.

Q. It is not true? A. Batteries is an entirely different business.

Q. Is that so. What about accessories, is that different too? A. Yes, sir.

Q. How long have you been a—that is, Biltmore, how long has Biltmore been a Goodrich distributor? A. I'm not sure. I think we are going on thirty years.

Q. As the— A. I know we have got our twenty-five year plaque on the wall and I'm not sure if it's longer than that.

Q. Well, my question was, as a designated supply point now, for Texaco stations? A. Well, I guess as long as the Texaco Company has the program.

Q. I see. There has been no difference in your operations (4890) before or after that? A. Of course not. We are calling on some of these people for thirty-five years. They are still customers of ours.

Q. Do you receive any notice from Texaco as to the opening of new Texaco stations? A. I think B. F. Goodrich has notified—is notified and they notify us.

Q. You are notified by the home office? A. By B. F. Goodrich.

Q. Do they have a branch here in town? A. They have a—yes, they do.

Q. Do the home office, that is, Goodrich home office salesmen accompany you in selling to Texaco stations? When I say you now, I mean your order salesmen. A. Not generally, no.

Q. Do they on occasion? A. No. I would say—we have run into them, you know, if I make a call a Texaco salesman may be there at the time I'm calling on the station, but making joint calls with our men, no.

Q. You are referring to Texaco salesmen now? A. That's what you asked.

Q. No, I thought I asked you whether or not Goodrich home office salesmen— A. Oh, I misunderstood you. At times. New business.

(4891) Q. That would include Texaco stations, would it? A. Yes, sure.

Q. Are you familiar with the reporting procedure in connection with the sales commission that's paid by Goodrich to Texaco? A. I don't think I am. I don't know what you mean.

Q. Do you report to Goodrich? A. We do not, no. Goodrich comes in and takes those records themselves right off our invoices.

Q. Somebody from the Goodrich home office comes in to your shop and takes that information? A. That's right.

Q. Do you know how often they do that? A. Once a month I believe.

Q. I think you stated that Texaco, the aid that Texaco renders in selling, helps you in selling the Texaco stations. Is that correct? A. That's right.

Q. How much—what type of help do they give you, do you know? A. Merchandising help, displays. They have some technical knowledge as to tires, where—I don't want to reflect on the knowledge of a service station operator,

or his ability, but they may not know too much about the tire business and it takes some instruction, and I would say that the Texaco men have a little bit better knowledge of that than some service (4892) station operators.

Q. You call on your Texaco stations once a week, do you? A. I call on all my stops once a week.

Q. And do all the other salesmen in your firm— A. We hope so.

Q. —call on them at least once a week? A. Yes.

Q. How much more often then would these stations be visited by the Texaco men? In other words, would they call on them once or twice a week and then you call on them once or twice a week? A. I don't know how often. I don't know their schedule at all. That takes up a small part of our business.

Mr. Dias: I have nothing further.

Redirect examination by Mr. Barton:

Q. Mr. Starr, do the Texas stations in your area and in Biltmore's area generally which don't handle, do not handle, Goodrich, but handle Firestone, handle Firestone exclusively? A. No.

Q. In other words, they handle brands other that Firestone? A. Yes, sir. There isn't one station that's exclusively with Firestone or Goodrich in Chicago. I'd go on the record as to that.

* * *

(4894) FRED OPOCENSKY was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Royall:

Q. Will you state your name, sir? A. Fred Opocensky.

Q. By whom are you employed, Mr. Opocensky? A. The Texas Company.

Q. And where is your place of employment? Where do you— A. Grand Island, Nebraska is my headquarters.

Q. And what is your present position? A. District sales representative.

Q. What territory do you cover? A. Well, it's a section that runs from Grand Island west about one hundred miles and southeast about two hundred miles. I have fourteen wholesale points in that area.

Q. What states does it touch? A. All of them in Nebraska, sir.

Q. Now, what are your responsibilities in that position? A. Well, I am responsible for sales, operations, accounting matters, credits and collections.

Q. How long have you held that position? (4895) A. Since January 1, 1958.

Q. What was your position prior to that time? A. Zone manager, headquartering at Grand Island, with a different territory.

Q. What territory was that? A. Well, I had Grand Island, which was a salary bulk plant, and I had seven other wholesale points.

Q. Now, under—and how long did you hold that position? A. Approximately eight and a half years.

Q. Now, how long have you been with the Texas Company? A. Well, I finished twenty-five years this month.

Q. In the position you held prior to your present position, who worked—what was the sales organization under

you? Who reported to you? A. When I was zone manager at Grand Island?

Q. Yes, sir. A. Well, I had the—I had two salesmen in Grand Island, and I had the salaried employees of the bulk plant which consisted of agents, drivers and so forth.

Q. Now, in that capacity did you come in contact with the salesmen and with the service stations in your area? A. Yes, sir.

Q. Now, how frequently? A. Well, I would manage to see all of my points once a month, and service station dealers—well I'd try to see (4896) them once every sixty days, all of them.

Q. Now, in your present position, your recent position, do you have less contact with your salesmen and— A. I have no salesmen now.

Q. You have less contact with the stations, do you, sir—service stations—or more? A. Well, I would have the—I would have the same amount of contacts, but I have more territory now, which would mean that I would not contact them as frequently as I did before.

Q. I see. Now, are you—I would like to hand you copies of Respondent's Exhibits 14, 15, 16 and 17, which have already been introduced in evidence, and ask you to glance over them, please, sir.

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The Witness: Yes, sir, I recognize them and am familiar with each of them.

By Mr. Royall:

Q. Are you familiar with that portion of these papers that relate to the independence and freedom of choice of Texas (4897) dealers in the purchase of TBA? A. Yes, sir.

Q. Is that duty—is that policy brought to the attention of the salesmen and service stations in the area which you serve? A. Yes, sir.

Q. Is it well known to those dealers? A. Yes, sir.

Q. Do the dealers conduct their operations in accordance with that policy? A. Yes, sir.

Q. Now, to your knowledge have—has there been any—have there been any instances in your territory of any coercion or forcing by Texas Company of service stations' purchase of TBA? A. No, sir.

Q. Have any—have you heard in your—in the performance of your duties, have you heard of any such forcing or coercion? A. No, sir.

Q. Does the same apply to threats? Have you heard of any threats or do you know of any threats against service stations by the Texas Company in connection with TBA? A. No, sir, I have never heard of any, nor do I know of any.

Q. Have you heard or do you know of any instances in which the—a service station has been treated less favorably because of any circumstances arising out of TBA? (4898) A. No, sir.

Q. Do you know of any instances where any lease has been cancelled or threatened to be cancelled by reason of any facts connected with TBA? A. No, sir.

Q. Are you familiar with Exhibit 209-A-Z-10, that being an exhibit of the Complainant, described as the Through-Put? Do you know what information that is based on? A. Yes, sir.

Q. What? A. Well, it's based on sales figures furnished by the dealer covering his gasoline sales, his motor oil sales, his lube jobs, and his sale of TBA merchandise.

Q. Do you know what the purpose of that report is? A. Yes, sir.

Q. What is it? A. Well, it's of great assistance to the salesmen in helping the dealer to improve his—to improve his sales and make him a more successful dealer. It will point up—point out any weakness.

Q. Does it—does that—does that purpose cover both sponsored and non-sponsored merchandise? A. Covers all merchandise.

Q. Is this report used in any way, as has been suggested by others, in any way as a policing of TBA? (4899) A. Absolutely not.

Q. I see. Has it ever been used to determine a quota of TBA? A. No, sir.

Q. Has it been used in any way to call attention to any dealer for the purpose of promoting or encouraging further TBA sales? A. That is the way that we used it, yes, sir.

Q. Has it been used in that connection—in connection with sponsored sales? A. All merchandise.

Q. All merchandise? A Yes.

Q. Now, you mean all merchandise, whether spopsored or unsponsored? A. Yes, sir.

Q. Does the total TBA sales, regardless of whether sponsored or unsponsored affect the success of a dealer? A. Yes, sir.

Q. And is it related directly to the amount of gasoline sales that may be expected? A. Very definitely.

Q. I see. And is that the purpose of this document? A. Yes, sir.

Q. Now, in your—during your time—during the time when (4900) you have had an opportunity to see the stations in your area, have you observed whether there are large amounts of non-sponsored merchandise in the Texas stations? A. Would you state the question again?

Q. Are there non-sponsored items, TBA items, in the Texas stations? A. I have never seen a station in twenty-

five years that did not have non-sponsored merchandise in it.

Q. Is that non-sponsored merchandise displayed? A. Yes, sir.

Q. Do you know of—has it come to your attention or have you heard of any instances where the Texas Company has requested that there be no display or that the goods be concealed? A. No, sir.

Q. Or do you know of any instances where the display of merchandise, of non-sponsored merchandise, has been the cause of any discrimination against a station by the sale on Zaloudek was cancelled? A. No, sir.

Q. Now, do you know a gentleman named Zaloudek? A. Yes, sir.

Q. What is his full name, do you know? A. I just know his first name, which is James.

Q. He was formerly a Texas dealer in Omaha, was he not? A. Yes, sir.

(4901) Q. And later was he a Mobile Oil dealer? A. Yes, sir.

Q. And is he now no longer a dealer of any oil company? A. (No response.)

Q. Is he now a dealer of any oil company?

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The Witness: I believe that he is no longer a dealer of any oil company.

By Mr. Royall:

Q. Are you familiar with the time when the lease of sale on Zaloudek was canceled? A. No, sir.

Q. You are not familiar with those circumstances? A. No, sir.

Q. Did you ever have any conversation with Zaloudek about the policy of the Texas station? A. Yes, sir.

Q. Will you give us what that conversation was? A. In 1948, when I was headquartering in Omaha, we had a new station under construction at 13th and Deer Park, and Mr. Zaloudek contacted me to learn the details of what the lease of the station would consist of, and so forth, and to ask for my recommendation to help him get the station. I did these (4902) things, and at that time discussed our TBA policy, and even helped him to get a Firestone set-up.

Q. Were you the one that helped him get that set-up? A. Yes, sir.

Q. And what was said at that time about the policy of the Texas Company in connection with TBA? A. Well, to the best of my recollection, as I remember it, I discussed the fact with him that we recommended handling of either Firestone or Goodrich, but that he was a free agent and at that time it was his choice to handle Firestone.

Q. Now, at that time was Zaloudek told that he could buy from no one except Goodrich or Firestone? A. No, sir.

Q. And, your Honor, in that connection I refer to page of the transcript 1456—1457, I believe—at the time he got this station, what—do you know what his preference was before he signed his lease, his preference as to the product to be— A. The TBA product?

Q. TBA product. A. Firestone very definitely.

Q. Was that his definite idea? A. Yes, sir.

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(4903) Q. With reference to 1462, did you at any time tell Mr. Zaloudek that he could not display any of his TBA products, including A. C. Puralator, wicks, Hastings filters, and others? A. No, sir.

Q. Did anyone tell him that in your presence? A. No, sir.

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Q. With reference to pages 1463 and 64, did you or anyone in your presence, or within your knowledge, ever tell Zaloudek to remove Armstrong tires or any other brand of tires from his tire rack? A. No, sir.

Q. Did you at any time, or did any one in your presence or with your knowledge, tell Zaloudek that he had a Firestone contract and that was what he was supposed to have in his racks? A. No, sir.

Q. This refers to 1464, your Honor.

Did you tell Zaloudek to take off of his shelves his TBA purchased from Silas Company, Al's Auto, or Storz Supply Company, or purchased from any other source? (4904) A. No, sir.

Q. Did any one so tell him in your presence or with your knowledge? A. No, sir.

Q. This relates to 1471, your Honor.

Did you ever tell Zaloudek that he was not supposed to have any TBA other than Firestone on his shelves? A. No, sir.

Q. Did any one in your presence or with your knowledge so tell him? A. No, sir.

Q. This refers, your Honor, to 1472.

Did you at any time tell Zaloudek that you did not want any Goodyear, Siberling, U. S., or any other brand of tires in his station, on the wire racks, on the floor of the station? A. No, sir.

Q. Did any one else tell him that in your presence or with your knowledge? A. No, sir.

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Cross examination by Mr. Dias:

Q. How often did you visit Zaloudek? A. Well, not too often. At that time I was covering the (4905) entire state of Nebraska, and I had no connection with his station, with the exception of helping him to get it.

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M. A. Buntz, Recalled, for Respondents—Direct

(4910) M. A. BUNTZ was thereupon recalled as a witness for the Respondent and, having been previously duly sworn, testified as follows:

Direct examination by Mr. Royall:

Q. Mr. Buntz, I believe you testified yesterday at page 2530 and 2531 that 50 per cent of the Texaco stations with whom you dealt carried some stock of non-sponsored tires. You later testified that you considered—later you spoke of Goodrich when you were discussing non-sponsored tires.

In connection with that 50 per cent, did you intend to include Goodrich as a part of the non-sponsored (4911) tires? A. No, sir.

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Q. Now when you testified about 50 per cent of the stations carry some stock of non-sponsored batteries, did you mean to include Goodrich as a non-sponsored—that is, Goodrich batteries as non-sponsored batteries? A. No, sir, I did not.

Q. When you were speaking of 40 per cent of TBA as a whole as non-sponsored, did you mean to include Goodrich among the non-sponsored products? A. No, sir, I did not.

Q. I believe you did testify later on page 2551 as follows:

> (4912) "Q. Would Goodrich be, so far as you are concerned, a non-sponsored product?
>
> "A. Well, yes, it would be to answer your question."

Now that is some pages later than the other testimony. How do you reconcile that statement with your previous statement that you did not consider Goodrich among the non-sponsored products in arriving at your percentage?

Mr. Dias: Your Honor, I want to object again. That is right in the heart of the cross examination and I think it is improper to bring this witness back at this time.

Hearing Examiner Kolb: He is changing his testimony for what it is worth.

Mr. Dias: I would assume it would be worth quite a bit from the point of view of having had an opportunity to study the record.

Hearing Examiner Kolb: I think from your point of view you would rather have him contradict himself.

Mr. Royall: These notes I am reading from are counsel's, and I am calling this to the Court's attention because I think the whole picture should be before the Court. Of course if he objects to that (4913) question and doesn't want him to answer it, maybe it is immaterial, but I think it would be better if he would say what he meant there because there is a misunderstanding.

Hearing Examiner Kolb: He testified that Goodrich was a non-sponsored product as far as he was concerned.

Mr. Royall: I read that testimony, yes.

Hearing Examiner Kolb: You can go on from there if you want to.

By the Witness:

A. What I meant was that Goodrich is competition but that was not included as the percentage of the non-sponsored products in the stations that I had reference to when it was brought up.

By Mr. Royall:

Q. For example, in the case of the 50 per cent figure as to tires and batteries, in the 50 per cent of sponsored, did you include Firestone and Firestone only, or did you include both of them?

Mr. Dias: I object to the double question, your Honor. I don't know which way his answer will apply.

Mr. Royall: I will withdraw that question. I think he has already stated the situation.

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(4914) ROGER WILSON, JR. was thereupon called as a witness for the Respondent, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Royall:

Mr. Royall: Your Honor, Mr. Wilson and Mr. Buntz both work for Firestone. I will take the liberty of shortening this examination as much as possible in order to avoid any unnecessary duplication.

By Mr. Royall:

Q. What is your position, Mr. Wilson?

Hearing Examiner Kolb: Let's have the witness' name.

By Mr. Royall:

Q. Will you give your name? A. Roger Wilson, Jr.

Q. For whom do you work, what position do you have, and how long have you had it? A. Manager of TBA sales, Omaha District, Firestone (4915) Tire & Rubber Company.

Q. How long have you had that position? A. Eleven years and six months.

Q. Has that position— A. Sir—

Q. What is that? A. You asked on that position?

Q. Yes. A. No, two and a half years on that position.

Q. What position did you hold before that? A. What they called a territory salesman.

Q. Where was your territory? A. Northwest Iowa.

Q. How long did you have that position? A. Eight years.

Q. Your service in the two positions was approximately eleven years, is that right, sir? A. Right.

Q. Now, Mr. Wilson, did your duties in those two positions bring you in frequent contact with dealers and their stations? A. Yes, sir.

Q. In the second position your territory was larger, was it? A. It was.

(4916) Q. During that period did you know of or hear of any pressure, coercion, or forcing on the part of the Texas Company in connection with dealers in TBA? A. No, sir.

Q. Did you hear of any threats of cancellation or discrimination? A. Never.

Q. Do you know whether or not the Texas dealers in that area considered themselves independent?

Mr. Dias: I object.

Hearing Examiner Kolb: Objection sustained.

By Mr. Royall:

Q. Did you ever have any conversation with dealers as to the—strike that.

Are you familiar with the supply houses of Anderson and Storz and Seidel's in the Omaha area? A. Yes, sir.

Q. What type of business in general do they do? What is their primary business? A. I consider them as what we have been talking of, a hard parts company, some TBA.

Q. Are they also interested in their business in electrical and mechanical work and products? A. To a greater extent than they are in the TBA.

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(4917) Q. Do you know, Mr. Wilson, whether you render types of services and quantities of service to these Texas dealers which are not rendered by these distributors I have mentioned? Do you know whether you render some that they do not? A. Yes, sir. You would have to—yes, sir.

Q. You do know? A. Yes, sir.

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(4919) Q. Will you answer that question, sir, what types and quantities of service you render that these other distributors do not? What is the difference? A. We have, as I said earlier, greater TBA stocks and we render a specialized service as far as this TBA in the Omaha district to service stations.

Q. In what way? A. By delivery, stocks, promotions, programs, advertising campaigns to a greater extent than any of these other suppliers that have been mentioned.

Q. Do you know from your experience in connection (4920) with TBA sales whether normally a salesman can make a sale the first time he calls on a customer? A. Very seldom, sir. I would say it would take an average of five to six calls and oftentimes many more before you can get a competitive account sold.

Q. Do you know Ted Carroll, a dealer named Ted Carroll? A. I did, sir.

Q. Did you have dealings with him? A. To some extent.

Q. Did you at any time make any statement to Carroll that he was obligated to buy Firestone tires and could not buy Century tires? A. No, sir.

Q. Did you make any threat to him by reason of the purchase of tires other than Firestone? A. No, sir.

Q. Did he ever say to you at any time, to you personally, that you had threatened him? A. No, sir.

Q. Do you know whether or not, in fact, Carroll did buy non-sponsored tires? A. Yes, sir.

Q. Did you see them in his station? A. Yes, sir, I did.

(4921) Q. What type were they? A. Century tires.

Q. How recently was that that you saw them? A. At least a year ago or within eighteen months.

Q. Do you know Ralph Linton? A. Yes, sir.

Mr. Royall: Your Honor, the other one referred to page 1397 and this one refers to page 1415.

By Mr. Royall:

Q. Do you know a dealer named Ralph Linton? A. Yes, sir.

Q. During this year or earlier did you see any Exide batteries on display in his store? A. Yes, I did.

Q. Did you see any other unsponsored goods? A. Yes,

Q. Did you see any products that are normally sold by Anderson & Company or could you identify them? A. Yes, I could. I think there were spark plugs and mufflers and tail pipes.

Q. Did you see any sold by Storz, normally sold by Storz? A. Yes, sir.

Q. Did you see wiper blades, non-sponsored wiper blades? (4922) A. That is right, I did, sir.

Q. And brake lining, unsponsored brake lining? A. Yes, sir.

Q. Are they all stocking items as you call them? A. Yes, they are.

Q. Did you make any complaint or threat at any time to Mr. Linton about those matters? A. No, sir.

Q. Has there ever been any agreement and understanding to your knowledge that Firestone would lay off trying to sell Goodrich dealers, Goodrich sponsored dealers, or that Goodrich would lay off trying to sell Firestone sponsored dealers? A. No, sir, in fact—

Q. Do you lay off? A. No, we do not.

Q. You have made joint calls, have you, with Texas representatives from time to time? A. Yes, sir.

Q. On any of those occasions have you heard a Texas representative ask removal of non-sponsored goods on display? A. No, sir.

Q. Or the concealment of them? A. No, sir.

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(4923) *Cross examination by Mr. Dias:*

Q. Mr. Wilson, what is Ralph Linton's trade name, is that R&R? A. R&R Texaco, 33rd and Q.

Q. What items were they that you saw in there that were obtained from Anderson, Storz, and the other suppliers? A. Several of those handle the same items and it is hard to pinpoint whether they come from one supplier or the other, but ANCO blades and Champion spark plugs, A-C filters, Gridley brake lining, Exide batteries, and some chemicals that I can't specifically name.

Q. They are carried by a number of those competitors, are they? A. Yes, sir.

Q. So that when you testified that they came from Anderson or Storz, you didn't mean to imply that you knew that it did come from Anderson or did come from Storz; you thought it came from one or the other?

Mr. Royall: Objection, your Honor. The question was whether they normally were carried by them, not whether they came from them.

(4924) Hearing Examiner Kolb: This is cross examination, Mr. Royall.

Mr. Dias: Read the question, please.

(The reporter read the question as follows:

"Question: So that when you testified that they came from Anderson or Storz, you didn't mean to imply that you knew that it did come from Anderson or did come from Storz; you thought it came from one or the other?")

By the Witness:

A. Yes, sir.

By Mr. Dias:

Q. You also mentioned that they carried them in stocking quantities. What is a stocking quantity of—well, take any one of these items you mentioned. A. That varies on turnover and station, and in this case those fellows do a pretty good job of mechanical work or do mechanical work, so they carry, I would say, a half dozen sets of brake linings and normal stocks of spark plugs. I mean, that is a good turnover item in any service station. 20 batteries, say.

Q. What is the Firestone spark plug, Champion, is it, or A-C? A. A-C and Auto-Lite; there is Auto-Lite, too.

Q. Firestone also sells Auto-Lite, is that correct? (4925) A. Yes.

Q. Now of the items that you saw in there, in the spark plugs, for example, did you mention spark plugs as some of the items that they purchased from other sources? A. Yes, sir.

Q. And were they Auto-Lite and A-C spark plugs? A. Yes, sir.

Q. How did you know that they came from other sources? A. Well, on one particular call I asked why we

weren't selling him more spark plugs, and I found out at that time competitors were selling the spark plugs that he had on his shelf.

Q. Could you tell us when that was? A. Last summer, last fall.

Q. 1957? A. Right.

Q. How often do you go out with Texaco representatives calling on Texaco stations, with Texaco representatives? A. It varies. You might say whenever the opportunity presents itself, or do you want an average of how often, how many times a month, or something like that?

Q. Well, do you have a fixed schedule for going out? A. No, sir.

Q. And if you don't have a fixed schedule, how often (4926) roughly does it occur as a routine thing? A. Twice a month.

Q. Twice a month, and you visit all Texaco stations, is that correct? A. As many as time permits.

Q. How many are there in the Omaha area? A. About 45.

Q. Do you call on all Texaco stations? A. No, sir.

Q. Which ones do you call on? A. Primarily we call on the ones that we are selling and any of the competitive stations that we would like to work on at that time, Texaco stations.

Q. In other words, those Texaco stations that are handling competitive products in TBA products, is that correct?

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A. Yes, sir, we do call on them.

By Mr. Dias:

(4927) Q. Did you say you were in Omaha for two and a half years as TBA sales—what was the title? I missed

that. A. Manager of TBA sales in the Omaha District.

Q. And that would then include Lincoln, is that so? A. That includes Lincoln.

Q. You have had that position for two and a half years? A. Yes, sir.

Q. During that time you visited these stations in Omaha and Lincoln, is that correct? A. Yes, sir.

Q. Prior to that time you were territory salesman in northwest Iowa? A. That is right.

Q. You wouldn't get over into Omaha and Lincoln at that time, would you? A. No, sir.

Q. So that your experience in Omaha and Lincoln is restricted to the last two and a half years? A. Right.

Q. How many Century tires did you see in Carroll's Texaco, and when was that? A. I can't give you a definite number on how many I saw.

(4928) Q. Do you recall that it was a stocking quantity? A. A stocking quantity could be defined again as to the turnover. Some dealers are required to stock a good many more than others, but that dealer was handling some Century tires and I recall seeing—it might have been two, three or a dozen.

Q. Can I suggest to you that it was two and that it was an order for a specific customer? A. It could be, it could very easily be, but is there a date or something on it?

Q. I am going to ask you for the date. You are the one that saw them. A. I think, like I say, I answered that within the last eighteen months, a year to eighteen months ago.

Q. And at that time do I refresh your recollection that the number of tires, Century tires, was two and that they were on specific order for a customer? A. I can't say that it was two, sir.

Q. Can you tell me then how it come about that you noted them there? A. Yes, sir, that is my job, to see, to watch all competition, to see what they are putting in the stations.

Q. What else did you note in the station at that time? Just Century tires? (4929) A. No, he had—I can't specifically tell you. You see, tires are a mighty big item in a service station, as far as that goes, but he had chemicals and some accessories that we weren't selling. We were not selling the man a very big share of his TBA and that is one reason I went down there with a supply point salesman trying to find out if we couldn't get the man doing a bigger job with us.

Q. What sort of business was he doing with you with tires, do you recall? A. I can't give you a dollar volume. I can give you an estimate.

Q. Is it your recollection that he was giving you the majority of his Firestone business? Wasn't that his primary line? A. Yes, sir, I would say that it was his primary line.

Q. Isn't that true also of Linton, aren't Firestone tires Linton's primary line, R&R? Aren't Firestone tires his primary line? A. Yes, sir.

Mr. Dias: I have no further questions.

Redirect examination by Mr. Royall:

Q. How often did Texas representatives go with you on these visits to stations, what per cent of the time?

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(4930) Q. What part of the time did they go with you? A. 15 to 20 per cent of the time.

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Paul B. Hicks, for Respondents—Direct

PAUL B. HICKS was thereupon called as a witness for the Respondent, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Royall:

Q. What is your name? A. Paul B. Hicks.

Q. By whom are you employed? (4931) A. The Texas Company.

Q. In what capacity? A. District sales representative, merchandising.

Q. How long have you served in that capacity? A. Approximately eighteen months.

Q. Before that what was your job? A. Merchandising salesman.

Q. In what territory? A. I had the western suburbs of Chicago.

Q. What does your territory now include? A. My territory now includes from 12th Street in Chicago south to 79th Street in Chicago; west to Mendota, Illinois and south to Kankakee, Illinois.

Q. How many Texas stations are there in that territory? A. Under my supervision, sir?

Q. Under your supervision. A. 89.

Q. Do most all of them carry TBA? A. Yes, sir.

Q. How many of those stations are Texas sponsored stations, approximately—I mean Firestone sponsored stations? A. Firestone sponsored, I would say 40 per cent.

Q. How many are Goodrich sponsored? (4932) A. I would say 55 per cent.

Q. Are some of them split stations? A. Yes, sir.

Q. The rest are split stations? A. Yes, sir.

Q. Are some of those stations stations where Firestone is the sponsor and Goodrich the sponsor, and some of those are split stations? A. Yes, sir.

Q. That is what you meant? A. Yes, sir.

Q. Are you familiar with the policy letter, Exhibit 10, which was issued by the Texas Company? That is Respondent's Exhibit 10. A. Yes, sir, I am.

Q. Do you recall the statement as to the independence of the dealers? A. Yes, sir.

Q. Did any Texas superior of yours ever discuss this policy letter with you and, if so, who was it? A. Yes, sir, they did. When I was a sales trainee first starting with the Texas Company during conferences that I had with the superintendent of sales training, we talked about TBA and the TBA policy of the Texas Company, and during those conversations I asked him (4933) how this merchandise got in there or what the Texas Company's policy was, and he explained to me the policy and also the fact that these men were independent businessmen and they had the right to choose the products that they sold, even though we had a policy, and that anyone that strayed from this policy was liable for dismissal.

Q. You say that was when you were earlier with the Texas Company? That was a policy letter similar to this but earlier than December, '55, was it? A. Yes, sir.

Q. Now— A. Sir, what I mean is this: The policy of the Texas Company was explained to me as that, not that particular letter.

Q. Not this particular letter, I see.

Do you carry this policy letter with you in the transaction of your business? A. Yes, sir, I do, and all Texas Company salesmen in our business do.

Q. Have you got one with you? A. I have one in my folder.

Q. Will you go and get it and show the foreman how you carry it?

In order not to encumber the record with (4934) repetition, is it correct that you carry it in a cover, covered by plastic? A. Yes, sir.

Q. And that is to prevent—that is to preserve it so it won't be worn? A. Absolutely.

Q. You keep that with you all the time during the transaction of your business? A. Yes, sir.

Q. And so do your salesmen? A. Yes, sir.

Q. Now do you carry out that policy in your operations? A. I am sorry, I didn't hear you.

Q. Do you carry out that policy in your dealings with customers? A. Absolutely.

Q. Do you know of any instances where your salesmen have violated that policy? A. Absolutely not.

Q. Who sells the merchandise, that is, the TBA, to the service stations in your area? Is it sold by Goodrich and Firestone? A. Yes, sir.

Q. You recommend it, do you? (4935) A. We do.

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Q. Do you know whether or not the dealers themselves have knowledge of this policy? A. Yes, sir, they do. They are told the policy.

Q. Do you know of any instances where they have violated it? A. I don't understand the question.

Q. I mean have you any instance where any of your salesmen violated the policy? Do you know of any instance? A. The Texas Company's policy?

Q. Yes. A. No.

Q. Have any leases in your territory, either your present territory or regional territory, ever been (4936) terminated for reasons relating to TBA? A. Absolutely not.

Q. Has any TBA situation affected in any manner your assistance to the station in the way of improvements or loans or any other way? A. No, sir.

Q. Do you know of any instances of threats made to dealers by reason of their TBA habits? A. No, sir.

Q. When you recommend TBA to Texas service stations, what do you stress and what do you discuss with the

dealers? A. I think the primary thing that we discuss in talking of TBA is the importance to the dealer of being in a TBA program as far as a source of supply is concerned. We usually go on the basis of who can give the best service, the quality of the products, and the price, the competitive situation, local acceptance in a given market.

Q. What next? Anything else, or is that the extent of your discussion? A. I think that is the extent of it, yes, sir.

Q. What is your evaluation of the service rendered by Goodrich and Firestone in the TBA business? A. The service rendered to our dealers in different (4937) locations with different companies can be tremendous. A service station dealer today depends a great deal on other products than petroleum products. Goodrich and Firestone salesmen and their sales people are experts in teaching these men how to sell these products, teaching these men how to make additional profits through the sale of these products, and it is for these reasons, besides display purposes, that they are of such great value to our dealers.

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(4938) Q. What is your opinion as to the relative merits of Firestone and Goodrich on the one hand and other tires on the other hand in connection with quality, service and the other factors that go into the sale of tires? A. Well, sir, let me say this: I can only say for the particular area that I am concerned with, and in that particular area I would say that Firestone and Goodrich are far superior to any other TBA suppliers in service and public acceptance.

Q. Has it been your business, a part of your business, to determine as nearly as possible how much TBA, whether sponsored or unsponsored, the various service stations sell? A. I am vitally interested in that, yes.

Q. Why are you interested in that? A. From the dealer's standpoint or from the company's standpoint?

Q. Both, either standpoint. A. Well, from the dealer's standpoint because again (4939) to be successful he must be actively engaged in the TBA business. Many of our dealers are in the TBA business but they are not actively in it, and one of the primary functions of the merchandising salesman or representative with the Texas Company is to help the dealer increase his business.

From the company's standpoint we are interested in it because we want a strong dealer organization and we know that to have a strong dealer organization they must be strong in all captions of service station activities and operations.

Q. Does the success of TBA sales tie in and is it related to the sale of gasoline? A. Yes, it is in many instances; it is, yes.

Q. Your prime interest is the sale of gasoline, is it not? A. It is, petroleum products.

Q. Petroleum products, yes.

And for that reason have you observed carefully the sponsored and non-sponsored goods both in the various Texas stations in your area? A. Yes, sir, I have.

Q. Based on that observation in the periods that you have mentioned for your service, have you an opinion as to the per cent of non-sponsored tires in relation to (4940) the entire stock of tires carried by the Texas stations as a whole in the area you serve? A. I would say that possibly 30 per cent of the total tire business is non-sponsored.

Q. Would that figure be larger if retreads were considered? A. If retreads were considered as part of the line?

Q. Yes. A. Yes, sir, very much larger.

Q. What would be the percentage in your opinion of unsponsored or non-sponsored goods if you considered

retreads and regular tires, too? A. I would say 65 to 70 per cent of our stations carry non-sponsored tires.

Q. You are speaking now of the number of stations, not the quantity? A. I am speaking of the number.

Q. I think in a previous question you left the impression you were speaking of the quantity. You are speaking of the number of stations, and that is what I asked you about? A. The number, yes.

Q. Retreads are in the Goodrich line, are they? A. Yes, sir.

Q. And the Firestone line? (4941) A. Yes, sir.

Q. When you were speaking of sponsored and non-sponsored, you were considering Goodrich and Firestone to be sponsored and all other brands non-sponsored, is that right? A. Yes, sir.

Q. Are retreads a growing product today? A. Yes, sir, they are. Goodrich and Firestone now have a new tire warranty or guarantee on retreads, and that is a comparatively new things, and therefore makes the sale of retreads much more important that it has been in the past.

Q. They are becoming an important part of the sponsored line then, are they? A. They are.

Q. Now I want to ask you the same question about batteries. What percentage of the Texaco dealers in your territory stock and display non-sponsored batteries? (4942) A. I would say approximately 40%.

Mr. Dias: Will you repeat that answer, please? Forty per cent of what?

The Witness: Forty per cent would stock non-sponsored batteries.

Mr. Royall: Mr. Dias, for your information, we don't mean exclusively; we just say they are non-sponsored—they display non-sponsored batteries.

By Mr. Royall:

Q. Now, in the matter of accessories, what is your estimate of the percentage of Texaco dealers in your territory which carry accessories? A. 100%.

Q. You mean non-sponsored accessories? A. Non-sponsored accessories.

Q. Have you at any time seen a single Texas service station in your territory that was not handling some non-sponsored accessories? A. Have I ever seen a Texaco station that was not handling non-sponsored—

Q. That was not handling non-sponsored. A. I have not.

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(4949) *By Mr. Royall:*

Q. All right, sir. Can you give an estimate of what you think is reasonable? A. Yes, sir.

Q. Now, what percentage of the total TBA sold in Texas stations in your area is non-sponsored—accessories in your area is non-sponsored? A. The total accessory sales that are non-sponsored?

Q. Yes, the percentage of them. A. I would say between 80% and 85%.

Q. Now, what would you say as to the percentage of total TBA? A. Percentage of total TBA?

Q. That is, of the total of the—the percentage of non-sponsored TBA, that is, tires, batteries and accessories, in relation to the total. A. I would say 65% of the total TBA volume is non-sponsored.

Q. Now, may I ask you whether to your knowledge the Texas Company has participated in any way in any arrangement by which Goodrich Company will not seek to sell tires and (4950) batteries and accessories to stations

which sponsor Firestone? A. No, sir. That's obvious by their sales figures.

Q. And is the same true as to—in reverse, as to Firestone and Goodrich? A. Yes, sir.

Q. Are the two, Firestone and Goodrich, competitive in your area? A. I would have to—

Q. Do they compete? A. Are they competitive?

Q. Yes. A. In prices, or—

Q. I mean, do they compete with each other? A. Yes, sir, they compete with each other.

Q. And does each of them sell TBA to stations sponsored by the other? A. Yes, sir.

Q. Now, what service does—if any—does the Texas Company through your part of the organization or otherwise render to service stations in connection with their TBA sales? What do you do? A. Well, sir, our primary interest in a Texaco station is to help the dealer increase his business and thereby increase his profit. Primarily we are not interested in whether he is selling sponsored or non-sponsored TBA merchandise. That (4951) is secondary with us, actually. What we want him to do is to sell some TBA. We have a program in the Texas Company that was initiated about a year and a half ago whereby we are trying to make one call per day through merchandising salesmen on their accounts. During this one call per day these salesmen and myself, when I have the opportunity, go in these stations and go over the man's business with him. As far as displays are concerned, we set up displays; whether they're sponsored or non-sponsored, it makes no difference. We set them up, try and merchandise them properly, try and show him how to best sell those products. And in that way we reach our goal, and that's having a strong Texaco dealer.

Q. Now, do you render that service in connection with non-sponsored goods? A. We do.

Q. Let me ask you a specific example. How many—what part of the fan belts are sponsored that are sold in your area, approximately? A. I would say 5% would be extremely high.

Q. Have you helped in the sale of fan belts to stations who handle principally non-sponsored? A. I have in many locations.

* * *

(4966) Q. In an earlier question I referred to the sponsorship of the stations. Do you understand that to mean that they are nominated for particular TBA sellers? How do you get a—how do you designate a station for sponsorship? What happens? A. When we have a change in dealers or a new location that's going to open, we nominate the station to both tire companies, and it is up to the tire companies to notify their individual supply points and contact this man.

(4967) Q. And that is the extent of your operations in that connection? A. Well, yes, sir, except we counsel him on the amount of stock he buys. You have to watch these tire companies once in a while.

Q. I understand that. But that is a sponsored station that you have designated, is that right? A. Yes.

Hearing Examiner Kolb: Is that all?

Mr. Royall: One other question.

By Mr. Royall:

Q. Do you know whether or not, from your experience with the Texas company, it is difficult in your area to get good service station operators? A. It is almost a critical situation with us.

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PAUL D. HICKS, JR. resumed the stand and testified further as follows:

Further direct examination by Mr. Royall:

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(4968) Q. I think I asked you about most of the pictures. All those pictures represent lessee stations? A. Yes, sir.

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Cross examination by Mr. Dias:

Q. I think the last question asked you just before we adjourned for recess had to do with sponsorship or nomination. Nomination is, I believe, the proper word. Since you have been only in this position a year and a half, do you have any immediate knowledge of how that is accomplished, how the nomination takes place? A. Now.

Q. No, any time you have been in your current position. A. Yes, sir.

Q. Have you had experience with the nomination of (4969) stations to Firestone or Goodrich? A. Yes.

Q. Is that part of your current duties? A. Yes.

Q. In your current position have you nominated stations or new operators? A. Yes, sir.

Q. Have new stations been opened up in your area? A. Yes.

Q. And you have nominated them to Firestone or Goodrich, is that correct? A. Yes.

Q. And, I take it, there have been changes of operators during that period? A. Yes.

Q. Let us take the case of a new station; every time there is a new station opened up are they nominated to Goodrich and/or Firestone? A. Yes, sir.

Q. Now, in the change of operators, that is, where an old station loses an operator and you get a new one, in each of those instances do you nominate the operator to Goodrich and/or Firestone? A. Yes, sir.

Q. Are there not in your territory some stations that (4970) are not considered suitabe for the sale of TBA? A. Under my supervision?

Q. Yes. A. No, sir.

Q. There are not? A. No.

Q. All those in your area are considered suitable outlets for TBA, is that right? A. Yes.

Q. Can you tell us a little bit about this new procedure of one call per day; that is a new procedure, isn't it? A. Yes, it is new as of February 1, 1957.

Q. And what does that entail? A. At that time the Texas Company formed what they called a merchandising department and we had classified merchandising salesmen. These men are trained to assist the dealer in furthering his business interests.

Q. Yes, and I think you explained that part of it before. What I was interested in was this one call per day; does that mean that the Texaco man doing this work calls on every station once a day? A. No, sir. The program is designed, is set up so that four days a week our merchandising salesmen are only to call on one account per day. Now, in actuality it does (4971) not work that well but that is the program.

Q. How many of those salesmen do you have? A. I have five at this present time.

Q. And do I understand at the present time that each one calls on a different station, is that correct? A. They each have their own individual areas.

Q. So that in a month's time do they manage to cover all the stations in your area? A. They would beeause they have one day open and that day they call on more than one account.

Q. In addition to displaying of merchandise and this type of thing, is there anything else they do at the station? Do they have any other duties? A. Yes, they counsel the dealer on all phases of his business and his operation, circle service, house keeping, cleanliness.

Q. I take it that you don't personally get around to these stations in your area too often since there are 89 of them. Am I right in that? A. No, not completely. I am almost constantly in the field with salesmen and without them.

Q. And do you see each and every one of those 89 frequently? A. By "frequently" I don't know what you mean but I see the 89 stations often, we will say.

(4972) Q. I thought you said frequently. What do you consider frequently or often? A. I visit those stations; usually my time is spent in those stations that we feel need help, so the better service station dealers, — the more successful ones,—I do not visit as often as I do those men that are having some kind of problem, some type of problem.

Q. Can you tell us the type of problem you would be interested in? A. The main one would be lack of business.

Q. And what else? A. Bookkeeping problems, help problems, display problems.

Q. In general, are you pretty familiar with these 89 stations? A. Yes.

Q. Now, we have got into some difficulties with the percent; there are 89 stations and you stated that 40 percent sponsored Firestone; as I understand that is approximately 36 stations, is that correct? A. If that arithmetic is correct, yes.

Q. Yes; assuming the arithmetic is correct. A. Yes.

Q. And then you stated that approximately 55 percent sponsored Goodrich? (4973) A. Yes, sir.

Q. Well, roughly, that is about 50 stations, isn't it, assuming my arithmetic is correct? A. Yes.

Q. And also some of those stations are split stations? A. Yes.

Q. Can you tell me how many of the split stations there are? A. Numberwise?

Q. Yes. A. I would have to have a list of my service stations, the 89 of them, and I think I could tell you that way. I can't recall which of the 89, right off the bat, would be—

Q. Can you tell us— Are there many that are split stations? A. Yes, there are quite a few.

Q. Can you give us a rough number? A. That buy from either or both?

Q. Right. A. I would say that there are approximately ten to fifteen.

Q. Ten to fifteen?

Hearing Examiner Kolb: That buy from both?
The Witness: Yes, sir.

(4974) *By Mr. Dias:*

Q. Now, of the 89 are there any that do not carry any of the sponsored lines, either Goodrich or Firestone? A. I can only think of one at this time.

Q. Now, do you make a practice of showing your service station's Texaco correspondence, intra-office Texaco correspondence? A. No, sir.

Q. This is another one that has bothered me; we have heard about the promotion of gas with TBA, and the promotion of TBA with gas. Which is the primary purpose, to sell gasoline? A. Our primary purpose?

Q. Yes. A. To sell petroleum products.

Q. And the TBA helps the sale of gasoline; it isn't the other way around. A. It could be both ways; in different locations there are some stations which are very strong TBA merchants and through the TBA solicitation to promote the sale of gasoline.

Q. So far as Texaco is concerned they don't care what promotes the sales, — the sales of TBA or the sales of gasoline? A. We are interested in sales, yes.

(4975) Q. On the accessories you mentioned 100 percent of the stock is non-sponsored. Is there anything wrong with the Goodrich or Firestone accessories? A. No, sir.

Q. Don't those salesmen try to sell them? A. Yes, sir.

Q. Don't they have any luck in the Texaco stations? A. They do have luck, yes, sir.

Q. Then I take it that the 100 percent that stock non-sponsored also stock Firestone and/or Goodrich, is that not correct? A. Some of them, yes, sir.

Q. Are there any again that do not stock some Firestone and/or Goodrich accessories? A. Yes, sir, there are some.

Q. Are there many? A. I would say they are in the minority.

Q. So that while 100 percent stock some non-sponsored, it is equally true to say that the majority of that 100 percent also stock Firestone and/or Goodrich accessories, isn't that so? A. As far as quantity is concerned, yes.

Q. What do you mean by that? A. Dollar-volume wise there is quite a bit of difference but just individual-accountwise I would have to answer (4976) your question: Yes.

Q. On the fan belts what is the recognized predominant brand of fan belts? A. Gates.

Q. Is that true of hose, too? A. Yes, sir.

Mr. Royall: That is all.

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John Nemec, for Respondents—Direct

JOHN NEMEC, called as a witness on behalf of Respondents, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Give your full name and address to the reporter. A. John Nemec.

(4977) Q. Where do you live? A. 8204 S. Troy, Chicago, Illinois.

Q. Is that on the south side of Chicago? A. It is.

Q. Is that generally the same district—

Mr. Lorenzen: I will withdraw that question.

By Mr. Lorenzen:

Q. Is Mr. Hicks the manager of the area you are in? A. Where my service stations are, yes.

Q. You are in the service station business, are you? A. That is right.

Q. And do you lease from the Texas Company? A. I do.

Q. At what locations? A. 8500 South Racine, Chicago, Illinois, and at 8956 South Ashland Avenue, Chicago.

Q. How long have you had leases on those stations? A. On one, going on three years and on one, just two years, the present one. Three years at the Racine location, and two years at the Ashland Avenue location.

Q. About what is the gallonage of your stations? A. Combined, 30,000 to 35,000 gallons per month.

Q. Do you handle TBA in those stations? A. Yes, we do.

Q. Will you tell us the reasons for handling it? (4978) A. We handle TBA to make an additional profit, also to supply our customers with their needs, mainly to make additional moneys.

Q. Do you find it helps in your gasoline sales? A. It does. They both work together. It is difficult to say which is helping which.

Q. Now, during the time in which you have been a Texaco dealer, have you had an understanding as to the Texas Company's TBA program and its TBA policy? A. Yes, I have; it was explained to me.

Q. What was your understanding of it? A. My understanding when I went into business not at these locations, although in these locations also, but the first place I opened, was that I was an indepenednt business man, I could run the business as I chose, selling their petroleum products, naturally, and that I would handle a nationally-accepted TBA item and they suggested Goodrich or Firestone, as a national brand which I should be or would be satisfied with, and I chose at that time Goodrich because it happened to be in that station that I took over the management of.

Q. And you say you did understand you were an independent business man? A. Definitely, yes.

Q. You could buy your TBA from whatever source you wanted (4979) to? A. Yes, I did.

Q. Now, has anybody since that explanation was made to you, told you that the Texas Company didn't mean what it said and that you had to handle the Goodrich or the Firestone line? A. No; no one has ever said that.

Q. Has anybody ever told you that your lease would be cancelled and not be renewed if you didn't limit yourself to Firestone or Goodrich TBA? A. No, I never had lease trouble.

Q. And your leases are the regular—well, I won't say regular, but you know your leases go from year to year and renew themselves unless cancelled? A. Yes; that is right. I signed them once and they are automatically renewed to me.

Q. And that is the type of lease you have? A. That is right.

Q. From whom do you buy your TBA, Mr. Nemec? A. From various sources. Do you want the names?

Q. Yes; would you give us the name of your principal suppliers? A. The principal one is Gardner and Kinsley, in Chicago.

Q. How about Motor Axle? A. Yes, we buy from them.

(4980) Q. And Major Motor Supplies? A. We do a good portion of our business there.

Q. And Amplus Battery Company? A. Yes, we do a great deal, exclusively in batteries, with them there. That is all they sell.

Q. And you buy quite a number from them, do you not? A. Yes, we do.

Q. And the Tire Sales Company? A. Yes, we deal with them.

Q. What sort of tires do they sell? A. It is a U. S.-Royal dealer.

Q. And you also deal with the Wynn Oil Company and the Bardahl? A. Yes, both.

Q. Those are what is known as additive chemicals? A. Additives, right.

Q. How about T. & T. Auto Supply Company? A. That is a man who comes to us and since he does, we do a great deal of business with him; he is handy.

Q. And you buy all sorts of TBA items from him, do you not? A. Yes, mainly accessories since he doesn't handle tires or batteries.

Q. Do you buy some anti-freeze from him too? A. Yes; I consider that an accessory.

(4981) Q. And some spark plugs? A. Yes.

Q. Thermostats? A. Yes.

Q. Now, Gardner & Kinsley sell Goodrich TBA, among other things, don't they? A. They do, yes.

Q. You buy a good many accessories from them that are not in the Goodrich line, do you not? A. Yes.

Q. Do you buy anti-freeze such as Prestone and Zerex; isn't that right? A. We buy some from them, yes.

Q. Do you get Gates fan belts and Gates radiator hose from them? A. Some of each, Goodrich and Gates.

Q. And you buy some of the Goodrich line and some other spark plugs from them, don't you? A. Yes.

Q. And the same goes for filters? A. We don't buy filters from him.

Q. Who do you buy filters from? A. From T. & T. Auto Supply now.

Q. About how many tires do you stock? A. We stock, between both stations, about 60 tires.

(4982) Q. And of them, there is a substantial number which are not Goodrich? A. A few.

Q. How many, would you say? A. A small portion of them. 10 or 15 out of the 60 are not.

Q. What kind are they? A. Mainly U. S.-Royals.

Q. Are they openly stocked where they can be seen? A. Yes, right along with the others.

Q. In the same display rack? A. Yes, we have only one tire rack.

Q. And do you display all of your TBA openly? A. Yes; otherwise they don't sell.

Q. Has anybody from the Texas Company ever told you to hide any of those items? A. No; I wouldn't have any place to hide them really but they have never said it.

Q. Of all of the tires that you sell about how many do you think you sell out of stock; that is, in percent,—how many do you think you sell out of stock and how many do you get on a pickup basis? A. Well, we get—Most of ours are on an order, on a pickup basis; percentagewise, more than 50 percent, a good 60 or 70 percent we sell by taking orders for them and (4983) then picking them up or having them delivered.

Q. So that you don't sell them out of stock? A. No,—just occasionally.

Q. And when you place these orders for pickup or spot delivery, do you place orders for whatever kind of tires the customer wants? A. Well, that's mainly why we have to do it because in accordance to what size he wants or what price range he wants, or black or white or what make, we have to order them specially.

Q. And if he wants other than Goodrich, you order it? A. Yes, we sell those too.

Q. And you have done that right along? A. Yes, we have.

Q. Now, in your batteries do you stock a complete line of your Amplus batteries? A. Yes, we do.

Q. And you also stock a line of Goodrich batteries? A. That we do also.

Q. Which do you sell the most of, the Amplus or the Goodrich? A. The Amplus.

Q. Can you estimate about what percent of your total battery sales are Amplus and what are Goodrich? A. At one time we averaged 3½ batteries per week with (4984) Amplus and I would say about two Goodrich,—2 to 3½ Now it is probably 60-40, I would say, — 60 percent of Amplus and 40 percent of Goodrich batteries.

Q. The Amplus battery is what is known as a price battery; it is a cheaper battery? A. It is a cheaper battery but it has good quality to it.

Q. Do you get any help from the Texas Company in connection with the merchandising of your TBA? A. Yes, considerable.

Q. What sort of help do you get? A. Oh, several times a year we have dealer meetings and conferences; they do send us display material which helps in promoting the products or the service, — on several occasions, i.e., when we opened our new stations we naturally were running good business and we had to open a new one, and we didn't have too much time ourselves, so the salesmen or different

employes of the company came out to help us re-arrange our stock or set up our material.

On grand opening occasions they were there to pitch in to help us sell anything that was sold, or, if it was given away, they helped us give them away, too.

Q. These suggestions you had in dealers' meetings and meetings you had, did that apply equally on TBA? (4985)

A. Yes.

Q. On page 688 of the record there is testimony by Joseph C. Arey; he is a salesman of the South Tire Service Company, and he says you couldn't buy TBA from him because you told him you are supposed to sell Goodrich. Now, tell me: Do you recall having any discussion with Mr. Joseph C. Arey at all? A. I do, very well.

Q. Will you tell us what happened? A. He came in one day when I was very busy and tried to sell me on the Goodyear tire line and supposedly I ordered him to get out, more or less, but I did actually give him an order and that was for two tires but they never did deliver. Why, I don't know. It was going into the winter season and they were not new tires; they were the Goodyear suburbanite recap tire.

Q. The Goodyear suburbanite recap? A. Yes, I didn't stock retreads at the time. I don't now but in the winter time retread snow tires will sell and he had a competitive price and mainly he had what they call a suburbanite which Goodrich don't have. They have snow tires or snow treads but people go for the Suburbanite name and I wanted to stock them. I ordered two tires. I didn't have anybody to sell them to for the moment but I wanted to display them. In fact, that is what they were (4986) for, and I never did receive them.

Q. You did place an order with them and they were never delivered? A. That is right; they were never delivered.

Q. Now, another gentleman testified here at page 958 of the record, a Mr. Draymon Jennings of Jennings Auto Supply Company, and his testimony was given in January of 1957, and he said that before that time he had been in your station and you told him that you couldn't buy from him because, and he is quoting you, now: "We have to handle Goodrich, you know how it is." Can you tell me whether you recall any conversation of that type with a Mr. Jennings? A. No, I usually pride myself on remembering faces or names, or one of the two, and I didn't remember this person at all, so if I quoted a statement to him I feel I would remember him. I feel I should. I feel I didn't know who the person was up until a few months ago and I happened to meet him and it wasn't on my business property. So I would say I did not make that statement at all.

Q. In fact, you would say you had never met Mr. Jennings. A. That is right; I would say he may have been in but he didn't talk to me.

Q. And as far as you can remember did you ever make a statement to anyone to the effect that the Texas Company (4987) required you to handle the Goodrich tire and that you couldn't buy anything else? A. No, nobody makes me do anything. The only reason I don't handle more than one line of tires is because,—now I can't possibly handle the entire line of Goodrich as there are too many sizes; I would have too much money invested and too much dead stock, and in some cases I have used the fact that I handle Goodrich and that is all I can afford to handle but not that anyone has compelled me to do so,—never.

Q. And would you feel free if you thought it would sell better, to handle some other line? A. If I thought it would sell better I would handle some other line. We are satisfied with Goodrich. Actually we sell a lot of tires and the margin of profit is 30 to 35 percent but by the time it is on the car it is so competitive I feel I am better off repairing

tires as selling them new. If I repair a man's old tires he is coming back again. On selling new tires, that is the end of it. On tires you have to have too many laying around. On other items you can sell more of them. On fan belts we sell, like you say, both, because some sizes are extremely difficult to fit to some cars. But we sell maybe 10 to 20 fan belts a week, but maybe we only sell, if we are lucky, five tires a week. Actually I (4988) I have made more on the fan belts and I have double and triple stocks, double or duplicate sets of fan belts whereas very seldom I have duplicate sets of tires.

Q. You conduct your business in the way you think you will make the most money? A. Yes, that is right; I do that.

Mr. Lorenzen: I have a picture here. May I ask the witness off the record whether he recognizes it before I introduce it? Mark this, please.

(The paper referred to was marked Respondent's Exhibit 51 for identification.)

By Mr. Lorenzen:

Q. I show you Respondent's Exhibit 51 and ask you whether you recognize that photograph as being one of a display of batteries at one of your stations? A. Yes.

Q. At which station? A. At the station at 90th and Ashland.

Q. What type of battery is that? A. Amplus and Century batteries.

Q. Was any special preparation made when that picture was taken? A. No, none whatsoever.

Q. That is just the way your station looks in the normal conduct of your business, is that right? (4989) A. Yes, although the battery display was low at the time.

Q. You mean you have more batteries? A. Normally the stand is filled, yes.

Mr. Dias: When the stand is filled there are some Goodrich batteries on there?

The Witness: Yes, presently there are. The stand is merely a window display stand. In fact, it is a Delco battery stand, although I do not have a Delco battery in the place and I got it some place and it makes a nice display from the inside and also from the outside. Directly across we have another display of batteries in the center of our shelving.

Mr. Dias: Does that display also contain Goodrich batteries along with these others?

The Witness: Yes.

Mr. Dias: I have no objection.

Mr. Lorenzen: I offer it in evidence.

Hearing Examiner Kolb: The document will be received in evidence.

(The photograph referred to, heretofore marked for identification Respondent's Exhibit 51, was received in evidence.)

By Mr. Lorenzen:

Q. Do you also have a display of both types of batteries in your other station, your 85th Street station? (4990) A. Yes, sir.

Mr. Lorenzen: That is all.

Cross examination by Mr. Dias:

Q. Mr. Nemec, I don't believe you gave us the trade name of your stations? A. J. & K. Service Stations.

Q. And have they always been known as J. & K. Service Stations? A. With the exception of when we had one and then it was J. & K. Service Station.

Q. Did you have any other trade name? A. No.

Q. You mentioned your combined gallonage, 30,000 to 35,000; in other words, roughly around 15,000 to 17,500 per station, is that correct? A. Yes.

Q. And when you make your purchases of TBA do you have them shipped to one station and then you yourself take them over to the other station, or how do you arrange that? A. Normally we order for the station that needs it and it is delivered accordingly to the individual station, but we don't keep an inventory that way. If we need something from one it is taken from there and the sale (4991) is rung up in the station where it is sold.

Q. You mentioned you never had lease trouble. Did I deduce rightly that you may have had some other kind of trouble? A. Well, you always have got trouble. We have got trouble now.

Q. In what regard? A. Well, business troubles.

Q. Sir? A. Help trouble; our main troubles are working hours and union trouble now.

Q. What about the working hours? A. Well, the schedule of your help in the work and to do a sufficient job so that we don't have to work so hard, being the owners.

Q. How many hours do you stay open, a day? A. We are open from 7 in the morning until 10 at night. That is 15 hours a day.

Q. Is that at each station? A. They are both run on the same basis.

Q. Is that your idea, to stay open those hours? A. Yes, we have to, to meet competition in the neighborhood.

Q. Do you do any repair work at your stations? A. Yes, we do.

(4992) Q. What type of repair work, light stuff or do you go into heavy repairs? A. No, we draw the line on heavy work. We do everything that we consider we can get out in a day, any mechanical job which is not going to

tie itself up more than a day with the automobile or the customer.

Q. You mentioned one of these suppliers, Motor Axle? A. Motor and Axle Parts.

Q. What do your purchases from that distributor consist of? A. Supplies?

Q. Yes, what kind of supplies do you get? A. Mainly brakes, and machine work,—drum turning,—that sort of repair or service; and some mufflers and clutch parts.

Q. Ignition? A. No ignition.

Q. That is generally known as hard parts? A. Generally.

Q. And the Tire Sales Company, you buy your Royals there, is that correct? A. Yes.

Q. I think you mentioned that you buy filters at T. & T. Auto Supply now. Did you change at one time or did you buy filters at another place? (4993) A. Yes; we used to buy them at Motor and Axle, and Gardner & Kinsley.

Q. And when was that? A. Oh, about three or four years ago.

Q. And for how long a period? A. For about four years,—four to five years, and that was three years back.

Q. I don't understand just exactly: When did you shift to T. & T.? A. Approximately three years ago.

Q. About three years ago? A. Yes.

Q. Returning to that conversation with Arey, do you recall that he offered to furnish the tires in question on the memo billing? A. No, I got a copy of the bill and he wrote up the bill there, whether it was a memo billing or not, and he had the quantity, two tires, and to be delivered, I don't know what day of the week, possibly the next day, I would imagine.

Q. And you never received them? A. No, we never did.

Q. Do you have Goodrich signs and balances around the premises of each station? A. Yes.

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(4994) JOHN A. McGUIRE, called as a witness on behalf of Respondents, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Would you give your name and your address to the reporter? A. John A. McGuire. My home address?

Q. Yes. A. 1821 Jenkinson Court, Waukegan, Illinois.

Q. What is your business? A. I am a Texaco dealer.

Q. And you lease your station from the Texas Company? A. Yes.

Q. What is the location of the station? A. 1240 Waukegan Road, Glenview, Illinois.

Q. About what is the gallonage of that station? A. Approximately 25,000 per month.

Q. Do you handle TBA there? (4995) A. We do.

Q. Will you tell us why you handle it? A. Basically and honestly, I think it is just to make money, but the second time is: To fulfill the needs of our customers, too; outside of gasoline they have many more needs and we want to give a complete service for them.

Q. Do you find that your having TBA attracts people for your gasoline sales? A. It does; it definitely does.

Q. Now, during the time you have been a Texaco dealer have you had an understanding as to the Texas Company's TBA program and its policy? A. At the time I became a Texaco dealer that was explained to me. The explanation went,—the primary thing was that I was an independent business man. The only requirement they gave me was that I was to run my business in a business-like manner and have things at my station that would sell and meet the customers' needs. I was not restricted in any respect as to what I was to buy, how much I had to pay for it, or whom I was to buy it from.

Q. You felt that you could buy your TBA from any source that you thought was best for your business? A. That is correct.

Q. Since you have been a dealer has anyone from the (4996) Texas Company told you that that understanding you obtained at the beginning wasn't so? A. No, sir.

Q. And that you had to buy Firestone or Goodrich? A. No one has ever said that to me.

Q. Has anyone indicated to you that your lease might not be renewed or that the Texas Company would treat you badly in some other way if you didn't buy Firestone or Goodrich TBA? A. No.

Q. From what sources do you buy your TBA? A. At the present time I am buying them from the Grand Auto Supply in Waukegan. I am buying a short time from Grimm-Hanson-Treland; I am buying them from the Berry Tire Company. Basically, I believe it is those three that take care of the majority of it.

Q. Do you buy anything from the Bowes distributor? A. Yes, we do.

Q. They have what? A. Radiator hose and fan belts.

Q. Do you buy all of your radiator hose from them? A. All of them.

Q. How about fan belts? A. All of them from Bowes.

Q. Are those Bowes hose and fan belts displayed openly (4997) in your station? A. Yes.

Q. And that is marked with the Bowes name? A. Yes.

Q. Now, the Strand Auto Supply Company; that is not a supply point of either Firestone or Goodrich, is it? A. It is not.

Q. Do you buy nearly all of your accessories from them? A. Yes, sir, we do.

Q. What do you buy from the Berry Tire Company? A. Tires, tubes and batteries.

Q. What kind of tires? A. We buy the Dunlop, the Miller tires.

Q. And what sort of batteries? A. Auto-Lite.

Q. Do you stock some Auto-Lite batteries? A. Yes.

Q. What percent? A. At the present time it is 100 percent, just exclusively Auto-Lite.

Q. Exclusively Auto-Lite? A. Yes, sir.

Q. And they are all bought from the Berry Tire Company? A. At the present time, yes, sir.

Q. And you display those openly? (4998) A. Yes, sir.

Q. With the names on them? A. Yes, sir.

Q. Does that go for all of your TBA; it is all openly displayed? A. Yes, sir.

Q. Has anyone from the Texas Company told you to hide it or not to display it? A. No, sir; never.

Q. Have they ever told you they would cancel your lease if you didn't stop displaying it? A. No, sir.

Q. Now, in addition to having the Miller and Dunlop tires you also have Firestone tires, do you not? A. That is correct.

Q. About how many tires do you stock at your station? A. Oh, roughly, about 10 or 15 is all.

Q. And about what percent of your sales of tires is made out of stock and about what percent is made on a pickup or spot delivery basis? A. I would say if I were to sell 15 to 20 percent out of stock, I would be doing pretty good.

Q. So the balance, 80 to 85 percent, you order the tire as the customer comes in and orders it from you? A. That is correct.

(4999) Q. And do you get requests for different makes of tires? A. We do.

Q. When you do, do you fill them? A. We fill those needs, yes.

Q. That is irrespective of whether it is Firestone, Goodrich, or Goodyear, or anything else? A. That is correct.

Q. Taking all your TBA business together, in volume of sales, what would you say is the percent of your TBA business which is in accessories? A. 15 to 20 percent.

Q. How much is in tires? A. Roughly, 45 percent.

Q. And how much is in batteries? A. I would say about 40 percent. I mean, it fluctuates, but it is close to those figures.

Q. Close to those figures? A. Yes.

Q. Are all your Auto-Lite batteries dry charged? A. They are.

Q. That is the only kind you stock? A. Yes, sir.

Q. Do you obtain any help from the Texas Company in merchandising your TBA? A. We do.

(5000) Q. What sort of help do you get? A. Outside of personal help from the sales representative which we are pretty fortunate we have; he is a good representative and he is out there quite a bit, and we do have display material coming from them. Outside of the display material we do have promotional ideas coming either through the mails or at these dealer conferences we have.

Q. Do you find that helpful in selling both the sponsored and the non-sponsored line of TBA? A. We certainly do.

Q. Taking all of your TBA together, about how much of it, do you think, is something other than Firestone, — about what percent? A. I would say about 55 percent of it is not Firestone.

Q. All your batteries and substantially all of your accessories are not Firestone? A. That is correct.

Q. And such of the tires you sell are tires of Firestone? A. Yes.

Q. If the customer does not express distinct preference do you recommend Firestone to him? A. I do.

(5001) Q. Why is that? A. I have had experience with Firestone. I have seen other makes on many cars

and seen other customers with different makes of cars and I believe at the present time that Firestone has the best tire.

Q. You get good service from them? A. Yes.

Q. They have a good service policy? A. Yes.

Q. And that is the reason you handle the Firestone tire, is that it? A. Yes; that, and the service policy is very good.

Q. Now, I think there is some testimony in this record from this Mr. Abernathy of the Berry Tire Company. Mr. Abernathy testified in January of 1957 and what he said at page 812 was that he had sold you up to 90 days before the date of his testimony and that as of that time, and I am quoting from him: "We were just pushed out of there."

Now, will you tell me whether any change took place 90 days before this January of 1957, and, if so, what change took place, and if you pushed Mr. Abernathy out of the station? A. To my knowledge Mr. Abernathy was never pushed out of our station. As a matter of fact, we are still buying from him, so it just doesn't quite make sense to me.

(5002) Mr. Dias: I want to object to one thing. I believe in reading the context, there was no physical pushing out mentioned.

Mr. Lorenzen: I don't think there was any.

Mr. Dias: I gathered that the witness implied that you are not saying Mr. Abernathy complained about being physically pushed out.

By Mr. Lorenzen:

Q. 90 days before the time in 1957 did you stop buying from him whereas you had been buying from him before that time? A. No.

Q. Nothing like that happened? A. No, sir.

Q. You had been buying from him before and you have continued since? A. Yes, sir.

Q. Do you have a calendar from the Berry Tire Company posted in your station somewhere? A. Yes, sir, I do.

Q. And that advertises the name of the Berry Tire Company, does it? A. Yes, sir, it does.

Mr. Lorenzen: We haven't had any nice pictures of the Bowes line before, so let me ask to have this (5003) marked.

(The photograph referred to was marked Respondent's Exhibit 52 for identification.)

By Mr. Lorenzen:

Q. I show you a photograph which has been marked Respondent's Exhibit 52 for identification and ask you whether you can recognize that as a display of Bowes equipment at your station? A. Yes, sir.

Q. About when was that picture taken? A. In January or February of 1956.

Q. Does the display still look quite a bit like that? A. Yes.

Q. Do you still have the sign Bowes and radiator hose? A. Yes.

Q. Was any special preparation made at the time that picture was taken? A. No.

Q. That is just the way it looked at the time the man came in to take the picture? A. That is right.

Mr. Lorenzen: I offer it in evidence.

Mr. Dias: You said it looks quite a bit like it, is that right?

The Witness: It is a copy of the picture taken (5004) at my station. It is changed now but it did look like that.

Mr. Dias: It is changed now?

The Witness: Yes; some of the hoses are gone, or are dirtier.

Mr. Dias: What is the location of it in your station?

The Witness: It is in the bay area ahead of the bay. In other words, anyone driving in could see it.

Mr. Dias: I have no objection.

Hearing Examiner Kolb: The photograph will be received in evidence as Respondent's Exhibit 52.

(The photograph referred to, heretofore marked for identification Respondent's Exhibit 52, was received in evidence.)

Mr. Lorenzen: Mark this Exhibit 53.

(The paper referred to was marked Respondent's Exhibit 53 for identification.)

By Mr. Lorenzen:

Q. I show you a photograph marked as Respondent's Exhibit 53 for identification, and ask you whether that is the type of calendar which the Berry Tire Company has posted in your station? A. Yes, sir.

Mr. Lorenzen: I offer it in evidence.

Mr. Dias: No objection.

(5005) Hearing Examiner Kolb: The photograph will be received in evidence as Respondent's Exhibit 53.

(The photograph referred to, heretofore marked for identification Respondent's Exhibit 53, was received in evidence.)

Mr. Lorenzen: That is all.

Hearing Examiner Kolb: Cross examine.

Cross-examination by Mr. Dias:

Q. Now, in addition to these Bowes hose and Berry tires, do you also have some other advertising in and about your station especially Firestone? A. Yes, sir.

Q. Do you have some Firestone decal; do you have an outside sign reading: Firestone, showing the service that you have? A. Yes.

Q. And various other Firestone signs and banners? A. Yes, sir.

Q. You mentioned the principal source of the TBA supplies you mentioned Grimm-Hanson-Treland; what are they? A. They are a parts house, located three doors from us.

Q. What do they sell? A. Mufflers, tail pipes, all hard parts for a car.

Q. They are mainly a hard part dealer? (5006) A. That is correct. They also have shelf goods, — waxes, polishes, and things like that.

Q. Do they, by any chance, handle Goodrich accessories? A. No, sir.

Q. Do you make any purchases from Goodrich? A. No, sir.

Q. Have you ever made purchases from Goodrich? A. Yes, sir.

Q. Can you tell us when? A. It will take a little figuring. It was in 1957 that we purchased tires from Goodrich.

Q. You don't think that might have been back in around September or October of 1956, do you? A. We were purchasing tires at that time, too.

Q. From Goodrich? A. From Goodrich, that is true.

Q. Will you tell us who the source of supply was; who was the distributor? A. Right out of their main office in Chicago.

Q. The Goodrich main office? A. Yes.

Q. Did you tell us when you started in business, Mr. McGuire? A. I started in September of 1956.

Q. Was that a new station? (5007) A. No, sir.

Q. What TBA was in the station when you took over? A. Basically the same that is in there now with the exception we did not have Firestone in there.

Q. What did you have at that time? A. Goodrich.

Q. That was Goodrich at that time? A. Yes.

Q. Was there any reason for your dropping Goodrich? A. Yes, sir.

Q. What was that reason? A. Poorer service.

Q. And when did that occur? A. It was in the early part of 1957; let us say around March or April.

Q. Had you been in the service station business before you got this station? A. I did not own a station; I was employed in one.

Q. What is your trade name in this service station? A. Bill's Texaco Service.

Q. Getting back to Goodrich, you purchased what from Goodrich, tires? A. Tires, tubes, and batteries.

Q. Accessories? A. No.

(5008) Q. None at all? A. I would just as soon say None. There might have been at certain times promotional items but that is about it.

Q. What about their plugs, filters, fan belts, hose, you didn't buy those from Goodrich? A. No.

Q. Did you discontinue about April, 1957? A. That would be correct.

Q. Did you complain to the Texas Company at all about the poor service from Goodrich? A. No.

Q. Were they aware of the difficulties you were having with Goodrich? A. I made no special point of making them aware, if they became aware.

Q. You made no special point to tell them? A. No.

Q. Did one of the salesmen ask you from time to time how you were getting along with your TBA supplier? A. Yes, I think they have. Yes, they have.

Q. Then you must have told them about the trouble with Goodrich? A. Well, as a person usually states they generalize and they say: Well, everything is all right; they don't usually (5009) get down to cases and say: He is bad, and he is good.

Q. When did you then shift from Goodrich to other products, after your supplies gave out, starting in April of 1957, is that correct? A. Yes.

Q. When did you start ordering from Firestone? A. At the conclusion of our dealings with Goodrich.

Q. That was around April or May of 1957? A. Yes, sir.

Q. And where is your source of supply for Firestone merchandise? A. Northwest Tire and Supply, Northwest Highway, Arlington Heights, Illinois.

Q. Now, at the present time do you have any Goodrich tires in your shop? A. I do have.

Q. Can you tell us about how many? A. Two.

Q. And do you have any other Goodrich merchandise around the station? A. Yes; I believe I have two batteries —I mean this is in the station proper.

Q. Yes. A. Two batteries in the back room that are for our own use on the jeep.

(5010) Q. When you stated that of all your TBA about 55 percent is not Firestone— A. That is right.

Q. —how do these Goodrich items figure in that? Does that change the percentage in any way? A. No, because those items— The four items you could pick out two of them are not really for sale and two of them are things I almost have to give away anyway, because it is just old stuff.

Q. On those Auto-Lite batteries, will you tell us where you bought those? A. Berry Tire Company and Grand.

Q. Is Grand a second source of supply? A. Grand, yes, in Waukegan. I don't know whether I mentioned that before.

Q. Have you been buying batteries continuously from Berry? A. No, sir.

Q. When did you discontinue? A. There actually has not been a point of discontinuing their delivery. When we need something in a hurry we go to Grand.

Q. Didn't you just recently place a sizable order with Berry? A. Yes, I did. I think it came to about $75, I think it (5011) was.

Q. Can you tell us when that was? A. Approximately ten days to two weeks ago.

Q. Up until that time when had been the last time you placed an order with them? A. Perhaps two months, because I remember we got six tires from them.

Q. Tires? A. Yes; I believe it was six.

Q. Were they new tires? A. New tires.

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(5014) PATRICK DELLE GRAZIE was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your name and your home address to the reporter, please? A. Patrick Delle Grazie, 8941 LaCrosse, Skokie, Illinois.

Q. What is your business? A. I operate a gas station.

Q. What brand of gasoline do you sell? A. Texaco.

Q. Is your station leased from the Texas Company? A. Yes.

Q. What is its location? A. 3003 Central Street, Evanston, Illinois.

Q. That is in the general Chicago metropolitan area? A. Yes.

Q. Are you near the Evanston Auto Supply Company? (5015) A. Yes.

Q. Are you near the Berry Tire Company? A. No. They are in Chicago.

Q. They are in Chicago? A. Yes.

Q. You buy or used to buy a little from them, too, though? A. Yes.

Q. About what is the gallonage of your station? A. About 12,000.

Q. How long have you been in that station? A. It will be five years in February.

Q. Before that time were you in the gasoline station business? A. Yes, also Texaco, working.

Q. For how many years? A. Seven before that; twelve years altogether.

Q. 12 years altogether? A. Yes.

Q. Do you have a hobby which is not selling gasoline? A. Yes.

Q. What is that? A. Racing.

Q. Midget automobiles? (5016) A. Yes, midgets.

Q. They have tires on those, do they? A. Yes, they do.

Q. What kind do you use? A. Firestone.

Q. You have for some time? A. Yes, 12 years.

Q. Do you handle TBA? A. Yes.

Q. You handle TBA at this station? A. Yes, I do.

Q. Will you tell us why you handle it? A. To get the people in there, it makes money.

Q. You make money on the sale of TBA? A. That is right.

Q. As well as getting people in there? A. That is right.

Q. You think it helps you with selling gasoline? A. That is right. You have to have one to go with the other. I can't just have gas or TBA, you have to have them both.

Q. What is your understanding as to the Texas Company's TBA policy and TBA program? A. Well, the understanding is that they would like you to handle the nationally advertised things, something (5017) that is accepted by the public, and either they suggest Goodrich or Firestone, but I took Firestone before I ever even talked to the salesman. I mean, if they suggested Goodyear and Royal, I would still pick Firestone, and it was my understanding that I could pick any one that I wanted.

Q. And you have had that understanding that you could pick any kind of TBA you wanted? A. That is right.

Q. And that you could buy from any source you wanted to? A. That is right.

Q. And have you in fact acted that way during the time you have been a dealer? A. I have.

Q. Has anyone from the Texas Company ever told you that if you didn't stick to the Firestone and Goodrich lines that your lease would be cancelled? A. No.

Q. Or that the Texas Company would treat you badly in any other way? A. No.

Q. Nothing like that has happened? A. Nothing.

Q. You say that you picked the Firestone before any (5018) Texas salesman ever talked to you? A. That is right.

Q. Will you tell us the basis for picking the Firestone brand? A. I think that it is the best tire made. I have tried Dunlop, Royal, and Firestone is the only one I have had no trouble with.

Q. You use those on your car? A. That is right.

Q. In addition to tires which you buy from the Firestone store—you do, do you not? A. Yes.

Q. Do you buy any other TBA from that Firestone store? A. Not too much. Once in a while if they have a sale I will buy something.

Q. But as a general proposition you get your accessories elsewhere? A. That is right.

Q. And your batteries elsewhere? A. That is right.

Q. Now how about giving us the names of some of your other suppliers? A. I buy mainly batteries from Automotive Tire & Supply in Skokie.

(5019) Q. What kind of batteries do you buy from them? A. Delco batteries.

Q. Have you always bought Delco from them? A. Yes. No, I used to buy Auto-Lite from them and he had a little trouble, he got into some trouble with Berry Tire Company and he no longer could sell Auto-Lite batteries, so he changed over to Delco and I changed with him.

Q. You mean the Berry Tire Company had his franchise taken away? A. That is right.

Q. So then they changed to Delco and you changed to Delco, too? A. I changed to Delco also.

Q. What else do you buy from Automotive Tire & Supply Company? A. Mufflers, fan belts, hoses, Prestone, polishes, chemicals, just about everything.

Q. What kind of fan belts do you buy from them? A. Gates.

Q. How do you stock those? A. I have a complete assortment hanging up on racks.

Q. Do the racks have the names on? A. Oh, yes, Gates comes in and puts them up for you.

(5020) Q. Just the same way as Firestone comes and puts up signs? A. That is right.

Q. Rather than put in another picture, I will just show you one of these.

I show you Respondent's Exhibit 42-D and ask you if that is a Gates' type of rack? A. Yes, that is the same type rack I have, and also on the hoses, those are Gates' hoses.

Q. That is also Gates? A. Yes.

Q. And it has the name acros the top in each case? A. That is right.

Q. And your belts have the name on? A. Yes.

Q. On the sleeve? A. Yes.

Q. And your radiator hose has some identification as well? A. That is right.

Q. What sort of filters do you handle? A. Right now I am handling A-C. I was handling Walker.

Q. You buy the A-C from whom? A. Schubert Auto Parts in Wilmette.

(5021) Q. That is another one we haven't heard about before. Where are they located? A. They are located in Wilmette, Ridge Road.

Q. They are neither a Firestone nor a Goodrich dealer? A. No. I buy batteries from them also, Auto-Lite, but I don't stock any Auto-Lite batteries.

Q. And battery cables? A. Yes.

Q. Now from whom do you buy your spark plugs? A. Schubert and Automotive Tire. I used to buy them from Berry when I was handling the Auto-Lite.

Q. Do you have any other suppliers? A. Village Chevrolet, Whissle Motors, Hasco Hydraulic Research. I buy from just about everybody.

Q. How about Evanston Auto? A. Yes, Evanston Auto.

Q. Do you buy anything from Johnson Tire Company? A. Yes, Goodyear tires.

Q. Goodyear tires? A. Yes.

Q. You say that you handle these Firestone tires. Will you tell me how many of those you stock? A. I don't stock any.

Q. So that all of your sales are made on a pick up (5022) or spot delivery basis? A. That is right. I don't have room to stock any.

Q. Let's come back to these batteries a minute. Your Delco batteries, are they displayed? A. Yes.

Q. Openly with the name on them? A. Yes.

Q. How about a sign, do you have a Delco sign advertising Delco? A. Not now at the moment. I did have but it was hanging on the fence and I ran into the fence and knocked it over.

Q. Have you made a request for a new sign? A. Yes, I have, but it hasn't arrived yet.

Q. When it does arrive are you going to put it up again? A. Oh, yes.

Q. Now has anyone from the Texas Company ever told you to take away the display of these non-sponsored items, including the Delco and Auto-Lite batteries? A. No.

Q. Nothing like that has ever happened? A. Never.

Q. Have they ever told you they would cancel your lease or treat you badly if you didn't stop displaying (5023) those items? A. No.

Q. You say you still buy a little from this Berry Tire Company? A. Yes.

Q. At one time did you buy more? A. Yes.

Q. What happened to change your buying habit there? A. Well, the main thing was that battery incident with Automotive when the salesman came in and we were getting a better price from this Automotive Tire & Supply, and this man from Berry, he didn't like the idea, so I guess he turned him in. He was giving us an extra 5 per cent at the end of the month. And I didn't like the salesman anyway, he was—

Q. Who is that, Mr. Dwyer? A. Dwyer. He was always crying about something.

Q. If you exclude from your mind now these clutches and carburetor parts and ignition parts and things like that when we talk about accessories, can you tell me of the total amount of tires, batteries and accessories which you sell, about what percentage you think is in tires? A. About 30 per cent in tires.

Q. About what per cent do you think is in batteries? (5024) A. About 10 per cent in batteries; about 60 per cent in accessories.

Q. In that 60 per cent have you included such things as mufflers and tail pipes and shock absorbers? A. No.

Q. If you did— A. If I did it would go up another 10 per cent at least.

Q. What do you find with respect to the make of tires, the brand of tires that your customers generally ask for? A. Well, most of the time it is Firestone. I mean, everybody knows that Firestone is a good tire. The only time I don't seem to sell a Firestone is if they have a new car and it comes through with a different make tire and they don't want to break up the set. Then I will sell them anything they want.

Q. You will get them anything they want? A. Oh, yes, any tire.

Q. Now these Auto-Lite batteries or Delco batteries which you sell, are they dry charged? A. Yes.

Q. Do you stock any others? A. No.

Q. At one time before the dry charged batteries came (5025) in, did you stock the wet charge or did the station at which you got them stock wet charge batteries? A. Yes.

Q. From your experience do you find any advantage in dry charge? A. Oh, yes. You don't have as much trouble with them. When you buy a battery and it is wet charged, it sits around for three or four months and there is a third of the warranty gone, just about, on a one year battery. You have to keep a charger on them all the time on a wet charge. It is a lot easier with the dry charge.

Q. Of all of your TBA that you handle, about how much do you think is bought from Firestone? A. Just about all the tires are from Firestone, that is about all I buy except, like I say, when they come out with a deal on polishes, tubes, then I buy.

Q. So the percentage that you gave us of 30 per cent tires and 10 per cent batteries and about 60 or 70 per cent, depending on whether you include the mufflers in or not, we can use that to determine how much you buy from Firestone? A. That is right.

Q. Do you buy anything from Goodrich? A. Occasionally I will buy a tire from the Goodrich (5026) Company if a customer wants one.

Q. Is it any substantial per cent of your total TBA? A. Very little. I mean, I have had a lot of bad luck with Goodrich and most of the time when they would come in with a Goodrich tire, it is because it got bad, it failed, not because it wore out. The way I look at it, you never buy a Royal or a Goodrich, you just rent it and keep making the adjustments on them.

Q. You are going to endear yourself to some of these Goodrich dealers. A. I have never seen one wear out.

Mr. Dias: They don't last that long?

The Witness: No.

By Mr. Lorenzen:

Q. Of course the employees of the Texas Company that come into your store know that you handle all of these non-sponsored products? A. Oh, yes. I don't even use Texaco in my race car.

Q. You say you don't? A. No.

Q. Now do you find that the Texas Company is of any help to you in marketing your TBA? A. Oh, yes.

Q. What do they do for you? (5027) A. They come around and give us hints on how to display it. We don't have time to do it. They have these dealer meetings, and any price changes, if we don't catch it, they do.

Q. You mean price changes in the TBA items? A. That is right. We have everything listed and if they know

something went up and it is still labeled at the old price, they will tell us about it.

Q. Is this assistance of help to you in selling your non-sponsored TBA as well as selling the Firestone tires? A. Oh, yes.

Q. Now about the business that you do with Evanston Auto Company, how about that, is that as much now as it ever was? A. Yes. They have a salesman that calls on me and he checks on plugs and points and the hoses and the belts, and he has orders that whatever is missing to replace it.

Q. Have you switched any of your business from Evanston to Schubert? A. Yes. Schubert is a lot closer. Evanston Auto delivers twice a day and Schubert is just a few blocks from me and I run back and forth and pick up most of the stuff from him.

(5028) Q. Schubert is not a Firestone or Goodrich supplier? A. No.

Q. Have you, in fact, felt free to buy your TBA any place where you thought it was good business to do so? A. Yes.

Q. And you have done so? A. Yes.

Q. Now you spoke a few minutes ago about attending these dealer meetings, Texaco dealer meetings. A. Yes.

Q. For how long have you been attending those meetings? A. Almost 12 years.

Q. During that time and at any of these meetings, has any representative of the Texas Company ever made any threat to any dealer or to all of the dealers there as to any dire consequences which would happen if they didn't handle the Firestone or Goodrich TBA? A. No.

Q. Do you get a chance to talk to a good many dealers at those meetings? A. Oh, yes, all of them.

Q. At any time have any of these dealers told you that they had received any threat of that kind from (5029)

a Texas representative with reference to their TBA buying habits? A. No.

Q. You did try Dunlop tires on your racing car at one time, did you? A. No, on my own car.

Q. On your own car? A. Yes.

Q. What happened? A. I went to Florida and back and they were shot.

Q. Did you get those Dunlop tires from the Berry Tire Company? A. Yes, I did.

Mr. Lorenzen: That is all.

Cross examination by Mr. Dias:

Q. On these dealer meetings that you have attended, Mr. Delle Grazie, have you ever heard Texas personnel recommended Goodrich or Firestone to the dealers? A. Yes.

Q. Talking about the gas in your race car, is that gas in the same category as the Goodrich tire, the gas for your racing car? A. Oh, we don't use gas, we use alcohol.

Q. That is what I thought.

(5030) So that it was no great sacrifice when you didn't use Texaco gas in your race car, is that right? A. No, I use it in the stock car.

Q. Also on this dry and wet batteries, doesn't Firestone have a dry charge battery? A. Yes, they do.

Q. Yet you prefer Delco, do you? A. Yes.

Q. Is there any special reason for that? A. Yes. It is original equipment in your General Motors cars, and that is why I handle the Auto-Lite also, I try to sell them original equipment. It is easier to sell a man that comes in, if he has a Delco in the car, I tell him I will sell him the same thing as the factory put in, and the same with Auto-Lite. Those are the two batteries they put in all their cars.

Q. Do you find in your opinion Delco is advertised more extensively than Firestone batteries? A. No, I don't think so; no. They are both advertised a lot.

Q. Well, generally you see Firestone tires advertised, you don't see the Firestone battery advertised. A. Well, in your newspaper ads you do, you see the (5031) batteries advertised.

Q. How about national advertising? A. No, not as much as tires. The way I look at it, tires is their main business.

Q. Yes. Then on national advertising, would you say that Delco or Firestone are more widely advertised? A. Delco.

Q. Incidentally, on that dry and wet charge battery, isn't there some work involved in using that dry charge, that is, in your installation of it? A. Not too much. In the wintertime usually you should put about a ten minute charge on them.

Q. Doesn't it run closer to 20 minutes? A. No, I have never left them on 20 minutes.

Q. Don't you have to add acid? A. Yes, you put the acid in.

Q. What all do you do to a dry charge to get it ready to put into a customer's car? A. Put the acid in, put a charge on it for about 10 minutes.

Q. And after you have done that, is that battery fully charged? A. It all depends on how long the acid has been sitting around.

Q. Isn't it true that after you put a dry charge (5032) battery into a car, after you have prepared it and put it in the car, it still requires the car generator to pick it up to full capacity, isn't that so? A. Yes. But you plan on that. Usually you ask the customer if he is going to do any driving or if he is going right home with the car. I have put them in without even charging them.

Q. On the other hand, a wet battery, assuming that your supplier periodically serviced you on those, wouldn't a wet battery be just as good as a dry battery? Assuming now— A. If it was fresh, yes.

Q. Yes, assuming that the battery supplier kept a fresh supply on hand at all time? A. Yes, but you don't know if he does that or not. That is a chance you take. I mean, I have put batteries in and had them come back the next day and they were no good.

Q. You never had that experience with a dry charge? A. Not yet.

Q. On Firestone plugs, do you ever buy Firestone plugs? A. No.

Q. Is there any reason for that? A. I like Champion, that is what I handle. I like (5033) the Champion plugs.

Q. Do you think the Champion is better than the Firestone? A. Well, I can't really say because I have never tried the Firestone.

Q. On that Berry incident, you have had experience with franchise dealers in the area from time to time, have you not? A. Yes.

Q. You know, do you not, that when a distributor has a franchise that he is entitled to an allotted area, is that right? A. Yes.

Q. Is there anything unusual about Berry being upset about the fact that another distributor had moved in on his territory? A. I don't think he moved in on his territory. I think the factory takes care of that. I mean, they will only put so many dealers in an area.

Q. So that actually the fault, if any, lie with the manufacturer, isn't that correct? A. Yes.

Q. Did Berry have the franchise before or for a longer period than this Automotive Supply? A. Yes.

(5034) Q. They had it before them, did they not? A. Yes, that is right.

Q. Can you give us some idea of the dollar volume of your battery and accessory business? A. With Automotive?

Q. No, I mean overall battery and accessory business, sir. A. It varies. In the winter time it is pretty high.

Q. In the winter it is? A. Oh, yes, that is when we sell most of our batteries.

Q. Can you give us some idea of what your volume is in the spring and summer and then fall and winter? A. In the winter probably about three or four hundred dollars a month on batteries.

Q. For how many months would that be now? A. About four months.

Q. And then the rest of the year—or do you know? A. The rest of the year is pretty slow on batteries.

Q. How much would that be about? I mean batteries and accessories? A. Batteries and accessories, well, that three or four hundred dollars would go for the whole year then on the batteries and accessories. Accessories, now that is taking in plugs?

(5035) Q. Yes, filters, fan belts. A. Yes.

Q. Can you give us some idea of the dollar volume of your tire business year round? A. It probably averages out about $250 a month. I am not a big tire dealer.

Q. As a matter of fact, your station is a rather small one, isn't it? A. I have got two bays. My office is small. My work area is as big as anyone else's.

Q. Do you do any repair work there? A. Yes, I do everything.

Q. Is the trade name of your station Pat's? A. Yes, Pat's Texaco.

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(5036) JOHN E. ROESSNER was thereupon called as a witness for the respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your name and home address to the reporter? A. John E. Roessner, 6202 East 10th, Indianapolis, Indiana.

Q. Mr. Roessner, you have had some connection with courts, heretofore, have you? A. Somewhat, yes.

Q. What connection have you had? A. One time I was Clerk of Juvenile Court for four years in Marion County.

Q. That is located in Indianapolis? A. Indianapolis, yes, sir.

Q. But now you are not connected with the judiciary? A. No. That has been some time ago.

Q. What is your occupation now? A. I am now a lessee Texaco dealer.

Q. Will you tell me at what locations your stations are located? A. 1601 North Meridian, Indianapolis, Indiana, and (5037) 2330 West Washington, Indianapolis, Indiana.

Q. What is the monthly average gasoline volume of your North Meridian Station? A. 58 to 60,000 gallons average.

Q. That is a pretty good sized operation, isn't it? A. Well, it is fair.

Q. How about your other station? A. I have only had that since February. We are running from 30 to 35,000.

Q. At these stations do you—strike that.

For how long have you been a Texaco lessee? A. 13 to 14 years.

Q. Before that time were you in the petroleum business too? A. Yes, I had been with Sinclair Refining Company for 7 years in the petroleum business running two service stations.

Q. At one time were you a supply point for some Texas dealers supplying them with all kinds of tires? A. That is correct.

Q. That is, Goodyear, U. S., Firestone? A. Goodrich.

Q. And Goodrich? A. That is correct, and some Armstrong.

Q. You sold them all? (5038) A. I have sold about all of them, Ferrin, and a few others.

Q. Have you had an opportunity to become acquainted with Texaco stations in your neighborhood? A. I have.

Q. You handle TBA at your stations? A. I do.

Q. Will you tell us why you handle it? A. The reason why I handle it, because it helps my gasoline gallonage; also it makes me competitive; and gives me good profit.

Q. During the time you have been connected with the sale of Texaco gasoline and the time you have been a lessee, do you have an understanding of what the Texas Company's TBA program and its policy has been? A. I have.

Q. What has been your understanding? A. When I checked into the Texaco station at 16th and Meridian, they suggested that I handle Firestone-Goodrich, and I told them I had contacts with Goodyear and Ferris. They said, "Well, Mr. Roessner, whatever you want to handle is all right with us."

Q. Has it been your understanding ever since that that is the policy of the company? A. That has been.

(5039). Q. Has any employee of the Texas Company ever told you that you have to handle the Firestone or Goodrich line or your lease is going to be cancelled? A. No, sir.

Q. Any threats to treat you badly in any way been made to you with respect to TBA? A. No, sir.

Q. Now would you tell us who some of your TBA suppliers are? A. Well, my suppliers, I buy from Goodyear; I buy from Firestone; I buy from Capital City Tire Com-

pany occasionally; I buy from Gibson Company; Central Rubber & Supply; Allen Auto Supply; Automotive Supply Company; once in a while Maddox Supply, Maddox Auto, I think it is.

I don't know whether I have left any out or not.

Q. Pennsylvania Tire Company? A. That is correct, I buy from them; I buy tubes from them.

Q. Did you mention the U. S. Rubber Company? A. I used to buy from them. We don't handle U. S. any more.

Q. How about Century, do you buy any Century tires? A. That is correct, I buy Gates hose from them, Gates belts from them, hose and parts.

(5040) Q. What sort of batteries do you stock now? A. We are stocking at present Red Diamond and Willard.

Q. You buy those from whom, the Red Diamond Battery Company? A. Yes, Peoria, Illinois.

Q. How about the Willard? A. Central Rubber & Supply.

Q. What sort of tires do you stock? A. I stock Firestone and Goodyear.

Q. Now— A. I have a few others, but mostly Firestone and Goodyear, that is about 98 per cent of it.

Q. Do you have signs from both of those companies? A. I do have.

Q. When you opened up this station on Washington, what kind of tires did you stock there at the time you opened? A. Well, the first thing we put in there was Goodyears. We bought 14 inch on a buy on seconds, so we stocked it heavy in that neighborhood with Goodyear tires for a sales proposition where we could give 50 per cent off to draw in new customers on our new location.

Q. What kind of batteries did you stock? A. I stocked Red Diamond and Willard,

Q. From the beginning when you opened at that station? A. That is correct.

(5041) Q. Do you display all of your TBA? A. I do.

Q. Openly? A. I do.

Q. Did anybody from the Texas Company ever suggest to you that you mustn't display any of these items except Firestone? A. No, sir.

Q. Has anybody said they would cancel your lease or otherwise treat you badly if you didn't? A. No, sir.

Q. You are under this same lease form we have been talking about which renews itself from year to year unless it is cancelled on 10 days notice? A. That is correct.

Q. That is your type of lease? A. That is correct.

Q. Now you buy oil from the Texas Company now in carload lots? A. I do.

Q. Was there a time when you bought it in such a way that you got a quantity discount check? A. That is correct.

Q. By the way, from your experience with the Texas dealers in that Indianapolis area, d. most dealers buy (5042) the oil in smaller quantities than carload lots? A. That is correct.

Q. So that they get the quantity discount? A. That is correct.

Q. But you haven't bought that way in the last three or four years? A. About three or four years.

Q. We had a little trouble, Mr. Roessner, in getting in Exhibit 39 because it wasn't addressed to the witness on the stand, and I asked you, did I not, if you could find a letter sending you your quantity oil discount check in '53 or '54? A. Yes, that is correct.

Q. And did you look for it? A. Yes, I did.

Q. And you found one, didn't you? A. I did.

Q. I ask you if this is the quantity discount check, the letter which accompanied your quantity discount check? A. Yes, sir, I believe that is the one all right.

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(5043) Mr. Royall: Also you want to show that it continues; this is for one year and the other was for another year.

Mr. Lorenzen: Mr. Smiley I think testified this was a regular form letter which was sent out each year but I just wanted to be sure we had a witness on the stand who actually got one.

I offer that in evidence.

Hearing Examiner Kolb: The document will be received into evidence as Respondent's Exhibit 54.

(The document referred to was thereupon marked for identification Respondent's Exhibit 54 and was received in evidence.)

By Mr. Lorenzen:

Q. What do you find, Mr. Roessner, with respect to the customer's demand for tires by brand name? A. Well, we find that Firestone is our best seller, Goodyear second, and we find that Goodyear and Firestone lead the pack. I think from sales records it is easier to sell because I can show where Firestone is second and Goodyear is No. 1 on sales and we have (5044) some good arguments about which tire is best.

Q. Is that the basis for your choice of those two tires as being the ones you handle? A. That is only one of the bases. Another reason why, I have had a lot of experience in off brand merchandise on tires and they are pretty hard to sell, only through price.

Another thing that makes them hard to sell is the fact that they don't hold up, and when you give away your price then you are on an equal basis with Firestone and Goodyear. So you are better off taking an advertised brand of tire which you can break down your sales resistance with, and you don't have the kick back on the adjustments and

the public knows what they are buying. Although I will sell them any type of tire they want if I possibly can get it in the City of Indianapolis, if that is what they desire.

Q. The choice of the tires you handle, including the Firestone, is entirely your own? A. That is correct.

Q. For business reasons? A. That is correct.

Q. And it is not a choice dictated by the Texas Company? A. That is correct.

(5045) Q. Do you find that the Texas Company is of any assistance to you in merchandising TBA at your stations? A. Well, I have attended a lot of dealer conferences and sales meetings and we have had a lot of help on merchandising, sales programs, yes, sir.

Q. It helps you with your Firestone merchandise as well as with all of the others? A. That is correct.

Q. For how many years have you been attending these dealer meetings? A. Oh, for 14 years, 13 or 14 years, as long as I have been there.

Q. Before that time did you have occasion to talk to Texas dealers when you were supplying them with tires? A. Oh, yes.

Q. During all that time have you ever had any Texas dealer complain to you or heard a complaint that the Texas Company was threatening him with cancellation of his lease or other treatment if he didn't buy the recommended line of TBA? A. To my knowledge I never heard anybody complain.

Q. Did you ever hear any threat of that kind made at any of the dealer meetings in your area? (5046) A. No, sir, I never did.

Mr. Lorenzen: I will ask to have this page marked from the Indianapolis Star dated May 23, 1958. I will ask it be given the next number for identification.

(The document referred to was marked Respondent's Exhibit 55 for identification.)

By Mr. Lorenzen:

Q. I show you Exhibit 55 for identification and ask you if you will state whether you recognize that as a page from the Indianapolis Star? A. Yes, that is.

Q. That is your home-town newspaper, as a matter of fact? A. That is correct, that is the morning paper.

Q. I call your attention to the left-hand corner of that exhibit and ask you if that is an advertisement of the Cooper Tire & Rubber Company? A. That is correct.

Q. Is that one of the tires that you would consider a little difficult to sell? A. That is correct.

Q. It seems as though there is a little difference of opinion among your Texaco stations, doesn't it? A. It might be so.

(5047) Q. Do you recognize on that advertisement a listing of Texaco stations? A. Yes, that is right, I recognize that.

* * *

Mr. Dias: No, I wondered whether or not you had an opportunity to participate in this particular ad.

The Witness: I probably did if I wanted to (5048) call Cooper and was interested in a deal. They haven't called on me, not for some time, because I am not interested in Cooper tires.

* * *

(5049) *By Mr. Lorenzen:*

Q. Are all Texaco dealers checked on this advertisement, so far as you know? A. I think this Model Tire Company is handling Texaco gasoline. I am not positive, I kind of think it is. I know they handle some Firestone tires, but I think they got the Texaco gas.

Yes, sir, I believe they all are outside of there might be something out of town on that one, that Model Tire Company. I think they are all Texaco gasoline dealers.

Q. Now the check that we are talking about for the Texaco stations is the blue ink X following the name, is that correct? A. That is correct.

* * *

(5050) Mr. Dias: Do these blue checks indicate,—are they all the Texaco dealers in Indianapolis?

The Witness: You mean are they all the Texaco service stations that Texaco have in Indianapolis?

Mr. Dias: Yes.

The Witness: They are only 6 of them. I don't know how many they have there, but I imagine it is between 40 and 60 stations.

By Mr. Lorenzen:

Q. Are you acquainted with the particular dealers listed on that advertisement yourself? A. I am, all but the one at Knightstown, I do not know him. That is out of town.

Q. Have you sold those stations at a time when you were a supply point? A. I have.

Q. Do you know whether those stations are operated on a lease from the Texas Company? A. They are lessee dealers like me.

Q. They are? A. Yes, sir.

* * *

(5051) Q. Mr. Roessner, have you looked at these pages which have been marked Exhibits 56-A and -B? A. Yes.

Q. To ascertain if they are copies out of the yellow pages of the Indianapolis Telephone Book? A. Well, I would say they are copies out of the Indianapolis Telephone Book.

Q. Will you look at 56-A, I think that has to do with batteries, does it not? A. 56-A?

Q. 56-A, yes, look under Delco Batteries and see whether you see anything listed that you recognize as a Texaco Station? A. Yes, sir, I do.

Q. Which one is it? A. Marcell's Texaco Service Station.

Q. Do you have another type of battery known as Anico-Lite? A. That is correct, that is an Indianapolis manufacturer.

Q. Look under that and see if you can see any Texaco station listed under that? (5052) A. Yes, sir, Ashby Texaco Service Station.

Q. Is Universal Battery another kind of battery? A. Yes, it is made in Chicago, I believe.

Q. Will you look under the Universal advertisement and see if you can find any Texaco dealers under that? A. Yes, sir, Bailey & Carson, E & M, E & M Texaco.

Q. Will you look on the next page under Armstrong Tires and see if you can find any Texaco station listed under that? A. Yes, sir, Seagraves Texaco Service Station.

Q. Are you sufficiently acquainted with the stations whose names you have just listed to tell me whether they also are lessee dealers like you are? A. Well, most of them, not all of them. There are a couple of new ones in there that I couldn't be positive about.

Q. Tell us the ones you know. A. Ashby, I know that one, that is like me.

Q. Lessee, he is a lessee, did you say? A. Lessee, yes. Bailey & Carson, that is a lessee; E & M, that is a lessee. The only one I don't know definitely is that Seagraves.

Q. How about Marcella? A. Marcella, that is a lessee.

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(5053) Mr. Dias: Mr. Roessner, listed under the Firestone Batteries on 56-A, can you tell us which ones of those Texaco stations are lessees?

The Witness: That England Station, that is a lessee station. I am not positive about that Mason Brothers; that must be a new dealer, but I kind of think that is a lessee station.

Bob's Texaco Service Station, that is a lessee station. Harger Service Station, that is a lessee station. I do not know about Harold's Texaco Service Station on Kentucky Avenue. I don't know him.

I am almost positive Garfield Texaco Service Station, that is a lessee.

That Hassell's is what they call a second party. I don't know how that thing is run. I don't know whether he leases from the owner or he leases from Texaco; that is questionable.

(5054) Mr. Dias: But he has a lease either from Texas Company or somebody else?

The Witness: Yes, sir.

Mr. Dias: That completes the list, does it?

The Witness: Yes, sir. On our Firestone.

Mr. Dias: Yes. The Exhibit 56-B seems to terminate right at the point where Firestone suppliers start. I have no objection to the rest of it.

By Mr. Lorenzen:

Q. Just let me ask you one question. Do you know from dealing with the advertisers in the Yellow Pages whether the dealers who are listed on those Yellow Pages have to pay for that listing? A. Yes, I believe they pay for that listing.

Q. That's all. A. I'm not positive, but I never got any listings free.

Q. You've had to pay for anything in the Yellow Pages? A. Correct. To the Telephone Company.

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(5055) *Cross examination by Mr. Dias:*

Q. Mr. Roessner, as I understand it, between your two stations you pump roughly 90,000 to 100,000 gallons a month, is that correct? A. That is correct.

Q. How long have you been in that station now? A. Oh, 13, 14 years.

Q. And when was it that you acted as a supply point of Texas Company stations? A. Well, it's been—let's see—is the Firestone man here? He could tell you. When Mr. Dykes left—I think that's about four or five years ago—now, the time slips on me. I've been in it a long time.

Q. In other words, up to about '52 or '53—'53 or '54, you were a distributor of these various items? A. Yes, for about two, three years I was a distributor for them.

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(5056) Q. Up to that period of 1955 then you were contacting all these Texaco stations, were you? A. Yes. In the area. I contacted most of them. I at one time had a salesman or two working for me.

Q. But you personally generally went around, is that so? A. That's correct.

Q. What is the heavy tire in that area? In other words, in each area there is one tire that seems to predominate, of these Firestone and Goodrich. A. Well, Firestone is the heavy tire.

Q. In Indianapolis, is that so? A. That's correct. Goodrich is very hard to sell.

Q. And from your observation, having gone around to all these stations, did Texaco stations generally handle Firestone or Goodrich? A. Well, they vary quite a little bit. Of course, where they vary it's strictly with price. The boys would buy tires for a price to meet competition. It's a competitive area. It's pretty highly competitive in Indianapolis in the tire business.

Q. Is there any special reason for that? A. Yes, sir, there is a special reason for that.

Q. What is that? A. Tire companies pretty well advertise their price. They have two or three stores there. Even Cooper has a store. (5057) Word gets around that you can buy them at the wholesale prices.

Q. Would you say that's unusual? A. In the tire business?

Q. Yes. A. Well, I'm not familiar with every market.

Q. No, but I mean, was that an unusual situation in the Indianapolis market? A. It always has been, ever since I've been in the business.

Q. That situation has prevailed, has it? A. That's right. One time Goodyear sold tires right in my filling station cheaper than I could buy them.

Q. Well, do you recall the type of advertising that Texaco stations generally had about their stations—Texaco station operators generally had Firestone or Goodrich advertising about their stations? A. You mean in the way of displays or signs, sign material, or what not?

Q. Yes. A. Yes. Generally they do have. I think it's more accessible to them than the other advertising, be-

cause—you take, for instance, Pennsylvania, and the rest of them, your other suppliers, they don't contact you as much. They don't have the sign. They don't show the interest. And so therefore you take the course with the least resistance. (5058) You put whatever is—

Q. You certainly wouldn't put up a Firestone sign if you had Pennsylvania to sell? A. Naturally you wouldn't go to extremes. You wouldn't put some advertising up that you didn't even handle. That's true.

Q. Do you know enough about the market as of the present time to tell us how many Texaco stations are handling Firestone? A. No, sir, because I lost contact within the last couple of years. But I imagine the majority of them are handling Firestone. Maybe in that market probably 60% to 40% Goodrich. There is some Goodrich in there. And then the boys handle whatever—a lot of them do; I can speak mostly for myself—I handle whatever the customer wants to buy.

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STANLEY GRELECKI was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

(5059) *Direct examination by Mr. Barton:*

Q. Will you please give your name and address to the reporter? A. Stanley Grelecki, 7438 Jackson Avenue, Hammond, Indiana. I'm a partner in the firm of Niemiec & Grelecki, 652 Burnham Avenue, Calumet City, Illinois.

Q. Mr. Grelecki, what business are you in? A. We are in the tire, battery and accessory business.

Q. And what is the name of your firm? A. Niemiec & Grelecki.

Q. And where is your business located? A. We are at 652 Burnham Avenue, Calumet City, Illinois.

Q. Is Calumet City within the metropolitan area of Chicago? A. Yes, sir, it is.

Q. And what brand of tires, batteries and accessories do you handle? A. We handle B. F. Goodrich tires and batteries, and accessories. We do have what they call their accessory line, which is composed of Simonize, Johnson, DuPont, several other; Champion spark plugs, for instance.

Q. You handle their complete accessory line? A. That's right, sir.

Q. How long have you been in business in this business of Niemiec & Grelecki? (5060) A. I would like to start by saying that in 1948 I was working for the Red Star Yeast Company as a salesman. I went into a service station called Bolda & Niemiec; and I went in as a partner in the firm of Bolda & Niemiec, which we operated a Conoco service station. We also did some wholesale business.

Q. Where was that? A. At 696 State Line Avenue, Calumet City, Illinois.

Q. That's right across the street from Hammond, Indiana, isn't it? A. That's right, sir. Then in 1951 Mr. Bolda for health reasons moved to Florida. Mr. Niemiec and I bought him out. We continued operating the service station until July of 1953, when we went into the wholesale tire, battery and accessory business.

We sold our part interest—or, we sold half interest in the service station to one of our employees, and eventually we sold him the rest of our service station business. So we are not associated in the service station any more.

Q. All right. You sold your interest in the service station after you found out you were going to make a great go in the tire, battery and accessory wholesale business? A. Well, sir, the way that started, we had been handling Fisk tires and batteries and cables for a number of years.

Q. When was that? (5061) A. At the time I went in business with the other two gentlemen, they were handling Fisk tires and batteries. And I went in with them, and we continued selling that. And then possibly two years later we took on the Goodyear line and handled that along with the Fisk line.

Q. That was in 1950? A. That's right, sir. We handled—we sold everything through the service station and we had a warehouse separately.

Q. And you sold out that warehouse to other Conoco service stations, did you? A. Whoever would buy from us.

Q. I see. Go ahead. A. Then in the fall of '52 we took on the Goodrich line and gave up the Fisk. We took on the Goodyear line. We had the Goodyear line along with the Goodrich line—and this was about September of '52 when we took on Goodrich.

Then in 1953 we saw an opportunity to expand our wholesale business and we went into the location that we are at present.

About the end of 1954, due to the fact that a number of tires that we were getting in—the different sizes and types—we gave up Goodyear. Our sales were not large enough to warrant stocking an inventory of Goodyear—and along with the financial problems.

Q. You mean you had to stock so many tires in order to have a balanced inventory that you couldn't afford to stock (5062) two brands of tires? A. That's right, sir. And our Goodrich line naturally was going better than the Goodyear line, so we stayed with that.

Q. What is your trade area? A. We cover what is known as the Calumet Region, and that includes Hammond, Whiting, East Chicago, Indiana Harbor, Lansing, Hobart. We also have a couple of accounts at Lake Village and Schneider, Indiana, along with Calumet City.

Q. Now, there are of course a number of—what is the nature of your customers? A. The majority of our customers are service stations that we supply. We do have some car dealer business, that is, new car dealer business, along with garages, that might buy spark plugs or tires, or something that they would need.

Q. Well, how many service stations do you supply all told? A. We have approximately 100 that our salesmen call on regularly.

Q. And by "regularly" you mean once a week? A. Yes. Our salesmen—we have two salesmen, and they call on each station at least once a week.

Q. And what's the situation with regard to you and your partner calling on stations during the time you've been in business? A. When we first started, naturally I was the only one that was selling, and I was covering the territory. We (5063) started out with Goodrich. Our territory man and myself made calls. He spent one day a week with us.

Q. You mean the Goodrich territory man? A. That's right, sir. I called on the service stations, and then as our business progressed we hired another man, and he and I called on service stations.

Then, a year ago we hired another salesman. Since that time I have been doing inside work, helping buy merchandise, obtain it, also going along and following up promotions such as—a certain time of the year where we have —Oh, I might use as an example, like the direct advertising program which Goodrich puts out each year. We go out and explain that to the dealers.

We also, if they have any problems, such as they have —they might have on a tire adjustment or battery—or you might have a customer that's dissatisfied and they don't feel they can handle it, we try to help him.

Q. Now, of these 100 service stations, do you have some Texas service stations? A. Yes, we do.

Q. That you supply? A. Yes.

Q. And how many of the 100 are Texas service stations? A. I would say between 30 and 35.

Q. And do you supply some Conoco stations? (5064) A. Approximately 20.

Q. And do you supply some Ohio Oil Marathon stations? A. We have two or three in our area that we do sell some merchandise to.

Q. And what are the remainder of the service stations which you sell? A. They will vary; Standard, Sinclair, Shell, Sun Oil, non-brand gasoline, Phillips—there may be a few others that I don't recall right now.

Q. Now, how do you obtain the accounts which you obtained in the course of your—well, first of all—strike that.

What's been the nature of the size of the increase in your business in this ten-year period since you've been in business? A. We started out—when we took on Goodrich they happened to have the tire known as the Life Saver tire, and we went out and we actively promoted the sale. We explained to the dealers, by calling on them, the quality of the tire that we had. And at the time Goodrich was probably the only one that was making the tubeless tire, and I think Firestone had one also then. And we went out and we had a good product, and we sold it. We sold it on the basis that we were competitive in price, and we could give them the service that they needed. We had our supply in inventory and we tried to put across to the dealers that we could supply them with merchandise if (5065) they needed it in a hurry.

Q. What's been the nature of the increase in your sales? How many times have your sales increased over that period? A. Since we have been active in the line, I'd say in the ten years we have probably ten times what we started out with in '48.

Q. Now, tell me, generally, how you obtained these Texas accounts which you obtained. A. The Texas accounts—we don't do any different, I don't think, than the other stations. We go out and give them the story on our product, the quality of the product, price, that we are competitive, that we can give them service. We follow up with advertising material, and by that I mean advertising signs that Goodrich does furnish us with. We help them put on—for instance now, this summer, since the first of the year, business has been a little bit tough. So we've made handbills for some of our dealers, where they're allowed to use them, and put on what we call special tire sales for them.

Q. You mean they—you make the handbills up and then they have them delivered in their area? A. That's right. We make up a handbill for their approval and then go ahead and get it completed, take it out to them, and they distribute it in their area.

Q. What's been the results from that? (5066) A. Our results have shown some increase in tire business in each one of these cases.

Q. Now, what is involved in the service which you say you give the dealers? A. Our service—we don't have any certain date for service. By that I mean, we don't go into Gary one day, or Hammond another day. When our salesmen call on their route, the next morning their merchandise is delivered.

If a dealer should call and need tires, or whatever it may be, and he has sold a customer, we get out that merchandise to him. Whether it's a half hour, or an hour, or whatever the time that he needs to get the merchandise, we get it out to him.

Q. And what's the nature of the—the extent to which you have to make such so-called emergency deliveries? A. We don't consider those emergency deliveries. That we do every day. We have that right along. And while it's

a lot of extra effort on our part, but with the—and, again, with the number of tires and the kinds—and especially now that we've come into nylon cord, it's duplicating our inventory again. And it's almost impossible for dealers to stock the tires that they need.

Q. Well, what is the nature of the problem there on stocking by service station dealers of tires? A. Well, sir, the average service station, if they had what (5067) we consider about 40 tires, that would be a good stock of tires. And when you get into—for instance, in one size, I might say, 670 x 15 tire, I think we can count about 25 different types and kinds between the tube type and the tubeless, and the nylon and rayon. Then the different grades or quality of tires. And therefore—

Q. You mean premium line, first line, second line— A. That's right, second line and third line, sir.

Therefore it's almost impossible for a dealer to have adequate stock under those conditions.

Q. He doesn't have either the room for it or the money to utilize in stock, I suppose? A. That is true, sir.

Q. Well, when you said that a good stocking dealer would have 40 tires you meant that that was the extent to which—the maximum stock the dealer would have, is that it? A. That's right. I don't know of any dealer we have that has any more than 40 tires.

Q. And since 40 tires wouldn't cover very many of these different sizes and types, what is the consequence? A. That result is that the dealer that has a sale for one or two tires may have it in stock, but where—because they try to get two or three of each, or possibly four in some sizes. And the result is that he sells the set of our tires—he usually needs immediate delivery on them.

(5068) Q. One or more tires? A. That's right. Now, we have had occasion in the evening, or even Sunday once in a while, which most of our stations are open, that they

would need an emergency delivery on a Sunday, which we furnish them. They usually will call my partner or myself at home, and we do take care of that.

Now, we feel it's important, because it's helped increase our business, and we have operated that way since we've began.

Q. Do all of your dealers to whom you sell stock 40 tires? A. No, sir, they do not.

Q. How many of them would be stocking in that order? A. We would possibly have ten.

Q. Ten out of the 100? A. Yes, sir.

Q. Would stock in that order? A. That's right.

Q. Now, are there any special techniques that a service station dealer must have in order to deal in tires? A. A dealer must know what a tire cost him, how much he wants to make on the tire, he must be able to evaluate the used tires that he's taking off of a car because there is some resale value in that, and he must recover some profit in it. He must know how to handle a customer as far as selling him on the quality of a tire.

(5069) Q. What do you mean by that? A. He must know the difference between—for instance, our Safety-S tire, our third line tire. Then we have our deluxe tire, which is our second line, and the Deluxe Silvertown, which is our original equipment tire. And he must know all of those things in order to meet competition.

You might have a fellow come in and say that, well, "I have a price of so much on a tire, and what can you do for me?" He must know enough by knowing his cost on tires what tire the customer is talking about. And also he must know what to do if a person gets a defective tire, what to do about it and how to handle it.

Q. What is that problem of a person having a defective tire? What's the adjustment problem? A. The adjustment problem—and we have tried to work with our dealers

that they would be in a position to know a defective tire against a tire that's not defective, where they should adjust it. And we recommend to our dealers and try to put across the information that they take care of their customer now. In other words, not to put him off, well, tomorrow, or next week, or so. They take care of him now. If they are in doubt, then tell the customer, "We will have to send the tire in," which they will send in to us, and we give them the information whether it is adjustable or not.

(5070) He also must know how to adjust tires. Our adjustment policy is that the customer pays for the service that he gets out of the tire. In other words, if the 100-level tire, which has 11/32 on it is wore down to 5/32, or 6/32, he must know that it's 50%. In other words, how much to charge the customer. That is important.

Q. And do I understand that your dealers, your service station dealers, are authorized by you to make adjustments on their own which you will honor? A. That's right, sir.

Q. At the time the customer brings the tire in? A. That's right.

Q. And if they're in doubt about whether or not it's adjustable, an adjustable item, then they call you and you pick up the tire and determine it immediately? A. If we can. If we cannot, then we again will further—or take it into the tire service department of the Goodrich Company in Chicago and get final approval or rejection on it.

Q. Now, does the dealer have to be, in order to be trained to sell tires, be trained as to the quality and the types and designations of competitive tires too? A. That, sir, is information that the dealer must have if he is going to do any kind of a job in selling tires. It's a matter of education. If the dealer doesn't know what he's doing he'll be afraid of tires, he won't want to sell them. (5071) He'll shy away from it. Which happens to a good many employees at service stations.

Q. Now, what about the inventory control problem in connection with a station's supply of TBA? A. That is another thing that we have offered to dealers when we go out and solicit them. We have what we call an inventory control guide book. It's furnished to us by Goodrich Company, and it has listed the number of products that we normally sell along with spaces for other products that he might have in his service station. And we try to get them to carry—for instance, in accessories, oh, a month's supply of polishes or other, hoses, or belts, and things like that. We call on them every week and we can refill his stock. Our salesmen that call on the stations, if this man is set up on the inventory control guide and carries six cans of one type of polish, or three of another, and he has sold one or two, or whatever it may be, that is what our salesmen write up as his order to put in his stock. In other words, we try to eliminate back room stocking of merchandise.

Q. In other words, you don't sell him a case if he only needs two of them? A. That's right, sir.

Q. And in how many of your stations have you been able to invite the dealer to adopt an inventory control system? (5072) A. That our salesmen have been taking care of, and in the last year I haven't followed too closely, but I would say we have eight or ten that do use the inventory control guide.

Q. And what is the fact as to whether those are Texas or other types of stations? A. To us it doesn't make any difference. Whatever station will accept that, we put it in there. And we had one occasion where we sold a Texas station because of that reason.

Q. Who was that? A. Fifth Avenue Texaco in Gary.

Q. Tell us the circumstances of that. A. We called on the man and we presented the sales story to him, and we told him what we had and what we had to offer, and we would like to have him try it out, which he did accept.

I went back a year later and checked with him specifically on how this worked out, and Mr. Osman commented that his tire, battery and accessory business had been greater than ever before; and his inventory is the lowest that it had been for several years. He was happy about it. And it has been another promotion for us to gain business.

Q. And what is the nature of the training, the dealer must have in order to sell batteries? A. Batteries—service stations should know how many months guarantee there is for service units that they have on the battery; he must know his price on batteries; he must know his (5073) price on batteries; he must know his cost on batteries. In other words, it's the old trading game which we have, just the same as in tires, and everybody comes in with a dead battery, "well, how much are you allowing me for my old battery?" And they must have a program set-up on that. They must also know how to tell when a battery is defective, by testing the cells. There are two methods that service stations test batteries. It's by the hydrometer method which tests the electrolite in the battery, or the cell tester, which gives you the top—you put the cell tester on the posts of the battery.

Q. Are you familiar with wet charge batteries and dry charge batteries? A. Yes, sir, we handle wet charge batteries—we handled wet charge batteries up until—

Q. Will you tell us about it? A. I think it was 1954, or '55, when Goodrich introduced the dry charge battery. And the wet charge battery is made up at the factory, and delivered to us or to a warehouse. We happen to get our batteries direct from the factory, which is close by. You have a certain amount of what we call a shelve life that wet—that—in a wet battery that you don't have in a dry charge battery, and the reason for that is, a wet charge battery, when it sets, it's all been charged, the acid is in it, and it gets a certain amount of coating that covers

like an insulation over your plates of the cell. (5074) It is very small, but over a period of time if you keep it on the shelve for any amount of time it will build up, and unless you take that battery and charge it, say, every thirty days for ten minutes to a half hour, or keep it on what we call a trickle charger, it will run down. It will run the battery down. It's the same where you might have a battery, set a wet battery on concrete. The concrete, the moisture, will draw the battery and run it down. Whereas in a dry charge battery, it's made on the same order that a wet charge battery is made at the factory, but they take out the electrolite and dry all of the cells in the battery. Then they put it together and seal the air vent on the battery. We get it then in that form, it's all been charged, and the only thing you have to do to activate it is to add the acid and usually on all of our price sheets it tells the quarts of acid that is required for each type of battery, and put it on a ten minute charge. Now, if you keep—

Q. That is ten minute charge? A. Yes, it is. There is a—in our batteries we have a little tag that says on there "charge for ten minutes."

Q. And it's just like a quick-frozen dessert or piece of meat, isn't it, which when you get it out and want to fry it, why, it can be prepared. A. Well, yes, you might call it that way.

Q. Now, what is the result in terms of dealers handling (5075) batteries when the dry charge battery came on the market as compared with their willingness to stock batteries before that? A. You had some sizes in batteries, and just to give you an example, up until the first of July we have thirty-nine different types of—and sizes of batteries. And you have some sizes naturally that don't move as much as others. Now, by having thirty-nine—that is the complete line, and I don't mean to say that all the dealers stock that many different types of batteries. But

in order to have a complete coverage of every quality battery in every group, that's how many there are. And you could take the dry charge and it would cut it down in stock a whole lot, and these fellows that would have a battery that didn't move too slow, for instance, what we used to refer to the High Ford battery, if you had it on—you could keep it on the shelve and we know the dealers that have had them for a year, they would deteriorate and some of them lost money by keeping them that way.

Of course, the dry charge is an advantage in that respect that you don't have the shelve life. In other words, when the dry charge batteries are activated by pouring in the acid, that is supposed to be factory fresh.

Q. Is it in fact? A. Yes, sir. Our experience since we have had dry charge batteries is that we do have less failures.

(5076) Q. Now, what are the merchandising programs which you carry on with your dealers in helping them to—you told us about some of them, but what are others that you carry on? A. We have through the Goodrich Company what we call traffic builders. They are items that have been pre-tested at service stations somewhere in the country by the Goodrich people, and they are sold to us, or we go out and promote them at the service stations. It's an item that—for instance, we had plastic pails that sold for $1.29. It's ordinarily a $2.90 seller. Something to get the—give the dealer a chance to get people into a station. Along to tie in with that we have a direct mailing program, and the cost of that is paid partly by the Goodrich Company and partly by the dealers. We had this summer four pieces of mailing that went out, and it cost the dealer—in other words, 250 pieces of mailing each times these four mailings, or 1000 pieces—cost him a little bit under $44.

Now, this ad is made up with Texas or Conoco or if it happened to be some other brand that is not on there, they

have an ad, Texaco gasoline, or oil, or if it happens to be in the fall they might have anti-freeze or something like that, along with tires and batteries and some accessories that they feature on that.

Now, that goes to—the dealer doesn't do any work on that. He might specify a certain area that he would (5077) want it sent to. In other words, he would block off two or four blocks or send it there. Or he might give his own list and have it mailed to them. The Donnelley Company here in Chicago does all of the work of preparing it and mailing it.

Q. And how many of your one hundred dealers take part in that? A. We have had this year sixteen that were in the direct mailing program.

Q. And what is the fact as to whether or not most of them were Texas and Conoco dealers? A. They are mostly Texas and Conoco.

Q. Now, in that connection, what is the role of the oil company, if any, Texas Company, Conoco Company, in this merchandising program? A. They help us present this to the dealers. This year our Goodrich territory man in Texas—and the Texas man went to some of the stations and presented this advertising program. I did some of them. In past years we have had dealer meetings where we have asked the dealers to come in and sit down, and we have presented the program to them. Some of them signed up at the time and some we followed up with calls and got them to sign up on it.

Q. And what is the role of the oil companies in the training of the dealer in these various problems of selling tires, (5078) selling batteries, etc? A. In our area we have had the petroleum people—if they have a problem they usually refer it to us, and we will go along with them or we will make the call ourselves and try to get the account straight-

ened up. If he does have a problem, we help him get done what is needed.

Q. I see. Now, you said you had 35 Texas accounts, I think, around that? A. Approximately; 30 to 35, sir.

Q. And what percentage of those are lessee accounts, if you know? A. I do not know, but I would estimate 20. It possibly may be higher, but I would estimate—it may be higher. I would estimate 20.

Q. Now, how many of these accounts are—were new stations, when you took them on? A. (No response.)

Q. Do you understand my question? A. Yes, I do, sir. I'm trying to think, because it's been over a period of years, of the years that we have had. And I would say we have had six or seven that we have had, new stations that have opened in our time.

Q. I see. And the other 28 or 26—28, were established dealers? A. That's right.

(5079) Q. At the time you took them on? A. Yes.

Q. Now, breaking those down, you said you handled Fisk at one time when you were a Conoco dealer? A. We did.

Q. How many Texas dealers did you sell to while you were a Conoco dealer handling Fisk tires? A. Of the present day accounts that we have, three to my knowledge.

Q. And what happened when you took on Goodrich and dropped Fisk? A. We continued selling these accounts.

Q. In other words, you took them on as Goodrich accounts, swiped them from Fisk to Goodrich, isn't that right? A. That's right.

Q. Now, the other 25 whom you got in to, and which were not new stations, who did they come from? A. Oh, I'd say a varied number of tires that they had. Some have been Firestone, some were Goodrich accounts. They were supplied by the store, or perhaps direct from the Goodrich warehouse in Chicago. We had some that handled Gates.

Q. Or via the Goodrich distributor, I think. A. That's right, sir. Gates and Dunlop.

Q. Now, with respect to Conoco, the 20 accounts that you have of Conoco, what was the source of those accounts? (5080) A. There again, we had some accounts that we had sold over a number of years, and of course our association as a Conoco operator helped us to become acquainted with some of the other Conoco operators through dealer meetings or advertising meetings that were held during the course of the year, and we went out and promoted the sale of tires with them.

Mr. Royall: Your Honor, this Respondent would like to move to strike that evidence relating to Conoco and have a standing objection to any other elicited so far as it affects Texas Company. I don't know—I don't hear anything that was—I want to preserve our opposition. That has been our position in the past.

Hearing Examiner Kolb: Well, off the record. (Discussion off the record.)

Hearing Examiner Kolb: On the record.

Let the record show that all testimony received referring to Conoco Company will be received subject to motion to strike by the Texas Company.

By Mr. Barton:

Q. Now, do you recall in connection with the Conoco Company accounts which you have, obtaining Nick Chaves at Hammond, Indiana? A. That is in East Chicago, Indiana.

Q. That's known as Nick's Conoco? A. Yes, sir.

(5081) Q. Now, will you explain the circumstances under which you obtained that account? A. Nick Chaves

started back when—in the Conoco service station when we were selling Fisk tires, and I was selling on the road. He would buy, oh, just very little merchandise from us. We got acquainted with him that way. As we went along and took on Goodrich, another distributor in Gary also had Goodrich tires, and he was one of his accounts. When the Gary distributor gave up handling tires, batteries and accessories, we called on him more frequently, and I personally did for about a year. We didn't get too far with him in selling him merchandise, and I switched the account over to one of our salesmen. He called on him for some time. And, oh, he would get an order once in a while, and then he had some difficulty with one of his other suppliers that he—

Q. Who was that supplier? A. He was being supplied out of Chicago by Chanenson Tire and Supply and J and E—excuse me, not J & E, but Brown Tire and Supply. I believe you spell it C-h-a-n-e-n-s-e-n.

Q. And what was the difficulty that Nick's Conoco was having with Chanenson?

Mr. Dias: I object, your Honor. Apparently at the time of this changing this salesman was handling the account. I don't know if this witness knows—

Mr. Barton: Now, if your Honor please, Mr. Chanenson (5082) got on the stand and explained about having lost Nick's Conoco in East Chicago to B. F. Goodrich, and I submit that it's proper to put in the explanation with this witness—which this witness is able to offer regarding that loss.

Mr. Dias: I don't know if this is the witness that can do that. That's my point.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Barton:

Q. You may proceed. A. We had called on Nick Chaves over the period of time which probably was two years or better from the time I first became acquainted with him, and as our salesman called on him he mentioned to him that he had some difficulty with an adjustment problem, with Chanenson, and he wasn't going to buy from him any more. Chanenson also had his salesman taken off of the territory. I don't know how much later it was in time, but Brown Tire and Supply was calling on Nick Chaves, supposedly—

Q. Brown Tire Supply was a sub-jobber of Chanenson? A. That's right, sir. And he went out of business. He went bankrupt. And from that time we have not—we have gotten more of Nick Chaves' business.

Q. And what about a—did you take any Conoco accounts from Cooper Tires? A. We had one account in Hobart.

(5083) Q. What was the name of that dealer? A. Paulson and Rippe, Hobart, Indiana. We had been selling Paulson and Rippe Fisk tires, and then they changed and began selling Cooper Tires. I don't know the period of time that they bought Cooper tires, but eventually when we got them back they told us that they were having trouble with Cooper and they were adjusting as many tires as they were selling for a while. And eventually they went back, and we are selling them, I would say, for the last three years. We have been selling practically one hundred per cent of their tires. We don't—

Q. Cooper Tires, they were requiring one hundred per cent adjustment on tires they sold? A. They said that their sales—they were adjusting as many tires as they were selling for a while.

Q. And what is your experience with B. F. Goodrich tires on adjustments? A. Our adjustments—

Q. What percentage do they run? A. I would say that, against our purchases, our adjustments probably run three per cent.

Q. Three percent? A. Yes.

* * *

(5084) Q. Now, Mr. Grelecki, you have gone around to most of these stations, these Texas stations you have sold to over the past several years, have you not? A. Yes, sir.

(5085) Q. And in the course of your calling on these stations you have observed whether or not those stations handle products, TBA products, which are not sponsored products, haven't you? A. Yes, sir.

Q. And what, if any, non-sponsored products have you observed in Texas stations which you were engaged in selling? A. Do you mean by brand, sir?

Q. Well, yes, in general. What type of batteries have you noticed? A. Exide, Delco; we have some what they call the Am-Plus.

Q. What is that, a price battery? A. Yes, it is. They do have that as a price battery.

Q. And what is the situation on accessories? Have you noticed competitive accessories? A. Yes, there are competitive accessories. In fact, for instance, we handle Champion spark plugs, and we have a number of accounts that don't buy Champion spark plugs from us, but they do buy them from some other source.

Q. I see. A. And there are numerous items like that that are nationally advertised that are not purchased from us that service stations do buy.

Q. Have you noticed Firestone in some of the stations? A. In our tire stations, no. Some that we call on for solicitation, yes, but not in our particular stations.

(5086) Q. Now, based upon your observation and your knowledge of what you sell to those dealers, what percentage would you estimate the non-sponsored items are of their sales in the TBA field? A. Do you mean as a whole group or—

Q. Let's take the accessory field. A. There again, you take certain stations that do more business than others, and it's rather difficult, not knowing what their total purchases are, to determine that, although if we went on the basis—base it on a station that does a fair job and we could determine by the number of dollars in volume that we sell them in accessories, and I would say that, basing it on dollars and cents, it would probably be fifty per cent.

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(5088) Hearing Examiner Kolb: That is the question I was going to ask, whether your question referred only to the Texaco stations.

Mr. Barton: I limited it by terms to the Texaco stations.

By Mr. Barton:

Q. Did you so understand it? A. Yes, the Texas stations, yes.

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(5089) *By Mr. Barton:*

Q. What is the situation with respect to the Texas Company stations? A. In the Texas Company stations I would say 50 percent that we are selling in the accessories line.

Q. What is the situation in the Conoco stations? A. There we don't do as well,—probably 30 percent.

Q. What is the situation with regard to—

Mr. Barton: Strike that.

By Mr. Barton:

Q. Mr. Grelecki, are you familiar with the policy of the Texas Company with regard to the matter of their service station lessees handling sponsored or non-sponsored lines? A. Sir, I don't know the details of it; I have never had the occasion of it being explained to me.

Q. What have you found with regard to the independence of the Texas dealers? A. We have found that we have to deal with each dealer as the operation of the station, and the owners, as we call them, of the station, and it is up to us to sell them. Now, through the program such as the advertising program that they come out with, and the overall program (5090) of nationally-advertised material and merchandise it does help service stations.

Q. And it helps you sell goods to the service stations, doesn't it? A. That is right, sir.

Q. And have you found that the oil companies which have a sales program in which you are working with, it increases the sales of these service stations for your TBA? A. That is true. Any station that has a definite program will do better than what you might call the hit and miss ones, that go along and take it as it comes. For example, like with our tire business this year, when it has fallen off, by having our hand bills it is a little more effort to make sales and it is a program for increasing sales and that does help.

Q. In other words, you wouldn't have to sell so hard if these dealers were instructed to handle your products, would you? A. No, I don't imagine we would. I don't know

whether we would be happy about it or what, but we can honestly say we have never been handed anything and somebody come and say: Well, here, you are going to supply that man,—anything of that nature.

Q. You have gone out to sell these dealers? A. It has taken us a number of months and even years to (5091) sell them.

Q. You built the dealers up by giving them service as they required it, haven't you? A. That is right; in addition on a new dealer we have a financial arrangement that we have gone along with. When he buys a certain amount of merchandise to open a new station, he will pay us half or 30 percent of his purchase, and then we let him pay it off at $100 a month for a year or 15 months, or whatever the case may be done. We have done that and we still have accounts that we carry that way. That has helped, because it seems like most of the fellows who own a service station are limited in finances.

Q. Have you ever heard of a Texas station being threatened with a lease cancellation because of handling competitive items? A. We have never had that occasion.

Q. Have you ever heard of a Conoco lessee being threatened with loss of his lease for that reason? A. No, sir.

Q. Have any dealers ever complained to you that they felt obliged to buy from you because of the oil company's sponsorship? A. No, we have never had that happen to us.

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(5092) Q. Mr. Grelecki, have you in the course of your selling had occasion when you have trained service station dealers who had no experience in the TBA business to be good TBA merchants? (5093) A. Yes, we have had that.

Q. And will you give us an example? A. John Wileygura; 3007 Grant St. He went in a new Texaco service

station that never had any previous experience in the service station business. He was an electrician by trade and when they went into this station we went out and sold him on our program of going along with finances as well as with the advertising, and the other material help we could give them.

We went out and set up their service station so that they would be ready to operate; we set up their shelves, their stock of tires and batteries; we even helped them obtain things like a cash register and some other items they needed for a service station which we did not or we do not sell. We went along and tried to help them with their bookkeeping.

Then we spent some time in the station with them, showing them how to sell merchandise, and John was a good, successful operator. He operated the station for about 18 months and I don't believe that his gallonage was ever below 18,000 gallons from the very first month that he started.

Q. And that was the result of your efforts and the Texas Company's efforts in training him to be a well-rounded dealer, wasn't it? (5094) A. Including the—

> Mr. Dias: I object to that. I don't know if you can trace that to the stocking of the station with TBA. The fact is he sold 18,000 or 20,000 gallons of gas, and we have to draw our own conclusions whether that was the result of the stocking. Maybe John was an excellent operator. Maybe he stayed long hours; I don't see how you can relate this to the stocking.
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> Hearing Examiner Kolb: I will overrule the objection.

By Mr. Barton:

Q. Go ahead. A. He did also an exceptionally good job in the selling of tires and accessories during the time he was in business. He gave it up after, I think, 18 or 20 months for some family difficulties which we do not know about. There is another party by the name of Frank Hardeson who operates this station but it was a case of a new operator that I think I started right, and we feel that it has helped him because we have gotten a good business out of it and even today the station is doing a good job of it.

Mr. Barton: Your witness.

Cross examination by Mr. Dias:

Q. Getting back to this John Wileygura, can you tell (5095) when that occurred? When did this situation occur that you are just describing? A. I believe that was three years ago.

Q. Three years ago? A. Yes.

Q. Now, would his be one of the new stations that you opened up that you mentioned earlier in your testimony? A. He was one of the new stations that we helped open, yes, sir.

Q. And I think you stated that there were about six or seven others that you helped open? A. Right.

Q. Were those others also Texas stations? A. Yes.

Q. And in each instance, or if it differs, you might tell me now,—in each instance were you notified by the Texas Company or by the Goodrich Company home office, that these new stations were being opened up? A. In two of these stations we received a letter informing us that they had obtained an operator and they were passing the information on to us and we should feel free to solicit them for their business.

Q. Is that the language they used in the letter, if you recall? A. As close as I remember, yes.

(5096) Q. That was two of the six or seven? A. Six, I believe. The one was a Conoco station.

Q. One was a Conoco station? A. Yes.

Q. When did you speak to these two now when you were notified, did you speak to them before they moved into their station? A. Yes; in fact, we contacted the one in the evening of the same day by telephone. We made a date with him to meet at our store and he came in, and we laid the program up and by "we", I mean, my partner, Michael F. Niemieco and myself, and we showed them what we had to offer.

Q. Did you close the transaction at a later date with them? A. The one we did, and the other one took two days. He said he was going to think it over.

Q. When the second one closed the transaction with you was that still before he opened the station? A. Yes.

Q. So that when he opened the station you had a supply of TBA in there? A. Yes, we set him up with initial stock.

Q. In each of those instances can you give me some idea of the value of the initial stock? (5097) A. I would say approximately $2200.

Q. $2200? A. Yes, sir; that included some equipment.

Q. Can you give us some idea of the number of tires that were included, and if the two differ, you might specify how they differ? A. Approximately 25 tires.

Q. And the number of batteries? A. Ten.

Q. And what type of accessories: Filters? A. Filters, polishes, fan belts, hoses, chemicals, flashlight batteries, and things like that.

Q. And if I understand correctly it was the Goodrich tire, Goodrich battery and Goodrich accessories, is that correct? A. Well, we purchased them from Goodrich; yes.

They might have been Simonized or DuPont or something like that, but they were purchased from Goodrich by us.

Q. Yes. Now, were either of these—that is true of both stations, is that correct? A. That is right.

Q. Now, about those other five, the other four,—4 Texaco and one Conoco, how did you find out or learn the (5098) identity of the new operator in each of those instances? A. In the three cases, if I remember correctly, we got them from some other Texaco operator or our salesman, who learned that; when we cover the routing we watch for new stations that are being built so that we can get in there and we try to locate and find out who the operator is going to be.

We got the information that way and tried to contact him at home. In the one case at one of our stations where we were supplying, they told us; in fact, I was calling on him that day, and he asked me if we could make an appointment with him, that they were putting in the new station and he knew the operator, and they had talked about it and he recommended to him that he buy from us because of our closeness to the location.

Q. Was this a Texaco operator you talked to? A. Yes.

Q. And he is the one who told you about the new Texaco operator? A. Yes.

Q. Did you, in that instance, negotiate with the new operator and also stock his new station with Goodrich TBA before he moved in? A. That is right, sir.

Q. And did his volume of purchases run about the same (5099) as the first two you mentioned? A. In his case not quite as high. You mean the initial stock, the opening?

Q. Yes. A. Yes; it will be approximately $2000 to $2400.

Q. Is that generally true with new stations, that that is about the amount? A. That has been our experience.

In order for him to have a balanced stock it requires about that much.

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(5100) Q. Now, does that account for all the new stations that you mentioned? A. I believe so, yes.

Q. As to those stations, did you finance any of those under your system that you mentioned before? A. Yes, we financed all but two.

Q. In that connection did Goodrich underwrite any of the loan? A. They have a program but we do not take advantage of it.

Q. Yours is separate and distinct? A. Yes.

Q. I believe you were asked what percentage of the accessories that were sold to Texaco stations, the Firestone accessories, and your answer was 50 percent, or right about that. (5101) A. Of our accessories; we handle Goodrich.

Q. And 30 percent to the Conoco accounts? A. That is right.

Q. How about tires; first as to the Texaco stations? A. I would say that we sell 75 percent of their tires, and I am speaking of the stations that we supply.

Q. Yes; that is the 30 to 35 Texaco stations? A. That is right.

Q. And how about the Conoco? A. The Conoco stations will run 50 percent.

Q. Now, as to the batteries, can you give us some idea of the percentage of the batteries that you sell to the Texaco stations? A. Possibly 80 percent.

Q. 80 percent? A. Yes.

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(5102) Q. And how long did you stay in that station? A. We were there until we opened our present location on July 1, 1953.

Q. Somewhere in between there you were just an employe, as I understand it; am I correct? A. No, from the time I went in to the service station, I went in as a partner.

Q. You were a partner from 1948 to 1953 when you discontinued and went into the wholesale business? A. Yes, but we did have a change in partnership. There were three of us and for health reasons Mr. Bolda moved to Florida, and since that time Niemiec and myself have been partners.

Q. Since 1948 when did you become a distributor? A. We were handling Fisk prior to my time of joining the other fellows. They had been in the distributing business.

Q. Now, commencing in 1948 when you became associated with them what were you distributing then? A. Myself?

Q. I mean this partnership? A. They were handling Fisk. I don't know how far back.

Q. Then when was it that you took on the Goodrich line in that partnership? (5103) A. In September of 1952.

Q. As I recall at that time you dropped the Fisk and took on Goodrich and you were also carrying Goodyear, is that correct? A. Yes.

Q. Do you recall when you took on the Goodrich line the number of Conoco stations that also took on the Goodrich line from you; in other words, purchased their Goodrich equipment from you? A. Sir, I don't know the exact number of stations.

Q. There were some, were there? A. Yes; there were some that we sold. We didn't get them immediately but we did sell them, and we still have some accounts today.

Q. And also at that time you were a Conoco operator, were you not? A. That is right.

Q. Do you recall in about that time the Conoco Oil Company meeting at which the taking on of the Goodrich line

was discussed? A. No, sir; not at a Conoco meeting. We had some of our own meetings which we sponsored with Conoco dealers asking them and explaining what we had to offer, but we had not been to a Conoco meeting.

Q. There was no Conoco or Goodrich representative there? (5104) A. There was a Goodrich man at the meeting.

Q. But no Conoco man? A. No.

Q. How about Texaco stations; did you commence selling some Texaco stations this line when you dropped Fisk and switched to Goodrich? A. Yes.

Q. Can you recall how many of those there were? A. I would say, in the first six months, we probably obtained ten.

Q. Ten? A. Yes.

Q. And do you recall the total number of Texaco stations you were selling to at the time? A. That is what I am referring to. We obtained ten but when we took on Goodrich we had three we were selling Fisk.

Q. They switched to Goodrich? A. Yes.

Q. Do you recall whether or not they were lessee stations? A. The two were not; one was.

Q. I see. Then, in a six months' period, you obtained about ten Texaco stations? A. That is right.

(5105) Q. How about the other seven? Are they lessees, do you recall? A. Yes; the majority of them I would say were. If you want a definite figure I probably could possibly go through, one at a time, and tell you which one it is.

Q. If you want a minute or two to think about it, and you can give us some more detail, do that. A. I believe there are five that were lessees, and two owned their own stations, or one owned his own station; the other one is leasing from the individual who owns the property.

Q. I see. Do you know how many Texaco stations there are in your territory right now? A. I do not.

Q. There are more than the 30 to 35 that you sell to? A. Yes, there are.

Q. And is the same true of Conoco; there are more Conoco stations than the 20 to 25 you sell to? A. There are.

Q. And on the Ohio Oil, there are more than the two or three you sell to? A. That is right.

Q. Are there other Goodrich distributors in your territory competing with you? A. Some that come from Chicago do call on accounts out (5106) our way.

Q. Do you know who they are? A. We have had Biltmore Tire out our way; Gardner & Kinsley; in fact, we have a couple accounts that Gardner & Kinsley sell along with us and have for years. We haven't been able to get their 100 percent business from them. Then there are the Goodrich company-owned stores in Hammond and in Gary, also.

Q. And they sell to some of these Texaco and Ohio Oil and Conoco oil stations, is that correct? A. They must. We have no knowledge to what extent, but they must.

Q. How about Warwick-Lamby? A. Yes.

Q. Is that Warwick-Rasmussen, Inc.? A. They are Warwick, Lamby and Rasmussen.

Q. They are still Goodrich distributors? A. To my knowledge, yes.

Q. Are they in your territory, too? A. We have not had them actively soliciting in our area.

Q. I believe you stated that the Goodrich territory man made calls with you, calling on these various Texaco stations and Conoco stations. Is that a man out of the Goodrich home office; is that what you had reference to? A. No, our salesmen. We call them territory managers (5107)

but it is our Goodrich representative who calls on us the same as I would be if I would be calling on the gasoline service station.

Q. But he is employed by the Goodrich Company? A. Yes.

Q. And you have that type of assistance from Goodrich; that type of problem; they would go around with you or your salesman making these calls? A. He spends one day each week with us and whatever we need to take care of, he is there for that purpose.

Q. Does he visit only Texaco stations or Conoco stations? A. No, sir; the entire field.

Q. Do you occasionally have Texaco and/or Conoco personnel make the rounds with you or your salesmen? A. We haven't had— Oh, we have had in the years, maybe one, or two or three occasions that they have gone with our salesmen to call.

Q. Not more frequently than that? A. No, not where we have gone together. Usually it has been in our area, if the salesman runs into a problem he notifies us and we go out and try to take care of it ourselves.

Q. When you stated that Goodrich first came out with a tubeless tire, I wondered: Was Goodrich the first to come (5108) on the market with a tubeless tire? A. That is right. Goodrich advertised: "First in Tubeless" for several years.

Q. Have you had much difficulty with those tubeless tires? A. If they are properly mounted and serviced, I would say that we have less problems with them than with the tube-type tire. The problem that has been with them has been in service. In other words, they haven't been properly mounted; the valve stems will leak, or the wheels have not been cleaned, — there is rust and debris where the beads come on, and there has been some trouble with that.

Q. And there has been quite a bit of trouble, has there not? A. There has been some, yes.

Q. You mentioned that ten of your 100 service stations, am I right in that, — that you sell to about 100 service stations? A. That is right.

Q. About ten of them state Woodstock-40 tires; how many of those ten would be Texaco stations? A. Seven.

Q. And Conoco? A. The other three.

(5109) Q. In connection with wet vs. dry batteries, assuming that the distributor of wet batteries kept the stock fresh, would the dry battery have any advantage over the wet battery? A. In the handling of it; the storage problem is less with the dry charge than the wet charge battery.

Q. Is the dry battery smaller in size? A. No.

Q. It is the same size? A. It is lighter, because the acid, which is required from four quarts on up, is not in there, so it is approximately 8 to 9 pounds lighter, because of the acid.

Q. Because of the performance of the battery, and assuming, as I say, that the battery distributor kept this stock fresh, would there be any choice other than as to this wet problem, that you mentioned, between the two? A. That is right— People have through national advertising got accustomed with the battery which is advertised as a dry charge battery. Actually, in performance, if he could get the battery without the storage—but if you take into consideration as we handled Fisk batteries, they used to go to the Chicago warehouse from the factory, and they were stored there until they were ordered, and we got them and kept them on our shelf until the dealers ordered them, and whatever time the dealer kept them until (5110) he sold them to the consumer,—there were three storage problems in there.

Q. Suppose you don't have those three intermediate steps; suppose you have the battery salesman selling directly to the distributor, and the distributor willing to do what is needed to keep the wet batteries fresh, would there be any preference over the wet of the dry battery? A. I don't think there would be.

Q. You mentioned, in connection with tire adjustments, that your adjustments amount to 3 percent against your purchases. A. I believe that is right.

Q. Actually it isn't until you sell the tire that you actually have trouble? A. That is right.

Q. What is your percentage of adjustments in connection with your sales? A. It would be smaller in connection with sales. Naturally we make a profit on our purchases so our adjustment problems should be less basing it on our sales on our retail level.

Q. I don't follow you. A. May I explain it this way?

Q. Yes. (5111) A. If we purchase $10,000 worth of tires a month, then our adjustment of 3 percent should be 60, but for $1000 worth of tires we wouldn't sell them at the same price but at $1200 or $1300, whatever the case may be, so if our adjustment is $60, the adjustment would be only about 2 percent.

Q. Will you answer as to the number of units, that do not come back? A. I can't answer that. I can tell you how many tires we adjusted each month. I can't in purchases; I can't tell the number we purchase each month. I don't have that. We adjust 30 tires a month.

Q. In your travels through your sales territory and in visiting at these various Texaco stations have you noticed Firestone tires in some of those Texaco stations? A. We haven't had too many— Are you speaking of the ones we supply or others?

Q. No, I am thinking more of those stations you are hoping to supply. A. Yes, there are.

Q. And as to the stations that you do supply are there any Firestones in those stations? A. They buy some but they don't set them out on display.

Q. As to the stuff you are trying to sell, the Texaco stations you are trying to sell, do you recall how many (5112) of those stations you have seen the Firestone tire in? A. I think probably most all of them have some evidence of Firestone on display.

Q. Tires? A. Yes.

Q. Would that go for batteries? A. Not as fully as for tires.

Q. How about accessories? A. There again, being national— We advertise the merchandise and accessories; it is hard to determine.

Q. Would there be Firestone among those accessories? A. There have been, yes.

Q. How long have you been a designated supply source for Goodrich supplies? Has it been ever since you have been handling the Goodrich line? A. I assume that. We were signed up as associate dealers or distributors.

Q. Do you have to make any report to the Goodrich Company as to the volume of sales to Texaco and Conoco stations? A. We report those sales each month.

Q. To each of the Texaco stations and each of the Conoco stations, is that correct? A. That is correct.

Q. How much time does that take you to prepare those reports? (5113) A. We have a system where we have a file and we have filed each invoice in its individual file and in order to go through the month's supply, I would say it takes two hours.

Q. And you do that once a month, do you? A. Yes.

Q. For all the stations that you sell to Texaco and Conoco? A. Yes.

Q. And the same is true of Ohio Oil stations? A. Any stations that we sell.

Q. You mean any of those stations with which Goodrich has this commission arrangement, is that right? A. That is right.

Q. To whom do you send those reports? A. We send those in to Columbus, Ohio.

Q. Are you compensated in any way for the time it takes you to make up those reports? A. No, sir.

Q. Does your firm have any sort of a direct arrangement with Texaco or the Texaco stations other than as a Goodrich distributor? A. No, sir, we have no arrangement whatsoever with any oil company. Since we have severed our connection (5114) with Conoco we have no relation.

Mr. Dias: I have nothing further.

Redirect examination by Mr. Barton:

Q. You adjust tires whether or not they have been purchased, from you, do you not? A. That is right, under the adjustment program any B. F. Goodrich tires which bear its name and serial number which indicates it is not a factory second, if it is adjustable we will adjust, and the same is true when somebody may purchase a tire in some other part of the country, or one of our customers might be in some other part of the country, and he would have that adjustment privilege.

Q. And you feel free to solicit any Texas station whether or not you get a letter from Texas, don't you? A. That is right, regardless of who it may be; not only Texas but others, also, because that is how we get out business is by solicitation.

Q. Continuous solicitation? A. That is right.

Q. Like calling on the telephone? A. We have never had an account that we obtained by calling them on the phone; we do not make it a practice to do that.

Q. Have other tire companies brought out tubeless tires (5115) since they were introduced by B. F. Goodrich? A. I believe every tire manufacturer today has a tubeless tire.

Q. And they actively promote their tubeless tires, do they not? A. That is right, sir.

Q. How often does the B. F. Goodrich territory manager call on the Texaco and Conoco stations with you or your own salesman? A. As often as we feel is necessary. We have no set time or number of calls for him to make.

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CLAYTON JACKMAN, called as a witness on behalf of the Respondents, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Barton:

Q. State your name and address. A. Clayton Jackman; 1512 Northwest Avenue, Jackson, Michigan.

Q. What is your business? (5116) A. B. F. Goodrich tires, batteries and accessories.

Q. What is the name of your business? A. Jackman Tire Service.

Q. Where is it located? A. 1512 Northwest Avenue, Jackson, Michigan.

Q. What is the area in which you do business? A. The city of Jackson, and Jackson County.

Q. Michigan? A. Michigan.

Q. What is the population of that area? A. Around 75,000, I believe it is.

Q. And in the county as a whole? A. That is in the county.

Q. Pardon? A. That is car registration for the city or the county.

Q. How long have you been in this business? A. Since a year ago, in May.

Q. And what did you do before that time? A. I operated a Gulf gas station, of Gulf Refining Company.

Q. How long were you in that business? A. 14 years.

Q. How did you happen to give up the Gulf station and go in the business as a B. F. Goodrich distributor? A. I thought there was more potential in the tire business, (5117) more chance for expansion, than in the service station business.

Q. Were you engaged in selling TBA while you were in the service station? A. Yes.

Q. What has been your experience there? A. Very good. While I was in the service station operation I sold tires and did a nice job.

Q. Pardon? A. I sold tires when I was in the service station operation and did a beautiful job.

Q. And who are the customers of Jackman Tire Service? A. We are small, in the wholesale end; we have approximately 22 dealers. I call on Ohio Oil dealers, Marathon, and Standard and Sinclair.

Q. Sunoco? A. Yes; on Sunoco and Mobile, and Pure Oil.

Q. How about Gulf dealers; do you call on them? A. Yes; we have some Gulf dealers.

Q. Do you have some auto dealers also? A. New car dealers, and also used car dealers.

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(5119) Q. How did you obtain the Marathon accounts? What was the basis upon which you obtained them? A. When I went with Goodrich, just a little over a year ago, they were being supplied through the B. F. Goodrich territory salesmen out of Detroit, and when I took on Good-

rich, as a wholesaler, he offered those accounts to me, providing the dealer would go along with my program.

Q. Yours was a more convenient supply point than at Detroit? A. A more convenient supply point than Detroit, yes.

Q. Are you familiar with the policy of the Ohio Oil Company selling Marathon with respect to their TBA program and the policy which they have with regard to the independence of their dealers? A. Well, yes, to some extent.

Q. And what is the basis for that understanding; will you explain to his Honor? A. For example, back in January of this year they had put in a new dealer.

Q. A new station? A. No; the station wasn't a new station. It was just a change of operators, and they put him in on Monday, which was my calling day there, and in the afternoon I made my (5120) regular call and at that time I met the new operators along with the Ohio Oil Company representative who was Mr. Beatty and he introduced these operators to me, and through our conversation these partners had previously been salesmen from another supply point in town here; they made the remark they didn't feel that they could do business with me.

Mr. Beatty, the Ohio Oil Company representative informed them that they did not have to do business with me, but he thought if they would listen to what I had and some of the help that we could assist him with, that perhaps they would be interested as time went on. So I called on those fellows for approximately four weeks before I got an order out of them, and since then there have been good relationships between us.

Q. In other words, you finally sold them? A. I finally sold them, yes.

Q. Now, do you notice in the course of going around to the Marathon accounts, competitive items which you do not sell them displayed in their stations? A. Oh, very much so.

Q. What are some of the competitive items? A. Delco batteries, Gates fan belts, various polishes, other makes, and radiator hose such as Thermoid.

Q. And it is openly displayed in their stations? (5121) A. Yes, sir.

Q. And have any of the dealers ever told you that there was pressure put on them to hide those or not to deal in those non-sponsored items? A. No, sir.

Q. Now, in connection with your selling to Ohio stations, do the operators of those stations obtain any sales assistance, merchandising assistance from the Ohio Oil Company? A. Yes, they do.

Q. And what is the nature of that assistance? A. In their gain advertising, co-op advertising, it is called window display, such as merchandising the products of their line, and also of the B. F. Goodrich line.

Q. How about in connection with the training of the dealers? A. Well, they have— Well, for an example, these new dealers we were just talking about that hadn't had any service station experience other than calling on service stations as salesmen, so the Ohio Oil Company sent one of their trained men in to train those boys. Now he was there for, I believe, three or four weeks training those boys for service station operations, pointing out to them how to sell, how to merchandise, how to get more business.

Q. What is the result, if any, in the sales which the (5122) Marathon stations make, as compared with the other oil companies whom you sell who do not have those programs? A. Of the dealers, again, who I call on, the Marathon dealers are more prosperous; they seem to get more business which, I believe, being TBA-minded creates

neatness in the service station; they look like they are in business, as you drive by. I believe most of them are becoming more healthy than some of the service stations which have no help from their own company.

Mr. Barton: Your witness.

Cross-examination by Mr. Dias:

Q. I am assuming that Marathon is the trade name of Ohio Oil Company; is that true? A. That is correct.

Q. You also mentioned something about cooperative advertising. Will you fully explain that in connection with the assistance from Ohio Oil Company? A. They have the co-op gain advertising in which they have eight mailing pieces which go out throughout the year, advertising their merchandise, — tires and batteries and what have you, and in the winter months they would advertise anti-freeze or, a lot of times, we also have the traffic builders, which, if the dealer is handling that traffic builder, they advertise that.

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(5128) LOY SPRADLING was thereupon called as a witness for the Respondent and, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Do you want to give your name and your home address to the stenographer? A. Loy Spradling, 812 - 12th Avenue, North, Buhl, Idaho.

Q. What is your business? A. I am a service station operator.

Q. What sort of gasoline do you sell? A. Texaco.

Q. And do you lease your station? A. Yes, sir.

Q. From whom? A. From the Texas Company.

Q. That is one of these leases that renews itself each year unless it is cancelled at the end of any year? A. Yes, sir.

Q. For how long have you had a lease like that? (5129) A. Eight years.

Q. At the same location? A. At the same location. I opened the station there.

Q. Was it a new station? A. A new station, yes.

Q. How did it compare with the other service stations in your neighborhood? A. It was the nicest station in town; the newest; modern.

Q. What is the gallonage of your station now? A. About 28,000.

Q. Do you handle TBA? A. Yes, sir.

Q. Will you tell us why you handle it? A. Well, to make a good profit. Also helps the sales of my gasoline and oil. And it is a one-stop service, in other words.

Q. It goes both ways: the gasoline helps your TBA, is that right? A. Yes.

Q. And your TBA helps your gasoline, is that right? A. Yes.

Q. Now, since you have been a lessee dealer at this location, have you had any knowledge of the Texas Company's TBA policy? (5130) A. Yes.

Q. What is your understanding as to what it has been? A. Well, they sponsor B. F. Goodrich and Firestone, and suggest it to you—to have it; otherwise you are free to handle whatever you want to. Get it, your TBA, any place.

Q. And it has been your understanding that you could get your TBA any place? A. Yes.

Q. In fact, have you done so? A. Yes, sir.

Q. Now, before you obtained this new station, and before the signed lease was delivered to you, was it known to

the representatives of the Texas Company what kind of TBA you were going to handle? A. Yes.

Q. And what kind of TBA were you going to handle? A. U. S. Rubber—U. S. Royals.

Q. Tires and batteries? A. Tires and batteries.

Q. Did you, in fact, open your station with U. S. Royal tires and batteries? A. I did.

Q. Have you continued to handle them? A. Yes, sir.

(5131) Q. Now, tell me from where do you get your supply of U. S. Royals and batteries? A. I get them direct from Salt Lake City, 255 miles.

Q. That is 255 miles away? A. Yes.

Q. Is there a Firestone supply point closer to you? A. Yes, sir.

Q. Where is the Firestone supply point? A. It is around 17 miles from me. A truck comes to my door every day.

Q. The truck with the Firestone tires comes to your door every day? A. Yes. They deliver my gas. They also supply tires.

Q. But your main product is U. S. A. Yes.

Q. Your station is identified with U. S. signs and decals, is it not? A. Yes, sir. Windows got decals on them. U. S. Royal signs outside.

Q. About how many U. S. tires do you stock? A. Well, around 200, 250.

Q. Is that 200 to 250? A. Yes, sir.

Q. Do you stock any Firestone tires at all? A. A few.

(5132) Q. How many? A. Approximately 20 tires.

Q. Will you state why you stock any of those Firestone tires? A. We have people that demand them. Tourists. And then a few local that will demand Firestone.

Q. Do you stock those Firestone tires because you are afraid the Texas Company will cancel your lease if you don't have them? A. No, sir.

Q. That has nothing to do with it? A. No.

Q. You handle those tires for your own business reasons, is that right? A. That's correct, yes.

Q. Now, you said you had some U. S. signs and decals. Do you have a large neon sign? A. I do have. Right by the banjo sign outside.

Q. By "banjo sign" you mean—? A. The Texaco sign.

Q. The one with the big "Texaco" star on it? A. Yes.

Q. And right next to it is this big Texaco—I mean the U. S. neon sign? A. Yes, sir.

(5133) Q. Now, how about your TBA, other than tires and batteries? Will you tell me from whom you buy your accessories? A. Well, I buy from the Motor Mercantile Company in Buhl, and Auto Parts Service in Buhl, and Bowes, that travels around from door to door, and several others. I buy from everybody.

Q. Are any of those sources of supply that you have mentioned Firestone supply points? A. No, sir.

Q. Or a Goodrich supply point? A. No, sir.

Q. Has anyone from the Texas Company ever suggested to you that your lease would be cancelled if you did not stop this practice of handling the U. S. and all these other accessories? A. No, sir.

Q. Have they ever suggested to you that they would treat you badly in any other way? A. Not any way.

Q. That they would not pave your driveway? A. No, sir.

Q. Or paint your station? A. No, sir.

Mr. Lorenzen: I ask to have these two photo-
(5134) graphs marked for identification as Exhibit 57-A and Exhibit 57-B.

(The papers referred to were marked Respondent's Exhibits 57-A and 57-B for identification.)

By Mr. Lorenzen:

Q. Do Exhibits 57-A and 57-B respectively show your outdoor U. S. Tire rack with the U. S. Royal Tire signs, and the showroom of your station with the U. S. decals in the windows? A. Yes, sir.

Q. And is that the way your station has looked for a substantial length of time? A. Yes, sir.

Q. Was anything moved away when those pictures were taken? A. Not a thing.

Q. Do you have a picture of this neon sign in front of your station? A. No, sir; I haven't a picture of it.

Q. How long has that neon sign been there? A. It has been there about two years.

Mr. Lorenzen: I offer these pictures in evidence.

Mr. Dias: No objection.

Hearing Examiner Kolb: The photographs will be received in evidence as Respondent's Exhibits 57-A & -B.

(5135) (The papers referred to, heretofore marked for identification Respondent's Exhibits 57-A and 57-B were received in evidence.)

By Mr. Lorenzen:

Q. Are you listed in the Yellow Pages of your local telephone directory? A. Yes, sir.

Q. Under what product are you listed? A. Under U. S. Rubber Company. They pay half of that in there, too, for me.

Q. They what? A. They pay half for the advertisement in the Yellow Pages.

Q. U. S. pays half and you pay half? A. Yes.

Q. Needless to say, all of your TBA is openly displayed, is that right? A. Yes, sir.

Q. A Texas Company representative never told you to hide it. A. No.

Q. Or threatened you if you did not discontinue displaying this U. S. product. A. No, sir.

Q. Do you find that the Texas Company is of any assistance to you in the merchandising of your TBA? (5136) A. Yes. Very much.

Q. What do they do for you? A. Well, they are always willing to help us display stuff, show us how to display it, and we get the Texaco Dealer Magazine, which I don't think you can beat any place for ideas. And then our dealer meetings that I attend all the time.

Q. Do you get any tips at that meeting about selling TBA? A. Yes, I do.

Q. For how long have you been attending those dealer meetings? A. For eight years.

Q. During those eight years has any representative of the Texas Company ever made any threat to you or threats generally to the people at those meetings which would indicate that the dealers had to handle the Firestone or Goodrich line or some Firestone and Goodrich products or else their leases might be cancelled? A. No, sir; not ever.

Q. Or that they would be treated badly in any other way? A. No, sir.

Q. In the course of those meetings do you talk to other dealers? A. Yes.

(5137) Q. Are there sort of social gatherings after the formal part of the meeting is over? A. Yes.

Q. In the course of those meetings, have you had occasion to become acquainted with the Texaco dealers in your neighborhood? A. Yes.

Q. Have any of those dealers at any time said to you or indicated to you that the Texas Company had threatened them in any way in order to require them to buy the Firestone or Goodrich line of TBA? A. No, they haven't.

Q. By the way, your division office is Butte, is that right? A. Yes. And Los Angeles is head office for that district out there.

Q. So you are in the Butte Division and in that Pacific Coast territory, is that it? A. Yes.

* * *

Cross-examination by Mr. Dias:

* * *

(5138) Q. What is out on the coast? A. The Pacific—

Q. The territory office? A. Yes.

Q. How far are you from Butte? A. Oh, let's see. I don't know for sure. Probably four or five hundred miles.

Q. Four or five hundred miles? A. Someplace like that.

Q. How close are you to Los Angeles? A. About eight hundred.

Q. Are you anywhere near Great Falls? A. About three hundred miles from Great Falls. Well, no; it is a little further than that.

Q. Aren't you sort of a distributor for U. S. Royal? A. I am a franchised dealer.

Q. Do you sell to other stations? A. I can. I don't. I haven't done any.

Q. You do not solicit business of other stations. A. No.

Q. Do you have any idea of how many Texaco stations are in town? A. One.

Q. Sir? A. One.

(5139) Q. Are you it? A. I'm it.

* * *

FRED PRYOR was thereupon called as a witness for Respondent and, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Give your full name and your home address to the reporter, please? A. Fred Pryor, Whitehall, Montana.

Q. What is your business, Mr. Pryor? A. I am a Texaco dealer. Run the station.

Q. Where is your station located? A. Whitehall, Montana. Legion and Main. Isn't that right?

Q. I think so. You said Legion. It's in Whitehall Montana, isn't it? A. Whitehall, Montana, yes. It's a small town of only 1200.

Mr. Dias: I am confused. Are you in the town of Legion or Whitehall?

(5140) Mr. Lorenzen: Legion is the name of the street, Mr. Dias.

By Mr. Lorenzen:

Q. For how long have you been a Texaco dealer? A. It will be ten years this Fall.

Q. Now, at this particular location how long have you been? A. Three years.

Q. Before that—incidentally, that is a leased station, is it not? A. Yes, it is.

Q. And you lease from the Texas Company. A. That's right.

Q. And you have one of these leases which renews itself each year unless it is cancelled at the end of the year. A. Each year.

Q. Is that correct? A. Yes.

Q. Before that you were in another leased station. A. That's right.

Q. Is the station you are in now a better station? A. Well, it is a new station. It is a brand new station. And really a nice one.

Q. A really nice station? A. A real nice station. Best looking one in town.

Q. (5141) It is better than the one you had before. A. Oh, yes; by far.

Q. Now, what sort of tires and batteries did you handle at that old station before you get this new one? A. Well, at the old station I started out with Lee and Delco. Lee Tire and Delco battery.

Q. And did you continue handling the Lee and Delco products at the old station? A. Yes, sir.

Q. Right up to the time you got the new one? A. That's right.

Q. And in spite of that, the Texas Company leased you the new station, is that right? A. Yes.

Q. Did the Texas Company representative know what kind of tires and batteries you proposed to handle at the new station when you signed the lease? A. He was there when I opened the station, and helped me open it up, and knew what I was putting in the new station.

Q. He knew that beforehand? A. Yes, sir; that's right.

Q. What did you put in the new station? A. At the time I opened up the station, I put in Lee Tires and Delco batteries.

(5142) Q. Now, tell us why you handle TBA at all in this station of yours. A. Well, that is to boost the gasoline sales and vice versa.

Q. If you figured they help each other in sales—well, did you figure that way? A. That's right.

Q. And you make money on it. You make money on the TBA. A. Yes, sir.

Q. During the time you have been a Texas dealer, what has been your understanding as to the Texas Company's

TBA policy and its program? A. Well, they might suggest you to sell Firestone and Goodrich, but there is nothing forced on you. You use your own judgment.

Q. And you felt free throughout the time you have been with the company to buy whatever TBA you want? A. That's right.

Q. And you have done so. A. I did so.

Q. Now, from whom do you buy your TBA supplies? A. Well, there are several salesmen on the road, and I buy from several salesmen.

Mr. Dias: I am sorry, I didn't hear you.

The Witness: I buy from several salesmen.

(5143) There are all salesmen on the road that sell part of the ways on towns there. From Montana Hardware I buy my tires.

Q. Where is that located, by the way? A. That is in Butte.

Q. In Butte? A. Yes.

Q. About how far away? A. Thirty-two miles to be exact.

Q. Is that close as you figure distance out there? A. That's close. That's real close.

Q. And how about the Firestone supply point? Is that located in the same town? A. That is the same town where the Montana Hardware Company is, yes.

Q. Tell us the name of some more people from whom you buy TBA? A. Well, I get my Delco batteries from the Texaco consignee there that runs the bulk plant.

Q. You mean the Texaco consignee handles Delco batteries? A. Yes.

Q. And you buy from him. A. That's right. He is right next door to me.

Q. What kind of tires does he handle? A. He handles Lee Tires, or handled them when I opened (5144) up the station, and I bought his stock; and he doesn't handle any tires now.

Q. He handles none at all now. A. Not now.

Q. Tell us some other people from whom you buy? A. Well, in Bozeman I get from Montana Motors and H. O. Motors. H. O. is in Butte. Then there are several others. I try to help them all out; they are just as hard up as I am.

Q. Do you buy from all of the suppliers? A. Yes.

Q. But I guess you leave the Firestone— A. I don't buy nothing from Firestone. They never call on me even. They go by the door; they got a truck on the road, but I don't know why he doesn't stop.

Q. You discouraged him, did you, when he tried to sell you some years ago? A. I didn't discourage him.

Q. You just didn't buy from him. A. I didn't buy from him, no.

Q. He hasn't called on you much since that time. A. No. I haven't had no trouble with the man, though.

Q. But he does not call on you. A. He doesn't call on me.

Q. What kind of tires do you handle now? (5145) A. Mansfield.

Q. Are most of your customers local people whom you know? A. Most of them are ranch people around there. Then there are tourists.

Q. You are talking a little too softly for the reporter and for us to hear you, sir. A. It is all country drawing around the neighborhood.

Q. That is, your customers you draw from people you know around your neighborhood, is that it? A. Yes, that's right.

Q. Do you find that they will accept your recommendation as to the type of tire you sell? A. They believe in me.

Q. And anything you recommend, they will buy. A. That's right.

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(5146) *By Mr. Lorenzen:*

Q. It is not as well-advertised as Firestone or Goodrich, however. A. I don't know whether it is here, but it is there.

Q. It is there. A. That's right.

Q. It is a well-known line up in your community. A. Yes.

Q. And it has good acceptance. A. Good quality.

Q. Good quality and good acceptance. A. Right.

Q. And you find you can sell it. A. At a good profit. Yes, I can. I wouldn't handle it if I couldn't.

Q. And the same goes for the batteries you handle: you can sell those and at a good profit, is that right? A. That's right.

Q. And that is the basis for the choice of the type of TBA you handle. (5147) A. That's right.

Q. You do not handle any Firestone or any Goodrich at all, do you. A. None whatever.

Q. About how many tires do you stock? A. Oh, I would say about between 35 and 40, possibly.

Q. Now, of all of the tires that you sell, about what per cent do you think you sell out of stock and how many do you have to sell on a basis where you have to pick up the tires or get delivery of them. A. About 75 to 80 per cent I have to pick up.

Q. Has anyone from the Texas Company ever told you that they might cancel your lease or otherwise treat you badly if you did not discontinue this line of tires and batteries and accessories? A. No, absolutely not.

Q. Do you find that your accessories have a faster turnover than your tires, that is, the stock you have in there turns over faster than in tires, the accessories turning over faster than the tires? A. Well, I believe we make a more of a profit off the accessories. They turn over more, possibly.

Q. Do you stock any batteries other than dry charge? A. No, sir.

Q. Do you find your customers have any preference, (5148) one way or the other? A. Well, if you explain it to them, they would rather have the dry charge, because the wet sits around for a while and deteriorates. If it sits around for a year, it is a year old.

Q. Has the Mansfield Tire Company ever furnished you with any decals to put on your windows? A. No, they haven't.

Q. Have they ever offered you any? A. No.

Q. So you don't have any tire decals on your station. A. No tire decals. I have a display rack I pull out in front of the station each morning.

Q. And that is identified as "Mansfield"? A. That's right.

Q. And do you have a sign on your station which shows a Delco Battery? A. I have.

Q. And is that on the front of the station? A. That is up on the front of the station, up on the windows.

Mr. Lorenzen: I ask to have this picture marked for identification as Exhibit 58.

Hearing Examiner Kolb: It may be so marked.

(5149) (The paper referred to was marked Respondent's Exhibit No. 58 for identification.)

Mr. Dias: I have no objection.

By Mr. Lorenzen:

Q. Does Exhibit 58 show your station with the Delco Battery sign over the door? A. That is right.

Mr. Lorenzen: I offer it in evidence. I understand there is no objection.

Hearing Examiner Kolb: It will be received in evidence as Respondent Exhibit 58.

(The paper referred to, heretofore marked for identification Respondent Exhibit 58, was received in evidence.)

By Mr. Lorenzen:

Q. How many years did you say you had been a Texaco dealer? A. Ten years this Fall.

Q. Have you attended dealer meetings? A. I have.

Q. Have you obtained any help from the Texas Company, at dealers meetings or in magazines, in connection with the sale of your TBA? A. Yes, sir, I have.

Q. What sort of help have you had? (5150) A. Well, in displays and through that magazine. It is a real nice magazine; and at the meetings. We have nice meetings and get-togethers.

Q. You have get-togethers after the meetings? A. Yes, sir.

Q. And do you talk to the dealers in your neighborhood who attend those meetings? A. Sure do. Go downtown and have a drink with them.

Q. In the course of those meetings, has any representative of the Texas Company ever threatened you in any way or threatened the dealers generally with lease cancellations or other bad treatment if they did not handle the Firestone or Goodrich TBA? A. I have never been threatened by the Texas Company in any way.

Q. Has any such threat been made at any meeting? A. No, sir.

Q. Has any of the dealers with whom you have gotten acquainted had any complaint to make to you that any threats were made to them by the Texas Company with reference to their sales of TBA? A. No, sir.

Q. Nothing like that has ever happened. A. No, sir.

* * *

(5151) *Cross-examination by Mr. Dias:*

Q. Did you give us your gallonage, Mr. Pryor? A. Well, at the present I pump about 800 gallons a week.

Q. Is that 800 a week? A. Right now. During the tourist season.

Q. That is the height of your season, is that right? A. That's right.

Q. What is it during the slow time? A. During the winter I have put in days where I didn't pump over 200.

Q. That is per week. A. That's right.

Q. And what is the population of your town? A. Around 1200.

Q. Are there quite a few Texaco stations in that town? A. There is two.

Q. And that is you and one other? A. Two besides mine.

Q. And the three of you get together at these dealer meetings, is that the situation? A. That's right.

Q. What are the other two Texaco stations handling, if anything, in the TBA line? A. They handle TBA, but I don't know what they handle. (5152) They have to take care of their business; I have trouble enough with mine.

Q. You are sort of the foreign legion out there in the Texaco setup, aren't you. A. That's right.

Q. Did you say that the nearest town was Butte? Which was 32 miles away? A. Yes.

Q. After you leave the town of Whitehall, where is the next Texaco station? Is it Butte? A. I believe there is a Texaco pump at 19 miles.

Q. Nineteen miles towards Butte? A. Yes.

Q. How about going in the other direction? A. That would be 35 miles, at Three Forks.

Q. Are there any other ways out of town, east or west or north or south, if I have missed them? A. North is Boulder.

Q. How many miles away is that? A. That is about thirty-five miles.

Q. And is that the nearest Texaco station in that direction, sir? A. That's right. There isn't any other direction. Well, there is—

Q. But you don't go that way. A. That's right.

(5153) Q. You have been in that business for ten years? A. That's right.

Q. What about the first seven years? You mentioned these last three years; what was the situation during the first seven years. A. The first seven years I leased the station from the Texas Company. Let's see. That was two blocks up the street from where I am now.

Q. I have—well, that is a different station. A. Yes, sir.

Q. What sort of business did you operate there? A. Texaco. I was working for the Texas Company.

Q. And you carry Lee Tires, or carried Lee Tires at that time? A. That's right.

Q. What was your gallonage in that station? A. Well, I kind of had to build that station up from the ground. It was very small.

Q. Your gallonage, then, I take it, was less than the gallonage here. A. Yes. I increased it as I went along,

and I was pretty well-liked and known. I worked for Shell and I brought some of the Trade from Shell up there.

Q. Do you have any other kind of business in addition to this gas station? (5154) A. No.

Q. How many stations of all kinds are in town? A. Well, there is some— "76" is one.

Q. Phillips "66"? A. There is two Standards, a Chevron and two Conocos.

Q. Do you know whether or not any of those stations carry Firestone or Goodrich—any of them? A. To my knowledge, no. I wouldn't say that.

Q. I am talking about all the stations? A. That's right. I don't know.

Q. Is there a Goodrich store in that town? A. No, sir.

* * *

(5155) CLEATUS ROGERS was thereupon called as a witness for Respondent and, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Would you give your full name and home address to the reporter, please? A. Cleatus Rogers. Alamosa, Colorado.

Q. What is your business? A. I am a Texaco dealer.

(5156) Q. Do you lease a station from the Texas Company? A. Yes.

Q. And what is the location of that station? A. It is at 4th Street and Denver Avenue in Alamosa.

Q. How long have you been there? A. Seven years.

Q. Before Mr. Dias gets at you, maybe you can discuss with me this gallonage of yours. What is your gallonage per month at that station? A. It would run approximately 20,000 a month.

Q. Do you handle any TBA? A. Yes.

Q. Will you tell us the reasons for handling it? A. Well, it helps the gasoline sales, and gasoline sales help TBA sales.

Q. Do you make money on the TBA? A. Yes.

Q. It is a profitable item in itself. A. It is.

Q. During the time that you have had that station, have you had an understanding as to the Texas Company's TBA policy and its TBA program? A. Yes.

Q. What has been that understanding? A. Well, they recommend selling either Goodrich or (5157) Firestone TBA. However, I buy my TBA in several different locations—from several different jobbers.

Q. Has it been your understanding that you were at liberty to buy from wherever you saw fit to buy? A. Yes.

Q. And didn't you understand that that is part of the Texas policy? A. That's right.

Q. Has anyone from the Texas Company ever told you that if you did not handle all or some Goodrich or Firestone TBA that they would cancel your lease or otherwise treat you badly? A. No.

Q. Nothing like that has ever happened, is that right? A. That's right.

Q. Would you tell me from whom you buy your TBA? A. Haynie Merchandise Mart, Motor Accessory and Parts Company, Bowes Distributors, Holland Auto Parts, and several minor jobbers.

Q. You buy from the Gates Rubber Company, too. A. Yes.

Q. And where do you have your recapping done? A. At the present time I have it done with Red's Recapping in Salida, Colorado.

Q. That is not a Firestone or Goodrich supply point, (5158) is it? A. No; no connection.

Q. Among other things, you handle the Gates fan belts and Gates radiator hoses, is that right? A. Yes.

Q. In fact, substantially all of your accessories come from some source other than Firestone or Goodrich, do they not? A. That's right.

Q. What kind of batteries do you stock? A. At the present time I have Auto-Lite and Goodrich.

Q. And what sort of Tires do you stock? A. Gates and Goodrich.

Q. How many Gates tires do you have in stock? A. Oh, approximately six. Maybe seven.

Q. And how many Goodrich tires do you have in stock? A. I would say around four.

Q. Out of all your tire sales, about how many are made out of stock and how much is made on a pickup basis? A. I would say eighty to ninety percent is made on a pickup basis.

Q. You get the order for a tire, and then you get it and put it on, is that it? A. Yes. Our Local Gates distributor is right nearby.

Q. And do you find that the Gates tires has good (5159) acceptance up there where you are? A. Yes.

Q. Now, tell us why you handle the Goodrich tires and batteries. A. Well, originally we started out, or I started out with Goodrich exclusively. And in doing so, the consignee put in a consignment of tires and batteries. Consequently, the consignment cost me nothing until I replace the consignment.

Q. You mean all the stock that you carry is something that you do not have to pay for. A. That's right.

Q. And you do not have to pay for any of that until you sell it. A. There is no money tied up. None of my money is tied up.

Q. None of your money is tied up in inventory. A. That's right.

Q. Do you find that helpful to you? A. Very much.

Q. Do you think that is a good business reason for handling some Goodrich? A. Yes.

Q. Now this consignment arrangement has continued, has it, even though you also have now the Gates and (5160) Auto-Lite line. A. Oh yes.

Q. All the Goodrich which you have in your store is still on a consignment basis, is that right? A. Yes.

Q. Do you handle these Goodrich Tires because you are afraid that the Texas Company will cancel your lease if you do not continue to handle them? A. No.

Q. Now, do you display all of your tires and batteries and accessories? A. I don't display all of them. Part of them are on the rack in back.

Q. Do you display all you have space for? A. That's right.

Q. And that includes all the accessories you buy, you say, from a place other than Firestone and Goodrich, is that right? A. That's right.

Q. And do you display the Gates Tires? A. Yes.

Q. And you have a big Gates banner over the front door of your station, do you? A. Yes.

Q. As well as the Goodrich decals for the Goodrich (5161) tires you handle. A. Yes.

Mr. Lorenzen: I ask to have this photograph marked for identification as Exhibit 59.

Hearing Examiner Kolb: It may be so marked.

(The paper referred to was marked Respondent's Exhibit 59 for identification.)

By Mr. Lorenzen:

Q. Is Exhibit 59 a fair picture of the front of your station? A. Yes.

Q. And what is that banner in the middle, over the front door? A. Well, it says "Gates DeLuxe Nylon Tires at Rayon Prices."

Q. And that is a Gates Tire advertisement, is that right, sir? A. Yes.

Mr. Dias: No objection.

By Mr. Lorenzen:

Q. Has that Gates banner been up there for a substantial amount of time? A. I would say about three months; maybe more.

Q. Have you ordered a new banner? A. Yes.

(5162) Q. This one is wearing out somewhat, is it? A. It is tattered and torn.

Q. And you have asked for a new one? A. Yes.

Q. And will you put that up when you get it? A. When I receive it, I will.

* * *

Q. Of all of the tires, batteries, and accessories, about what per cent do you estimate is bought from B. F. Goodrich? A. Oh, approximately ten to fifteen per cent, I would say.

Q. And all the balance of it you obtain from some other source, is that right? A. That's right.

Q. During the time that you have been a dealer, have you received any assistance from the Texaco Company in marketing your TBA? A. Yes.

(5163) Q. What sort of assistance? A. We have our regular dealers meetings, approximately three or four meetings a year.

Q. In the course of those meetings, have you become acquainted with other dealers? A. Yes.

Q. And do you find you pick up at those meetings any information which is helpful to you in selling your TBA? A. Very much.

Q. Do you also get the Texaco Dealer Magazine? A. Yes.

Q. Do you find that that helps your marketing of TBA? A. Yes.

Q. And that is irrespective of whether the TBA is brought from Goodrich or some other source. A. That's right.

Q. The suggestions are equally applicable. A. Yes.

Q. In those dealer meetings you said you have had occasion to become acquainted with the other dealers in your neighborhood, is that right? A. Several.

Q. And do you have social gatherings after the meetings? A. Yes.

Q. At those meetings has any representative of the (5164) Texas Company ever threatened you or any of the other dealers with lease cancellations or any other bad treatment if you did not handle some of the Goodrich or Firestone line of TBA? A. We have never been threatened.

Q. In any way at all? A. In any way.

Q. Has any Texaco dealer ever complained to you that any such threats had been made to him? A. No.

Q. You do not handle any Firestone, do you? A. No.

Q. And of all the TBA that you sell, can you estimate about how much of it is in accessories? What per cent is in accessories? A. I would say around 65 per cent is accessories.

Q. And the balance is tires and batteries. A. That's right.

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Cross-examination by Mr. Dias:

Q. Where is Alamosa, Mr. Rogers? Is that towards Greeley or Cheyenne? A. It is towards New Mexico from Denver. It is about 245 miles from Denver—south.

(5165) Q. What is the size of Alamosa? A. Population about 7600.

Q. And you have had this same station for seven years, have you? A. Yes.

Q. And when you went into the station, as I understand it, you carried Goodrich exclusively. A. That's right.

Q. Was it a new station when you went in? A. Yes.

Q. Did you at that time, or while you were negotiating for a station discuss with the Texaco people the merits of Goodrich and Firestone and did they suggest that you carry one or the other? A. They suggested.

Q. Yes. And you chose Goodrich, is that correct? A. Yes.

Q. You mentioned something about receiving your Goodrich on consignment. I missed who it was that gave you this material on consignment. Who is that? Where did you get your Goodrich material? A. Well, it is a consignee, a Texaco consignee, at Alamosa.

Q. Does the Texaco consignee also furnish you with the gasoline? A. Yes.

(5166) Q. What is his name? A. T. D. L. Menke.

Q. Is he located in Alamosa? A. Yes. Six blocks from my station.

Q. He carries the full Goodrich line, does he? A. No; only batteries.

Q. Not tires? A. No.

Q. Where did you get your Goodrich tires from? A. Just at the present time he handles only batteries. He did handle tires.

Q. Tires, too, originally? A. Yes.

Q. When did he discontinue tires? A. About two years ago—two and a half years ago.

Q. And he carries no accessories? A. No accessories except batteries.

Q. Is there a Goodrich store in town? A. No.

Q. Is there a Goodrich distributor in town? A. A tire distributor, yes.

Q. Who is he? A. O. K. Rubber Welders.

Q. And what do you say that they handle? A. Well—

(5167) Q. I take it they handle tires. Do they handle batteries? A. They just handle tires. Several different brands.

Q. I see. Nothing else? A. No.

Q. Now, is there a Firestone Distributor in town? A. Yes.

Q. And who is he? A. Harold Foster.

Q. And what does he carry? A. Firestone.

Q. Firestone tires—? A. And accessories.

Q. All three—tires, accessories and batteries? A. Yes.

Q. And he is a distributor, is he? What is his business? Is he a wholesaler? A. He is wholesale and retail.

Q. Tires, batteries and accessories? A. Yes.

Q. There is no Firestone store in town. A. No.

Q. Now, how many other Texaco stations are in town? A. There are three others, besides mine.

Q. Are they located anywhere near your station? A. Within ten blocks.

(5168) Q. And do you know those stations pretty well? A. Yes.

Q. What do they carry? What sort of tires, batteries and accessories? A. Well, I don't know. I think one of them carries Goodrich—not exclusively. I know one carries Dayton Tires.

Q. The other one? A. I don't know what the other one carries.

Q. Does the fellow who carries the Dayton tires also carry Firestone and Goodrich tires? A. Not to my knowledge.

Q. Do any of those three stations have advertising signs outside? A. Yes.

Q. Some of them have Firestone or Goodrich signs outside of their station, is that right? A. One has Goodrich. But the other two have Dayton. I don't know what the other has. I don't know what he handles.

Q. How well do you know the operators of these three stations? A. Quite well.

Q. These are the fellows you meet with at these meetings, is that right? (5169) A. Yes.

Q. Are they lessees, too? A. No. Two of them are not third-party stations as mine is.

Q. That is the fellow with the Dayton tire? A. Dayton.

Q. And the other one you don't recognize. A. That's right.

Q. How many stations of all kinds are in your town? Are there a number of them? A. The last count I had was around 26 stations.

* * * *

(5170) PAUL L. MAYERS was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Do you want to give your full name and home address to the reporter, please? A. Paul L. Mayers, 2214 Scudder Street, St. Paul, Minnesota.

Q. What is your business? A. Texaco dealer.

Q. Where is your station located? A. 2307 Como Avenue West.

Q. That's in St. Paul also? A. In St. Paul.

Q. You lease that station from— A. I do.

Q. —Texas Company? A. Texas Company.

Q. And for how long have you been a lessee dealer? A. Twelve years.

Q. About what is the gasoline gallonage of your station? A. 15,000 average for the month.

Q. Before I forget it, what division is your station located in? (5171) A. That's Minneapolis division.

Q. Minneapolis division? A. Minneapolis Division.

Q. Do you know, is that under the Chicago territory? A. No—

Q. Central territory with head offices in Chicago, do you know? A. No, head offices in Minneapolis.

Q. You don't know what's over your division? A. No, I don't. It's a five-state area, that I know, and in Minneapolis is their office.

Q. Now, do you handle any TBA at your station? A. I do.

Q. Will you tell us why you handle it? A. Public acceptance, and to make money; and it helps me in my gasoline business.

Q. You say "public acceptance." You mean the public wants a one stop service type of station? A. Right, sir.

Q. So you find it helpful to have TBA along with your gasoline business? A. That's right.

Q. Have you had any understanding during the time you've been a lessee dealer as to the Texas Company's TBA policy and its TBA program? (5172) A. They recommend that you handle major tire and accessories, and I happened to take Firestone, as I like them.

Q. Do they also tell you you can buy at other places if you want? A. Any place I want to, yes.

Q. And you have in fact done so, haven't you? A. I have.

Q. Now, do they recommend to you the Firestone or Goodrich line? A. They do.

Q. Now, has anyone from the Texas Company ever intimated to you that if you didn't handle the Firestone or Goodrich completely, or at least in part, that your lease would be cancelled? A. No, they haven't.

Q. Or that they would treat you badly in any other way? A. No.

Q. Will you tell me who your suppliers of TBA items are? A. M & L Motor Supply, St. Paul.

Q. Now, that's not connected with either Firestone or Goodrich, is it? A. No.

Mr. Dias: Excuse me. Would you mention what it is that you buy from each place as you go along, please?

The Witness: M & L Motor Supply—accessories and (5173) tires. They handle Gates.

Q. Now, you buy substantially all of your accessories from M & L, don't you? A. M & L, right.

Q. All right. What other? A. Midway Dealers—is a Firestone dealer.

Q. And what do you buy from him? A. I buy some Firestone tires, and some accessories.

Q. But not nearly as many as you buy from M & L, do you? A. That is, accessories I buy—

Q. Accessories? A. I buy more from M & L. Firestone Store, tires only.

Q. How about Standard Auto Parts? A. A few accessories.

Q. National Battery Company? A. Batteries.

Q. The National battery? A. I buy all my batteries—some of my batteries from them. I handle Delco and National batteries.

Q. And the National batteries you buy from the National Battery place? A. Right.

Q. Now, from whom do you buy the Delcos? A. M & L Motor Supply.

Q. Do you buy anything from D. Riley Company? A. That's Bowes. I handle accessories.

(5174) Q. You handle the Bowes line of radiator hose? A. I do.

Q. And anything else? What else do they make? Battery cables? A. Cables—

Q. Thermostats? A. Thermostats, and radiator solvent, fuses, light bulbs. I don't handle his fan belts. I handle Gates' fan belt.

Q. And what—do you buy anything from the W. S. Smith Tire Company? A. I buy tires, new and recaps.

Q. What kind? A. Goodyear.

Q. You have half of your recapping done at W. S. Smith, do you? A. Yes, I do.

Q. And that's a Goodyear recap process? A. Goodyear distributor, yes.

Q. Now, do you stock any tires other than Firestone? A. I have U. S. Royal, around six of them right now. Goodyear, about five.

Q. You have about six Firestone? A. Around six to seven Firestone in stock.

Q. Now, do you take these U. S. and—do you keep these U. S. and Goodyear tires openly displayed? (5175) A. I do.

Q. Where anybody can see them if he wants to? A. Yes.

Q. How about your Delco and National batteries? Are they openly displayed? A. I have those on the shelf, right in the office.

Q. Where all of your other TBA items are displayed? A. Right.

Q. Do you display all of your TBA items, no matter from what source you buy them? A. I do.

Q. Are they in plain view? A. Yes, they are.

Q. Texas Company employees know about them? A. Yes, they do.

Q. Has any threat ever been made to you that if you didn't stop handling or displaying the Delco and National battery and the U. S. and Goodyear tires, and the Gates fan belts, and other accessories not in the Firestone and Goodrich line, that your lease would be cancelled or that the Texas Company would treat you badly in any way? A. No, sir.

Q. Nothing like that has ever happened? A. No, sir.

Q. Have you ever been told to hide any of this TBA which you (5176) didn't buy from Firestone or Goodrich? A. I don't know why I should.

Q. You haven't been told that? A. No.

Q. Now, will you tell us why you handle Firestone tires? A. I handle Firestone tires because it's a public acceptance, and I think it's the best tire made.

Q. You get good service on them? A. Very good. I make all my own adjustments.

Q. Is that a— A. And that's—

Q. —a big advantage to you? A. Yes, it is.

Q. Are those the reasons why you handle Firestone? A. Yes, sir. I make money.

Q. And you make money on them? A. Right.

Q. Do you handle the Firestone because you're afraid not to do it on account of the Texas Company might treat

you badly if you didn't? A. No. I handle them on my own accord.

Q. Do you feel free to handle any TBA that you feel like handling? A. I do handle any accessories.

Q. And your test is whether or not it becomes—it makes you money? (5177) A. I like to make money.

Q. Don't we all. And that is also the reason why you handle the Delco batteries and the National batteries? A. I get a better deal with Delco and National than I do with Firestone.

Q. And so you handle their batteries? A. Right.

Q. Have you obtained any help from the Texas Company in connection with merchandising your TBA? A. I attend all their meetings.

Q. Does that help you? A. Yes, it does.

Q. What sort of help do you get there? A. How to display articles and how to lead up to a sale and close the deal. I like the way they conduct their meetings.

Q. Do you find it helpful to you—find these suggestions helpful to you in selling the TBA which you do not obtain from Firestone or Goodrich? A. Yes, it does.

Q. Equally helpful for all of it? A. Yes.

* * *

Q. I don't think you mentioned the source from which you (5178) obtain the U. S. Royal tires. Is that Milton Rosen? A. Milton Rosen Tire Company, U. S. Royal distributor.

Q. All right. Now, let's go back to those meetings. In the course of those meetings have you had occasion to become acquainted with other dealers in your neighborhood? A. Yes, I have.

Q. How much territory do these meetings take in? I mean, from what territory do the dealers get gathered in? A. It's the Twin City area, St. Paul area, and that includes

Stillwater and the suburban area. It's about a 25-mile radius.

Q. And do you have any larger meetings in fall and spring? A. We do.

Q. And those include more dealers? A. Yes.

Q. Do they include the Minneapolis dealers? A. Yes.

Q. You have joint meetings with them? A. Joint meetings, right.

Q. Now, in any of those meetings has any representative of the Texas Company ever made any threat to you or to dealers generally with respect to the type of TBA that the Texas Company sponsors? A. They have not.

Q. Ever suggested that any leases would be cancelled due to— (5179) or that the dealers would receive any bad treatment? A. No.

Q. If they didn't handle the Firestone or Goodrich line, or part of it? A. No, sir.

Q. In the course of these meetings have you had a chance to talk to the dealers? A. Yes, I have.

Q. Other Texaco dealers? A. Yes.

Q. You've become acquainted with them? A. Yes, I have.

Q. Have any of those dealers ever complained to you that the Texas Company has treated them—threatened them with lease cancellation or bad treatment in any way if they did not handle the Firestone or Goodrich line? A. No, they haven't.

Mr. Lorenzen: That's all.

Cross-examination by Mr. Dias:

Q. As I understand it you don't handle Firestone batteries, is that right, Mr. Mayers? A. No, I don't.

Q. Now, let's see. You went into business back in about 1946, is that correct? (5180) A. Right.

Q. Had you been in the gasoline business before that time? A. I was out of the gas business for four years during the war.

Q. And prior to the war had you been in the gasoline station business? A. Standard Oil Company.

Q. And for how many years? A. Five years. Mobile, three. Northwest, three.

Q. That's far enough. Did you handle Firestone products while you were in those stations? A. No, I did not.

Q. When did you develop your taste for Firestone? A. When I went into the Texaco station twelve years ago.

Q. Did you in the beginning carry a full line of Firestone tires, batteries and accessories? A. I did at first, yes.

Q. And for how many years, do you recall? A. Roughly three years.

Q. And did you then start discontinuing some of their products? A. Yes, when I found out some of it wasn't good.

Q. And which was it that wasn't so good? A. The batteries weren't so good. The batteries were lousy.

(5181) Q. And the plugs weren't so hot, were they? A. No.

Q. You said no, did you? A. No.

Q. I mean, so the reporter can pick you up. A. I'm sorry.

Q. And which other products did you find faulty? A. Some of their accessories were not too good.

Q. Did you ever mention that to the Texas Company, the fact that you were having difficulty with the Firestone products? A. No, I didn't. I just went ahead and bought from whoever I wanted to.

Q. When you dropped the Firestone batteries and accessories and started buying others, you recall no conversation with a Texas Company man as to why you did that? A. No. No.

Q. However, you do like the tires and you continue to buy them? A. Yes, sir.

Q. And you stock and carry quite a few, do you not? A. Yes.

Q. Now, as of the present date, can you tell us roughly what your TBA inventory is? In other words, how many dollars worth of tires, how many dollars worth of batteries, and (5182) how many dollars worth of accessories do you carry in your station? A. My inventory would run approximately fifteen hundred.

Q. $1,500.00? A. Right.

Q. And of that $1,500.00, how much would be in the 60 to 70 Firestone tires? A. Around twelve.

Q. Twelve hundred, is that so? A. Right.

Q. And at these dealer meetings, do you meet the same dealers all the time at the dealer meetings? A. Just about, yes.

Q. And you've been meeting with them for a number of years? A. Right. Right. Every year.

Q. Once a year? A. Twice. Spring and fall.

Q. After you've conducted your business, do they have some sort of a buffet or drinks, that sort of thing? A. Yes, they do.

Q. It's a pretty nice night out? A. I always have a good time there.

Q. Do you talk shop at that time, or do you just chat? A. We just chat.

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(5183) *Redirect examination by Mr. Lorenzen:*

Q. Mr. Mayers, you had this bad experience with the Firestone products, you say, about three years after you took on the station? A. Right.

Q. That's about 1949? A. Right.

Q. And you haven't handled any of them since? A. No, I haven't.

Q. Now, on your tire inventory, how many tires do you sell out of stock and how many tires do you sell on a pick-up basis? A. On a pickup basis I would say between 25 and 30—about 35% I would pick up.

Q. So all of the others, 65%, 70%, are sold out of stock? A. Right.

Q. So you carry a fairly adequate stock for your needs? A. I do.

Q. Now, do the items of accessories that you handle have a faster turnover in sales than tires? A. They do.

Q. So that your dollar volume of sales of accessories as against tires isn't measured by the difference in inventory, is it? A. No, it isn't.

(5184) Mr. Lorenzen: That's all.

Recross examination by Mr. Dias:

Q. When you pick up tires, don't you on occasion pick up Firestone too? You don't carry all sizes of Firestone in your station, do you? A. Firestone tires I pick up, yes.

Q. You pick up Firestone too? A. Oh, yes. U. S. Royal and Goodyear.

Q. Yes, but also Firestone? A. And Firestone.

Q. Do you have any idea of what your monthly TBA sales are? A. You mean tires, batteries and accessories?

Q. Tires, batteries and accessories, yes. A. Close to one thousand a month.

Q. About a thousand a month? A. Yes.

Q. And can you tell us how much of that is in tires? A. Between 400, 450 in tires.

Q. And can you break that down further and tell us how much of that would be Firestone tires? You sell more Firestone than the others, do you not? A. Yes, I do. I would say about 90% is Firestone.

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Lowell L. Bates, for Respondents—Direct

(5185) LOWELL L. BATES was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Mr. Bates, do you want to give your full name and the place where you live to the reporter? A. Lowell L. Bates, 1223 Grand, Grand Junction, Colorado.

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Q. Now, what's your business? A. I'm a service station operator.

Q. What sort of gasoline do you sell? A. Texaco.

Q. And do you lease your station? A. I lease the station from the Texas Company.

Q. Where is it located? A. At Fifth and White Avenue, Grand Junction, Colorado.

Q. You've been a lessee for five and a half years? A. Yes.

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(5186) Q. What's your monthly gallonage at your station? A. Last month it was 25,000 gallons. It would be in excess of that.

Q. Do you handle TBA? A. Yes, I do.

Q. Will you tell us why you handle it? A. TBA and gasoline go together. I mean, it's a one-stop service.

Q. You mean the sale of one helps the other? A. Yes, they do.

Q. It works both ways? A. Yes, it does.

Q. Do you make money on the TBA? A. I certainly do. I try to.

Q. Well, I guess you do, don't you? A. I sure do.

Q. Now, during the time you've been a lessee, have you had an understanding as to the Texas Company's TBA policy and its TBA program? A. Yes, I have.

Q. What has been your understanding? A. Well, I've always handled whatever I wanted to handle. I've always bought whenever I wanted to buy.

Q. Well, now, in addition it was your understanding that you could so do? (5187) A. Yes.

Q. Well, now, did anyone from Texas ever recommend to you that the Firestone line was a good line and that the Goodrich line was a good line? A. Yes, they did.

Q. Has anyone from the Texas Company ever threatened that your lease would be canceled or that you would be treated badly in any way if you didn't handle the Firestone or the Goodrich line, or substantial parts of it? A. No.

Q. Now, will you tell us who your suppliers of TBA are? A. All TBA you mean, or—

Q. Yes. Just list the suppliers, if you can. A. Henry Bolthorf.

Q. Tell us in general what you buy from each one of those suppliers. A. From those I buy, oh, parts, auto parts, like maybe engine radiators, voltage regulators, plugs, and that sort of thing.

B. K. Sweeney Company, same general accessories.

Auto Equipment Company, same general accessories.

Q. Well, now, from the Auto Equipment Company you buy pretty nearly all of what we've been calling accessories, don't you? A. Yes, I do. And I buy—

(5188) Q. You buy caps, car rugs, cleaners, fan belts, filters, radiator hose, waxes, that sort of thing? A. Yes.

Q. And that's not connected with either Firestone or Goodrich, is it? A. It is not, no.

Q. Do you buy from them Gates fan belts and radiator hose? A. Yes.

Q. Openly display that? A. Yes, they are.

Q. They are hung on the usual Gates racks, are they? A. Yes.

Q. All right. Now, do you want to tell us some more people from whom you buy TBA? A. Bowes Sealfast. That's a distributor.

Q. Do you buy all your battery cables from them? A. Yes, I do.

Q. And you buy some caps? A. Yes.

Q. And some cleaners? A. Yes. Chemicals.

Q. And some radiator hose? Or was that all Gates? A. Radiator hose is all Gates.

Q. All Gates? A. Yes.

(5189) Q. Is that the same Bowes line which puts out a dealer magazine? A. Yes, it is.

Q. Well, now, has your picture ever appeared on that Bowes dealer magazine? A. Yes, it did.

Q. You were pictured in there as a Bowes product dealer? A. Yes, I was.

Q. Now, from whom do you—what kind of batteries do you handle? A. I handle B. F. Goodrich, U. S. Royal, and I believe I have three Delcos of the original equipment Delco in stock.

Q. How many Goodrich batteries would you say you have in stock? A. Ten or twelve.

Q. And how many U. S.? A. Ten or twelve.

Q. Now, let's come to tires. What kind of tires do you handle? A. I handle B. F. Goodrich and U. S. Royal.

Q. Now, about how many U. S. tires do you have in stock? A. At the time I think about 30.

Q. You mean as of now? A. Yes.

Q. And how many B. F. Goodrich tires do you have in stock? A. Possibly 10; maybe 8 or 10.

(5190) Q. What percent of your total tire sales are made out of stock and what percent is made on a pickup basis? A. Oh, 75, 80% is pickup basis.

Q. And you pick up both Goodrich and U. S., and any other make that they ask for? A. Yes, I do.

Q. Now, do you display all of your TBA, no matter from what source? A. Yes, I do.

Q. And that goes for your U. S. tires? A. Yes.

Q. And your U. S. and Delco batteries? A. Yes.

Q. You don't make any effort to hide anything? A. No, I do not.

Q. Has any representative of the Texas Company ever told you to hide any of the TBA which you did not buy from Firestone or Goodrich? A. No.

Q. Or told you that your lease would be cancelled or you would be treated badly in any way if you didn't stop handling that line? A. No, I have not.

Q. Incidentally, do you know what division headquarters are over your particular setup? (5191) A. Denver.

Q. Who is your TBA representative? A. Deck Underhill.

Q. Now, can you— A. That's out of the division, you meant?

Q. He's the division representative? A. Division, is that what you meant?

Q. Yes. That's what I asked you. He's the division representative? A. Yes.

Q. Now, can you give me an estimate of about how much of all of your TBA sales are in accessories as distinguished from tires and batteries? Not in dollars, in percent. A. Oh, 50% I'll say.

Q. You'd say about half of all your TBA sales are accessories? A. Yes.

Q. And the balance is in tires and in batteries? A. Yes.

Q. And would you, Mr. Bates, say you sell some more tires than you do batteries? A. Yes. Oh, yes.

Q. Do you get any help in merchandising your TBA from the Texas Company or its representatives? A. Yes, I do.

Q. What sort of help do you get? (5192) A. Oh, there's all kinds. There's sales help, display ideas, kind of merchandise for the time of year, and all that sort of thing.

Q. You mean at which time of year which type of TBA moves best, that sort of thing? A. Yes.

Q. You get suggestions like that from the Texas Company? A. Yes, I do.

Q. And do you find those suggestions help you sell all of your TBA, whether it's from the Firestone and Goodrich line or some other place? A. Yes.

Q. Do you buy any accessories from Goodrich? A. No.

Q. All of that is bought from some place other than Goodrich or Firestone? A. Yes, it is.

Q. Now, will you tell me why you handle the Goodrich line of tires and batteries to the extent that you do handle it? A. Why I handle it?

Q. Yes. A. I make more money on it. I get a better percentage on it right now.

Q. You buy direct now, do you? A. Yes, I do.

(5193) Q. From Denver? A. Yes.

Q. And that— A. There is a warehouse there, right there in Grand Junction.

Q. But you buy directly from the— A. I'm billed direct from—

Q. You're billed direct? A. Yes.

Q. And that gives you a much better discount than if you bought locally, is that right? A. Yes.

Q. And is that the occasion—is that why you now handle this Goodrich line of tires and batteries? A. Yes. That's one reason.

Q. What are some of the others? A. B. F. Goodrich is an original equipment tire, and therefore replacements are sold.

Q. That is, there is a demand for the Goodrich tire? A. Yes.

Q. Are there other B. F. Goodrich dealers in Grand Junction? A. Yes.

Q. Are there other—now—I will withdraw that. Can you make your own adjustment? A. Yes, I do do my own adjusting, yes.

(5194) Q. And is that an advantage to you? A. Yes, it is. Very much.

Q. Have you made an effort to obtain from the U. S. Rubber Company the same sort of a deal you have with Goodrich? A. Yes.

Q. Have you succeeded? A. Not yet, no.

Q. Still trying? A. Yes, I do try.

Q. And if you do get a similar sort of a deal, would you feel free to take it? A. I'd buy spot purchases, yes.

Mr. Lorenzen: That's all.

Cross-examination by Mr. Dias:

Q. Will you explain this direct purchase from B. F. Goodrich, please? Is it direct purchase or direct billing? A. Direct billing.

Q. And— A. It would be a direct purchase, I suppose. I draw direct from the warehouse.

Q. And the warehouse is where? A. In Grand Junction.

Q. Oh, the warehouse is in Grand Junction? A. Yes. And I also can ship from Denver if they haven't (5195) got it—the particular thing—in the warehouse, see?

Q. You mean Denver will ship to you? A. Yes.

Q. What is that deal? In other words, is it a quantity affair? Do you have to buy a certain number in order to get this better price? A. Yes.

Q. And what is— A. A year, you mean?

Q. Per year. And what is the quantity per year? A. 25,000.

Q. 25,000 tires? A. Dollars.

Q. Oh, dollars. A. Volume.

Q. And I take it that your purchases of the Goodrich tire do amount to $25,000.00 a year, and that is the reason why you get this special price, is that right? A. They don't amount to may—maybe not any particular year, no. I'm signed up on that agreement.

Q. Oh, is this something new that you're on? A. No, it is not.

Q. Well, I'm a little bit confused. How do you get the special price then? In other words, if you don't buy 25,000, what happens then? (5196) A. I'm still billed at that price.

Q. You're still billed at the lesser price? A. Yes.

Q. See if I understand this now. You go into the Goodrich people and you say, "Put me on a $25,000.00 quantity"— A. Well, I don't know whether you—

Q. I'm not trying to confuse you. I'm trying to unconfuse myself. A. Yes.

Q. Is it based on the previous year's purchases? You say— A. Yes. Yes, it was previous.

Q. In other words, last year you sold $25,000.00, and for that reason this year you're operating in that price category, is that correct? A. That could be correct.

Q. Well, it could be, but is it? That's what I want to know. A. I haven't quite made any $25,000.00, if that's what you're getting to.

Q. Well, then maybe this confuses things. Do they operate on a calendar year basis, January to December? A. Yes.

Q. And you haven't made your $25,000.00 this year, is that what you say? A. Yes.

Q. Now, how about—this is '58. How about 1957? Did (5197) you make your $25,000.00 in '57? A. No, I did not.

Q. I see. This then is the first year that you're trying for this, is that— A. Yes.

Q. I see. How much Goodrich did you sell last year? A. I don't know.

Q. Would it be about 15, 20,000? A. Fifteen.

Q. About fifteen. In other words, it must have been some sizable figure that led you to believe that you might make the 25,000 category this year, isn't that so? A. Yes.

Q. And can you tell us roughly what your sales have been to date on Goodrich tires? A. I remember last month's bill.

Q. And what was that? A. 1308.

Q. That's $1,308.00? A. Yes.

Q. All right. Now, how have your previous bills compared with that one? Are they higher or lower? A. Slightly lower.

Q. Slightly lower. Would it be within a range of $100.00 maybe? (5198) A. Yes.

Q. Less than $100.00? A. Less than $100.00.

Q. About $50.00 difference in bills? In other words, each month so far have you purchased at least $1,308.00 worth of Goodrich tires, or something within $50.00 range? A. Within—yes.

Q. Each of the months to date, is that so? A. Yes.

Q. So that when you tell us that you have ten Goodrich tires on your racks, that isn't very significant, is it? You

don't have them up there—you don't have your complete stock up there? A. No, I do not.

Q. You draw them as you need them? A. Yes.

Q. And your purchases are sizable, are they not? A. Yes.

Q. Now, what is the situation in connection with Royal? Have you sold that many Royals this year? A. No, I have not.

Q. Can you tell us how many Royals you've sold? A. How many dollars worth?

Q. Dollars, units—dollars we'll say, per month. A. Three or four hundred.

(5199) Q. Per month? A. Per month, possibly.

Q. Now, did the batteries, the Goodrich batteries, also come under that same deal that you're talking about? A. It's included with the tire purchases.

Q. Included with the tire purchases? A. Yes.

Q. So once again the ten to twelve Goodrich batteries on the shelf have no significance, do they? A. No.

Q. Can you give us some idea of how many batteries you sell per month? A. I don't know—35, 40.

Q. 35 to 40? A. I don't know. I'm just guessing. I don't know.

Q. All right. Can you give us some estimate on the number of Royals that you sell per month? A. Slightly less.

Q. All right. How much is slightly? A. 20 or 25.

Q. You sell about 20 or 25? A. Yes.

Q. And Delco? A. Less yet of Delco. It's possibly ten, twelve a month.

Q. Did you say that you carried the Goodrich because —for (5200) one reason because it's original equipment? A. Yes.

Q. What's your experience with the Delco battery? Is that original equipment? A. It is.

Q. Let me check my geography. Is Grand Junction about 50 miles outside of Denver? A. Grand Junction is 260 miles west.

Q. West of— A. Of Grand Junction.

Q. Do you go through— A. I mean, west of Denver. Excuse me.

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(5201) *Redirect examination by Mr. Lorenzen:*

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(5202) Q. Well, let's see. You said you sold most Goodrich batteries? A. Yes.

Q. And then your U. S.—no, your—yes, your U. S. batteries were kind of a close second, and then the Delco batteries sort of lagged behind? A. Well, the Delco is usually sold—they will request the Delco battery.

Q. They don't? A. They will.

Q. They will? A. Yes.

Q. And you only sell those on specific request? A. Yes.

Q. The Goodrich and U. S. batteries depend on your own salesmanship to sell them? A. That's right. That's absolutely right.

Q. And you make more money selling the Goodrich than you do on any other? A. Yes, I do.

Q. And does the same apply to your tires? You make the most money when you sell the Goodrich tire? (5203) A. Yes.

Q. And so naturally you try to sell that just as hard as you can? A. Yes.

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(5204) DALE RETKE, called as a witness for and on behalf of the Respondents, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you state your full name and your home address? A. Dale Retke; 1217 Lewis, Laramie, Wyoming.

Q. What is your business? A. Texaco station operator.

Q. Do you sell Texaco gasoline? A. Yes.

Q. And you lease a station from the Texas Company? A. Yes.

Q. What is the location of that station? A. 420 S. Second Street, in Laramie.

Q. About what is the gallonage of that station? A. It averaged about 13,500 a month, last year.

Q. Do you handle any TBA? A. Yes.

Q. Will you tell me why you handle it? A. We need the money. You have more satisfied customers (5205) if they can meet all their needs at one stop.

Q. They help you sell gasoline to them, do you think? A. Yes, it helps to sell gas and the gas helps you to sell TBA.

Q. Have you had an understanding as to the Texas Company's TBA policy and program during the time you have operated this station? A. Yes.

Q. What is that understanding? A. They sponsor Firestone and B. F. Goodrich TBA but they sell whatever is your choice.

Q. And, in fact, you have bought on that principle that you can buy anything you want? A. That is right.

Q. Has anyone from the Texas Company ever told you that your lease would be cancelled or that you would be treated badly in any other way if you didn't handle all or some of the Firestone products? A. No, they haven't.

Q. Or the Goodrich products? A. No, they never have.

Q. Will you tell us who your suppliers are? A. Casper Supply Company supplies Gates fan belts and accessories.

Q. Do you buy all of your fan belts from them? (5206) A. Yes.

Q. And all of your radiator hose? A. Yes.

Q. Are those belts and radiator hose displayed with the Gates name on them? A. Yes, on the Gates display rack.

Q. On the Gates display rack with the name Gates across the top of it? A. Yes.

Q. From whom else do you buy? A. From the Laramie Auto Parts Company; they are the Firestone distributor.

Q. You buy some of your accessories from them, do you not? A. Yes, we do.

Q. And you buy some of your tires and some of your batteries from them? A. That is right.

Q. From whom else do you buy? A. Frank King Service is a recap shop and tire warehouse.

Q. Do you have your recapping done there? A. Some of it, yes.

Q. How about the S. & B. Tire Sales? A. They supply Gates tires and do some Goodyear recapping.

(5207) Q. Do you buy the Gates tires from them? A. Yes.

Q. And you have the recapping down there too? A. That is right.

Q. And how about the Azar Auto Supply; do you buy from them? A. That is in Denver; they supply some accessories.

Q. And you buy some from them? A. Yes; that is right.

Q. Who is Jim Harris; is he a local man? A. Jim Harris is the Bardahl distributor for that area. He comes from Cheyenne and delivers Bardahl supplies.

Q. You buy that additive from him? A. Yes.

Q. And you also buy some from the Wynn Distributing Company? A. Yes; he is from Cheyenne.

Q. And you buy some additives from him? A. Yes.

Q. In addition to the Firestone batteries what kind do you handle? A. Delco.

Q. And from whom do you buy those? A. Casper Supply.

Q. As of now how many Firestone batteries do you have (5208) in stock and how many Delcos? A. Approximately three of each. It depends upon whether one was sold today. I keep three and if I sell one, I get another one.

Q. Then you buy another one? A. Yes.

Q. Do you display your Delco just like you do your Firestone? A. Yes, I do. Sometimes I have more Firestone and sometimes more Delco. I have some of them in the display.

Q. But you display Delco from time to time? A. Yes.

Q. With the sign "Delco" on them so that people can see them? A. That is right.

Q. How about tires; in addition to Firestone, what kind of tires do you sell? A. Gates.

Q. Can you tell me about what percent of your tire sales are made out of stock and about what percent you have to make on a pickup or spot delivery basis? A. I would say 75 to 80 percent are pickup.

Q. And you order for the customer whatever tire he wants, is that right? A. Yes.

(5209) Q. It may be Firestone and it may be Gates, and it may be something else? A. Yes; it may be Goodyear. I have sold some Goodyear tires also.

Q. Now, tell me as far as your Firestone tires go, have you got some sort of an arrangement now with the Firestone dealer whereby he puts them in your place on con-

signment? A. Yes; I just recently took on a consignment arrangement with the Firestone dealer. I am going to keep approximately 30 tires on consignment.

Q. That means you don't have to pay for the stock? A. Yes, as I sell he will replace whatever tires I sell from the stock.

Q. But the Gates tires that you stock you have to pay for before you sell them? A. That is right.

Q. Do you advertise the Gates tire in front of your station? A. Yes, I do.

Q. Do you have a tire rack with a Gates sign on it? A. Yes; it is what they call a self-service rack.

Mr. Lorenzen: I ask to have this photograph marked Respondent's Exhibit 60.

(The paper referred to was marked Respondent's Exhibit 60, for identification.)

(5210) *By Mr. Lorenzen:*

Q. Is Respondent's Exhibit 60 for identification a picture of your Gates tire, self-service tire stand, with the Gates sign on top of it? A. Yes; that is right.

Q. And is that a stand and a sign which you regularly have in front of your station? A. Yes, it has been there for probably ten months to a year.

Q. And you display your Gates tires openly in that? A. Yes.

Q. Has anybody from the Texas Company threatened you with lease cancellation or they would treat you badly in any other way if you didn't get rid of that Gates stand and sign? A. No; they did ask me why I changed and I explained to them that they had a better selling policy than Firestone and that is why I made the change, and nothing was said that the lease would be cancelled.

Q. And since that time the Firestone Company has made this better deal for you so that you could put those Firestone tires in on consignment, is that right? A. That is right.

Mr. Lorenzen: I offer this picture, marked Respondent's Exhibit 60, into evidence.

(5211) Mr. Dias: Are there any Firestone signs outside your station?

The Witness: We have the Firestone decals on the window; that is all.

Mr. Dias: You don't have any of those big signs outside?

The Witness: I believe there is one sign that says Firestone tire service or tires.

Mr. Dias: Is that over near the lube rack?

The Witness: It is over near the lube rack, yes.

* * *

By Mr. Lorenzen:

Q. What do you find about public demand by your customers for Firestone tires? Do you find some that ask for their tires? A. Yes, they are original equipment tires on quite a few of the cars, and they do demand with the replacements, the same brand tire.

Q. So that with those people you find it easier to (5212) sell Firestone? A. Yes; that is right.

Q. Now, what about the profit that you make,—you told me, and Mr. Dias, just now that you explained to the Texas Company you made more profit on some lines of the Gates tire. Now, do you make a better profit on some lines of the Firestone tire? A. That is right. Some of your nylon and your 500, and that quality tire there is a better profit than there is in the Gates.

Q. How far are you from the Firestone warehouse? A. About half a block.

Q. What do you find about your ability to sell the Firestone tire or the Gates tire to your transient customers? A. I think the Firestone sells easier to your transient trade. It is a more popular national brand.

Q. Now, does the Firestone supply point and its employes give you any business? A. Yes, they do.

Q. Quite a bit? A. Their store is within half a block of the station and there is, I would say, a good half of their business is done in my station, by their employes and their own trucks.

(5213) Q. So they patronize you and you buy from them? A. That is right.

Q. Do you have an estimate as to how much—

Mr. Lorenzen: I will withdraw that.

By Mr. Lorenzen:

Q. Do you stock any batteries other than dry charge? A. No.

Q. Has anyone from the Texas Company ever made any threat to you that the lease would be cancelled or that you would be treated badly if you didn't stop handling these Gates tires and Delco batteries? A. No threats have been made.

Q. Or any of the other TBA which you buy from source other than Firestone? A. No, sir; no threats were ever made.

Q. Do you attend dealers' meetings of the Texas Company? A. Yes.

Q. Have any threats ever been made at any of those meetings to you or any other dealers? A. No.

Q. Have any dealers ever complained to you that threats have been made to them? A. No; none.

Q. Do you get any help from the Texas Company in merchandising your TBA? (5214) A. Yes, they have sales meetings. They tell when is the best time of the year to push certain brands of merchandise and how to go about making sales,—just of general help.

Q. Is that of help to you in connection with all of the TBA which you sell? A. Yes, it is.

Mr. Lorenzen: That is all.

Cross examination by Mr. Dias:

Q. Mr. Retke, if you told us when you started in business, I missed it. Would you mind telling me again? A. About two years ago; two years ago, November 15th.

Q. You started in November of 1956? A. Yes.

Q. Were you in the gas station business before you took this station? A. No.

Q. Was that a new station that you got? A. No.

Q. It was an old station? A. It was an old station.

Q. When you moved in? A. Yes.

Q. Do you recall the TBA supplies that were in the station (5215) when you moved in? A. They were mostly Firestone at that time,—Firestone tires and batteries.

Q. And you bought it from the previous owner, did you? A. Yes, I bought the stock and the equipment.

Q. In negotiating with the prior lessee did the Texas Company help out in that transaction taking inventory? A. No, they didn't take inventory.

Q. You just made your arrangements with the prior lessee, is that right? A. That is right.

Q. You say that there were Firestone tires and batteries in there when you took over? A. Yes; Firestone tires and batteries.

Q. And were there some Firestone accessories? A. Yes; there were some Firestone accessories. There were

some other accessories, though, that weren't Firestone.

Q. Well, I take it that Firestone tires and batteries,—that is all he had in those two lines, is that correct? A. That is right.

Q. Did you, in negotiating with the Texas Company for the station, do you recall that they recommended Firestone or Goodrich as a TBA supply? A. Yes; they suggested that as long as that line was there, that I try it, and if there were any complaints (5216) to go ahead and do as I saw fit.

Q. And did you thereafter, when the stock that you bought became depleted; did you buy more Firestone tires, batteries and accessories? A. Yes, I have ordered Firestone tires and batteries as I need them.

Q. Did you then have some difficulty with the Firestone distributor? A. No trouble with the distributor.

Q. Or the merchandise? A. No; no trouble with the distributor.

Q. When did you discontinue stocking the line exclusively in tires and batteries? A. Approximately six months after I took over the station.

Q. Was there any reason for that? A. It was the location of the station. There is a Coast-to-Coast hardware store which sells a cheaper brand of tires than I do, right across the street, and a Gamble store across the street which sells cheaper tires.

Q. So that from a competitive standpoint you had to buy stocks of cheaper tires? A. That is right.

Q. And cheaper batteries, too, is that right? A. Yes.

Q. And you said that the Texaco salesman asked you why (5217) you changed and I assume you explained that to him, did you? A. Yes.

Q. And did he attempt, so far as you know, to get you a better price on Firestone tires and batteries? A. Not that I know of.

Q. But he has now arranged, I assumed, this consignment deal he worked up? A. That was an arrangement between me and the Firestone distributor,—not with the Texaco representative.

Q. Who is the Firestone distributor? A. The Laramie Auto Parts store, who have a Firestone department, and a Parts Department in the same store.

Q. You mentioned you talked to these other dealers at the dealer meeting; how many other Texaco stations are there in Laramie, do you know? A. Seven, including us.

Q. Seven in all? A. Yes.

Q. Do you know those stations pretty well? A. Yes.

Q. Can you tell us what type of TBA they carry? Isn't it true that they carry mostly Firestone? A. There is one besides myself, who sells Gates.

Q. And the others carry Firestone? A. Firestone and some B. F. Goodrich.

(5218) Q. And are they lessees the same as yourself? A. I think they are all the same.

Mr. Dias: I have nothing further.

Redirect examination by Mr. Lorenzen:

Q. At these dealer meetings do you come in contact with dealers other than the ones just in Laramie? A. Yes, there are some from the surrounding communities, smaller towns, that come in to them.

Q. And do you have some larger meetings twice a year, in the fall and in the spring, with the dealers from all over? A. Well, from the smaller surrounding towns they come in in the spring and the fall, usually.

Q. Now, before you took over this station, in November, 1956, had you placed any new order with the Firestone store? A. No.

Fred Pryor, Recalled, for Respondents—Redirect

Q. Before you placed any order with that Firestone store did competing salesmen from other places call on you? A. Yes; I was called on at the time I took over by several B. F. Goodrich, Gates and people having several other lines of tires and accessories.

Q. And within six months you started to place orders with Gates? A. That is right.

(5219) Q. Now, you said that there were non-sponsored accessories in the station when you took it over. Did you buy those, too? A. Yes, I bought everything that was in stock.

Q. And the Texas Company knew about that? A. Yes.

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(5220) FRED PRYOR was thereupon recalled for the Respondent and, having been previously duly sworn, was examined and testified further as follows:

Redirect examination by Mr. Lorenzen:

Q. Mr. Pryor, who does the bookkeeping in your family? Could you tell us that? A. My wife.

Q. Not you. A. No.

Q. Since giving the testimony about how much gasoline you pumped this morning, have you had an opportunity to call up the bulk plant which supplies you with gasoline and check up on the deliveries to you? A. I sure did.

Q. And did you find that your testimony, that you pumped an average of about 800 gallons a week, was too low a figure? (5221) A. That is a little low.

Q. Will you give us the figures from the bulk plant as to what was actually delivered to you last year? A. Well, this morning when I answered, I meant 800 gallons a day.

Q. You meant 800 a day instead of 800 a week. A. That's right.

Q. What were your figures last year? A. Gas for the 12 months of 1957 was 122,450.

Q. What does that average to a month? A. 10,204.

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(5222) GORDON B. PATTERSON was thereupon called as a witness for Respondent and, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Give your name to the reporter, will you? A. Gordon B. Patterson.

Q. And where do you live? (5223) A. Denver, Colorado.

Q. What business are you in? A. I am a Texaco dealer.

Q. Do you sell Texaco gasoline? A. Yes, sir.

Q. And you lease your station from the Texaco Company. A. Yes, sir.

Q. Are you in under one of those leases that renews itself each year unless it is cancelled at the end of the year? A. Yes, sir.

Q. What is the location of your station? A. 46th and York.

Q. In Denver? A. In Denver.

Q. What is the average monthly gallonage of your station? A. Oh, 50,000 gallons.

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Q. Do you handle it—do you handle TBA in your station? A. Yes, sir.

Q. Will you state why you handle it? A. Well, I think it makes for better business. I (5224) think it helps your gasoline sales and makes more money.

Q. Now, how long have you been in this station? A. Three years.

Q. During that time have you had an understanding as to the Texas Company's TBA policy and program? A. Well, I understand they recommend that you handle Firestone or Goodrich products, but I have always bought anything I felt was to my own benefit.

Q. And did you do that because you understood the policy to be that you could buy where you wanted to buy? A. Yes.

Q. And so you have done so. A. Yes, sir.

Q. And is all of the TBA which you handle handled by you because you think it is the best for your own business to handle those particular brands? A. Yes. Right.

Q. That is the only basis for your choice. A. Right.

Q. Now, has anyone from the Texas Company ever told you that they would cancel your lease or treat you badly if you did not handle all of the recommended lines of TBA? A. No, sir.

Q. Or if you did not handle some of them? (5225) A. No, sir.

Q. Will you tell us who your TBA suppliers are? A. Oh, I buy from Standard Tire Company—

Q. That is the Firestone supplier? A. That is the Firestone representative. And I buy from Auto Equipment Company of Denver.

Q. You buy a good deal of your accessories from them. A. Yes. duPont line. Fan belts—

Q. And Gates? A. Gates Factory Store. I buy tires from them.

Q. And you buy all your fan belts from them? A. No, I buy my fan belts from the Motor Cool Company. I believe the fan belts come from a different supplier than Gates. Gates is tires only.

Q. Motor Cool Radiator Company, is that it? A. Yes. I buy hose connections and fan belts.

Q. And that is the Gates fan belt you buy there. A. Yes. The Gates fan belt. And Gates hose.

Q. You handle all Gates. A. Yes.

Q. Is that a thermostat line—this Dole I have down here? A. That comes from Auto Equipment.

Q. And you handle that. A. Yes.

(5226) Q. Do you handle any other thermostat line? A. Harrison.

Q. That comes from Motor Cool? A. That comes from Motor Cool, yes.

Q. That is not a Firestone or Goodrich supplier. A. No.

Q. And you display all of those, with their brand names, do you? A. Yes.

Q. So that anybody can see them, including the Texas Company salesmen? A. Yes.

Q. Now, what other supplier do you use for your TBA? A. Oh, I buy from Wynn Oil, and Bardahl.

Q. Those are additives. A. Yes. B. K. Sweeney Company.

Q. Where do you get your spark plugs? A. I buy from Phillips 66—a service station. We buy together at a little better price.

Q. What about your batteries? A. I buy from Grant. Grant Batteries.

Q. Do you handle those Grant batteries 100 per cent? A. Yes, sir.

Q. What about tires? Do you handle some Firestone? A. Firestone and Gates.

(5227) Q. Do you stock some of each? A. Yes.

Q. You stock more Firestone than Gates. A. I do.

Q. Of all your tire sales, what per cent is out of stock, and what per cent is on a pickup basis or spot delivery basis? A. I suppose it is probably 75 per cent pickup.

Q. Do you order and pick up whatever make tire the customer wants? A. Yes, sir.

Gordon B. Patterson, for Respondents—Direct

Q. Or whatever— A. Anything I can sell.

Q. Or whatever make you suggest or succeed in selling, is that right? A. Surely.

Q. Now, has the Texas Company ever told you to hide or to not display any of your TBA? A. No, sir.

Q. Have they ever told you they would cancel your lease or otherwise treat you badly if you did not stop the display of TBA not in the Firestone or Goodrich line? A. No, sir.

Q. Nothing like that has ever happened to you. A. No.

(5228) Q. Where do you display your Gates Tires? A. I display them on the tire rack. I got samples sitting out in front.

Q. Is that on a stand marked with the Gates name? A. Yes.

Mr. Lorenzen: I ask to have this photograph marked Exhibit 61.

(The paper referred to was marked Respondent's Exhibit 61 for identification.)

By Mr. Lorenzen:

Q. Is Exhibit 61 a picture of your station, showing the Gates tire and the Gates stand? A. Yes, sir.

Q. Was any special preparation made when that picture was taken? A. No; that is what it is.

Q. Is that the way your station looked and had looked for some time before the picture was taken? A. Yes, sir.

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Mr. Dias: Do you know when this picture was taken, Mr. Patterson?

(5229) The Witness: Yes, sir. It hasn't been long ago.

Mr. Dias: Do you know who took it? Did you take it?

The Witness: No.

Mr. Dias: Are these the only ads you have about the station?

The Witness: Do you mean for Gates tires?

Mr. Dias: No, of anything. Do you have a Firestone sign?

The Witness: Yes, sir; there is a Firestone Tire sign.

Mr. Dias: Is that the big one outside?

The Witness: On the tire rack.

Mr. Dias: Do you have Firestone valances?

The Witness: You mean decals?

Mr. Dias: Decals, yes.

The Witness: No.

Mr. Dias: What other Firestone ads do you have around there that this picture does not show?

The Witness: Well, I don't believe I have any other Firestone, except on the big tire rack, and that is at one side of the station.

Mr. Dias: Is that where you have the Gates tires, too, right with that same rack?

The Witness: Yes. I have them in that rack, (5230) and I have another rack inside. One out on the street.

* * *

By Mr. Lorenzen:

Q. What about your Grant batteries; are they in your station? A. Yes, sir.

Q. Do you make any effort to hide those? A. No, sir.

Q. Are they on display? A. Yes, sir.

Q. With the Grant name on the battery? A. Yes, sir.

Q. Can you tell us what per cent of all of your TBA is in accessories? If you take your TBA together, about how much of the sales are in accessories? A. I think it is about fifty per cent, probably.

Q. And then about how much is in tires? A. About thirty-five.

Q. If I can subtract, that leaves about fifteen per (5231) cent for your batteries. A. About that, yes.

Q. Have you participated in any advertising of the Gates tire in newspapers or anything like that? A. Yes. I am in the newspaper ads.

Q. The name of your station is— A. About every three months.

Q. The name of your station is listed under—? A. Gates.

Q. Under the Gates ad? A. Yes.

Q. How about the classified telephone directory? Are you listed there under—? A. Under Gates tires.

Q. How about Grant Batteries, do you know? A. No, I am not.

Q. Do you pay for that listing in the Yellow Pages or does the Gates Company pay for that? A. Well, the Gates Company.

Q. Entirely? A. Yes.

Q. Now, you handle these Firestone Tires. Will you tell us why you handle them? A. Well, I think they are a good tire. I like the tire and they are nationally advertised; and I have a (5232) highway station, and tourists come through. There is a demand for them. Your Gates tire is local.

Q. You mean among your transients, your transient customers, you find it easier to sell them Firestone? A. Yes; easier.

Q. So you think it is an asset to have the Firestone tire. A. I do.

Q. And to have such advertising signs of Firestone that you do have. A Yes, sir.

Q. Do you attend dealer meetings of the Texas Company? A. I do, yes.

Q. In general, is the Texas Company of any assistance to you in marketing your TBA products? A. Yes, they have been a great help.

Q. What do they do for you? A. They show you how to merchandise, how to make displays. They are a good deal of help. They help you sell.

Q. Does that help apply as well to your TBA merchandise which is not Firestone and Goodrich as it does to Firestone and Goodrich? A. Oh, yes.

Q. You find it helpful for both. A. Helpful for both of them.

(5233) Q. At these dealer meetings, has any representative of the Texas Company ever made any threats about lease cancellations or any other bad kind of treatment if dealers did not handle some or all of the Firestone or Goodrich line? A. No, sir.

Q. Has any dealer ever complained to you that such threats have been made to him? A. No, sir.

Q. Will you tell me whether there is any necessary relationship between the inventory, the amount of inventory which a dealer carries, and the amount of sales? A. No, there isn't.

Q. You mean you may have a large inventory and— A. And not sell very much.

Q. And you may have a small inventory with a fast turnover and have more sales, is that right? A. That's true.

Q. And is that particularly true when you compare inventories of tires to accessories? A. I think so, yes.

Gordon B. Patterson, for Respondents—Cross

Q. Would you say that there is a shortage of good filling station operators in Denver, as compared to the number of stations that are available? A. Yes, I suppose there is.

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(5234) *Cross-examination by Mr. Dias:*

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Q. Is that out of the city proper, away from it? A. It is right at the edge of town.

Q. Did you say you were in the station three years? A. Yes, sir.

Q. Had you had any prior experience in the station operating business? A. No, sir.

Q. Was it a brand new station when you took it over? A. No.

Q. Can you tell us the brand of TBA that was in the station when you took over? A. Well, it is probably about the same brands that I am handling now. They were handling Gates Tires at the time.

(5235) Q. They were. Incidentally, did you say that Gates is a local tire? A. Yes. The tire is made in town.

Q. It is made in Denver? A. Yes.

Q. I see. Did you state that the Standard Firestone Distributor—what is his full name, please? A. Well, it is the Standard Tire Company.

Q. Standard Tire. Where are they located? A. 141 South Broadway.

Q. Do they also sell batteries and accessories? A. Yes, sir.

Q. And where are they in relationship to your station? A. You mean distance?

Q. Yes. A. Oh, they are quite a way, I suppose. Five or six miles, perhaps.

Q. Have you ever purchased any batteries from Standard? A. No, sir, I haven't.

Q. None at all? A. No.

Q. Where is Grant located? A. They are located closer. They's close.

Q. Whereabout? A. Two blocks.

(5236) Q. And these other suppliers—Auto Equipment—? A. They are downtown. About as far as Standard.

Q. Do they have better service than Standard? A. Not necessarily. They all have good service.

Q. I take it that there are quite a number of stations in Denver, gasoline stations. A. Yes.

Q. What is the leading brand of gas in Denver? A. Continental; Conoco. Texas.

Q. After that? A. Texas Company.

Q. How does Phillips 66 rank? A. I believe fourth. Standard is third.

Q. Are you familiar with any of the rest of the Texaco stations? A. Oh, not too much. I know some of them. There is a lot of them.

Q. How many would you say there are in town? A. Golly, I don't know. I wouldn't know that.

Q. Well, you are not familiar with them at all, is that it? A. Well, not too much, no.

Q. Aren't you in the directory, listed under Firestone Tires, too? A. Yes, sir. I think so. I am.

(5237) Q. Do you pay for that? A. I think I pay something on that, yes.

Q. How often do you attend those dealer meetings? A. Not as often as I would like to; but I do attend some of them.

Q. How many are there during a year that you know about? A. I know about all of them. But I don't get to attend all of them.

Q. How many are there? A. I don't know. We have our big meeting in the Spring of the year, and they have them occasionally. I don't know that it is regular.

Q. In the three years that you have been attending these meetings, how many would you say you have attended? A. Oh, I have probably attended four or five.

Q. Can you tell us how many Firestone Tires you have in stock right now? A. Oh, I would think probably fifty or sixty.

Q. Do you have the same number of Gates? A. No. I have about a dozen.

Q. And in the course of a year's time, how many Firestone do you sell? A. Well, it would have been—this would have to be a guess: I sell approximately a thousand dollars worth (5238) of tires a month.

Q. In tires alone? A. In tires.

Q. Does that include Gates? A. That includes them all, yes, sir.

Q. And how much of that would be Gates, and how much Firestone? Can you give us some idea? A. Oh, I suppose that it would probably be eighty per cent Firestone.

Q. Can you give us some idea of the volume of your sales of batteries and accessories per month? A. I suppose it runs around $1,200, $1,300 on batteries and accessories.

Q. Batteries and accessories? A. Yes.

Q. This 50,000 monthly gallonage—does that come about due to the peak season right now? A. Last year my average gallonage was 55,000.

Q. For the year? A. Yes.

Q. And this year it is down a little bit. A. I think it is off just a little. I think last month I pumped 4,000.

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Gordon B. Patterson, for Respondents—Redirect

Arvid F. Tubbs, for Respondents—Direct

(5239) *Redirect examination by Mr. Lorenzen:*

Q. On this tire sale, you say you sell your tires about eighty per cent Firestone and twenty per cent Gates? A. Yes.

Q. Is that about the way the demand is for the tires? A. It seems to be now, yes.

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(5240) ARVID F. TUBBS was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your full name and your home address to the reporter, please? A. Arvid F. Tubbs, 204 East Main, Marshall, Minnesota.

Q. What business are you in? A. I am a Texaco station operator.

Q. Do you sell Texaco gasoline? A. Yes, sir.

Q. And do you lease your station? A. Yes, I do.

Q. From Texas Company? A. From Texas Company.

Q. Where is that station located? A. It is 101 East Main, Marshall, Minnesota.

Q. For how long have you been a lessee of the Texas Company? A. Of the company itself since '54—four years.

Q. And before that there was a distributor that owned that station? A. Yes, sir; and leased from him from '52 to '54.

Q. Do you handle TBA at that station? A. Yes, sir.

(5241) Q. Will you tell us why you handle it? A. Well, it's for the money; and it helps out on the gas sales, and the gas in turn helps out with your TBA. And the customers are just more satisfied all the way.

Q. Do you find it satisfies your customers? A. Yes, satisfying their demands.

Q. The customers like it and you make money? A. Yes.

Q. About what is the gallonage of your station? A. It will average right—12,000 a year, right within a few hundred either way.

Q. You mean— A. A month.

Q. All year round, per month? A. Per month. A year round average.

Q. Now, during the time that you have been a Texaco dealer, and particularly since you have been a lessee of the Texas Company, have you had any understanding as to what the Texas Company's TBA policy and program is? A. Yes, sir.

Q. And what do you think it is? A. They recommended us to handle Firestone or Goodrich tires and TBA, but we could handle anything that we wanted to as long as it was a good product.

Q. And have you handled anything you wanted to? (5242) A. More than anything.

Q. And you have handled all kinds of brands that we may not even know too much about down here? A. Yes; that's right.

Q. Has anyone from the Texas Company ever told you that your lease would be cancelled or not renewed if you didn't handle the sponsored line? A. No, sir. They never have.

Q. Has anybody told you that the company would treat you badly in any way if you didn't handle the sponsored line? A. No, sir. They never have.

Q. In your opinion, are the brands of TBA which you handle of the type which have good acceptance in your community and your neighborhood? A. Yes. I handle most generally national brands of everything so you just name the brand and they want it.

Q. And the particular type you handle has good acceptance in your community? A. Yes. In our community it is strictly up to me. All the recommendations I make, if it's good—

Q. You mean your customers will follow your recommendations? A. Yes.

Q. Now, tell me, among your customers how many are from your own community and how many are transients that come through the place? (5243) A. I'd say at least 90% are local and about 10% are transient.

Q. And you know those local ones? A. Yes.

Q. And they rely on your judgment? A. Yes.

Q. What tire do you recommend to them? A. It depends on the type of driving and the abuse they give the tires. And most generally, if they come in and just want a tire I will try and sell them the one I make the most money on. But if they come in and want a Goodrich or Firestone, I will get them that.

Q. What is the tire you recommend to them that you can make the most money on? A. Gates. Gates and Goodyear.

Q. Those are the two you make the most money on? A. Yes.

Q. And are most of your sales in those two lines? A. Yes.

Q. What percent of your sales are in those two lines? A. I would say at least 85%.

Q. Do you stock any tires? A. Yes, sir.

Q. And how many Goodyear tires have you got in stock right now? (5244) A. Oh, I only have about four to six right in there.

Q. Of the Goodyears? A. Yes.

Q. And how many Gates? A. About fifteen.

Q. Do you happen to have any other tires there right now? A. I think there is four Firestones. And that is all.

Q. That is all? A. Yes.

Q. And that's it? A. Yes.

Q. Do you sell many Firestone tires? A. Not too many. Just whenever the public demands.

Q. That is, you have those more or less on a pickup basis? A. Yes. And adjustments—returns I got back for adjustment.

Q. Of all of the tires that you sell, how many do you sell out of inventory and how many do you sell on a pick-up basis? A. Oh, about 80 to 85% on pickup, and the difference on inventory.

Q. And of those pickups you say that around—what did you say, 80 to 85% are Goodyear and Gates? A. Yes.

Q. And the balance are Firestone and all other makes? A. Yes; that's right.

(5245) Q. Now, how about your batteries? What kind do you handle? A. Grant mostly, and some Auto-Lite and Exide.

Q. Do you stock any batteries? A. No, I don't. The supplier is right next door. I can get them all any time.

Q. So you pick up all your batteries? A. I pick up the batteries. The Grant distributor and Goodyear are the same man.

Q. But the ones that you sell are all either Grant, or Auto-Lite, or Exide? A. Yes.

Q. Now, how about your accessories—not counting now your tires and batteries. From whom do you buy your accessories? A. The biggest majority from Arnold Motors, right in Marshall.

Q. That is not a Firestone or Goodrich supply house? A. No. That is an independent supply house.

Q. How about Redwood Motors? A. Yes, I get quite a few from there, and tires from there.

Q. Do you buy your Gates tires— A. Gates tires and fan belts through Redwood Motors.

Q. And what is this D. G.— A. D. L. Milney. That's another wholesale house there. (5246) I buy, oh, probably 10% of my accessories.

Q. And Marshall Tire Service? A. That is the Goodyear distributor and Grant battery distributor.

Q. Then, except for your pickup of tires you don't buy anything from Firestone, is that right? A. That's right. Just tires alone from them.

Q. Just tires and what? A. Just tires alone.

Q. And you don't buy any B. F. Goodrich merchandise? A. No. I just pick up tires occasionally, possibly two to four a year is all.

Q. Do you openly display all of your TBA? A. Yes.

Q. You don't hide any of it? A. Not a thing.

Q. Anybody from the Texas Company ever tell you that you had to hide it? A. No, sir.

Q. That they would treat you badly in any way if you didn't stop the display of this merchandise? A. No, sir; never did.

Q. You say that about 90% of your customers are local? A. Yes.

Q. From your immediate vicinity? (5247) A. Just from within a 30-mile radius.

Q. Do you know them all pretty much personally? A. Yes; by name.

Q. And they rely on your judgment both with respect to tires and batteries? A. Yes.

Q. When did you take over this station? Eight years ago? A. May 20, 1950. That is eight years—a little over eight years.

Q. Now, what kind of TBA did you have when you opened it, after you took it over? A. I'd—well, a few Goodyear tires, and a few of their Grant batteries for the opening; and otherwise there wasn't much in the accessory line.

A few mirrors, and stuff like that; spark plugs, and that type of accessories.

Q. You took it over just that way? A. Yes, sir.

Q. And have you handled substantially the same type of merchandise that you handle now the whole eight years? A. Yes. Very much.

Q. In the course of that time has the Texas Company remodeled your station? A. Yes, they have. Well, no—the owner did it the year before, a year or two before the company took over the lease. And then the company did put in new lighting in the lube rooms.

(5248) Q. Since you have leased from them? A. Yes. They did all that. And they put some shelving—rebuilt some shelving in the back office, we call that.

Q. Do you feel they have treated you badly in any way because you have handled the TBA which is not in the Goodrich or Firestone line? A. No, sir. Not at all.

Q. When you say "the previous owner," did you mean this distributor from whom you leased originally? A. Yes; that's right.

Q. Does the Gates Tire Company, by the way, have a credit plan of its own? A. Yes they do, sir.

Q. And they will let you honor—is that the plan that lets you honor any oil company credit card? A. It is more or less up to our recommendation; but if the customer has a credit card it is our risk.

They will accept that credit rating, and as soon as the customer makes the first payment on those tires we get our money for them.

Q. Are those first payments generally made? A. Yes. Very much so.

Q. Do you get any help from the Texas Company in merchandising your TBA? A. Yes; very much so.

(5249) Q. What sort of help? A. In your dealer meetings. And then, when the field men come around they will give different suggestions and help you out with different setups, and explain different stuff, along with this Texaco Dealer Magazine we get. It is all very good.

Q. And those field men will help you sell the type of TBA you do sell? A. They will help us set up and display, and explain everything. They will.

Q. You said you went to some dealer meetings. For how long have you been attending those? A. Oh, off and on for the full eight years.

Q. Do you get acquainted with the dealers who attend those meetings? A. Yes. I know the whole works.

Q. About how many are there? A. I would say in the neighborhood of forty—a few more or less.

Q. Who attend your meetings? A. Yes, sir.

Q. Have you ever heard any representative of the Texas Company threaten you or the dealers generally at these meetings with lease cancellation or any other mean conduct if they didn't handle the sponsored line of TBA, or some of it? (5250) A. No, sir, I never have.

Q. And have any of those forty dealers whom you say you are well acquainted with ever told you that any threats had been made to them with reference to their TBA purchases? A. No, sir; never have.

Q. Nothing like that has ever happened? A. No, sir. Never.

Q. I don't know if it is really much use asking you this, but what is the percent of your total TBA which you buy from either Firestone or Goodrich? A. About two—about two per cent.

Mr. Lorenzen: I would like to add to the photographic gallery. Would you mark this for identification as Exhibit 62?

(The photograph referred to was marked Respondent's Exhibit 62 for identification.)

By Mr. Lorenzen:

Q. I show you Respondent's Exhibit 62 and ask you whether that is a photograph of your station. A. Yes, sir, it is.

Q. Are those window valances Goodyear valances? A. Yes, they are.

Q. Do you have any Firestone or Goodrich advertising about that station at all? A. I don't have a bit.

* * *

(5251) *Cross examination by Mr. Dias:*

Q. I only noticed one pump on that picture. You have two at least, don't you? A. Two.

Q. Is your station located at the commercial end of town? A. One block—well, yes, right on the end of the commercial street.

Q. And what is the size of Marshall? A. It is approximately 6,300.

Q. You mentioned that 90% of your customers are local, and that they come to you from a radius of thirty miles. How many Texaco stations are in town? A. Just mine.

Q. Yours is the only one? A. Yes.

Q. Are there any other gas stations nearby? A. No. No large—mine is the biggest one within about thirty miles. I mean, there is one in Lynd, seven miles away. That is just a pump in front of a—

(5252) Q. That is a Texaco station? A. It is just a Texaco pump.

Q. I didn't make myself clear. Are there any other stations in your town? A. Other stations, yes, but no more Texacos.

Q. Are they located anywhere near your station? A. Oh, yes. Well, there is sixteen of them altogether, all within about seven blocks.

Q. You are sort of surrounded by them? A. Yes.

Q. Do any of those stations carry Firestone? A. I don't believe there is any stations that carry Firestone.

Q. Or Goodrich? A. There is one Goodrich. The Goodrich is a Mobile 24-hour station.

Q. And there are no Firestone stations there? A. There is a Firestone distributor, but he isn't in a station. He is a Firestone store. Everything.

Q. Does he sell gasoline too? A. No, he doesn't.

Q. Where do you draw the dealers for these meetings that you have attended for the last eight years? A. They come from a radius of, oh, it runs—there must be about a 70-mile radius, roughly. It is where they all (5253) meet. And it will be the dealers plus their helpers. All helpers are invited too. And all the dealers try to bring their help along.

Q. Are they run pretty late at night after the station is closed? A. Most of the time they get an extra person to take care of the station.

Q. How often are those meetings held, do you know? A. Oh, every three or four months, I believe.

Q. Have you attended all or most of them? A. No. I'd say two or three.

Q. At these meetings are there ever any rubber company representatives describing their products? A. No. I have really never had them where they get up and really make a call. They will have their tires on display, and the representative will be there; but at the same time, he doesn't go up and talk and explain different stuff. We have been invited to the Firestone showing, and the Goodyear showing, and Gates showing, and that is the only time we

ever have anything to do with the tire companies. The representatives are all at our meetings, but they never say much. We just know they are there.

* * *

(5254) RAYMOND HOLM was thereupon called as a witness for the Respondent and, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your name and your home address to the reporter? A. Raymond Holm, 311 Center, Mankato, Minnesota.

Q. How far is this Mankato from Marshall? A. About 110 miles, I would say.

Q. Do you attend the same meetings as Mr. Tubbs, or different ones? A. Different ones.

Q. You are in the service station business. A. That's right.

Q. You sell Texaco gasoline? A. That's right.

Q. And do you lease from the Texas Company? A That's right, yes.

Q. Do you handle any TBA? A. Yes.

Q. Will you tell us why you handle it? A. Well, to attract business, naturally. Gasoline and (5255) TBA go together like, I guess, ham and eggs, you might say. Gasoline will bring people in for TBA, and TBA will bring people in for gasoline. They work hand in hand. Today it is no more a filling station; you have got to be able to do a little bit of everything, and have a little bit of everything, just like your super markets. That is the way your service stations have become.

Q. How long have you been a lessee? A. Seven years.

Q. During the time you have been a lessee, have you had an understanding as to the Texas Company's TBA

program and policy? A. Yes. When I was going through the interview, being interviewed for the service station, the zone manager for Texas Company outlined the TBA program and everything else pretty distinctly. He recommended that we could handle Firestone or Goodrich, but that we would feel free at any time to handle anything we wanted, that we were a completely independent businessman, that we could do pretty much anything we wanted.

Q. Did you act on that statement of policy? A. I am afraid so.

Q. You have, in fact, bought a good deal of TBA which has nothing to do with Firestone or Goodrich, have you not? (5256) A. That's very true.

Q. In fact, nearly all of your TBA is in some other lines. A. That's right.

Q. Has anyone since that original talk that you had with this manager ever said to you that in fact the Texas Company did not mean this statement about your independence and that you had to buy Firestone and Goodrich? A. I don't have to do anything; just be there, keep it open, and buy their gasoline—and that's it.

Q. And nobody has told you that you had to buy Firestone or Goodrich? A. No.

Q. And nobody has told you that your lease would be cancelled if you did not do it? A. Never.

Q. Nothing like that has ever happened. A. No.

Q. Will you tell us from whom you buy your TBA? A. The Kaye Corporation.

Q. What do you buy from them? A. Tires, fan belts, and various other TBA they got. They are a real large outfit; they got a lot of TBA. Batteries—

(5257) Q. What kind of tires? A. Armstrong.

Q. Are those your principal line of tire? A. Yes. Mainly.

Q. About how many of those do you have in stock? A. About fifty.

Q. Do you stock any other tires? A. Yes.

Q. What are they? A. Kelly-Springfield, and U. S. Royal.

Q. How many Kellys do you have in stock? A. About thirty.

Q. And how many U. S. Royal? A. Twenty or twenty-five, approximately.

Q. Are those your principal lines? A. Yes.

Q. Do you happen to have anything else in stock? A. Yes. I have got two Goodrich.

Q. Two Goodrich tires? A. Yes.

Q. How did you happen to get those? A. Well, I got those through adjustments. Otherwise I probably wouldn't have them.

Q. Do you display all of your tires openly? A. Yes.

Q. Do you have signs for the Armstrong tire? (5258) A. Yes. All your major oil companies or tire companies will put out advertising programs. You know what I mean. Certain periods of the year: 4th of July, Labor Day, sales, and fire sales, and everything else; and whenever they come out with them, which is about five or six times a year, we put them up right away.

Q. That is Armstrong? A. Armstrong, yes; and—

Q. And Kelly? A. Kelly.

Q. How about Royal? A. Not too much Royal.

Q. How about Goodrich? A. None.

Q. You put none on. A. I get it, but I don't put it up.

Q. Well, don't you have a weatherbeaten old Goodrich decal up there in your station? A. Yes; that's been there. I don't want to take it off; it is too much work. So I just leave it.

Q. Do you think it helps you get any customers? A. Oh, I think it don't hurt anything. We get very little transient business, and if a person, a local, or a transient, needs an adjustment, they see the B. F. Goodrich decal and stop, and they ask me if I handle the Goodrich. I tell them I don't handle it, but I (5259) can see what I can do for them, and I do what I can about getting it.

Q. Then you do— A. I will get it and adjust it, and take it down for him.

Q. And you do make money on that sale. A. I hope so.

Q. You do have this other outdoor or window advertising of these Armstrong and Kelly-Springfield tires that you have testified about. A. Yes.

Q. And that is in your station all the time. A. Yes. It is there all the time—most of the time. I mean one day—you don't leave it up from one day to the next. You take it out for a little while so that somebody can tell that there is a change. Otherwise, they see the same stuff, so they never know you change it.

Q. You change your windows, just like stores change their windows, their displays, once in a while, is that right? A. That's right.

Q. Do you participate in any newspaper advertising with any of the tire distributors whose tires you handle? A. Yes. We have a coop advertising program with Armstrong (5260) on our newspaper and radio.

Q. To what extent do you participate in that? A. Well, we still do a little of it, but we used to be on the basketball games and football games and baseball games. That was on two radio stations. With Armstrong.

Q. That was sponsored by Armstrong? A. By Armstrong and myself.

Q. How about newspapers? A. That was also Armstrong and myself, too.

Q. That was sponsored by you jointly and your name appeared on it. A. My name appeared on it, yes; on the bottom.

Q. Of course your name appeared in this radio advertising, did it not? A. Oh, definitely.

Q. And this has been going on for how long a time? A. About five years.

Q. What station was this advertising on? A. Radio Station KTUE and Station KWSM—both Mankato.

Q. And do you want to give us the name of the newspaper in which this advertising took place? A. The Mankato Free Press.

Q. Is that a daily? A. That is a daily, yes.

(5261) Q. Now, in addition to that, have you done any handbill advertising? A. Yes, with Armstrong Tire and Grant batteries. We have put out handbills, circulars, you know. We had the kids put them around on windowshields, and stuff like that, until the local police—there is an ordinance against it, so they pretty well made us quit.

Q. So then you couldn't give out any more handbills. A. That's right.

Q. Tell me something: do you remember when you opened this station; did you open it with this line of tires that you now have? A. No; I opened with Goodrich, and that was a financial reason, because they would put them in on consignment and if I sold one I would pay for it; and if I didn't sell one, it didn't cost me anything. So at least I had them.

Q. So when you opened this station, you didn't have too much money, did you? A. That's right.

Q. And you had to take a deal where you could get your TBA on consignment? A. That's right.

Q. And the B. F. Goodrich people offered to put it in without charge, is that right? (5262) A. Without charge; right.

Q. What battery did you open with? A. Delco.

Q. Was that Delco Battery put in on the same basis? A. Yes.

Q. How long was it after you got on your feet that you changed and bought these other tires? A. I would say about a year. Eight months to a year.

Q. As soon as you were financially able? A. That's right.

Q. And then you changed to these other tires, to Armstrong, right? A. To Armstrong, yes.

Q. And now you pay for your own inventory. A. That's right.

Q. Isn't that Goodrich dealer a little unhappy about that? A. That's tough.

Q. Does he still try to sell you? A. He is there every week.

Q. And he hasn't had any success. A. He is a tough one. He can't seem to take no for an answer.

Q. From whom do you buy most of your accessories? A. Mostly the Kaye Corporation and Bowes Sealfast.

(5263) Q. You buy substantially all of your accessories from Bowes Seal Fast, is that right? A. That's right.

Q. Do you buy anything from Goodrich? A. Nothing.

Q. Any Firestone? A. Nothing.

Q. So anything you get from Goodrich or Firestone is just a pickup basis in tires. A. For anyone who wants them, I will get them for them. Yes.

Q. Everything else is from a source other than Firestone and Goodrich, is that right? A. Yes.

Q. Do you display all of your TBA openly? A. Every bit of it.

Q. Has the Texaco Company ever told you that they would cancel your lease or otherwise treat you badly if

you did not stop this newspaper advertising or radio advertising or the display of your non-sponsored merchandise? A. No. In fact, they were always for it.

Q. They were always for it? A. Yes. It was helping the gallonage—all this advertising was.

(5264) Q. What happened? A. He didn't want to condemn; he wanted to continue. Even if it was something else.

Q. They were happy with it? A. Very happy.

Q. Did you get any help from the Texas Company in your merchandising, in merchandising your TBA? A. Yes.

Q. What sort of help did you get? A. Oh, training programs, selling aids, and hints as far as merchandising and display and selling—how to sell, how to close a sale, and anything on that order. Me and the fellows who worked for me got this.

Q. And that applied, of course, to the non-sponsored TBA? A. To the non-sponsored TBA, too.

Q. Because that is all you are handling. A. That's all I'm handling, yes.

Q. You did attend dealer meetings, did you not? A. Oh, yes.

Q. About how many of the Texaco dealers around you do you think attended those meetings? A. Well, there is about forty-five or fifty dealers, and I imagine about thirty showed up.

Q. Each time? (5265) A. Each time, yes.

Q. How many meetings did you attend? A. Just about all of them.

Q. And in the course of that time did you meet more or less all of the dealers? A. I met, I think, just about every one of them.

Q. What is your division point, by the way? A. Minneapolis, I believe.

Q. The Texaco Division Point is Minneapolis? A. I believe so. Isn't it Ray?

Q. At these meetings, has any representative of the Texas Company ever threatened you or the dealers there generally? A. No.

Q. They have not threatened you or them with cancellation of lease or with any other unfriendly conduct if they did not handle the Firestone or Goodrich line, or some of it. A. Never a word was said on it. Never said a word.

Q. Did you get pretty-well acquainted with these dealers after the meetings? A. We always used to sit around and have a kind of a bull session, yes.

Q. Did you talk together? A. Yes.

(5266) Q. Did any of those dealers ever complain to you that The Texas Company was in any way threatening them if they didn't handle the sponsored line of TBA? A. They never threatened at all.

Q. By the way, do you know what some of those other Texaco dealers around you handled in the way of TBA? A. Well, I think everybody just like myself. There isn't hardly any of them that go along there with the program.

Q. You mean practically no one handles Firestone or Goodrich? A. I don't think anyone handles it 100 per cent.

(5267) Q. Do a lot of them handle the type of tires and TBA that you handle? A. Just about every one of them.

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Cross examination by Mr. Dias:

Q. How often do you visit those other Texaco stations in town? A. Oh, we are pretty close. I think I am in one or two or three of them every week.

Q. Do you distribute; are you a distributor? A. No.

Q. How many Texaco stations are in Mankato? A. Six.

Q. How many of them lease their stations the same as you do, do you know? A. I believe four.

Q. Four out of six? A. Four out of six are under a third-party lease.

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(5268) Q. Do the other stations, then, handle only those Firestone and Goodrich that are turned in to them for adjustment purposes? A. Oh, no. I don't know what they do. As far as the tires they have are concerned, I don't ask them if they got that tire through an adjustment.

Q. Do any of those other stations carry some Goodrich and Firestone? A. Oh, I suppose some of them do. I haven't seen any of them around.

Q. You have been in each and every one of the stations? A. Just about. They have Gates, Mansfield, Remington, and Armstrong, to name a few.

Q. How large a town is Mankato? A. About 30,000. That is with North Mankato and Mankato, combined.

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(5269) COLLEY BURNETT, called as a witness on behalf of the Respondents, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your full name to the reporter? A. Colley Burnett.

Q. We are getting a little closer to the Atlantic seaboard, aren't we, Mr. Burnett? A. Yes.

Q. Where do you live? A. Geneva, New York.

Q. Is that your home address? A. Lochland, in Geneva, New York.

Q. What is your business? A. At 43 Lake Street, Geneva, New York.

Q. And what sort of business do you have? A. I am a Texaco dealer.

Q. Do you sell Texaco gasoline? A. Yes, sir.

(5270) Q. And do you lease from the Texas Company? A. Yes, sir.

Q. How long have you been a lessee and Texaco dealer at that location in Geneva? A. 18 years.

Q. Approximately what is the gallonage of your station? A. Monthly?

Q. On the average, yes? A. I will average about 29,000.

Q. Is Geneva located on any highway? A. It is located on 5 and 20,—U. S. 20.

Q. Is your station near U. S. 20? A. Just off of the by-pass.

Q. Do you handle TBA at your station? A. Yes, sir.

Q. Will you tell us why you handle it? A. Well, TBA more or less makes a one-stop service; it helps your sales of gasoline and oil, and, in turn, your gasoline sales help the TBA sales.

Q. You handle TBA because you want to,—it is your choice? A. That is right.

Q. And you think it helps you in your business? A. Yes, sir.

Q. Have you had any understanding and do you have an (5271) understanding of the Texaco's TBA policy and program? A. Yes, sir.

Q. Will you tell us what that understanding is? A. Well, the Texas Company recommends Goodrich or Firestone, but you can handle any brand that you desire.

Q. Have you acted on that understanding? A. Yes, sir.

Q. And your TBA purchases have been made on that basis? A. Yes, sir.

Q. Has anyone from the Texas Company ever told you that the Texas Company would cancel your lease or other-

wise treat you badly in any way if you didn't handle all or some of the sponsored TBA line? A. No, sir.

Q. Nothing like that has ever happened? A. No, sir.

Q. Will you tell us from whom you buy your TBA? A. Goodyear Tire and Rubber, Delco batteries, B. F. Goodrich.

Q. Do you buy anything now from Chapin-Owen? A. Some; I buy Delco batteries, all accessories,—polishes, oil filters, and so forth.

Q. Chapin-Owen is not the Goodrich or Firestone supplier in your neighborhood, are they? A. No.

(5272) Q. So you buy substantially all your accessories from a house which is not connected with Firestone or Goodrich? A. Yes.

Q. From whom do you buy your Goodyear tires? A. Goodyear Tire and Rubber Company, in Buffalo.

Q. You say you buy your Delco batteries from Chapin-Owen? A. Yes.

Q. Are those your principal suppliers? A. Yes.

Q. You say you handle the Delco battery; is that the only one you stock? A. Yes, sir.

Q. How about tires; what do you stock? A. Goodrich and Goodyear.

Q. Will you tell me how many Goodrich tires you have in stock now? A. Probably ten or twelve.

Q. And how many Goodyear do you have in stock? A. About 150.

Q. About how many of your sales of tires are out of stock and how many are on a pickup basis? A. I would say right now the pickup basis would run about 75 percent.

Q. So only about 25 percent is out of stock? (5273) A. Yes, sir.

Q. When you pick up, do you pick up whatever tire the customer wants so that you are able to sell it to him? A. Yes.

Q. No matter what make? A. Yes.

Q. You pick up more Goodrich now than you do Goodyear? A. Yes.

Q. That is because you have a large stock of Goodyear and only a small stock of Goodrich? A. That is right, sir.

Q. And you do sell more Goodrich tires than that difference in inventory would indicate? A. Yes.

Q. My friends here have been kind of touchy about this Goodrich situation and I just want to bring out you sell quite a few Goodrich tires, don't you? A. Yes.

Q. You find there is some sort of popular demand for them in your neighborhood? A. Yes.

Q. And they are a successful line of tire? A. Yes.

Q. At one time did you try some other tires in addition to Goodrich and Goodyear? (5274) A. I have had some Vanderbilts.

Q. How did those go? A. It is pretty much of a selling job to get rid of them. There is not much public acceptance.

Q. And you found out those were not satisfactory? A. That is right.

Q. So you gave up those, did you? A. Yes, sir.

Q. And do you display your Goodyear tires? A. Yes, sir.

Q. And your Delco batteries? A. Yes.

Q. They are all openly displayed? A. Yes, sir.

Q. Have you got signs? A. Yes, sir.

Q. For both the Delco and the Goodyear? A. Yes.

Q. Do you have any Goodrich decals in your station? A. No.

Q. Do you have any Goodrich signs? A. I have a Goodrich metal sign on the outside of the station.

Mr. Lorenzen: May I have these marked Respondent's Exhibits 63-A and 63-B?

(5275) (The photographs referred to were marked Respondent's Exhibits 63-A and 63-B, for identification.)

By Mr. Lorenzen:

Q. Mr. Burnett, do these two pictures, Exhibits 63-A and 63-B, respectively, show the outside of your station and the display of Delco batteries inside the station (handing photographs to the witness)? A. Yes, sir.

Mr. Lorenzen: May I add this picture as Respondent's Exhibits 63-C?

(The photograph referred to above was marked Respondent's Exhibit 63-C, for identification.)

By Mr. Lorenzen:

Q. And is Respondent's Exhibit 63-C another picture of the inside of your station, showing your accessories, including your Goodyear tubes? A. Yes.

Q. Are those Goodyear tubes in boxes marked "Goodyear"? A. They sure are.

Q. On Respondent's Exhibit 63-A, the outside of your station, I see a Goodyear sign in your window? A. Yes.

Q. Is that a good-sized sign? A. Well, that window is, I would say, about five feet in size.

(5276) Q. The sign half fills it? A. The sign must be 2½ feet.

Q. How about the Goodyear sign on the tires down at the left of the picture; is that a substantial picture also? A. This is just a regular tire holder, yes, sir. It is possibly a foot.

Q. And you have a large Goodyear sign over the tire? A. No, the tire fits into that; that is a carrier.

Q. Was any special preparation made when those pictures were taken? A. No, sir.

Q. That is just the way the station looked when the pictures— A. At the time the pictures were taken, yes, sir.

Q. And would you say that in the ordinary course of your business the station looks substantially as shown in these pictures, Respondent's Exhibits 63-A, -B and -C? A. Yes, sir.

Q. Now, you do make some changes from time to time, don't you? A. Well, you have to change things around in a different location like that.

Q. Tell us what changes you would be apt to make which would be different from the picture? A. Well, not so much inside as outside. The next time (5277) you come, you might have these tires over in place of these stands over on the inside of the door.

Q. You mean the Goodyear tires and the Goodyear sign might be over to another place, over to the left perhaps? A. Yes, or they might be out here on the pump islands, in the front.

Q. Do you keep Goodyear identification of substantially that type on your station or in front of your station all the time? A. Yes.

Q. Do you keep this Delco sign inside your station? A. That is a regular rack. That is a battery rack; that is always there.

Q. And the Delco batteries with the display is regularly displayed on that stand? A. Yes.

Q. And you have your stock of Goodyear tubes in your station as shown on Respondent's Exhibit 63-C? A. Yes.

* * *

(5278) Q. Are you under one of these standard form leases which renews itself at the end of each year unless it is cancelled on ten days' notice? A. Yes.

Q. That is the type of lease you have now? A. That is right, yes, sir.

Q. And have had for years? A. Yes.

Q. Has any threat been made to you to cancel your lease or not renew it, if you didn't stop handling this competing merchandise; that is, I mean competing with Firestone and Goodrich, and stop advertising this merchandise? (5279) A. No, sir.

Q. No threat like that has been made to you? A. No, sir.

Q. Do you feel free to handle any TBA you want? A. Yes, sir.

Q. If your business judgment dictated a discontinuance of any Goodrich product, would you feel free to do so? A. Yes, sir.

Q. Can you give me an estimate of about what percent of your total TBA sales are in accessories as distinguished from batteries and tires? A. I believe accessories are about 40 percent.

Q. And what about tires and batteries? A. That would include your other 60 percent, then, — just accessories, tires and batteries.

Q. 60 percent would be tires, tubes and batteries, together? A. Yes.

Q. Have you any idea of what the relationship is as between those two classes, — tires and tubes, on the one hand, and batteries on the other? A. I would say batteries 15 to 20 percent.

Q. And the balance in tires? A. Yes.

Q. And what is the total amount of your TBA that you (5280) estimate you buy from the B. F. Goodrich supplier? A. I think as to tires I buy 50 percent, I think it runs about 50-50.

Q. The total TBA would be 20 percent you buy from Goodrich and the other 80 percent you buy from the other suppliers, taking all your TBA together? A. It would be about 40 percent, wouldn't it, — 40 percent Goodyear—

Q. You told us, I think, that all of your accessories and all of your batteries are from a source other than Goodrich? A. That is right.

Q. And that leaves 40 percent which is bought from both Goodrich and Goodyear, and other tire companies? A. That would be about 20 percent from Goodrich.

Q. And you said about half of that was from Goodrich and half from Goodyear? A. Yes; I wasn't figuring accessories.

Q. And 20 percent you buy from Goodrich and that 80 percent would be those you buy from others than Goodrich? A. That is right.

Q. And you buy nothing from Firestone? A. Firestone is right across the street. I can walk over there if somebody demands a Firestone tire.

Q. Sell them on a pickup basis? (5281) A. Yes.

Q. Do you think it is better business for you to handle the Goodrich tire than the Firestone tire? A. Yes, sir.

* * *

Q. Does the Texas Company give you any assistance in the merchandising of TBA? A. Yes, we have dealer meetings and also there is a Texaco dealer magazine and things like that.

Q. Do you find that whatever suggestions you get from those sources are helpful in the selling of your TBA? A. Very helpful.

Q. No matter whether it is the Goodrich or some other kind? A. That is right.

Q. About how many dealers would you say attend these dealer meetings, on the average? A. I would say there are generally 30.

Q. Are they different ones, not always the same ones? A. Generally the same ones, as a rule.

Q. Have you had a chance to get acquainted with them a little bit? A. Pretty much.

(5282) Q. In the course of those meetings has any employe of the Texas Company ever threatened you or any of the other dealers with lease cancellation or some other kind of discrimination if you don't handle some or all of the line of Firestone or Goodrich? A. No, sir.

Q. In the course of your conversations with the dealers, have any of them ever told you that any such threat has been made to them? A. No, sir.

Q. What is the division point in which—the Texaco division point in which your station is located? A. Buffalo.

Q. That is in the Buffalo division? A. Yes.

Q. And do you know what the territory point is, the territorial point? Is that known as the eastern or northern territory? A. I would imagine that point would be in New York.

Q. You think your headquarters office is in New York. A. I think so.

Q. Do you buy your oil in carload lots or do you get this oil quantity discount letter? A. In carload lots?

Q. Yes. (5283) A. No, I don't buy in carload lots.

Q. Do you get this oil quantity discount check? A. That is right.

Q. Do you get a letter with it? A. Yes, sir.

Q. I show you Respondent's Exhibit 54 and ask you whether you recognize that as a letter which you have received in connection with quantity oil discount checks—I mean that form, of course, — not that specific letter; do you think you have received that? A. Yes, sir.

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Cross-examination by Mr. Dias:

* * *

(5284) Q. Then was this 20 percent also on a yearly basis, the 20 percent of your tire purchases from Goodrich, —was that on a yearly basis? A. Yes, it would have to be on a yearly basis.

Q. And if that is so, then the 20 percent that you talk about, or rather, is it $2500 for annual purchases of Goodyear tires. I assume the 20 percent is $2500 and is an annual figure. A. That would run, on the 40 percent, $5,000 or $6,000.

Q. In other words, you buy $5,000 to $6,000 worth of tires, 50 percent Goodyear and 50 percent Goodrich, is that correct? A. Yes.

Q. In other words, it would be about $2500 to $3,000 apiece; Goodrich and Goodyear? A. Yes.

Q. And that is annual purchases? A. Yes.

Q. What is the dollar volume of your sales, annual sales of batteries and accessories? Can you give us some idea of that? A. Oh, I would say $6,000 to $7,000, or $6,000, probably.

(5285) Q. $6,000 a year.

Mr. Lorenzen: He said $6,000 to $7,000.

A. Around $6,000, I believe.

Q. I want you to notice, if you will, the fact that Respondent's Exhibit 54 came out of the Indianapolis Division, and will you read the language of the whole letter and tell us whether or not there is any difference between that letter and the one you usually get.

Can you tell me whether that is identically the same as the one you received? When was the last time you received one? A. I received a letter with our bonus check about the 1st of February.

Q. May I suggest that your form may have been a brief, short form with just a blank spot to indicate the dollar volume of your bonus? In other words, it was a mimeographed or form letter but it just mentioned that attached is your check for your oil bonus and that is about all it said; do you recall that? A. I have the letter attached which read, I would say, the same as this letter.

Q. That is what we want to determine. You have had one like that? A. Yes; I won't say it was this year or last year, but I have had them over a period of years.

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(5291) MERVIN A. HUMMEL was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Mr. Hummel, will you give your full name and your home address to the reporter, please? A. Mervin A. Hummel, 501 Fifth Street, S.E., Watertown, South Dakota.

Q. What business are you in, Mr. Hummel? A. The service station business.

Q. What sort of gasoline do you sell? A. Texaco.

Q. Do you lease from the Texas Company? A. Yes, sir.

Q. And you are under one of these usual form leases which can be cancelled at the end of each year, but if it isn't cancelled it automatically continues? A. Yes.

Q. What is the location of your station? A. It's located—the address is 120 First Avenue, S.E., (5292) Watertown, South Dakota.

Q. How long have you been there? A. Two years.

Q. Before that time have you been a Texaco dealer at another location? A. Yes, sir.

Q. Where was that, and during what time? A. That was on the corner of Kemp Avenue and Fifth Street, N. E.

Q. Same City? A. Same City; Watertown, South Dakota.

Q. And what was the time during which you were a dealer there? A. I operated that location for—from 1947 until 1953.

Q. And then there was a gap of two, three years? A. Three years, sir, yes.

Q. And then you started in again in 1956? A. Right.

Q. In the meantime you had some other occupation? A. Yes.

Q. Approximately what is the average monthly gallonage of the station in which you are now? A. 12,000 gallons.

Q. Of course, at both stations you handled TBA? A. Yes, sir.

(5293) Q. That was your own choice? A. Right.

Q. Now, will you tell us, when you started in this station in 1947—will you tell us at the time when you started, with whom you dealt for your TBA, and will you tell us how you came about to deal with them? A. Well, the consignee in Watertown was the person whom I leased the station from—or, I leased it through him from the Texas Company.

Q. Well, I meant your TBA. A. Oh, the TBA.

Q. It's all right. I don't mind this, but how—you did buy some TBA in that station, didn't you? A. Yes.

Q. All right. Now, when you first moved into that station from whom did you buy it, and will you tell us why you bought it from him? A. I purchased my TBA from the Firestone distributor in Watertown, South Dakota, and of course one of the reasons that I did that was because the manager of the Firestone store and I were buddies

together in the service. In fact, he was in my platoon in the army.

Q. Did you contact him for your supply of TBA before anyone of the Texas Company talked to you about TBA? A. Yes.

(5294) Q. So that was entirely your own choosing? A. Definitely.

Q. Now, for how long did you continue to buy from Firestone? A. I would say about three years.

Q. Then you had a disagreement, did you, with the Firestone supply point? A. Definitely.

Q. And did you stop buying then? A. Yes.

Q. Then to what make of TBA did you switch, and from whom did you buy? A. I started to sell Delco batteries, and I sold any tire that I could procure, other than Firestone.

Q. Other than Firestone? A. Yes, sir.

Q. Well, now, during that time did anyone from the Texas Company ever threaten to cancel your lease or otherwise treat you badly if you didn't go back to the Firestone line? A. No, sir.

Q. Nothing like that happened? A. No, sir.

Q. And they didn't treat you badly or cancel your lease, is that right? A. No, sir.

Q. And you left that station at Fifth and Kemp because you (5295) wanted to? A. Right.

Q. And at the time you did leave, you were handling none—tires that were not Firestone? A. Yes, sir.

Q. Or Goodrich? A. Right.

Q. And Delco batteries? A. Right.

Q. Now, then, when this new station which you have at 120 First Avenue—is that a better station even than the one at Fifth and Kemp? A. Yes. The facilities are much better.

Q. At the time when you were negotiating for the lease of this new station, did the representative of the Texas Company with whom you were dealing know that you were not going to handle either the Firestone or Goodrich line? A. I'm quite certain he did.

Q. And he leased you the station in spite of that? A. Yes.

Q. Now, with what sort of TBA did you open this station which you now have? A. I opened with Grant batteries and Armstrong tires.

Q. And tires? A. Right.

(5296) Q. You had no Firestone and no Goodrich TBA? A. No.

Q. And what is the TBA which you handle now? A. I still handle Armstrong tires and Grant batteries; and the other TBA items I pick up locally.

Q. Do you buy anything from the Firestone or Goodrich supply points? A. No.

Q. Do you occasionally pick up a Firestone or Goodrich tire? A. On request, yes.

Q. But that's the sole extent to which you buy anything from Firestone and Goodrich? A. Yes, it is.

Q. You stock Armstrong tires? A. A very minimum.

Q. That is you only stock a few tires all told? A. Right.

Q. And then most of your sales are made out of —on a pickup basis? A. Definitely, yes.

Q. About what percent of your sales are in Armstrong tires? A. 100%, I would say.

Q. Well, don't you ever get a request for some other make once in a while? A. No. Very — in fact, I would say I haven't sold anything (5297) than Armstrong for a year and a half.

Q. Well, tell me about the acceptance of this Armstrong tire in your particular neighborhood. A. It's very well accepted.

Q. Do you have an active distributor there? A. Definitely.

Q. How about advertising? Is that Armstrong tire advertised a good deal? A. Locally, yes.

Q. A good deal? A. Yes.

Q. Would you say that it is advertised locally as much in that particular neighborhood as some of the national brands are? A. I would say it is.

Q. Do you find that the manager of this Armstrong distributing point is very active in soliciting service station dealers, including the Texaco stations? A. I would say he is very aggressive.

Q. And he solicits very actively? A. Definitely.

Q. Do you know of your own knowledge what luck he's had in soliciting other Texaco stations in your neighborhood? A. Well, I know one particular situation where the Texaco station had been taken over by a new operator, and — in fact, (5298) I think that — well, the morning that he went down in this particular location, it was quite early, and I imagine he got there just as he turned the key in the station door. And this was about the first or second day after he had taken the station over, and no one else had gotten a chance to solicit any of his business. And of course, this man being aggressive, he sold him on Armstrong tires.

Q. You mean as soon as he opened he put in a — as soon as he put in a stock he had Armstrong tires? A. Right.

Q. Was that a station in Watertown? A. It's located in a little town about twenty miles east of Watertown.

Q. What's the name of that town? A. Clear Lake, South Dakota.

Q. Now, what's the most recent change in operators of a Texaco station in Watertown, do you know? A. Do you mean the time interval?

Q. No. I mean, when was it? A. About — I think about a year and a half ago.

Q. And do you know what that new lessee a year and a half ago opened with? A. He opened with Gillette tires.

Q. Not Firestone or Goodrich? A. Definitely not.

(5299) Q. Are they in a rack with the Armstrong name on it? A. Right. They're in a tire holder.

Q. Is it visible from the outside? A. It's — we have one in our front window.

Q. How about these Grant batteries which you handle? How are they displayed? A. They are displayed in the front window also.

Q. Where anybody can see them? A. Right. They're right before the public.

Q. How about this advertising which you say the local Armstrong dealer does? Have you participated in that? A. Yes.

Q. Has your name appeared in it? A. Definitely.

Q. By the way, does the same dealer also handle the Grant batteries which you sell? A. Yes.

Q. And has your advertising appeared in connection with those batteries as well as the tires? A. Yes.

Q. To a substantial extent? A. I'd say so.

Q. You have a lot of newspaper clippings that show your advertising? A. Well, every time they put an ad in the paper, why, our (5300) name is included in the ad.

Q. Has the Texas Company ever told you to discontinue that type of advertising? A. Definitely not.

Q. Have they ever told you to stop handling and displaying the Armstrong tire or the Grant battery? A. Never.

Q. Have they ever threatened you with the cancellation of a lease or that they would treat you badly in some other way if you didn't buy some or all of the Firestone and Goodrich TBA products? A. Never. I might add, sir—

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(5301) Q. Has the Texas Company done anything to prevent you from handling this Armstrong or Grant line? A. Never.

Q. What sort of a newspaper are these Grant and Armstrong advertisements published in? A. The local daily paper.

Q. What's its name? A. The Watertown Public Opinion.

* * *

Q. Do you attend any dealers' meetings which are sponsored by the Texas Company? A. Yes, sir, we do.

Q. About on the average how many other Texas dealers would you say attend? A. I'd say somewhere around 20 to 25, perhaps 30 sometimes.

Q. During the course of those meetings, has any representative of the Texas Company ever threatened you or the dealers there generally with lease cancellation or some other unfavorable action if they didn't handle the Firestone or Goodrich line? A. No, sir.

Q. At those meetings do you get a chance to talk to the other dealers? A. Definitely.

(5302) Q. You've gotten pretty well acquainted with them? A. Yes.

Q. Have any of those dealers ever told you that the Texas Company has in any way threatened them with lease cancellation or other unfavorable conduct if they didn't handle the Firestone or Goodrich line? A. No, sir.

Q. Nothing like that? A. No.

Q. And of course all the other Texas dealers know what sort of TBA you are handling, don't they?

Mr. Dias: I object.

Hearing Examiner Kolb: The objection will be sustained.

By Mr. Lorenzen:

Q. Well, have you kept it a secret from the other Texas dealers that you're handling this Armstrong line and the Grant line? A. No, sir.

Q. Do you obtain any helpful suggestions on merchandising TBA from the Texas Company and its Dealer Magazine? A. Yes, sir, we do.

Q. Do they tell you about merchandising at these dealers' meetings? A. Right.

Q. And it's also covered in the Texaco magazine? (5303) A. Yes.

Q. Do you find that that is helpful even in merchandising the line of TBA which you handle? A. Definitely, it is.

* * *

Cross-examination by Mr. Dias:

Q. When you recounted that story of the Armstrong man visiting that new Texaco station—do you recall that? A. Yes, sir.

Q. What was the name of that Texaco station? A. Well, I don't know the dealer's name, sir, but it's the only one in Clear Lake, South Dakota — the only Texaco station in Clear Lake.

Q. Clear Lake? A. Yes, sir.

Q. How far is that from Watertown? A. Approximately 21 miles.

Q. And you said you imagine that the Armstrong man was there before he even turned the key in the door? A. Well, I know he was. I'm positive, because the Armstrong man is a very good friend of mine, and he made the remark to me that he had a new Armstrong dealer who operated a Texaco station.

(5304) Q. Can you give us the time of that conversation? A. I can't sir. Not accurately.

Q. What is the population of Watertown? A. It's about 14.5, sir.

Q. 14,500? A. Yes, sir.

Q. How many Texaco stations other than your own are in town? A. Six.

Q. Would you mind telling us what the difficulty was that you had with Firestone? A. Well, I placed several batteries in a fleet of vehicles that I was taking care of, and within 30 days I had to replace every single one of those batteries that I had installed in this fleet originally. And I couldn't get any satisfaction from the Firestone distributor, so as a result I put Delco batteries in all these vehicles.

Q. Can you tell us when approximately that occurred? A. In 1949.

Q. Did you mention the difficulty to Firestone? A. Definitely.

Q. And did they refuse to make adjustments on them? A. They just more or less ignored me.

Q. Who was the Firestone distributor at that time? A. William Marquardt.

Q. And is he still the Firestone distributor in Watertown? (5305) A. Yes, sir.

Q. And the gentlemen that operate the servicing end, are they still the same as the people over there in 1949? A. Yes, sir.

Q. Did you mention that difficulty to Texaco? A. I talked to Mr. Cole about it, the consignee.

Q. At that time you were renting or leasing from a consignee? A. No, I was leasing from the Texas Company.

Q. During the period of your occupancy of the first station? A. Yes, sir.

Q. I understood you to say you leased from the consignee. That's not so? A. No. It was a third party station, third party lease.

Q. I see. And in your current station you're leasing directly from Texaco? A. Third party lease; the same way.

Q. But, I mean, your connections are directly with Texaco rather than with any intermediary? A. Yes, sir.

Q. At these dealer meetings, has the TBA ever been discussed? A. During the last two years there has been very little discussion about it.

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(5306) *Redirect examination by Mr. Lorenzen:*

Q. Those batteries with which you had that difficulty, were they a wet charge battery? A. Yes, sir.

Q. Would the particular difficulty which you had have been obviated by dry charge batteries?

Mr. Dias: I object, your Honor, until we find out why that would be so or what the difference might be so far as this gentleman knows.

Hearing Examiner Kolb: Overruled.

By Mr. Lorenzen:

Q. Did you understand the question? Maybe I put a $64.00 word in there which— A. Well, the reason for the difficulty with the batteries is due to the fact that a wet type battery, if stored unused for any great length of time, will slowly deteriorate to the point where it no longer has a charge. And that was the reason for the difficulty I had with this group of Firestone batteries that I purchased. They had been stored too long, and as a result they just weren't up to top efficiency when I put them in the motor vehicles.

Q. Mr. Dias asked you how many Texaco stations there were in Watertown. You said six, I believe? A. Yes, sir.

Mervin A. Hummel, for Respondents—Recross

(5307) Q. How many of those handle either the Firestone or Goodrich line?

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The Witness: One, sir.

By Mr. Lorenzen:

Q. And is that also a Goodrich distributor? A. Yes, sir.

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(5308) *Recross examination by Mr. Dias:*

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Q. And on these Texaco stations, how many of them are lessees and how many of them own their own stations, do you know? A. There is one out of the six in Watertown.

Q. That does what? A. That does own his own station.

Q. That does have his own station? A. Yes.

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(5315) Mr. Lorenzen: Now there was introduced in evidence here as exhibit 35 a list of dealers who sold Texaco gasoline who did not handle any Firestone and Goodrich TBA. That was in 1951 and 1952 and apparently the purpose of introducing that exhibit was to show that the Texas Company knew which of its dealers did not handle Firestone and Goodrich and presumably counsel is going to argue from that that those particular dealers were subjected to a campaign of some kind and later were either cancelled out or conformed to what counsel thinks should be the Texas pattern, but which is not.

(5316) Now we have some witnesses whose

names appeared on that list here to testify and of course they are included in the list of names we have given.

The Government sent questionnaires to these witnesses, either after this proceeding was commenced, or perhaps while it was in the stage of investigation, and we have in evidence as Respondent's exhibit 4 in this case one of the answers; a particular dealer happened to send us a copy of his answer and he said, in effect, that he was perfectly happy with the Texas Company and he wasn't sending any information to the Government, as I recall. Some of the other answers, of course, we don't have; in fact, we didn't know these questionnaires were sent until we discussed the matter with some of our witnesses.

In view of the agreement between counsel that the opposing parties would not contact the witnesses, it seems to us that in fairness to us and to the witnesses, any statements which were made in any event several years ago—we don't know whether it was in 1952 that this questionnaire was sent out or a year or two later, or in 1955, but in any event it was several years ago—these witnesses should be given an opportunity to refresh their recollection on statements which are in Mr. Dias' file. It seems to me we have been trying this case on the theory that it is not a game, that we are not trying to surprise the other side, but (5317) are trying to put the facts before you as best we can. Now we don't want any witness to testify to anything that happened years back if it isn't so. And I don't think Mr. Dias would want the witness to do that, nor your Honor. Human memory is feeble, and if there is anything at all with which a witness can refresh his recollection, particularly in the background of disclosure of names of

witnesses in this case, it seems to me that the attorney supporting the complaint should be only too happy to permit the witness to refresh his recollection on any questionnaire of that kind in order to be sure that the testimony which is given is absolutely in accordance with the facts.

Now it seemed to us that Mr. Dias in fact did recognize that, because we made this demand for these papers on August 12 in a letter of which your Honor has a copy and which is annexed to our motion papers.

Mr. Dias, in response to that letter, said that he didn't agree to give us the information at that time and then he made some comments which I won't read into the record at this time, somewhat facetious, but I think they indicate the necessity of having these statements, because after all, this is not a game; we want to find out what the facts are. And finally he states that he would like to have some information on each of the witnesses, as a consideration for furnishing us with these statements and he backs up that (5318) request by saying "My proposal seems to be in keeping with Mr. Royall's remarks at page 91 of the August 30, 1956 pre-trial conference, and accordingly this will serve to notify you that I may make that as a counter-proposal to yours on August 18."

Well, we looked up this statement and it is the statement with which I opened this motion, in which it was suggested that the type of witnesses be given, the location of each, and the subject matter of what they were going to talk about. So we pointed out to Mr. Dias, in our reply, that we had gone even further than that, we had given him the names of each of the witnesses, we had given him the exact location of the

witnesses, we had given him exactly the status of the witness, whether he was a dealer or an ex-dealer, whether he was an employee of the Texas Company, and we then went even further, we told him we would voluntarily tell him the subject matter of their testimony and advise him of the subject matter of the dealers' testimony and ex-dealers' testimony, which would be similar to the subject matter in Chicago, and he listened to that for a week, so I am sure he knows what the general subject matter is going to be, and we told him as to the company employees that their testimony was going to be specific denial of certain charges which had been made by the government witnesses against them and also the extent to which TBA of the Firestone and Goodrich line (5319) is or is not sold in some of the divisions with which those particular witnesses are connected.

So it seems to us that we complied with Mr. Dias' suggestion, to give him every opportunity to prepare for this examination, and fully met his offer.

As far as the general law goes, there seems to be no doubt that we are entitled to those papers; if this were a court case there is no question but that the court would say that under the Federal Rules of Civil Procedure, we would be entitled to those statements and we have cited to your Honor Hayman against Pullman Company, in the Northern District of Ohio, and several other cases, and the conclusions reached by Moore on Federal Practice, and the Encyclopedia of Federal Procedure.

It just seems to me there is no purpose in holding these statements out on us at all, except to turn this proceeding into a game rather than into an orderly procedure for discovering what the facts actually are.

Colloquy

Mr. Dias: Your Honor, this is the first time I have heard any mention of legal support for this argument, but my position is this, and to make the record perfectly clear, there has been no deviation from the agreement that I have had with counsel; I gave them all the information per our agreement insofar as our witnesses were concerned.

Bear in mind we have a respondent coming in here (5320) presenting their witnesses, people for whom they vouch, and why we are supposed to assist them in verifying their witnesses' testimony is beyond me.

There are really about three reasons why I don't think they are entitled to them. In the first place, these documents, if there are any, come under the exclusion provided by attorney-work-sheets, work product. They are basically, again I say, respondents' witnesses, but there is a case that I think is especially in point, and I refer you to U. S. versus Deere & Co., et al. This is a rather lengthy finding, but very apprepos in this case, so I will read it.

"'As the Supreme Court recognized in Hickman versus Taylor, the term 'work product of a lawyer' cannot be defined precisely. It must be applied in light of the particular facts which are presented. As heretofore indicated, it was in response to plaintiff's interrogatories that defendants furnished plaintiff with the list of the former dealers and it was to these dealers that questionnaires were sent by the plaintiff. The attorneys assigned to the Antitrust Division of the Government, who have been in active charge of these proceedings from their inception, framed the questionnaire and the accompanying letter to the former dealers. The letter was

signed 'Herbert A. Bergson, Assistant Attorney General, by Melville C. Williams, Chief, Midwest Office, Anti-Trust Division.' It seems clear, therefore, that these (5321) questionnaires were the work of the lawyers who were representing the government in the litigation in question.

"There are no unusual circumstances which would justify the yielding of the doctrine in the interest of justice. The names and addresses of these former dealers canvassed by the plaintiff are known to the defendants."

You will note the similarity with this instant case.

"Similar questionnaires may be submitted by defendants to them if they so desire. Representatives of the defendants are located in the immediate areas where most of the ex-dealers reside. This Court is not unmindful of some of the practical difficulties which may confront the defendants in carrying on their investigation with their former dealers, many of whom may have grievances, because they are no longer associated with the particular defendant. And there may be ex-dealers who may refuse for some reason to give any statements, or refuse to divulge to the defendants the nature of the answers made to the questionnaires because they did not keep copies of the answers and they do not remember clearly the exact wording of the information imparted to the Government. But these difficulties are not so insurmountable that an exception should be made to the rule that the work product of a lawyer need not be divulged. The defendants are substantial companies which have adequate facilities for investigation (5322) and making due

preparations for trial. The information which the Government acquired from the answers to the questionnaires was obtained long after the lawsuit was commenced. There is no marked disparity between the parties in obtaining facts and in making due preparations for trial."

That is at F. R. D. 527-528, and as I said in the beginning, the respondents are offering these witnesses and vouching for their honesty and the truth and I don't doubt they seriously think that is the situation, but if the witnesses do not remember signing statements, and if the respondents are not confident that their witnesses are prepared to tell the complete truth in this matter, they are still not hurt; they just need not put the witness on.

For that reason, I suggest that the motion be denied.

Mr. Royall: What is the citation you gave?

Mr. Dias: F. R. D. 527-528.

Mr. Royall: Who is speaking in that?

Mr. Dias: The court.

Mr. Royall: What court?

Mr. Dias: I don't know off-hand. You will find it in the record.

Mr. Lorenzen: We would be very happy to file this motion and we have cases which make the thing perfectly clear that statements signed by the witnesses are quite different from the papers in Hickman against Taylor. That was a case (5323) in which the lawyer himself went out and made notes, and he was not required to disclose those notes. That is not the situation here. We don't want anything Mr. Dias himself took. If he went out to interview these witnesses and made notes of his

own, that is a different proposition. But as I understand it, questionnaires of some kind were sent out, signed by the witness; they are exactly the type of witness statements that time and again have been given to the parties and indeed we have one case here in which the plaintiff, the party himself, made a statement of which the defendant had gotten hold and the Court made the defendant give the plaintiff his own statement, so that he might have a look at it and know what was in that before he testified, in order to refresh his recollection.

There is no fear on our part that these people won't be perfectly honest, but we know to a certain extent on cross-examination it is a contest of wits between the attorney and the witness, and I just think in fairness to the witness, if he has made a statement, he should be allowed to see it to refresh his recollection.

I am sure that the basic reason Mr. Dias doesn't want to give us these statements is because they would support the witness' testimony a hundred percent, and if there is the slightest discrepancy between it, we would like to know, the witness would like to know, and we would like to present (5324) the facts to your Honor fully and honestly to begin with.

We are going to call these witnesses, whether we get the statements or not, but I think it is a very unfair procedure for counsel who has in his possession statements made some years ago, to refuse to turn those statements over to us, and to the witnesses, who signed them, to permit them to refresh their recollection before they take the stand. I think there is no sense in it except, as I say, to turn this

into a game instead of an inquest into the facts.

Mr. Dias: If your Honor please, the comment that there may be a battle of wits going on between the cross-examiner and the witness—I have never won a battle of wits yet. But insofar as the statements are concerned, we have a further problem in connection with the confidentiality of documents in the Commission's files. I am not urging that at this time, but I do mention it.

Insofar as the work product of counsel supporting the complaint, if you will take a look at Respondents' exhibit 4, you will note that that document was signed by me. That certainly comes within work product of counsel supporting the complaint. That is one type of statement. (Handing exhibit to the Examiner.)

As to any other type statements we may have, the fact that an agent of counsel supporting the complaint obtains some statements, or may have obtained some statements, (5325) certainly doesn't take it out of the doctrine of work product. As you know, we have a project attorney here who is directly responsible for the preparation of these complaints, that is, the preparation of the investigation and then subsequently the issuance of the complaint, and the proper trial of it, and at all times we are under his immediate supervision.

That being so, and since he directed the institution, or the gathering of any statements, this is all part of a work product that is subject to the doctrine of immunity of work product.

Hearing Examiner Kolb: The motion will be denied. Proceed.

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James L. Hendrickson, for Respondents—Direct

(5326) JAMES L. HENDRICKSON was called as a witness for the respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Royall:

Q. Will you give your name and address and the address of your place of business? A. James L. Hendrickson, 2720 Walnut Street, Penbrook, Harrisburg, Pennsylvania.

Q. Is that your business address? A. Yes, sir.

Q. Now, are you a lessee of a Texaco filling station? A. Yes, sir.

Q. What is the name of the station? A. Hendrickson Texaco Service.

Q. Is that one of these annual leases that is automatically renewable? A. Yes, sir.

Q. How long have you been the lessee of that station? A. Five years.

Q. What is your average monthly gallonage? A. Approximately 22,000.

(5327) Q. Did you handle tires, batteries and accessories? A. Yes, sir, a full line.

Q. Does Texas Company recommend a particular line to you? A. Texas Company recommends Goodrich and Firestone.

Q. Now, do you know about what percentage of your TBA business is tires? A. About thirty percent.

Q. And how much of it is batteries? A. About ten percent.

Q. And that would mean sixty percent were accessories? A. Yes—no, sixty percent would be gasoline—you mean TBA, yes, sir, sixty percent.

Q. Yes.

Now, which of those three items has the greatest turnover? A. The accessories.

Q. And therefore, your inventory figures at any particular time do not necessarily represent the difference in volume, do they? A. No, sir.

Q. What kind of tires do you buy? A. Firestone, Goodyear, and Dunlop.

Q. What proportion of your tires are Goodyear? A. About 75 percent.

Q. And what proportion are Firestone? A. About one percent—I am sorry, sir, about 25 percent.

(5328) Q. Do you buy any Goodrich tires? A. No, sir, never bought any.

Q. Have you at other times handled other brands of tires, aside from Goodrich and Firestone? A. Yes, sir. Gates, I handled Gates tires.

Q. Have you handled Kelly tires? A. I handled them before I was a Texaco dealer.

Q. Century tires? A. No, sir.

Q. What sort of batteries do you sell? A. Exide.

Q. Do you sell any Firestone or Goodrich batteries? A. No, sir.

Q. Did you purchase a substantial amount of your accessories from Goodrich or Firestone? A. None of it, sir. Approximately none.

Q. Could you tell us, if I give the names of some of the companies, from whom you buy your TBA? Or may I ask you this way: Do you buy from the Harrisburg Auto— A. Harrisburg Auto Parts Company, yes, sir.

Q. Do you buy from the E. Mather Company? A. Yes, sir.

Q. What items, in general, do they sell you, the Mather Company? A. Spark plugs, Filter cartridges, hoses, fan belts, (5329) polishes, cleaners, waxes.

Q. And does Harrisburg also sell you spark plugs? A. Yes, sir.

Q. Do you buy from the R&H Distributors in Harrisburg? A. Yes, sir.

Q. What do you buy from them? A. Exide batteries.

Q. You buy all of your batteries from them? A. Yes, sir.

Q. Do you buy from the Quaker City Motor Parts Company? A. Yes, sir.

Q. Do you buy part of your spark plugs from them? A. Spark plugs, filter cartridges, points, condensers, and so forth.

Q. Do you buy from Whitcombs Incorporated? A. I do occasionally.

Q. Is that a Firestone— A. That is a Firestone distributor, yes, sir.

Q. Do you buy from D. K. Norwalk? A. I do get recapping done there, sir.

Q. Do you buy from Zirilli Brothers? A. Yes, sir.

Q. Do you buy tires from them? A. I buy Firestone tires from them. They are an Esso Service Station dealer.

(5330) Q. And do you buy from Gruber Tire Company? A. Yes, sir.

Q. Do you buy from the Ullrich Auto Supply Company? A. Yes, sir.

Q. You buy from them filters and wiper blades? A. Yes, sir.

Q. Now, who selects—who makes the decision and selection as to the TBA you buy and from whom you buy it? A. I do.

Q. On what basis, for example, do you select your tires? A. On a price basis; the place I get the best price.

Q. And why do you buy Exide batteries? A. Well, it is a first-line battery; it is a good name.

Q. What is the average of the TBA you buy per year, or per month, whichever you choose to give, how much

TBA do you sell, at your selling price, put it that way, a year, approximately? A. Oh, about 20 percent.

Q. I mean, how much do you sell—how much in dollars, I mean? A. By month, probably about $800.

Q. Is your TBA business increasing? A. Yes, sir.

Q. What percent would you say of your entire TBA is Firestone and Goodrich? A. About one percent.

(5331) Q. Now, during the time that—let me ask you this: These items which you purchased, are they on display and open to public view? A. Yes, sir.

Q. Do the Texas salesmen see them? A. Yes, sir.

Q. Did the Texas salesmen, or any representative of the Texas Company, ever complain to you about the display or the handling of these non-sponsored products? A. No, sir.

Q. Have they ever requested you to remove them or place them in any other position? A. No, sir.

Q. Do you advertise in any way any of these goods you buy other than from Firestone—you say you buy none from Goodrich. Do you, for example—Exide batteries, do you give any publicity to that? A. Yes, sir.

Q. In what way? A. In the classified directory of the telephone book.

Q. Have you had prepared, or has there been prepared, photostats of your store, showing the items that you carry? A. There has been pictures taken, yes, sir.

Q. And are those representative of what the condition is and has been? (5332) A. Yes, sir.

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Q. Now let me ask you this, Mr. Whiting. During the time you have been a lessee, have you had a knowledge of the Texas Company's policy in TBA; that is, that part of the policy which relates to the independence of the dealer? A. Yes, sir.

Q. What is that policy? A. Well, the policy, as I understand it, is that you can buy and operate to the best of your ability.

Q. Texas does recommend to you Firestone and Goodrich, do they not? A. They do, sir.

Q. Did you ever, in connection with that recommendation, or under any other circumstances, commit yourself to Texas, or promise to Texas to buy Goodrich or Firestone products? A. No, sir.

(5333) Q. Has Texas ever made the claim that you made such a promise? A. No, sir.

Q. Do you or do you not understand you are entirely free to purchase your TBA products from whom you wish, and the brand you wish? A. I understand I can.

Q. And have you acted on that policy? A. Yes, sir.

Q. Has Texas in any way ever tried to force you or compel you to buy any particular brand or from any particular person? A. No, sir.

Q. Has the matter of where and from whom you purchase your TBA ever been raised in connection with your lease or the amount of rental, or the repair of your station, or maintenance of your station, or anything else? A. No, sir.

Q. Have you any feeling that the purchase by you of your products principally from other than Firestone and Goodrich affects you in any way in your relations with the Texas Company, under your lease, or otherwise? A. No, sir.

Q. Have you seen at any time any written papers from the Texas Company announcing this policy of independence of the dealer? A. Yes, sir.

(5334) Q. In what connection? A. In the Company magazine.

Q. And did you ever receive these oil discount letters relating to oil discounts? A. Yes, sir.

Q. Was there any mention in that of this policy? A. No, sir.

Q. Did you ever—what was your answer to that? A. No, sir.

Q. Nothing in the letters about—I don't know whether you understood my question or not. A. Would you repeat the question?

Q. I said, was there anything in those letters relative to your independence in buying? A. I did, yes, sir, every year since I have been with the Company.

Q. And did they refer to that policy of independence? A. Yes, sir.

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Q. Now, what advantage do you get from handling TBA products? (5335) A. Well, it is a necessary evil in the service station business. It helps you supplement other income.

Q. And does it have any effect upon your gasoline gallonage? A. Yes, sir; it helps it.

Q. Now, does the Texas Company assist you in any way in the merchandizing of TBA? A. The salesmen assist in recommending certain displays, at dealer meetings we go to.

Q. And do they discuss with you the record keeping, current record keeping under S-75? A. Yes, sir.

Q. Is that service rendered to you used by you and known to be used by you on non-sponsored goods, as well as the Firestone and Goodrich goods? A. Yes, sir.

Q. And does that benefit you in the sale of non-sponsored goods? A. Yes, sir.

Q. Do they send you a dealer magazine? A. Yes, sir; every month.

Q. Is that of value to you in connection with your sale of non-sponsored TBA? A. Yes, sir.

Q. Now you spoke of the dealers' meetings. Do you attend those meetings? (5336) A. Quite regularly.

Q. Do you find and learn in those meetings matters that will help you in the sale of TBA, whether it be sponsored or non-sponsored? A. Yes, sir.

Q. Do many dealers attend those meetings? A. Yes, sir; about 30 to 40 men.

Q. At any of those meetings have you ever witnessed, or heard, any efforts by the Texas Company to force or compel any dealer to buy Firestone or Goodrich products? A. No, sir.

Q. They do recommend them, do they not? A. Yes, sir.

Q. At these meetings, were there from time to time representatives or distributors who sell non-sponsored products present? A. No, sir.

Q. You didn't see any of those there? A. No, sir.

Q. At any of these meetings, was there any threat or implied threat made in your hearing of treating badly any one who did not buy sponsored TBA? A. No, sir.

Q. Did you have a chance to talk informally with these dealers at these meetings? A. Yes, sir.

(5337) Q. And did they generally come from your area? A. Yes, sir.

Q. Did you hear, at any time, any complaint from any dealer as to coercion or forcing them to buy sponsored TBA? A. No, sir.

Q. Did you hear any statement from any dealer to the effect that the failure to handle sponsored TBA would put them at a dis-advantage with the Texas Company? A. No, sir.

Q. Now, is there in your lease any provision proscribing or restricting the hours that you shall keep open? A. No, sir.

Q. Or providing any minimum hours? A. No, sir.

Q. What hours do you keep open at this time? A. 7:00 a.m. to 10:00 p.m.

Q. Have you at any earlier period kept open a longer period? A. Yes, sir; 24 hours.

Q. When you changed from 24 hours to your present hours of operation, was there any complaint from the Texas Company about it? A. No, sir.

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(5338) Q. Do you know whether or not it is difficult for oil companies to get dealers for their—good dealers for their stations?

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Q. Do you know that? A. In the general neighborhood, it is difficult.

Q. In your area are there a considerable number of empty service stations? A. There are some, yes, sir.

Q. Is your station doing well? A. Yes, sir.

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(5339) Q. If, according to your figures, you buy approximately 7½ percent of your TBA from Firestone, do you buy all that from a designated supplier, or do you buy only part of it from a designated supplier? A. I buy about one percent of my TBA from a Firestone distributor.

Hearing Examiner Kolb: How much from the designated suppliers?

Mr. Royall: Designated distributor or supplier?

(5340) The Witness: I buy Firestone tires from an Esso dealer, not from a designated supplier.

By Mr. Royall:

Q. Does that explain the difference between the one percent and the larger percentage? A. Yes, sir. I do buy Firestone tires, but not from a designated supplier.

Mr. Royall: That is all, your Honor.

Cross examination by Mr. Dias:

Q. How large a town is Penbrook? A. About 3,500.

Q. Do you know how many stations of all kinds are in town? A. About a dozen.

Q. How many Texaco, besides yourself? A. One.

Q. One other besides yourself? A. Yes, sir.

Q. Would you care to give us his name? A. J. O. Graham.

Q. Do you have a Goodrich distributor in Penbrook? A. No, sir; Harrisburg.

Q. How far is that? A. It is about two miles to the distributor's place of business.

(5341) Q. Penbrook is a suburb of Harrisburg? A. Yes, sir.

Q. And it is about two miles to the distributor? A. Yes, sir.

Q. And who did you say was the Firestone distributor? A. Whitcombs.

Q. Are you carried in the classified directory under Firestone tires, also? A. No, sir.

Q. On these accessories that you purchase, you mentioned that you handled Gates tires. Isn't that on a demand-purchase basis? In other words, if a customer comes in and asks you, you buy Gates? A. No. I set myself up to try to be a distributor of Gates tires several years ago.

Q. When was that? A. About two years ago.

Q. Was this a new station that you moved into five years ago? A. No. The station had been there.

Q. What brand of plugs do you carry? A. Champion.

Q. And filters? A. Fram.

Q. Fan belts? A. Gates.

(5342) Q. Wiper blades. A. Anco.

Q. How often do you attend the dealers meetings? A. I don't think I have ever missed any.

Q. Didn't you say before you attend them quite frequently? A. Whenever they have them, yes, sir.

Q. How often do they have them? A. Twice a year, if I recollect correctly.

Q. And you attended each one for the last five years, since you have been a Texaco dealer? A. Yes, sir.

Q. Were you a Texaco dealer before you went into this station? A. No. I was a Sun Oil Company dealer.

Q. At these meetings have you ever seen or heard from Firestone and Goodrich representatives? A. Yes, sir.

Q. And they discussed their products? A. Put on displays and discussed it.

Q. Where are those dealer meetings held? A. They have been held usually in the American Legion home or a place that is adequate to have them.

Q. In Penbrook? A. In Harrisburg, or on the west shore, the other side of Harrisburg.

Q. And all the dealers from the entire area come? (5343) A. Yes, sir.

Q. What do you generally talk about when you talk informally with these dealers? A. About our products, and try to find out if somebody has something that it is possible for an individual to handle to make more money.

Q. Aren't they sort of social gatherings as much as anything? A. Well, there is a social gathering afterwards always.

Q. Is that when you talk with these dealers? A. We usually have a question and answer period, after the pro-

gram, by the person conducting the program, after the film, or whatever the discussion is.

Q. Who conducts the program? A. Texas Company.

Q. And there are Firestone and/or Goodrich representatives present? A. I have seen them both at one meeting. Usually they are—

Q. One or the other? A. Yes, sir.

Q. After the question and answer program, is that when you socialize? A. Yes, after the meeting is over.

Q. Have soft drinks and sandwiches? A. A little Schnapps.

(5344) Q. Do you recall the exact language in this bonus letter you say you received, on oil? A. Not the exact language, but it brings out the point that the amount of money you can make by selling more oil.

Q. Is that about the extent of it? A. Well, it brings out the facts about you being a Texaco dealer and the advantages of it.

Q. And is that about the extent of it? A. As far as I know.

Q. Does this other Texaco operator in town also attend these dealer meetings? A. I have seen him once.

Q. Does he own his own station? A. He owns his own station and sells nothing but gasoline.

Q. Is competition pretty severe in Pembrooke? A. Yes, sir.

Q. Are there any stations located near yours? A. Well, I am between two stations, a block on either side, one on one side and one diagonally across the street.

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Howard O. Whiting, for Respondents—Direct

(5345) HOWARD O. WHITING was called as a witness on behalf of the Respondents, and having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Would you give your full name to the reporter? A. Howard O. Whiting.

Q. Mr. Whiting, I am quoting from exhibit 35 in this case. The name H. O. Whiting, U. S. Number 21, Ripley, West Virginia appears there. Would that be you? A. That is right.

Q. Mr. Whiting, this exhibit which the Government adduced and put in evidence is dated 1952, January. Now since that time do you recall if the Federal Trade Commission sent any request for information to you? A. I think that was about 1952.

Q. Do you think also at some time subsequent to that? A. That is right.

(5346) Q. Did you fill in those questionnaires, or whatever the request for information was, that the Federal Trade Commission sent to you? A. I did.

Q. Why did you fill them in? A. I felt it was my duty to answer any questions that was asked of me.

Q. So you did fill those statements in and you sent them back to the Federal Trade Commission, or whatever agency it was that inquired of you? A. Yes, sir.

Q. Do you recall now what was the subject matter of that inquiry? A. No, I don't.

Q. Would you like to see a copy of that questionnaire before you testify in this case? A. Yes, I would.

Mr. Lorenzen: Your Honor, I would like to renew my motion at this time to ask counsel supporting the complaint if he has in his possession

any information furnished by Mr. Whiting as described in his testimony to furnish a copy of that statement to Mr. Whiting.

Hearing Examiner Kolb: Mr. Lorenzen, this is your witness. I see no occasion for demanding any documents which the Commission may have in their file to contradict what (5347) this man may testify on direct examination. I assume he is going to tell the truth and I think we can go on on that basis.

Mr. Lorenzen: I am sure he is.

Hearing Examiner Kolb: It seems like you are afraid he is not.

Mr. Lorenzen: I want this document for two purposes, your Honor—

Hearing Examiner Kolb: I don't think it is proper. I overrule the request.

Mr. Lorenzen: I won't argue any further; it is for the reasons stated before.

I would like to move at this time that the attorney supporting the complaint be foreclosed from using the statement which he has here and which at this time he refuses to disclose to this witness.

Hearing Examiner Kolb: I am denying the motion.

Mr. Dias: I would like to make one thing clear. The implication is that I have such a statement, and of course there is no assurance that I do. I would like that clearly understood.

Mr. Lorenzen: Will you make a statement on the record that you do not have it, in which case I will withdraw my motion?

Mr. Dias: I certainly will not. I may or may not have a statement.

(5348) Hearing Examiner Kolb: Let's proceed with the examination of the witness.

Mr. Lorenzen: All right.

By Mr. Lorenzen:

Q. Mr. Whiting, you are in the service station business, are you? A. I am.

Q. What sort of gasoline do you sell? A. Texaco.

Q. Do you have a lease from the Texas Company? A. I do.

Q. Is it one of those leases which renew itself each year? A. Yes, sir.

Q. About what is the gallonage of your station? A. About 6,000 gallons a month.

Q. How long have you been in this particular station? A. Ten years and two months.

Q. Have you handled any TBA during this time? A. I have.

Q. Have you found it useful to your business? A. I have.

Q. You make money on it? A. I do.

Q. You think it helps you get customers? A. It certainly does.

(5349) Q. Are those the reasons for which you handle it? A. That is the reason.

Q. Now tell me what kind of tires you handle now? A. I am handling Siberling, Mohawk, and McCreary.

Q. Can you tell me about how many of each you have in stock? A. I have approximately 150 Siberling—no, I take that back — about 160 Mohawk, and 50 Siberling and 25 McCreary.

Q. Any Firestone? A. No.

Q. Any Goodrich? A. No.

Q. How about batteries, what kind do you have? A. Willard.

Q. What kind of accessories do you have? A. Well, I have filters and fan belts and wiper blades and also I have waxes and polishes.

Q. Do you buy any of those from a Firestone or Goodrich distributor? A. No.

Q. Who are your principal suppliers? A. The Automotive Supplies—

Q. Where is that located? A. One in Ripley and one in Charleston, West Virginia.

Q. You buy most of your accessories from them, do you, or a good many of them? (5350) A. I do.

Q. What type of fan belts do you have? A. Gates.

Q. And radiator hoses? A. I don't have any of those, no.

Q. Do you display Gates fan belts? A. I do.

Q. With the Gates sleeves on them? A. Yes, sir.

Q. In a Gates' rack? A. Yes, sir.

Q. What other supply point do you use? A. Now, do you mean for these accessories, or—

Q. No, let's take tires and batteries and accessories, all together. A. I get my tires out of Siberling and Mohawk out of Akron, from the factories, and my McCreary comes out of Indiana, Pennsylvania, factory.

Q. Those sources of supply are all some distance from your place of business, are they not? A. They are.

Q. Do you have Firestone and Goodrich supply points readily available to you? A. I do.

Q. But it is your choice that you buy the Siberling and (5351) Mohawk from the factory? A. It is.

Q. Do you also use Center Auto Supply, or Carter? A. Center Auto Supply has gone out of business now.

Q. But you did patronize them? A. I have.

Q. Where do you buy the accessories which you used to buy from Center? A. From the Automotive Supply in Ripley and also Spencer, West Virginia.

Q. And neither one of those are Firestone or Goodrich supply points? A. They are not.

Q. Do you display all of your TBA? A. I do.

Q. Have you ever made any effort to hide it? A. No.

Q. Have you purchased these tires and these batteries and accessories pursuant to your understanding of what the Texas TBA policy has been? A. Yes, sir.

Q. And what it is now? A. Yes, sir.

Q. What is your understanding of that policy? A. Well, they have a policy there that they furnish their (5352) dealers with tires and accessories, anything they may want to handle.

Q. You mean they recommend to dealers to take Firestone? A. They do, they recommend Goodrich to me.

Q. Is that what you meant when you said "furnish"? A. Yes, at my request they would furnish them.

Q. But you haven't requested it, have you? A. No.

Q. And has it been your understanding that you could buy your tires and batteries and accessories wherever you wanted to? A. Yes, sir.

Q. And you acted on that understanding? A. Yes, sir.

Q. Has anyone from the Texas Company ever made any threat to you to cancel your lease or not to remodel your station or otherwise treat you badly if you did not stop handling the Siberling and Mohawk tires? A. No, sir.

Q. Or any of these batteries or accessories which you handle? A. No, sir.

Q. No such threat has ever been made to you? A. At no time.

Q. Has anyone from the Texas Company ever told you to hide the tires and batteries and accessories which you handle? (5353) A. No, sir.

Q. Or threatened that if you did handle them they would cancel your lease or otherwise treat you badly? A. No, sir.

Q. Nothing like that has ever happened? A. No.

Q. Have you had Siberling tires and Willard batteries in that station from the beginning? A. Yes. I have had Willard batteries from the beginning.

Q. Willard batteries you have had from the beginning? A. But I didn't have the Siberling tires until approximately four years after I was at the station.

Q. But ever since then, and that would be about 1952, you have handled those tires? A. I have.

Q. And you have continued to be a lessee of the Texas Company? A. I have.

Q. Now as a matter of fact, they just remodeled your station for you, didn't they? A. They have.

Q. Porcelainized the whole front of it? A. Yes, sir.

Q. And as a condition of that, have they told you you had to stop handling these tires or batteries? (5354) A. No.

Q. Now I show you a photograph here and ask you if you recognize that picture. A. I do.

Q. What is that a picture of? A. That is a picture of my station, as it has been partly renewed. There is some more yet to be done on this.

Q. But that is generally the way your station looks, since it has been porcelainized? A. Yes, sir.

Q. Is that automobile in front of the station, which has the name Whiting Tire Service, and Siberling Tires, yours? A. It is.

Q. Is it generally located in front of your station, when you don't have it out? A. That is the official place for parking that, yes.

Q. Now I notice on this picture there are no names at all, either yours or any tire identification. Will you tell us how that comes about? A. The signs were taken off in order to put the porcelain on and while it is not a hundred

percent complete, I am waiting until it is before I put the name of the station on.

Q. And then before this porcelainizing happened, you had the name of the station on there? A. I did, Whiting Tire Service.

(5355) Q. And did you have the name Siberling Tires on there? A. Yes, sir.

Q. And are you going to put both names back as soon as the job is finished? A. Yes, sir.

Mr. Lorenzen: I ask to have this exhibit about which the witness testified marked Respondent's exhibit 64.

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Q. I show you another photograph and ask you whether that similarily shows your station and the automobile with the Siberling sign? A. That is right, it is.

Q. And that was taken about the same time as exhibit 64-A, was it? A. Yes, sir.

Q. Now I call your attention to the Siberling tire sign on the left hand side, and ask you whether that is regularly there in place at your station? A. That is regularly placed on my tire rack, outside rack, (5356) that I keep out there during the day.

Q. Is that in addition to the Siberling sign, which you say is up there, when the station is not being remodeled? A. It is.

Mr. Lorenzen: I ask that this photograph be marked exhibit 64-B.

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Q. About what is your TBA volume a month, in dollars? Do you know about what it is? A. It varies considerably,

and has increased in the last few months to approximately $2,000 per month.

Q. Are most of your customers local people whom you know in the community? A. They are.

Q. And they accept your recommendation on the type of tires you sell? (5357) A. They do.

Q. Now are you listed in the phone book under any TBA product? A. Under Siberling tires.

Q. Do you do any advertising, radio or newspaper? A. I do.

Q. And do you feature any particular TBA product in that? A. Siberling and Mohawk tires.

Q. Has anyone from the Texas Company ever told you to discontinue such advertising or such phone book listing under the penalty of having your lease cancelled? A. No, sir.

Q. Do you stock any Willard batteries now? A. A few, I keep on hand four or five, something like that.

Q. Your distributor is close at hand? A. It is within a block.

Q. So that most of your battery sales are on a pick-up basis? A. That is right.

Q. Do you get any help from the Texas Company in any way in selling your TBA? A. I do.

Q. What sort of help do you get? A. From instructions at meetings, and magazines, information they put out.

Q. The Texas dealer magazine? (5358) A. That is right.

Q. That contains articles on TBA? A. It does.

Q. Do you find that helpful? A. I do.

Q. Even in selling Siberling and Mohawk tires and Willard batteries and your accessories? A. Yes, sir.

Q. Do you attend those dealer meetings quite often? A. I do, approximately two a year.

Q. And during the time you have been a dealer, would you say you have atended most of them? A. I have.

Q. Are other dealers there, too? A. Yes, sir.

Q. About how many other dealers would you say, on the average, show up at those meetings? A. Well, usually, in one meeting that I attend in Charleston, West Virginia yearly there are approximately 75. Another meeting that I attend in Point Pleasant, West Virginia there are approximately 20.

Q. Taking both of these meetings together, has anyone from the Texas Company, at that time, ever threatened you or any of the dealers there with lease cancellation or any other unfavorable conduct, if you didn't handle some or all of the (5359) Firestone or Goodrich line?

* * *

The Witness: I have never heard.

By Mr. Lorenzen:

Q. At the more formal part of the meeting, do you talk to the dealers themselves? A. I do.

Q. You talk shop to some extent with them? A. We do.

Q. You get fairly well acquainted with them? A. Yes, sir.

Q. Have any of the Texaco dealers at any time complained to you that the Texas Company has threatened them in any way with lease cancellation or other unfavorable conduct, if they didn't handle some or all of the Firestone or Goodrich line? (5360) A. No, sir.

Q. No such complaints have ever been made to you? A. No, sir.

* * *

Cross-examination by Mr. Dias:

Q. Are your meetings like the other gentleman's, social affairs after the formal meeting? A. To a certain extent.

Q. You, too, have some schnapps and sandwiches? A. We do, sometimes. Well, eats and drinks of different kinds.

Q. A social gathering, more or less, after the meeting? A. Well, afterwards, yes.

Q. Can you describe the regular meeting, what goes on at that time? A. Well, we discuss the products which the Texas Company sells, such as gasoline and oils, and TBA.

Q. And do you sometimes see Firestone or Goodrich representatives at those meetings? A. I do.

Q. Do they ever miss any of the meetings? A. Yes.

Q. They do miss some? A. Yes, sir.

(5361) Q. How many years have you been going to these meetings? A. Ten years.

Q. And you go to two a year? A. Approximately.

Q. The one with the 75 dealers in Charleston, that is the larger one, I mean, that is the big one of the year? A. Yes, sir.

Q. Do you see Firestone and Goodrich, or Firestone or Goodrich salesmen at those meetings? A. Yes, sir.

Q. Do they miss any of those meetings? A. No, sir.

Q. What is this meeting of 20 dealers in Point Pleasant, what sort is that? A. That is our immediate area. That is our bulk plant manager who holds those meetings usually with the aid of the state men.

Q. State Texaco man? A. Yes. They discuss the oils and gas and TBA.

Q. Did you say Point Pleasant, is that where your bulk plant is? A. Yes.

(5362) Q. Do you mind describing your station before it was rehabilitated? A. Well, it was, before the porcelain was put on?

Q. Yes. A. It was bridge-building which had to be painted every year, and it was pretty shabby looking.

Q. How long, have you been in that same building, ever since you have been with Texaco? A. Yes.

Q. Are there more modern Texaco stations in town? A. No, sir.

Q. As a matter of fact, there is only one other Texaco station in town, isn't there? A. Not in town, no other.

Q. No other in the town of— A. No, sir. Outside of town.

Q. Who is he? A. Howard Winters.

Q. And he is a sort of supermarket, carries all sorts of items? A. Yes, sir.

Q. Is he also a Texaco wholesaler? A. I don't know whether you would call it "wholesale" or not.

Q. You say he is the only Texaco station near Ripley. (5363) What is the population of Ripley? A. Approximately 3500.

Q. Is there a Firestone distributor in town? A. Yes, sir.

Q. Who is that? A. It is known as the Skeen Service Store.

Q. Do they also handle gasoline at that— A. No, sir.

Q. Is that the only Firestone distributor? A. Yes, sir.

Q. Are you sure Ashland doesn't carry Firestone? A. I don't know that they carry them for sure. They may be.

Q. How many Goodrich outlets are in town? Is there a Goodrich store in town? A. One—

Q. Where is that located? A. (continuing)—that I know of.

Q. Where? A. Goodrich tires are handled by Fisher Chevrolet, Inc.

Q. Did you say Winter's does carry Texaco gasoline? A. He does.

Q. And you did or did not know whether or not he carried Firestone products? A. He carries Firestone tires.

Q. Tires? (5364) A. Yes, sir.

Q. You have given us the dollar volume of your TBA sales per month. Could you give us some idea of your dollar volume of gas sales per month? A. Something like $1500.

Q. $1500? A. Fifteen to two thousand, something like that.

Q. Is that a pretty good average monthly throughout the year? A. It is.

Q. I believe you stated that for a while you did not carry Seiberling, or these others. What brand did you carry? A. Mohawk.

Q. Where did you purchase those? A. From Mohawk Rubber Company, Akron, Ohio.

Q. Is that the company that you used to work for? A. No, sir. I have never worked for Mohawk Rubber Company.

Q. Who did you work for at Akron? A. Firestone, Goodrich, Goodyear.

Q. Did you ever move for or apply for a franchise to Goodrich or Firestone? A. No, sir.

Q. In other words, you never tried to buy their product? A. No, sir.

(5365) Q. What sort of tire services do you render, Mr. Whiting? A. We fix flat tires of all kinds, do some recapping, and whatever service is necessary to—

Q. Do you do quite a bit of recapping? A. No. That don't amount to very much. I only recap passenger tires. I have one mold.

Q. Are you in a farm area in Ripley? A. It is.

Q. On these monthly sales of gasoline, does that also include large purchases by farmers for their tractors, and

that sort of thing? A. No. I don't sell any large purchases to farmers.

Q. Do you have access to the Texaco credit card? A. I do.

Q. Do you indicate on the credit card the sale of Seiberling or Mohawk tires, by name? A. No, sir.

* * *

Redirect examination by Mr. Royall:

Q. What do you put on the card, just the size of the tire? A. Size of the tire.

Q. Has anybody from the Texas Company ever complained to you about your using the credit card? A. No, sir.

(5366) Q. Did you tell Mr. Dias how many competing gasoline stations there were in your town?

* * *

A. There are 16 of us handling gasoline in Ripley.

By Mr. Lorenzen:

Q. This fellow Winters, who you said carries Firestone tires, is he a lessee dealer like you are? A. No.

Q. He owns his own store? A. He owns his own business.

Q. Did I understand from the previous figures you gave to Mr. Dias that your TBA sales in dollar volume are just about the same as your gasoline sales? A. Something near that.

Q. In view of Mr. Dias' question—I didn't want to put this picture in because of the porcelainizing. But is that a picture of your station just prior to this reporcelainizing job which was going on? A. Yes, sir.

(5367) Q. And that was the brick-faced station that you were talking about? A. Yes, sir.

Howard O. Whiting, for Respondents—Recross

Curtis Toothman, for Respondents—Direct

Mr. Lorenzen: I ask to have this document marked as Exhibit 64-C.

Hearing Examiner Kolb: What has that to do with the case?

Mr. Lorenzen: Mr. Dias, I think, argued it was a shabby broken down station. I want to show it was a perfectly good-looking station.

* * *

Recross examination by Mr. Dias:

Q. In connection with the 16 stations handling gas in Ripley, how many of them handle Firestone, do you know? A. I don't recall but one.

Q. Where is he located in relationship to your station? (5368) A. He is about two blocks.

Q. Away from yours? A. Yes.

Q. How about Goodrich? Do any of those stations handle Goodrich? A. Not that I know of.

* * *

CURTIS TOOTHMAN was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Mr. Toothman, will you give your full name and your home address to the reporter? A. Curtis Toothman, 516 Walnut Street, Fairmont, West Virginia.

Q. Are you Mr. C. L. Toothman, whose station is at Fifth and Fairmont, Fairmont, West Virginia? (5369) A. That's right.

Q. That is a name also appearing on Exhibit 35.

Mr. Lorenzen: Your Honor, may we have a stipulation that Mr. Toothman's testimony with respect to filling out statements for the Government would be substantially the same as that of Mr. Whiting's, and that if we make a request for the production of his statements that Mr. Dias would turn it down and your Honor would sustain his position?

Hearing Examiner Kolb: It is so ordered.

By Mr. Lorenzen:

Q. You are in the business of selling gasoline among other stations? A. Yes, sir.

Q. Where is your station located? A. Fifth Street at Fairmont Avenue.

Q. At Fairmont? A. Fairmont, West Virginia.

Q. How much of a city is Fairmont? A. About 32,000.

Q. Do you have a lease from the Texas Company? A. Yes, I do.

Q. Do you sell Texaco gasoline? A. I do.

Q. Is this one of the leases which renews itself every year? (5370) A. Yes.

Q. Approximately what is the monthly gallonage of your station? A. About 8,000.

Q. Do you handle TBA? A. I do.

Q. A fairly complete line? A. Yes, sir.

Q. Is that your own choice that you handle it? A. Yes.

Q. Why do you handle it? A. Well, I think I can make more, probably a better product.

Q. What sort of tires do you handle? A. I handle Gates.

Q. How long have you been in this station? A. Eighteen years.

Q. For how long a time have you handled Gates? A. Eighteen years. Since I opened up with them.

Q. So you opened with the Gates tires, and you have been handling it ever since? A. Ever since.

Q. What sort of batteries do you have? A. I have Gates batteries, and a few Delcos, and some Willard.

Q. Do you have any U. S.? (5371) A. Yes, I have some U. S.

Q. Do you have any Firestone or Goodrich batteries? A. No.

Q. Do you have any Firestone or Goodrich tires? A. No.

Q. Have you also handled accessories? A. Yes.

Q. To what extent do you buy those from the Firestone or Goodrich stores? A. I don't buy any from either one of them.

Q. Occasionally do you pick up any? A. Occasionally I pick up two, maybe something like that.

Q. By the way, is there a Firestone store and a Goodrich store in Fairmont? A. Yes.

Q. Right close to you? A. Yes. Firestone is one block away, and Goodrich is about eight blocks away.

Q. From what source do you get your tires? A. I order them out of Pittsburgh.

Q. How far is Pittsburgh from Fairmont? A. About 90 miles. At the warehouse.

Q. Where do you get your Gates batteries? A. Same place.

Q. How about your Delco batteries? (5372) A. I get them right across the street.

Q. And your U. S. batteries? A. Right across the street. Both of them right close together, U. S. and Delco.

Q. Is there a supply point for both, close? A. Yes; they are wholesale houses.

Q. And they are right across the street from you? A. Right across, yes.

Q. Would you give us the names of some of the places from which you buy your TBA? A. Pittsburgh Auto Equipment and Craig Motors.

Q. Gates Rubber Company? A. I beg your pardon?

Q. The Gates Rubber Company in Pittsburgh is another? A. Yes. They are in Pittsburgh. That is where the warehouse is at.

Q. What is the name of the company—you said Pittsburgh Auto, you bought accessories? A. Pittsburgh Auto. That is right across the street. I mean that is the wholesale house. That is right across the street from where my station is. Pittsburgh Auto Equipment.

Q. That is located in Fairmont? A. In Fairmont, that's right.

Q. Is there another accessories wholesale house at (5373) 120 Jackson Street? A. That is Craig Motors.

Q. You buy from them? A. Yes.

Q. Are those your principal sources of supply? A. Yes.

Q. What sort of fan belts do you handle? A. Gates.

Q. Radiator hoses? A. Gates.

Q. Do you display those? A. I do.

Q. Do you have the regular Gates' racks? A. Regular racks in my bays.

Q. And the Sleeves on the belt? A. Yes.

Q. What about Gates tires, do you have those in stock? A. I keep those in stock. I am a distributor for them. I have about 40 in stock at a time.

Q. And you keep a number of Gates batteries in stock? A. Yes.

Q. About how many of those do you have? A. Well, I buy 25 at a time and when I get down to a small amount I reorder. I usually have about 25 on hand at all times.

(5374) Q. Are you listed in the telephone book under any TBA product? A. Under Gates Tires and Tubes.

Q. Do you do any advertising? A. Through the radio, yes.

Q. Radio? A. Radio, yes.

Q. Do you feature any TBA products in that advertising? A. I feature tires, tires and batteries.

Q. Gates? A. Gates.

Q. By name? A. That's right.

Q. Has any one from the Texas Company ever told you that your lease would be cancelled or you would be treated badly in any other way if you didn't stop this purchasing of Gates' tires and batteries and these Delco batteries? A. No, they never have.

Q. Has any threat like that been made to you to keep you from displaying or advertising the Gates' tires and batteries? A. No, never has.

Q. Nothing like that has ever been made to you? A. Nothing like that.

Q. Do you feel free to buy any TBA product you wish? (5375) A. I do.

Q. Are most of the customers to whom you sell, local people? A. Yes, they are.

Q. You know them? A. Yes, I know them.

Q. Do they accept your recommendations as to tires? A. They do.

Q. And as to batteries? A. They do.

Q. Do you feel you get a good financial deal on this Gates' setup? A. Yes, I do.

Q. Is that the reason for your handling it? A. Yes, it is.

Q. Do you know that the Texas Company recommends to its dealers the Firestone and Goodrich line of TBA? A. Yes. I knew that. I mean all these years, in our meetings and all, that they recommend these, that they have recommended Goodrich and Firestone tires at our meetings.

Q. And you have also known that you could buy any place you wanted to if you didn't want to follow the recommendation? A. That's right.

Q. And you acted on that assumption? A. I did.

Q. Has anybody from the Texas Company ever told you that (5376) that was a poor assumption to make, and that in fact you had to buy the Firestone and Goodrich? A. No.

Q. Never? A. Never.

Q. Do you attend dealers meetings? A. I do.

Q. Have you attended such meetings? A. I have.

Q. About how many and for how long a time? A. Well, in the 18 years I don't think I missed a one. We have two a year, spring and fall meetings. I might have but I don't think so.

Q. How many other dealers do you find at those meetings, on the average? A. I have to go to Morgantown, 25 miles. And I would say there are 20 dealers in that area with us.

Q. Do you attend any other meetings? A. Sometimes we have maybe a small meeting around there. There would be a few of them come. But the big meetings are the spring and fall meetings and those are the ones we usually attend.

Q. That is in Morgantown? A. Morgantown, yes.

Q. At those meetings, in your presence, has anyone from the (5377) Texas Company ever said or suggested that the dealers would have to handle some or all of the Firestone or Goodrich line or else they might be subject to lease cancellation or some other unfavorable treatment by the Texas Company? A. No, they haven't, in my presence.

Q. Nothing like that has ever happened? A. No, sir.

Q. Do you get acquainted with the other dealers at those meetings? A. Yes, we do.

Q. Either at the social sessions or after them? A. After them, yes.

Curtis Toothman, for Respondents—Voir Dire.

Q. Do you talk shop with them to some extent? A. We always do. We always have a huddle after the meeting is over with.

Q. Have any dealers ever told you that they have been threatened by the Texas Company with lease cancellation, or any other unfavorable conduct, if they didn't buy some or all of the Firestone or Goodrich line of TBA? A. No.

Q. You do display all of your TBA openly, do you not? A. I do.

Q. And no doubt the Texas salesman knows what kind of product you are handling? A. He knows it.

(5378) Q. I show you two pictures and ask you whether those are snapshots of your station? A. Yes, they are.

Q. Is that just the way your station looked at the time? A. That is the way it looks still today.

Q. It still looks that way today? A. Yes.

Mr. Lorenzen: I ask to have these two pictures marked Respondent's Exhibit 65-A and -B.

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Voir Dire examination by Mr. Dias:

Q. Do you know when these pictures were taken, Mr. Toothman? A. Those were probably taken about 60 days ago. I just can't recall.

Q. Did you take them? A. No, the salesman took them.

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(5379) *Direct examination by Mr. Lorenzen* (resumed):

Q. Mr. Toothman, these are snapshots and don't show things too clearly. Will you tell me, looking at 65-B, there is a tire sign and it says "Nylon Tires". Is the name "Gates" on that sign? A. The name "Gates" is right over in here; it is pretty hard to see from the snapshot.

Curtis Toothman, for Respondents—Resumed, Direct

Q. You are pointing now to the stand? A. Yes, to the stand. Right in there.

Q. The right-hand side of the stand has "Gates" on it? A. Yes.

Q. Is that a standard Gates' sign? A. It is a standard Gates' sign. They send these new inserts for them, every two or three months I get an insert.

Q. So that the insert with the Gates' name on it is one that is renewed every two or three months? A. That's right.

Q. How about the sign in your window which says, "Nylon Tires"? A. That is "Nylong Tires", that is Gates' tires, and this is your Gates' battery sign here.

Q. Is that a Gates' sign? A. That is a Gates' sign which comes from there. They mail it from Denver.

(5380) Q. And you generally have a sign of that type in your window? A. In the window at all times.

(5381) Q. Underneath the nylon tire sign, there is another one that say "Silver Cobalt"? A. That is cobalt batteries. That is just the name with Gates. That is a heavy duty battery.

Q. That is the advertising— A. (interposing) Advertising of Gates battery.

Q. The slogan for Gates battery? A. Yes.

Q. Do you have signs like that in your window? A. I do.

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Q. During the time you have been in the station, has the Texas Company repaired your station for you? A. Yes. They have reserviced the driveway and several other repairs. I mean we have had new pumps. If I recall, maybe two or three sets in that time. And new tanks. I can name several things. New roof and a lot of things that were done.

Q. When you have requested them to do things for your station, has it been done? A. It has been done, yes, sir.

Q. And at those times has there been any threat made to you (5382) that it wouldn't be done if you didn't stop handling this Gates line? A. None at all.

Q. Nothing like that? A. No.

Q. At these dealers' meetings in Morgantown, about which you have testified, do you get any useful hints about selling TBA? A. Yes. Your Firestone and your Goodrich representatives are also there, and they have a display. The company has a program which they will try to help you sell. I mean your TBA. There is no brand mentioned in the programs themselves. They have been of great help to us.

Q. Do you find that you can use whatever information you get there to sell your Gates line? A. That is right.

Q. And do you use it? A. I do use it.

Q. Do you get any TBA advertising material from the Texas Company? A. Yes. We get several bulletins to put up in your windows, and most of them are no names at all. Just tires or batteries or accessories, no certain name on them. They send them to us and we use them.

Q. And you find that helpful? (5383) A. Sure. I do.

Q. And you read the dealer's magazines? A. Oh, yes.

Q. Do you find anything helpful there? A. Very much.

Q. In connection with selling your TBA? A. Yes.

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Cross examination by Mr. Dias:

Q. How many Texaco stations are in town, Mr. Toothman? A. There are two besides mine.

Q. Where are they located with relation to yours? A. One of them is located on the same avenue I am. That is about nine blocks from me. And the other one is located on the east side and I can't tell you his name right now.

Whitey Clayton is the one on my avenue. The other one is over on Speedway, East Park Avenue. I just can't recall his name.

Q. Do you have any Firestone stores in Fairmont? A. Yes.

Q. How many? A. Well, they have one right below me, and they have—

Q. One? A. One block from my station. Then, they have—

Q. (interposing) Which one is that? (5384) A. That is the main store.

Q. And the address? A. It would be 400 Fairmont Avenue. Fourth Street and Fairmont Avenue. Either one.

Q. And he is one block from your station? A. Yes.

Q. Does he sell gasoline, too? A. Yes.

Q. What does he sell? A. Sterling, I believe, is what they sell.

Q. I didn't get the name. A. Sterling.

Q. Sterling gas? A. Sterling gas, I think, is what they sell.

Q. What about the other two Firestone stores? A. The one down on Jackson Street, and one on the east side, east side of the river.

Q. And theyeare not very close to your store, your station? A. No, sir.

Q. Do you know what they carry in the way of gasoline? A. The same.

Q. They all carry Sterling? A. Yes.

Q. How about Goodrich? Is there a Goodrich store? A. The Goodrich store is about eight blocks from me.

(5385) Q. Do they have any stations in town distributing Goodrich products? A. Just the store.

Q. Did you say there were two other Texaco stations? A. Besides my own, yes.

Q. Will you tell us—I don't know if it was asked—when you took over that station on your own? A. Mine?

Q. Yes. A. 1940.

Q. 1940? A. Yes, as I recall it.

Q. Is that when you first started operating on your own? A. Yes.

Q. You are sure that wasn't the time that you started in there as an attendant? You worked in a station— A. No. The station—I was there before that.

Q. Before what? A. Before 1940, as an attendant. Then, I bought the station, bought in with a partner, because I have actually been there more than 18 years. Eighteen years is all that the company has got records for.

Q. And prior to 1940, prior to the time that you took over, what products were they handling at that time? A. The same thing.

(5386) Q. Did you say that you buy no products at all from Goodrich or Firestone? A. If I need a tube or something like that, I run down there and get it.

Q. No waxes or polishes? A. No.

Q. You handle garden tractors, too? A. Not any more

Q. When did you discontinue that? A. Two, three or four years ago.

Q. Where did you buy those? A. I bought those from —got them out of Oakland, Maryland, some of them. Some came from Standard Supply.

Q. Who is Standard Supply? A. Standard Supply is over at Le Havre. That is where they came from, from Le Havre. I can't tell you the address.

Q. That is all right. After these dealer meetings, did you fellows get together and just sort of socialize? A. Yes, sir.

Q. Do you, too, have Schnapps? A. Yes, sir.

Q. It is a wonderful organization. You say it is strictly a social meeting after the meeting is over? A. Yes, it is.

Q. Can you describe what goes on during the meeting proper? (5387) A. Well, during the meeting they bring out different ways to sell, and how to make money, and the wrong way, and the right way to do it. And we discuss it afterwards.

Q. Do you discuss it during this social gathering? A. Yes, sir.

Q. What else do you discuss during the social meeting? Jokes? A. Yes.

Q. Do you ever talk real business at that time? A. Sometimes. I mean we change ideas—I mean some one is doing something that maybe some of us is missing out on, and it would help us out. It helps out. Just talk general.

Q. What else can you think of that you discuss at that time? Anything in particular? A. No.

Q. Can you give us some idea of your gasoline volume per month? A. It averages about 8,000.

Q. 8,000? A. Yes.

Q. What would that amount to, dollar-wise? A. Profits?

Q. No. Total. 8,000 gallons would represent how many dollars? A. About $2,000. It is probably more than that.

Q. Approximately 2,000? (5388) A. Yes.

Q. How about your TBA sales? A. They run about four to six hundred dollars a month. I have a variation there.

Q. Have you ever lost any customers because you didn't have Firestone or Goodrich tires? A. Not to my knowledge.

Q. Is your business mainly transient or local? A. It is local. Mostly local.

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Vincent Capolupo, for Respondents—Direct

VINCENT CAPOLUPO was called as a witness for Respondent and, after being properly and duly sworn, was examined and testified as follows:

Mr. Dias: Before we go on with this witness, let me state this: I do not stipulate that this man did or did not sign a statement. I think we had better go through that with each witness.

Mr. Lorenzen: I wasn't even going to ask on this man.

Mr. Dias: I didn't want to surprise you.

(5389) *Direct examination by Mr. Lorenzen:*

Q. Would you give your full name and address to the reporter, please? A. Vincent Capolupo, 318 Ridgefield Road, Upper Darby, Pennsylvania.

Q. As long as Mr. Dias brought up this point, do you recall giving to Mr. Dias or to anyone from the Federal Trade Commission any statement at all? A. I do not.

Q. Are you in the service station business? A. Yes, sir.

Q. What sort of gasoline do you sell? A. Texaco.

Q. Where is your station located? A. Southeast corner of 63rd and Catherine, Philadelphia.

Q. Do you lease from the Texas Company? A. Yes, sir.

Q. Do you have one of these leases that renews itself each year? A. Yes, sir.

Q. I think you are the dean of the dealers we have had. How long have you been in there? A. Thirty-one years.

Q. You have leased all that time? (5390) A. Yes, sir.

Q. Just so that you won't have to go back in your mind 31 years, let us talk about the last, say, ten years. A. All right.

Q. And any questions that I ask you, limit it to the last ten years. You won't have to go back on cross-examination and try to remember things that happened 31 years ago.

Mr. Dias: I object to that statement.

By Mr. Lorenzen:

Q. What is the gasoline gallonage of your station now? A. About 18,000.

Q. Gallons a month? A. A month.

Q. Do you handle TBA? A. Yes, sir.

Q. Is that your own choice? A. My own choice.

Q. Why do you do it? A. For profit. Extra profit.

Q. Does it make you a profit? A. Yes, sir.

Q. Is it one of these what they call a traffic builder that brings customers to your station? A. I should think it would.

Q. Is that one of the reasons you handle it? (5391) A. That's right.

Q. Do you know whether the Texas Company recommends any particular line of TBA? A. Yes.

Q. What lines do they recommend? A. Goodrich and Firestone.

Q. Do you know whether it is part of the policy that you have to buy some or all of the Firestone or Goodrich line? A. They say they recommend it, but we generally buy what we want to buy.

Q. And do you feel free to buy anything you want? A. I do. I do buy freely.

Q. And in the course of your [* * *] have you bought anything you wanted? A. Everything I wanted, yes.

Q. Have you, youself, decided what would be most profitable for Vincent Capolupo? A. That's right. One hundred percent Vincent Vincent Capolupo.

Q. Is that the way you decide what TBA to buy? A. That's right.

Q. Tell me, what kind of tires do you have in stock now? A. At the present time I have Firestone and U. S.

Q. And about how many do you stock of each? A. About nine of each.

(5392) Q. Within the last few years, have you handled other lines? A. I have quite a few lines.

Q. Tell us what other lines you handle? A. I have handled Goodyear, Goodrich, Dunlop, Mohawk, anything that was in the price range for me to buy.

Q. How have you decided what particular line you want to stock at any time? A. Wherever I got a good deal.

Q. And that is the line you buy? A. That is the line I bought.

Q. What kind of batteries do you handle? A. Thor.

Q. Do you stock any of those? A. I have about 14 on hand.

Q. Do you have on hand any other batteries? A. No.

Q. Do you remember there was a time when the Texas Company rehabilitated your station and put in three new bays. A. They built me a brand new station.

Q. They built you a brand new station? A. A brand new three-bay station.

Q. What kind of tires were they handling when they did that for you? A. I was handling Dunlop.

Q. Will you give us the names of the principal suppliers of (5393) TBA from whom you buy? A. Gall, Doar and Sheer, 16th and Fairmont Avenue; and Lancaster Auto Supply, they are at Lancaster Avenue—I think 34th and Lancaster; and Genuine Pars, at 534 North 63rd Street; and I buy from a wagon peddler, Harry Freedman.

Q. I think you didn't mention the name of a company from whom you buy most of your batteries, did you? A. Thor Battery.

Q. But what is the name of the company? A. I think it is—it is a funny name.

Q. Premier? A. Premier.

Q. 1147 Rising Sun Avenue? A. Rising Sun Avenue, right.

Q. In Philadelphia.

And from what company do you buy your Dunlop tires when you are handling those? A. Thornton Ford.

(5394) Q. You handle some Firestone tires now, is that right? A. That is right.

Q. Will you tell us the basis for the change which you made from the Dunlops to the Firestones? A. Well, I called the Firestone man up and asked him would he give me a deal on some tires and he said he would, so that is why I put them in.

Q. You got a deal? A. I got a deal.

Q. A good deal? A. A good deal.

Q. Is that the reason you went to the Firestone? A. That is right.

Q. Did anyone from the Texas Company ever threaten to cancel your lease or otherwise treat you badly if you didn't handle some of the Firestone line? A. No, sir.

Q. And no such threat influenced— A. No such threat influenced me.

Q. And no such threat influenced you to buy the Firestone line? A. No.

Q. Do you openly display and handle openly and display whatever type of tires you have in stock? A. At all times.

(5395) Q. At all times? A. At all times.

Q. Have you made any effort to hide them from your Texas salesman? A. No, sir.

Q. Has he known all about them? A. Yes, sir.

Q. Has he ever told you to hide them? A. No, sir.

Q. Has he ever threatened you with having your lease cancelled? A. No, sir.

Q. Or that he would get the Texas Company to treat you badly in some other way— A. No, sir.

Q. —if you didn't hide them? A. No, sir.

Q. So you kept them on display? A. At all times.

Q. And you sold them at all times? A. That is right.

Q. And that line of testimony goes for batteries, also? A. Everything.

Q. All accessories which you handle? A. All accessories.

(5396) Q. By the way, I take it from your answer as to your supply points that you buy no accessories to speak of from Firestone? A. None whatsoever.

Q. You buy all of your accessories from some other supply point? A. That is right.

Q. So all your batteries are from another supply point, all your accessories, and at least half the tires which you stock now? A. That is right.

Q. Can you tell me about, in sales, taking all of your TBA sales together, all your tires and all of your batteries and all of your accessories together, about how much of that business do you think is in accessories and about how much of it do you think is in tires? A. I would say about 75 percent of that would be in accessories, and tires about 25 percent of them.

Q. Tires and batteries together you think— A. About 25 percent.

Q. About a quarter of it? A. Yes.

Q. And three-quarters in accessories? A. That is right.

Q. How do you feel about the quality of the Firestone (5397) products? A. I think they are all right. It is a good quality, premium tire.

Q. But you buy your tires strictly on price? A. That is correct.

Q. Have you attended dealers' meetings during the time you are testifying about now? A. Yes, sir.

Q. About how many dealers attend those meetings? A. I would say from thirty to forty.

Q. And about how often are those meetings held? A. They generally hold—twice a year they generally hold their meetings.

Q. You don't have any monthly meetings in Philadelphia? A. Now and then.

Q. Do you attend some of those, too? A. Now and then.

Q. Do you find you get any tips in selling TBA at those meetings? A. I think we do, a lot of them.

Q. Can you use those on the sale of TBA, whether it is Firestone or Goodrich? A. That is right.

Q. You can use it on all your TBA? A. That is right.

(5398) Q. Do you get any other help in merchandising your TBA? A. Well, the salesman gives ideas in helping us out.

Q. Do you ever get a chance to look at the dealers' magazine? A. Yes, sir.

Q. What about that? Do you find that— A. That is a helpful thing, too.

Q. At these dealer meetings do you get acquainted with other dealers? A. Quite a few of them.

Q. In fact, you have been a president of the Pennsylvania Retailers Association, haven't you? A. That is right.

Q. And you have had a wide acquaintance with dealers that way? A. That is right, quite a few.

Q. In those meetings, in your presence, has anyone from the Texas Company ever threatened you or any of the other dealers with lease cancellation or with any other unfavorable conduct if you didn't handle some or all of the Firestone and Goodrich lines? A. No.

Q. Nothing like that has ever happened? A. Nothing like that.

Q. You socialize with these dealers, do you? A. That is right.

(5399) Q. And both at the meetings and at other times? A. That is right.

Q. When you have met any of these dealers? A. That is right.

Q. You have met them on other occasions, too; is that right? A. That is right.

Q. On any of these occasions, whether at the meetings or on other occasions, has any dealer ever complained to you that anyone from the Texas Company has threatened to cancel his lease or has threatened to treat him badly in some other way— A. No.

Q. —if he didn't handle some or all of the Firestone or Goodrich lines? A. No, sir.

Q. Nothing like that has ever happened? A. Nothing like that.

Q. Mr. Capolupo, have you had any offers from any other companies to become a dealer for them? A. I did.

Q. Did you turn them down? A. Yes, sir.

Q. Do you know whether the gasoline distributing companies have a tough time in your neighborhood getting dealers for their stations? (5400) A. Quite a few of them.

Q. Have a hard time getting them? A. That is right.

Q. So that there are more stations than there are dealers to take care of them? A. You are right.

Q. Do you display your Thor batteries openly? A. Yes, sir.

Q. Have you ever made any effort to hide them? A. No.

Q. Do you display your U. S. tires openly? A. Yes, sir.

Q. No effort to hide them? A. No effort whatsoever.

Q. They are up there in the tire rack alongside of Firestone? A. That is right. As long as you walk right in there you can see them, right in the place.

Q. And when you had the Dunlop tires, was it the same situation? A. Same situation.

Q. And the same with other kinds of tires that you have handled? A. That is right.

Q. Do you feel entirely free to buy any kind of TBA you think is best? (5401) A. That is correct.

Q. Tell me, about what proportion of your sales, tire sales, do you figure is out of stock and what proportion do you pick up? A. Oh, about sixty percent.

Q. Is what you pick up? A. Pick up.

Q. And only about forty percent of your tires you sell from stock? A. From stock.

Q. When you pick up do you pick up whatever kind you are able to sell to the customer? A. Whatever the customer suggests, I get for them.

Q. You get it? A. I get it.

Q. That may be Goodyear? A. It may be any of them.

Q. Or Goodrich? A. It may be any tire.

Q. Or any of them? A. It may be any of them.

Q. And it is any of them. A. Yes.

* * *

(5402) *Cross examination by Mr. Dias:*

Q. Mr. Capolupo, what is your dollar volume of gasoline sales per month? Do you have any idea? A. Not offhand.

Q. Sir? A. Not offhand.

Q. Do you have any idea what your dollar volume of TBA sales are per month? A. I would say anywhere from four to six hundred.

Q. How much? A. Four hundred to six hundred dollars.

Q. Are your gasoline sales more than that? A. It could be.

Q. It could be? A. Yes.

Q. Do you mean it also might be that you sell just four hundred to six hundred dollars worth of gasoline per month? A. No. It is eighteen thousand per month I sell. I hadn't figured it down.

Q. Can you give us a rough idea of what 18,000 gallons would sell for? A. I would say close to $2,200.

Q. When did you become disenchanted with Goodrich? Didn't you carry that for many years? (5403) A. I had them fourteen years.

Q. What happened? A. Well, the price situation.

Q. And when you carried Goodrich didn't you carry their full line of tires, batteries, and accessories? A. No, just the tires and batteries.

Q. Tires and batteries. If you will, try to recall what came up then and what you did about it. A. That is too far back to find out what I did. We just had a disagreement, I guess, and I just swung out and got a better price on the outside.

Q. Did you mention that disagreement to Texaco in any way? A. Yes.

Q. What did they try to do about it? A. They told me to use my own opinion, to do what I wished.

Q. Did they attempt to get you a better price from the Goodrich people? A. At that time they might have.

Q. Who was the Goodrich distributor at that time, do you know? A. No, not offhand.

Q. You dealt with him for fourteen years? A. Yes.

Mr. Lorenzen: Did you fix a date, Mr. Dias, as to when this was supposed to have happened?

(5404) Mr. Dias: No, I haven't yet. I don't know when it happened.

By Mr. Dias:

Q. Can you tell us when this happened? A. No, not offhand I couldn't.

Q. But you did deal with him for fourteen years? A. Yes.

Q. And at one time you thought they were the best in the market? A. I still think they are. The Firestone is a good tire.

Q. And is it for the same reason that you do not buy Goodrich now? Or do you buy Goodrich now? A. I buy Goodrich now. When a customer requests a Goodrich tire, I will get a Goodrich tire.

Q. And these tires that you actually have in the station, you say they are Firestone and U. S.? A. Yes.

Q. How many Firestone do you think you carry at one time? A. Nine.

Q. And U. S.? A. About nine.

Q. And is that your normal stock? A. That is the normal stock.

Q. When did this shortage of dealers commence in Philadelphia, Mr. Capolupo, do you know? (5405) A. I would say it started about a year or so.

Q. A year or so ago? A. Yes.

Q. And when did you receive this offer from another oil company? A. Oh, about a year.

Q. And has that shortage of dealers continued since then? A. As far as I know.

Q. Do you have any idea what caused that? A. I really don't.

Mr. Dias: I have nothing further.

Vincent Capolupo, for Respondents—Redirect

James F. McCue, for Respondents—Direct

Redirect examination by Mr. Lorenzen:

Q. On this gasoline volume, you say you sold 18,000 gallons? A. Yes.

Q. In order to get the dollar volume, you multiply— A. I just recall, I made an error. It is close to $5,000.

Q. It is close to $5,000? A. I just tried to iron things in my memory now, as I went along.

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(5406) JAMES F. McCUE was called as a witness for the respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Royall:

Q. Mr. McCue, you are a Texaco dealer? A. Yes, sir.

Q. What is your full name? A. James F. McCue.

Q. Where is the station? A. Walnut and Chestnut Streets, West Chester, Pennsylvania.

Q. Are you a lessee under the regular form of annual lease? A. Yes, sir.

Q. How long have you been a lessee at that station? A. It will be 26 years the 9th of next January.

Q. What is your average gallonage per month? A. About 24,000.

Q. What are your TBA sales now? A. Do you mean in dollars?

Q. Yes. A. We average about $10,500 a month. I would say $3,500 probably is TBA.

Q. You handle tires, batteries, and accessories? A. Yes, sir.

(5407) Q. And what brand of tires does Texas recommend? A. They recommend Firestone and Goodrich.

Q. And what brand of tires do you carry? A. That is what we carry, both.

Q. Firestone and Goodrich.

Of your TBA, what percentage would you say in dollars is tires? A. In TBA?

Q. I mean of the total TBA, what part of it would be tires? A. I would say it might average eight or nine hundred dollars a month.

Q. In dollars? A. In dollars.

Q. In percentage what would it be? A. In percentage?

Q. Yes. A. Tires would run around 50 to 55 percent.

Q. And the batteries? A. I would say 15—10 to 15.

Q. And the rest of it would be accessories? A. Accessories.

Q. Which of those has the greatest turnover? Accessories? A. Accessories.

Q. Why do you buy Firestone and Goodrich tires? A. Well, national acceptance, and I have been a Goodrich (5408) dealer for 23 years, and people who don't buy gas from me come there for tires because I am known as a Goodrich dealer.

Q. Did you ever sell other tires? A. Well, one time I handled Century for a short time, but I had a lot of trouble and gave them up.

Q. Did you ever handle US tires? A. Well, if some one wants them, I will get them the tires, if they insist on them.

Q. Is it your experience that Goodrich and Firestone tires attract customers better than others? A. They do.

Q. Are you familiar with the policy of the Texas Company with reference to the independence of the dealer? A. Yes, sir.

Q. Do you feel that you are entirely free to select or change the brand of tires and the people from which you buy? A. I feel that way, yes.

Q. What batteries do you buy? A. Well, we buy Delco and Bowers.

Q. Do you buy from Goodrich or Firestone? A. Unless someone insists on it and wants Goodrich and nothing else.

Q. Do you think you can sell Delco batteries better than any others to your customers? A. It has worked out that way.

(5409) Q. From whom do you buy accessories? A. Well, we buy from Gaul, Derr, and Shearer in Philadelphia, and West Chester Automotive.

Q. Do you buy Bowes Seal Fast? A. Yes. That is a truck, a peddler who comes around. We buy from him.

Q. Do you buy battery cables— A. And accessories.

Q. Terrell Accessories Auto Business Supply? A. He is out of business.

Q. Wiley— A. Wiley Motors is a garage. We do favors for them. If we are short something, and the others are closed, we get them there.

Q. What kind of fan belts and radiator hoses do you carry? A. We handle Gates and Voit.

Q. You buy those from West Chester— A. Aviation.

Q. —Automotive? A. Aviation Company.

Q. What do you buy from Gaul, Derr, and Shearer? A. Fram filters and brake fluid and almost all types of accessories.

Q. Do you buy from eight or nine different people? A. Yes, sir.

(5410) Q. Both your tires and your batteries and accessories are on display? A. Yes, they are on display at all times.

Q. Can they be seen by the Texas people and are they seen by them? A. Yes, sir.

Q. Have you ever received any complaint or threat from the Texas people about your handling non-sponsored batteries and accessories? A. No.

Q. Has there ever been any effort to force you to do so? A. Never.

Q. Have you ever committed yourself to Texas to buy only sponsored goods? A. No, sir.

Q. Or to buy any particular quantity of them? A. No.

Q. Does the sale of TBA give you a profit? A. It certainly does.

Q. Does the carrying of TBA contribute to better gasoline sales? A. If you don't handle things, customers will go where they can get them.

Q. Does Texas help you any in connection with your sale of TBA? A. Well, at meetings it is discussed and they furnish (5411) follow-up cards for lubrication system, and different helps, Texaco dealer magazine.

Q. Are those all helpful to you and utilized by you in non-sponsored as well as sponsored goods? A. Yes, sir.

Q. Do you attend the Texas Company meetings? A. Well, if I don't go, my partner goes. There is always one of us there.

Q. Did you ever hear at any of those meetings any complaint of any dealer as to Texas forcing them or requiring them to buy sponsored goods? A. No.

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Cross examination by Mr. Dias:

Q. How many of these meetings are there a year? A. They run two a year. Sometimes the salesman will have a meeting, maybe two or three times, or five times.

Q. How many of those meetings have you attended? A. I used to always attend them until I got into this partnership, with this younger fellow. I usually send him because he is going to take over one of these days.

Q. When did you get this partner? A. January 1, 19— two years ago.

(5412) Q. So you haven't attended any meetings since then? A. Yes, I have been to a meeting since then.

Q. How many? A. Just one.

Q. Just one? A. Yes.

Q. Do you socialize, too, after these meetings? A. Oh, yes.

Q. You mentioned this station or this supply, this exchange of favors with this garage, was it? A. Yes. Richard Connor. He is the new Firestone distributor. He had an Atlantic station on the next corner and gave that up and became a Firestone distributor.

Q. And do you purchase much from Connor? A. Last month our purchases from him were $475, and from Goodrich it was $480. So it is about half.

Q. And do you have some idea about the amount he purchases from other than Goodrich or Firestone? A. Well, just roughly I would say it will run maybe seven or eight hundred dollars.

Q. For all the other supplies? A. All the other supplies.

Q. Of the other suppliers, who gets the lion's share? A. Gaul, Derr, and Shearer, and Aviation.

Q. Can you give us some idea of the volume of business with (5413) Gaul, Derr, and Shearer? A. Well, their monthly bill usually runs—it runs sometimes as high as four or five hundred dollars, sometimes fifty dollars.

Q. What about last month? A. Last month I would say it was about $160.

Q. What is it that you buy now from Firestone and Goodrich? A. Tires and recapping. That is all.

Q. No accessories? A. No accessories.

Q. How often does the Texaco salesman come around to your station? A. He lives in West Chester, so he is around quite often. I would say he might be in three to

four or five times a week. I mean he doesn't—he just stops in, maybe buys gas or talks.

Q. Have you always had that same salesman? A. He has been there about five years.

Q. For salesmen who do not live within the neighborhood, how often would they call on you? A. Well, once in two weeks, maybe.

Q. What do they do? Do they sell you gasoline or just check on your station or what? A. Do you mean the salesmen?

Q. Yes, the Texaco salesmen. (5414) A. No, they just talk with us about, if they have anything on their mind, maybe some repair work has been done, maybe he will have a slip that I will have to sign Okaying it, or maybe just talk about baseball or anything.

Q. More socializing? A. No, it is not socializing. The way he says, "If you have no complaints, why talk about it?"

Q. How often does the next echelon of Texaco personnel come around? A. The top?

Q. Not necessarily the top. Say the next step above. A. I rarely see them, unless at a meeting.

Q. And at these meetings that you have attended, you have seen Firestone and Goodrich personnel? A. I have seen them there. They just are introduced and that is all.

Q. They have never taken part? A. They never talk.

Q. They never have? A. No, sir.

Q. They haven't? A. Not in recent years. I would say in the last fifteen years.

* * *

(5416) Mr. Lorenzen: This morning, at the time we made a motion for the production of any statements in the possession of counsel supporting the complaint, which statements were made by wit-

nesses whose names had been supplied to counsel supporting the complaint, we delivered a written copy of that motion and a memorandum in support of it. At this time we would like formally to incorporate that written motion in the record.

Hearing Examiner Kolb: The motion may be filed with the Secretary of the Commission. The order of the Hearing Examiner previously made on the oral motion will stand as to the written notice, denying the motion.

* * * *

(5417) WILLIAM CLYDE SIZEMORE was called as a witness and, after being properly and duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Mr. Sizemore, will you give your full name and your home address to the reporter? A. William Clyde Sizemore, 308 National Highway, Thomasville, North Carolina.

Q. Mr. Sizemore, are you in the service station business? A. Yes, sir.

Q. What sort of gasoline do you sell? A. Texaco.

Q. What is the location of your station? A. Sixty East Main Street, Thomasville, North Carolina.

Q. How long have you been there? A. I have been there 12 years.

Q. About how much of a city is Thomasville? A. It has a population of around 16,000.

Q. Does it have a lot of other service stations in the city? A. Yes, sir.

Q. You said you had been there 12 years? A. Yes, sir.

Q. Under lease?

(5418) Q. That lease is from the Texas Company? A. Yes, sir.

Q. And is it one of these leases which renews itself each year? A. Yes, sir.

Q. Do you remember when you first went in there did you have a partner? A. Yes, sir.

Q. So that the 12 years covered either the time when you had a partnership or when you were in it by yourself? A. Yes, sir.

Q. And you have been in it continuously for the whole 12 years? A. Yes, sir.

Q. Do you handle TBA? A. Yes, sir.

Q. And have you handled it from the beginning? A. Yes, sir.

Q. Why did you handle TBA? A. We handled TBA because this day and time you have to carry supplies of products to meet the demand of the customer. It also brings in new customers and builds up your gasoline sales also.

Q. You decided to handle that on your own account? A. Yes, sir.

(5419) Q. And for those reasons? A. That's right.

Q. With what kind of TBA did you open your station, speaking now particularly of tires and batteries? A. I am not sure when we first opened exactly what we did have. We had two or three different brands. We hadn't decided on anything at that particular time, just anything. They were kind of hard to get ahold of then. We would take most anything we could get. We did sell three or four different brand tires.

Q. Have you any recollection of what kind of tires you had at that time? A. Well, we sold some Goodyear, U. S. Royal, and Dunlop, I think it was.

Q. And how about batteries? A. We have handled Autolite batteries from the beginning.

Q. From the beginning? A. Yes, sir.

Q. What kind of tires do you handle now? A. Gillette.

Q. Exclusively? A. Yes, sir.

Q. How many do you have in stock? A. I have probably 35.

Q. And how many Autolite batteries do you have in stock? (5420) A. I think I have eight at present.

Q. Do you have any others? A. No, sir.

Q. You are Mr. W. C. Sizemore, of Main and Cemetery Streets, in Thomasville? A. Yes, sir.

Q. That is how it is listed in Exhibit 35. A. Yes, sir.

Q. For how long now have you had these Gillette tires? A. I think we have handled Gillette approximately ten years. I think that's right.

Q. Tell me, are most of your customers transient, or are most of them local? A. Local.

Q. Are the customers mostly people you know? A. Yes, sir.

Q. And are they willing to accept your recommendation as to tires? A. Yes, sir.

Q. And you do recommend Gillette? A. Yes, sir.

Q. Do you have a good deal with the Gillette Company? A. Yes, sir; that is the reason I have them.

Q. You figure you make more money on selling the Gillette's than any other kind? (5421) A. Yes, sir.

Q. And is that why you handle them? A. Yes, sir.

Q. Did you understand that that way of buying TBA was in accordance with the Texas Company's TBA policy? A. Yes, sir.

Q. Do you also know whether or not the Texas Company recommends to its dealers the Firestone and Goodrich lines? A. Yes, sir; they do.

Q. You do know that? A. Yes, sir.

Q. But in spite of that you understood that you could buy what you wanted? A. Yes, sir.

Q. And you have done so? A. Yes, sir.

Q. From what source do you buy your accessories? A. I get part of it from Carolina Supply Company, Stokes Auto Parts, Myers Auto Parts, in Lexington, and that is about the main points where I get them from.

Q. None of those are Firestone or Goodrich? A. No, sir.

Q. You don't buy any Firestone or Goodrich? A. No, sir.

Q. Do you have Firestone or Goodrich supply points in Thomasville? (5422) A. Yes, sir.

Q. From where do you get your Gillette tires? A. Montgomery and Aldrich, in Durham.

Q. How far away is that? A. It is about 70 miles.

Q. Do you have any Delco batteries in the station now? A. No, sir. We have a pickup point where we pick up Douglas and Delco.

Q. Douglas and Delco? A. Douglas and Delco.

Q. You sell some of those? A. Yes, sir; we sell quite a few of them because they are handled by Auto Supply in town, and we can pick them up day or night.

Q. Do you display all of your TBA? A. Yes, sir.

Q. Openly? A. Yes, sir.

Q. Do you have any signs advertising the type of TBA you sell? A. Yes, sir.

Q. What do you have? A. I have decals across the front of the station, and that tells of Gillette tires, tubes, and then I have inside of my station a rack for filters, and then I have my tires displayed (5423) on racks inside.

Q. Do they have the Gillette name on them? A. Yes, sir. And then, I have an Autolite rack with batteries on it.

Q. And those Autolite batteries have the name on it? A. Yes, sir.

William Clyde Sizemore, for Respondents—Direct

Mr. Lorenzen: May I have these three pictures marked as Exhibit 66-A, -B, and -C.

(Whereupon, the documents referred to were marked Respondents' Exhibit 66-A through -C for identification.)

By Mr. Lorenzen:

Q. Do you recognize these pictures, Exhibits 66-A, -B, and -C? A. Yes, sir.

Q. Do they show your station? A. Yes, sir.

Q. Do they show parts of your station? A. Yes, sir.

Q. Do they show the Gillette decals about which you have testified? A. Yes, sir.

Q. And the tires and the Autolite batteries? A. Yes, sir.

Q. Is this substantially the way your station looks today? A. Yes, sir.

(5424) Q. Was any special preparation made in connection with taking these pictures? A. No, sir.

Q. That is just the way your station happened to look the day the photographer came in? A. Yes, sir.

Q. And how long ago were these pictures taken? A. They was made last week.

Q. Last week? A. Yes, sir.

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(5425) Q. Did anyone from the Texas Company ever tell you that they would cancel your lease or treat you badly in any other way if you didn't stop handling these Gillette tires and Autolite batteries and accessories? A. No, sir.

Q. Has anybody ever told you to hide these TBA items or to take down the signs? A. No, sir.

Q. Nothing like that— A. (interposing) No, sir.

Q. (continuing)—has ever happened to you? A. No, sir.

Q. Do the Firestone and Goodrich supply point salesmen call on you on occasion? A. They have in the past, but they don't any more.

Q. You have discouraged them, haven't you? A. Yes, sir.

Q. So they have stopped calling on you? (5426) A. Yes, sir.

Q. Do you find that the Texas Company is of any help to you in marketing your TBA? A. Yes, sir.

Q. What sort of help do you get? A. Well, we get help from dealers' meetings and we have the salesmen coming into the territory and helping us with displays, and arranging our merchandise, and then we get the dealers' magazine each month.

Q. And all of that is of help to you in selling Gillette tires? A. Yes, sir.

Q. And Autolite batteries and your accessories? A. Yes, sir.

Q. Where do you have these dealers' meetings? A. We have them in our district. The bulk plant manager usually will call three or four meetings a year. We have salesmen or representatives of the company will come in and show a film and talk to us. Then, we have one what we call the big dealers' meeting, spring dealers' meeting, usually held in Winston-Salem, and all the dealers throughout the district will be there.

Q. How many dealers do you think come to these meetings that you have at the bulk plant? A. We usually have anywhere from eight to fourteen, fifteen (5427) sometimes.

Q. And how many dealers are at the meeting in Winston-Salem? A. I would say approximately 100 to 125.

Q. Are you on the Dealers' Advisory Council? A. Yes, sir.

Q. That is an advisory council of Texas dealers? A. Yes, sir.

Q. Do you have meetings of that council somewhere? A. Yes, sir.

Q. Where is that? A. We meet in Charlotte.

Q. How many other dealers attend those meetings? A. There are ten others. There are eleven of us, I think in all, on the council.

Q. Do you get pretty well acquainted with the other dealers that you meet at the bulk plant meetings? A. Yes, sir.

Q. Do you know those pretty well? A. Yes, sir.

Q. Do you know the dealers at the Winston-Salem meetings fairly well? A. We know quite a few of them.

Q. Quite a few of them? A. Yes, sir.

Q. How about the dealers on the council with you? (5428) A. Yes, sir.

Q. Do you know those pretty well? A. Yes, sir.

Q. Have you had occasion to talk to them and talk shop with them? A. Yes, sir.

Q. At any time have any of these Texaco dealers complained to you or told you that anyone from the Texas Company has made a threat to cancel their lease or to treat them badly in some other way if they didn't handle some or all of the Firestone or Goodrich lines? A. No, sir.

Q. Nothing like that has ever happened? A. No, sir.

Q. And has any threat of that kind, lease cancellation or any other kind of bad treatment, been made in your presence at any of these dealer meetings which you have attended? A. No, sir.

(5429) Q. Tell me, are you listed in any telephone book or city directory or anything in connection with the

type of TBA products which you handle? A. Yes, sir. I am listed in the City Directory.

Q. In connection with what kind of products? A. Gillette.

Q. Gillette? A. Yes, sir.

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Cross examination by Mr. Dias:

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(5430) Q. That is, then, the date. You don't recall whether it was 1950 or 1951 that you took over? A. I think it was '50. I am not sure.

Q. 1950 or 1951, at any rate you operated the station by yourself? A. Yes, sir.

Q. This 12 years in the station then commenced as of the time that you became a partner with Mr. Stinson; is that correct? A. Yes, sir; that is correct.

Q. Were you employed at the station prior to that time? A. No, sir. The station was closed and we opened it. Mr. Stinson got the lease on it and opened the station and I went in as a partner.

Q. At the time it was opened? A. Yes, sir.

Q. At that time, in 1946, what TBA did you carry then? A. At that time, we, I think we got the Auto-lite battery right off, but we couldn't—there was a shortage of tires and we had to take just what we could get. We would get, sometimes we would get ahold of U. S. Royal and Dunlop, I think it was, and any two or three we could pick up like that.

Q. That ties in with your previous testimony as to the scarcity of products, as to what you started buying when you first went into the station? (5431) A. Yes, sir.

Q. That ran from 1946 on. Is there a Firestone distributor in town? A. Yes, sir.

Q. Can you give us his name? A. Frank Cranford.

Q. Are there any Firestone stores in town? A. Yes, sir. That is the Firestone store and the distributor there; yes, sir.

Q. Does he handle gasoline, too? A. Well, he owns an Esso station besides the store, and runs it. They run separate.

Q. Is that the only Firestone distributor in the town of Thomasville? A. Yes, sir; the only one.

Q. How about Goodrich? A. We have a Goodrich store.

Q. And where is that located? A. It is located on Salem Street, two blocks from my station.

Q. Goodrich is two blocks from your station? A. Yes, sir.

Q. How far is Firestone from your station? A. It is in the same block.

Q. In the same block? (5432) A. Yes, sir.

Q. Do you ever pick up Goodrich or Firestone tires at the request of a customer? A. No, sir. I never have a customer to request them.

Q. Because of the locality of the Firestone and Goodrich stores? A. Yes, sir.

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(5433) Q. Who manufactures Gillette? A. It is the U. S. Rubber Company.

Q. Are there any other Texaco stations in town? A. Yes, sir.

Q. How many? A. Just one.

Q. Just one? A. Other than mine.

Q. Sir? A. Just one other than mine.

Q. Where is he located? A. He is located on the same street that I am located on, but it is several blocks out.

Q. Do you know him at all? A. Yes, sir.

Q. Do you know what kind of TBA he carries? A. Yes, sir. He carries the Exide battery and the Goodyear tire.

Q. Does he own his own station? A. Yes, sir.

Q. How often did the Goodrich and Firestone salesmen call on you? A. When they did call on me they would come, they would on (5434) an average come once every two weeks.

Q. How long ago was that? A. That is about five years ago.

Q. Is that long ago? A. Yes, sir.

Q. You said you discouraged them. How did you discourage them? Did you order them out of the station? A. No, sir. We would discuss the prices that I was buying my line of tires for, compared to theirs and then I would tell them I couldn't handle them because their price was out of line and I could get a better deal with the Gillette, and could offer them to my customers at a cheaper price, and that is what I was after.

Q. That was five years ago? A. Yes, sir.

Q. And they don't call on you any more? A. No, sir.

Q. These dealer meetings at the bulk plants, how often are they conducted? A. I don't know. Sometimes we will have one about every three months. They usually average about three or four a year.

Q. They are not regularly scheduled? A. No, sir.

Q. How do you know when there is going to be a meeting? (5435) A. They call. Some of the personnel from the bulk plants will call us and tell us that there is going to be a dealer meeting. We don't have them at the bulk plant. They are different places. Sometimes we will have them at restaurants and sometimes at the Elks Club and places like that.

Q. Always in Thomasville? A. No, sir. In High Point.

Q. How far is that— A. Seven miles.

Q. What is the purpose of those meetings? A. Different things. Sometimes they will have a film on the way to run the station, like the "Clean-up" film, maybe, about how to keep your station clean and points to go about keeping it clean, and registered rest rooms, and different things like that. And maybe they will run one on boosting your sales on oil. Just different things like that to go along with the program of spring and fall. Sometimes they will be on "PT anti-freeze," to boost the sale of that.

Q. And you have attended all of those, have you? A. No, sir. I attend most of them. Occasionally I miss one. Very seldom.

Q. You say roughly they are about three a year? A. Yes, sir.

Q. Has the other dealer in town attended those meetings? A. He attended some. He doesn't attend as often as I do.

(5436) Q. Are there any other retail sources for Goodrich and Firestone products, other than those two places that you mentioned, the Firestone store and the Goodrich store? A. Not that I know of.

Mr. Dias: I have nothing further.

Redirect examination by Mr. Lorenzen:

Q. This other dealer who doesn't attend these meetings as faithfully as you do, is he on the dealers' Council? A. No, sir.

Q. You said something about the fact that the Goodrich and Firestone stores were near you was a reason why customers didn't ask you for the Firestone and Goodrich tires, in answer to Mr. Dias' question; is that right? A. I didn't —if I answered it that way I didn't mean it that way. I said the reason that they didn't ask me, or that they did— that I didn't have any customers ask me for the Firestone

and Goodrich tires, and the way I understood the question, he said it was because the stores were near. In other words, they could go to the store and buy them, other than coming to my station.

Q. Are there some of your gasoline customers who do that? Is that how you know about it? A. No, sir. I don't know that they do. I just said they didn't come and ask me for them. When they come to me for (5437) tires, I always sell them Gillette's.

Q. Then you don't know why you are successful in selling Gillette and they don't go and get Firestone or Goodrich? A. No, I don't know that. I never asked them.

Q. You don't know in general why people don't ask you for Firestone and Goodrich tires, do you? A. No, sir.

Mr. Lorenzen: That is all.

Recross examination by Mr. Dias:

Q. Have you ever had occasion to pick up a Firestone or Goodrich tire for a customer? A. Yes, sir; I have.

Q. Was that for a local customer or a transient? A. Local.

Q. How did your price compare with the Firestone and Goodrich stores? Which was it, Firestone or Goodrich? A. The only time I pick them up is when I won't have one in stock, the size someone wants, and they have to have the tire, say, that day, and their price will vary around $3.00 more than what I can get the Gillette for.

Q. You said "one in stock." Do you mean the Firestone in stock or the Gillette in stock? A. No, sir; I don't stock anything but Gillette's.

Q. So that pricewise your Gillette is cheaper than the (5438) Firestone; is that correct? A. Yes, sir.

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Charles T. Llewellyn, for Respondents—Direct

(5439) CHARLES T. LLEWELLYN was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your name and address to the reporter? A. Charles T. Llewellyn, 52 West Ninth Street, Chester, Pennsylvania.

Q. You are in the business of selling gasoline, are you? A. Yes, sir.

Q. You have a service station? A. Yes, sir.

Q. Where is it located? A. At 52 West Ninth Street, Chester, Pennsylvania.

Q. What kind of gasoline do you sell? A. Texaco.

Q. Do you have a lease with the Texaco Company? A. Yes, sir.

Q. And is that one of these leases that renews itself each year? A. Yes, sir.

Q. How long have you been a lessee of the Texas Company? A. About thirteen years.

(5440) Q. About what is the gasoline volume of your station now? A. Between twenty and twenty-five thousand. It fluctuates. That is gallons.

Q. Seasonally do you get as high as 30,000 gallons a month? A. Well, if we can scare up a right-sized price war, we can make 80,000. About twenty to twenty-five. It stays around that throughout the entire year. That is normal gallonage.

Q. Do you handle TBA? A. Yes, sir.

Q. Have you handled TBA since you have been at the station? A. I could not be without TBA.

Q. So you have had it? A. Yes, sir.

Q. When you say you couldn't operate without it, you mean financially? A. Dollars and cents.

Q. You need TBA? A. Definitely.

Q. In the time that you have been in this station can you tell me have you handled all kinds of tires? A. Yes, sir.

Q. And stocked all kinds? A. Yes, sir.

Q. Give us the names of some of the makes of tires that you have stocked there. (5441) A. You mean other than the more accepted brands?

Q. Do you mean by "more accepted" Goodyear, Firestone, or Goodrich, or US? A. Yes, sir.

Q. Have you handled all of those? A. No, sir.

Q. Which ones have you handled? A. I have handled mostly Goodrich.

Q. And what others in addition to Goodrich? A. I handled some Firestone, and I have handled some Dunlop. In fact, I have Dunlop in stock now. I have Mohawk in stock at the moment, along with some Firestone and Goodrich.

Q. Have you ever handled any Cooper tires? A. I had one consignment of ten, and I didn't have a very good end result with them, and so that was it. I never handled but ten of them. I discontinued it.

Q. What was the matter with them? What was your experience with those Coopers? A. Price-wise my experience was good, but profit-wise and holding up the station quality, the tires were bad, definitely bad. And I just discontinued handling them.

Q. You mean they wouldn't stand up? A. That is correct, sir.

Q. Did that take your customers away from you or make them unhappy? (5442) A. Well, I didn't make my customers unhappy because I make good on anything that I can't get an adjustment through. I do my own adjusting. I won't see the customer losing anything if I can help it.

Q. Did this Cooper tire venture cost you money out of your own pocket? A. Oh, yes, definitely.

Q. So you haven't handled Cooper since? A. No. I don't even like to hear the word.

Q. At one time did you handle any General tires? A. I had a General franchise for a year and a half, approximately a year and a half.

Q. That is the result of a disagreement that you had with Goodrich?

Mr. Dias: Your Honor, I object to leading questions.

Mr. Lorenzen: I withdraw that.

By Mr. Lorenzen:

Q. Did you switch from Goodrich to General at that time? A. Yes, sir. I had the Goodrich line and I ceased handling the tires and I sent the entire stock that I had at the time back to the company and got a credit for them. About between $45,000 and $46,000 worth of rubber.

Q. You sent it all back to Goodrich? A. Right in their lap, sir.

Q. Did the Texas Company know about that? (5443) A. Yes, they did.

Q. What did they do about it? A. They agreed with me. They said there was no justification for the thing that caused the difference between the Goodrich and I, and they sustained it and said that the moment—unless there could be something done in the future to straighten the matter out, they were definitely in accord with what I had done.

Q. What was the difficulty between you and Goodrich? A. Well, they placed an A dealer, as we called it at that time—they had several categories of dealers, whereby if you purchased tires to a certain degree and volume you

got a certain price under the so-called key deal. If you did a better job than that you had what they called an A deal, which was so many more percentage points under the key deal. They placed a distributorship three doors from my station, my location, and I just didn't see the sense of beating my head in and not making any money. So I discontinued the stocking of the tire. I wouldn't even handle it. If some one wanted to buy it, I wouldn't even talk about it. I would try to persuade them to buy another tire, a General.

Q. And the Texas Company knew about it? A. They knew it. I had the display items on the island. I had their tire stand. However, my salesman, who is interested in Goodrich and Firestone because that is our company's policy, (5444) said nothing to me. He just said, "It may be that we may be able to get it straightened out with them later on," and eventually that so happened.

Q. Eventually it did get straightened out? A. Yes, sir. They moved their location to another part of the city.

Q. And you say that was about a year or a year and a half later? A. Yes, sir.

Q. Then did you buy Goodrich again? A. Yes, sir.

Q. Did you feel that was the best deal you could get for you, Mr. Llewellyn? A. Yes, sir. At the time if I didn't think so I wouldn't have bought the tire back.

Q. Is that the way you have been buying tires ever since you have been in the station? A. Yes, sir.

Q. Whatever price deal you think is best for you? A. I strictly look for something that I can buy that I can sell at a profit, and to meet the competition of the chain outlets, who are right close to me, such as Sears and Roebuck, Pep Boys, and Penn Jersey.

Q. Do you get a good enough price from Goodrich to meet that competition? (5445) A. Not all together. I don't like to say anything to discredit the tire that anyone

sells, but I had to go out into the market and pick up a so-called tire that doesn't have the acceptance of a Goodrich or Firestone, but can be bought at a lower key deal price that I can meet the competition of the chain stores for the lower-priced tires.

Mr. Dias: I move to strike all of that answer after he answered the question to the effect that "No one—"

Hearing Examiner Kolb: The answer may stay in.

By Mr. Lorenzen:

Q. So then you bought another line of tire to meet the competition? A. Yes. I bought the Dunlop and the Mohawk.

Q. And that is what you handle now? A. Yes, sir. In addition to the Firestone and the Goodrich. And the Firestone line I buy I didn't buy from a distributor of the Firestone Tire and Rubber Company. I buy off of an independent.

Q. Tell me, from whom do you buy your accessories? A. From Motor Car Service and Auto Parts and Radiator Company, of Chester.

Q. Those are not either Firestone or Goodrich outlets? A. No, sir.

Q. Do those particular companies handle any tires? A. Auto Parts and Radiator.

(5446) Q. Does Motor Car Service? A. They did at one time, but they discontinued about eight years ago.

Q. And how about Delaware County? A. They don't handle tires. They handle Autolite batteries.

Q. Have you ever bought any Mansfield tires from Loos and Dilworth? A. It is a Philadelphia concern.

(5447) Q. Do you feel free to buy any kind of tires or batteries or accessories that you think best for your business? A. Yes, sir.

Q. Do you understand that that is the Texas Company's policy? A. Yes, sir. They never interfere with me.

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Cross examination by Mr. Dias:

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Q. What was your next venture in the service station business? A. I left and took a leased location from the Texas Company at 52 West Ninth Street, next door at that time to where the station is located now was a vacant lot.

Q. 52 West Ninth Street? A. Yes, sir.

(5448) Q. What year was that? A. That was in 1947.

Q. And how long did you stay there? A. Well, I opened that location up for them, and I was there two years and they built a new station, a three-bay station.

Q. You say you opened that station? It was brand new when you took it over? A. No, it was dilapidated. I don't know what class they call it. But at one point I believe they were going to discontinue the whole thing and drop the operation on the ground and leave it go. But I got in there and did a good job for them for two years and then they decided on that basis they were going to build a new station.

Q. Did you carry TBA at 52 West Ninth Street? A. Yes, sir.

Q. What TBA? A. I sold Delco batteries, I bought them from a firm now that is out of business Hyman Stein and Sons, and one day a Goodrich salesman stopped by for gas. I never saw him before. And I got talking to him. His name was Brown. He asked me, would I be interested in buying from the Goodrich Company, because there were no distribution point in the Chester area whatsoever.

Q. For Goodrich? (5449) A. Yes, sir. Or Firestone, for that matter, at that time. And I said, "Yes, I would like to consider it." He said, "I will give you the information. Did your salesman ever talk to you, your Texas Company salesman?" I said, "Yes," but our primary problem as we have it is that we just can't buy tires in any particular quantity to sell because anyone who had a franchise in tires right after the war, they really sold them out, the wholesalers sold them at retail. And the individual gas stations, unless they had contacts previous to the war—and I didn't have any—could get them. I couldn't.

Q. That situation was brought about by the war? A. Yes, sir.

Q. Did you then take on a supply of Goodrich tires? A. I didn't buy too many Goodrich tires. I first had to establish a credit rating with the company, and I first had to furnish them to the people with whom I bought in Chester, and it probably took five or six weeks.

Q. Before the Goodrich man spoke to you, were you carrying any tires at all, or just anything you could get your hands on? A. Anything I could get my hands on. Mostly recaps. No new tires.

Q. After your credit was approved, did you start carrying Goodrich? (5450) A. Yes. They allowed me so much credit a month. And I bought batteries from them. That was when I started to buy their batteries. And I never left them because the deal that they gave me in batteries was always perfect.

Q. So that sometime in 1947 you started buying Goodrich tires and batteries; is that correct? A. Well, the first I bought, sir, were batteries. There weren't too many tires available.

Q. When during that period 1947 to 1949 did you feel that you were in the tire business? A. I never actually was what you might say was in the tire business until I

got the new location, because my little setup there wasn't adapted to the kind of any particular amount of stock. The location wasn't safe. I couldn't get fire insurance. The only thing I carried were some batteries and tire chains.

Q. When did you go into the new location? A. The new location was built around 1950, at the same time as Mr. Capolupo. We opened within several days of each other.

Q. And that is your present location right now? A. Yes, sir.

Q. When you went into the new location did you carry Goodrich tires and batteries? A. Yes, I did.

Q. And did you continue to carry it until you had this (5451) little argument with Goodrich? A. Yes, sir.

Q. Over how long a period was that? A. Well, about a year and a half, I would say, two years.

Q. In other words, about 1952 you had this disagreement with Goodrich? A. About that, 1952-53. In around there.

Q. Can you tell us a little more about that? You apparently stocked up quite heavily on Goodrich? A. There is nothing to tell, other than I didn't think that they used good judgment. They either didn't value the good business I gave them or they were too greedy and felt that this would help them and not help us.

Q. It didn't seem to me that you considered yourself much of a factor. Did you buy many times during that period '50 to '52? A. I sold a lot of Goodrich tires, yes.

Q. When did this new distributor come in? A. He wasn't a distributor, the fellow who had the "A" deal. He wasn't a distributor.

Q. What was he? A. He had an "A" deal on the same basis as I bought tires. He wasn't a distributor.

Q. Was he a store? A. He was a store, yes:

(5452) Q. A Goodrich store or an independent store? A. No, he was—it was a gypsy store. They handled anything that they could sell. They had a Fisk, and they had Mohawk, and they had Lee's, they had U. S. Royal, Firestone, Goodyear, any tire that you want to name.

Q. How did you have trouble with him? Couldn't you compete with him pricewise? What was the situation? A. The unfortunate part of people who come in to buy a price tire knew that they sold the Goodrich tire, too. So they came down and handed me a sheet of paper and said, "Look, Llewellyn, this is what I could buy it up the street for. What can you do?" I would hand the slip back and say, "You go back there." I wouldn't sell that tire at two percent, not even to my mother.

Q. You say that they finally discontinued, cut that dealer off? A. No, they didn't cut him off. He moved.

Q. At any rate he was no longer a factor, and you went back with Goodrich? A. I, in fact, never left them. The account was always open. I just never bought anything from them.

Q. Did you say you sent back $35,000 or $40,000 worth of tires? A. No, I didn't say that. I said that much in—between $4,200 and $6,000. I sent tires back at two different times within a space of about three weeks. You see, they couldn't (5453) get them all in the van, and I had to lug the rest of them up. That was the difference.

Q. Whatever it was you had, between $4,000 and $6,000 worth, that is what you returned to Goodrich; is that correct? A. I returned every Goodrich tire I had in stock then.

Q. Then, when did you start restocking? A. Well, that is a good question. I don't remember. But I do know that I have them now in stock. From time to time, I kept gath-

ering, accumulating them. And then, they had a liquidation program on old tread design that wasn't adapted to the new 14-inch tread, and they had to change the whole design to have the 15-inch conform to the 14-inch. So they sent a lot of them out in liquidation, which gave me sometimes two or three "tens" under key deals, and four "tens," and then I bought the tires, and that is when I bought a lot of Goodrich tires in. That is why I have as many as I have in stock now.

Q. Was that something within the last year or two? A. Within the last two years, yes, sir.

Q. You also carry Firestone? A. I have some Firestone, yes, sir.

Q. Can you give us some idea of how many Goodrich and Firestone you have, and how many you have of the other brands you mentioned? A. I have about a hundred or so of Goodrich tires, and the (5454) biggest part of the stock in Goodrich that I have are of the so-called third grade safety-S liquidation. In other words, we get a couple of "tens" in that, and that is why I bought it. That is a good deal.

Q. That carries the Goodrich label? A. That's right, yes, sir. I don't have a premium first line Goodrich tire in my stock. That I sell on a pickup basis anymore.

Q. How about Firestone? How many Firestone have you bought? A. I must have about 40. I have about 30 or 40 that I bought from the Firestone store in Yeadon. They have a Firestone store in Chester, but I can buy the same tire at another Firestone location cheaper than I can within the confines of my own city, because they won't sell to me in Chester because I compete with them.

Q. Where are they located in Chester? A. About two squares away from me.

Q. You say you compete with the Firestone store? A. I can sell their tires as cheap as they can, and I can buy it off of one of their own stores, yes.

Q. How about Goodrich? Do they have a store anywhere near you? A. No.

Q. How many Dunlops do you have? A. I must have about 20 or 25.

Q. And Mohawks? (5455) A. About the same number. Maybe a few more of each. Not less.

Q. You don't carry General anymore? A. No.

Q. How do your TBA sales run? How do they average out over a month? A. Do you mean in dollars and cents?

Q. Yes. A. Sometimes $600, and sometimes $2,000. It all depends on the run that I get. It fluctuates.

Q. It runs from $600 to $2,000? A. That's right.

Q. When it is $2,000? Is that in the height of the season, the peak of the season? A. Around Memorial Day, right before the 4th of July, and right before Labor Day. Those are your three big tire seasons.

Q. The 4th of July, Labor Day, and when? A. Memorial Day. Those are the three periods that are your best time months of the year. If you don't sell them then, you are stuck with them.

Q. And it would be around those periods that your TBA sales go up around $2,000? A. Yes.

Q. The rest of the year they are down closer to $600; is that correct? (5456) A. $600 to $1,000. I do a nice tires business because I go out on the market and buy tires at a price where I can compete and, thereby, I can move tires.

Q. Do you carry power motors, too? A. I used to carry them. I discontinued them.

Q. How about garden supplies? A. I had them, too, and I discontinued them.

Q. How long ago did you discontinue those items? A. Last year. Last summer. Not this summer, but the summer before.

Q. How much confectionery or tobacco do you sell? A. I retail my own cigarettes out. I don't have a cigarette machine. I used to have four of them and I sold them. I just sell my own cigarettes loose. I average about ten cartons a week.

Q. You don't count that in your TBA sales? A. That is rung up as a special item on the register for tax purposes, and it is not part of TBA. It is miscellaneous sales, not connected with TBA.

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(5457) Q. You handle filters, do you not? A. Yes, sir.

Q. What brand filters? A. Fram.

Q. How about spark plugs? A. Champion and AC.

Q. How about fan belts? A. Yes, I handle fan belts.

Q. What brand? A. Well, I have Goodrich fan belts.

Q. What other accessories do you buy from Goodrich? A. None.

Q. Polishes, waxes? A. No, sir. Motor Car Service I buy all of my stuff.

Q. Sir? A. Motor Car Service. They have the DuPont line and I stay pretty close with the DuPont line right down the middle.

Q. How about Firestone accessories? Do you have any Firestone (5458) accessories? A. No. Never bought any in my life.

Q. In the course of a month's time, let's take the average month, now, other than these three big seasons for tires, can you give us some idea of this approximately $600 worth of TBA sales, what part of that is the result of tire sales? A. Well, almost the entire amount of the $600 rep-

resents tires in itself, and about $400 is TBA. I sell more —I sell a few more tires I think for a gross month than I do TBA. It is pretty close. It is give or take five percent either way.

Q. What you are doing is giving me the figures on tires and batteries and others in the other group? A. Yes, sir. Battery sales are not too great. Not anymore than about eight percent.

Q. I think you mentioned that you didn't carry Firestone or Goodrich batteries; is that right? A. I didn't say that.

Q. Do you carry them? A. I carry the complete line of Goodrich batteries. I have carried them ever since, in the first part of our question about the little station.

Q. Even while you had trouble with tires? A. I still continued the batteries, because I couldn't match that price anywhere in the city of Chester. So, I hung on to (5459) them.

* * *

(5460) RAY V. BAILEY was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your full name and home address to the reporter? A. Ray V. Bailey, 1346 Cornwall Place, Norfolk, Virginia.

Q. You are in the service station business? A. Yes, sir.

Q. What kind of gasoline do you sell? A. Texaco.

Q. At what location? A. 21st Street and Colley Avenue, Norfolk.

Q. Do you have a lease with the Texas Company? A. Yes, sir.

Q. Is that one of those leases which renews itself each year? A. Yes, sir.

Q. How long have you been a lessee at this location? A. Twenty-two years and six months.

Q. This location is in the city of Norfolk? A. Yes, sir.

Q. You are Mr. R. V. Bailey, 21st and Colley Avenue, Norfolk, (5461) Virginia, whose principal brand of TBA is Gates? A. Yes, sir.

Q. That is the way you are listed on Exhibit 35. Do you know whether you gave any statement of any kind to the Federal Trade Commission in connection with this? A. I didn't, no, sir.

Q. Do you know whether a questionnaire was sent to your station? A. I understood that we had a questionnaire that came to the station and my assistant filled it out and mailed it while I was off duty.

Q. Do you know the contents of it at all? A. No, sir, I have no idea how he answered the questions or what.

Mr. Lorenzen: To the extent that statement may be used on cross-examination or used in preparing for cross-examination, I would like to repeat the motion made this morning that such statement be produced at this time.

Hearing Examiner Kolb: The statement hasn't been used, so I can't enter any order on it. Motion denied.

By Mr. Lorenzen:

Q. Do you handle TBA at your station, Mr. Bailey? A. Yes, sir.

Q. Have you done so quite a while? A. Yes, sir.

(5462) Q. Tell us why you handle TBA at all? A. That is where your biggest profit is. It is not in gasoline

or washing and Simonizing. You get it out of your TBA, batteries, tires, spark plugs, points, condensers, stuff like that.

Q. And it is your own choice that you sell and handle TBA; is that correct? A. Yes, sir.

Q. What type of tires do you stock and sell in that station? A. I have the Gates line.

Q. Entirely? A. Entirely.

Q. How many Gates tires are you stocking today? A. About 175.

Q. And how about batteries? What kind of batteries? A. Gates batteries.

Q. Entirely? A. Entirely.

Q. About how many Gates batteries do you have on hand? A. Right now we have close to 200. Between 180 and 200.

Q. What about accessories, what kind of accessories do you handle? A. We have Gates belts and Gates hose, and Fram filters, AC filters, Champion spark plugs, AC spark plugs, Autolite spark plugs.

(5463) Q. Do you buy any of your accessories from a Firestone or Goodrich supply point? A. No, sir.

Q. None at all? A. None at all.

Q. Do you display all of these Gates items? A. Yes. There are four tires displayed in the window, setting in a Gates stand, with the Gates name on it. We also have a stand, the price of tires stamped on the board.

Q. And your Gates batteries and belts, are they displayed where anybody can see them? A. The batteries are not. I have them in the back room. There are too many of them. They degenerate too bad if you put them in the window, with the sunshine on them. We keep them in the back room.

Q. Has your keeping them in the back room anything to do with the Texas Company? A. No, sir. The door is

not locked. The Texas Company man walks back there every time he comes around and takes a look.

Q. Has he ever suggested to you that you shouldn't display the Gates batteries? A. No, sir.

Q. You have signs advertising the Gates tires in your window, do you? (5464) A. Yes, sir, I have. Well, I have one decal. It is not a decal but a poster that I put in. Last week I think it was. Then we have the stands, the tire stands that you set the tires in. They are in the window. But I have no decals on my window at all, permanent decals.

Q. You mean you don't have any kind of decals whatever? A. No. We get a sign and just tape it up, stick it on the window. When it gets old we take it off and put up another one.

Q. For how many years have you had some kind of Gates tire identification publicly visible on your station? A. I took on the Gates agency in March 1950.

Q. Have you had publicly visible identification on your station ever since? A. Yes, and on my truck, stencilled on my truck, too.

Q. On your truck, also? A. Yes, sir.

Q. It says Gates service? A. It says Gates tires and—

Q. I show you this photograph and ask you if that is a photograph of a part of your station and of your truck? A. Yes, sir, that is it.

Mr. Lorenzen: May we have this marked for identification as Respondent's Exhibit 67.

(The photograph was marked Respondent's Exhibit 67 for identification.)

(5465) *By Mr. Lorenzen:*

Q. Will you look at Respondent's Exhibit 67 and tell me for how long have you had a sign like this, a Gates sign on your truck? A. Since 1950. Of course, it is not the same truck. I traded trucks since then. That is a 1956 model.

Q. But you had a similar sign with the Gates name on it since that time? A. Yes. We had that new truck stencilled before we put it in service just as you see it.

Q. I see a tire stand in the lefthand corner of this picture, and you can't make out the sign on top of it. Is that a Gates sign on top of it? A. That is a Gates sign, yes, sir.

Q. And for how many years have signs of that type been displayed in front of your station? A. Ever since I have had the line. Since 1950.

Q. From time to time you say you have window signs of Gates in your windows? A. Every time they send us a new window sign, price change, we put it in the window.

Q. And that has the name Gates on it? A. Yes, sir.

Q. And that has been going on since 1950; is that correct? A. That is correct.

(5466) Q. And is the sign to the left of the door one of those signs? A. That is the sign with the new tire design that just come out.

Q. That is a Gates sign? A. A Gates sign, yes, sir.

Q. And is that where you have been putting different types of Gates signs for the last five years? A. Right inside the door, as people walk in, so they can see it easily.

Q. That is the way you have been doing it for the past five years? A. If they ask questions about the tires I don't have to tell them.

* * *

(5467) Q. Do your bill heads and statements contain the name Gates? A. Yes, sir.

Q. Are these three documents which I show you bill heads and statement forms which you regularly use? A. Yes, sir. The statement form is what I work on.

Q. And on the upper lefthand side of this it says "Distributor of Gates tires and batteries", I think, if you spell in the letters which have been punched out by some filing machine; is that right? A. Yes, sir. That is "Gates tires and batteries."

Q. That is what it says on those? A. Yes, sir.

Q. How long have you been using statements and bill heads with this Gates name on them? A. I would say about four years, because as soon as we ran out of what we had on hand we had to have a new batch made up and we had them made up just like this.

Q. So you have been using this type of bill head and statements? (5468) A. Yes, sir.

Mr. Lorenzen: I ask to have these three documents marked as Respondent's Exhibits 68-A through C.

* * *

Q. Are you listed in the telephone book, Mr. Bailey, in connection with any TBA products? A. I am listed under Gates tires and batteries.

Q. Does your Texas salesman know about your sale of Gates tires and batteries? A. Yes, sir.

Q. As a matter of fact, the Texas Company's division point is in Norfolk, isn't it? A. That is correct, yes, sir.

Q. How about the personnel from that division point? Do they come into your station ever? (5469) A. I have about six or eight of the employees of the Texas Company that deal with me.

Q. Who buy at your station? A. Yes, sir.

Q. Do you know who they are? A. James Irdell is one.

Q. What is his position? A. That I can't—I don't know. I can't tell you what his position is. I really don't know.

Q. How far are you from the division office? A. About eight miles, roughly.

Q. Do you know whether any of the division officers like the managers or assistant managers are among the people who trade at your station? A. I don't think it is any of them, no, sir. It is just the regular run of employees at the stations—I mean at the plant.

Q. Salesmen and employees? A. Yes, sir.

Q. Has any one from the Texas Company ever told you that your lease would be cancelled, or that they would treat you badly in any other way if you didn't stop handling this Gates line? A. No, sir. I have never been threatened in any way from my company. I have been treated very nice.

(5470) Q. Have you known, during the time that you have been a dealer, that the Texas Company recommends the Firestone and Goodrich product to its dealers? A. Yes, I do.

Q. You have known that? A. Yes, sir.

Q. And have you known that you would be free to buy TBA wherever you wanted to? A. Yes, sir. I could buy anywhere I wanted, and what I wanted.

Q. And has that been your understanding of the Texas Company policy? A. That has been my understanding, and it has been my policy.

Q. Do you get a good financial deal on this Gates setup? A. Yes. I buy direct from the factory. That is the only way I can compete with Sears and Roebuck, right down the street from me. I can sell a set of tires within a buck of their price.

Q. Is that the reason you handle the Gates in your station? A. That is not the only reason. Gates is a good product, and it is a product we are proud to sell.

Q. It is a good product and you get it at a good price? A. That is right. It is like the Texaco products. I am proud to sell them and I think the tire is very good as far (5471) as quality is concerned.

Q. You have had good experience with them? A. Yes, sir.

Q. And your own customers are satisfied with them? A. Very satisfied.

Q. From whom do you buy your accessories? A. Chesapeake Auto Supply Corporation, McLean Auto Supply Corporation, Perry Buick Motor Car Company, Kline Chevrolet Sales Company, Del Mar Service and Supply, and Five Points Service Center, I think. It is a heck of a lot of them.

Q. Are any of them the Firestone and Goodrich supply points in Norfolk? A. No, sir.

Q. You do not buy anything from them at all? A. Nothing at all.

Q. What is the average gasoline gallonage of your station? A. We run about 22,000.

Q. Do you find that the Texas Company is of any assistance to you in selling your TBA product? A. Yes, sir.

Q. What do you find they do to help you? A. Well, at the dealers' meetings they show you movies and they show you—they stress circle service and the proper way to service a customer, and they show you on your lube rack what to look for, bad tires, defective tires, and bad (5472) grease fittings, when they are bad to give them a new one, wheel packing, and changing the differential and transmission grease, and to be sure to check your hydramatic or Fordamatic or whatever make car you have, to use a clean cloth, to show them whether it is dirty or not.

Q. Do you look at the dealer magazine? A. Yes, sir. You get pretty much the same out of there as you do at the dealers' meetings. Not too much difference.

Q. Do you find that that help that you get is of help to you in selling the Gates line? A. It helps you sell anything that you have, yes, sir. Gates or any kind of TBA.

Q. That is, it is applicable to all kinds of TBA? A. Yes, sir.

(5473) Q. At those dealer meetings, are there representatives of Firestone and Goodrich present at times? A. There is one of each at every meeting, most that you go. They have a display of their product, one on one side of the room and one on the other.

Q. How many dealers attend these dealers' meetings? A. About 75 to 80.

Q. Have you attended a good many of them since you started operating your station? A. One of us usually goes, myself or my assistant. If it falls on my shift, he will go. Of course, vice versa.

Q. How many dealer meetings do you have about, a year? A. About two a year.

Q. And about how many do you think you have attended on the average, say, in the last ten years? A. I average better than one a year. It just depends. Maybe you will have two meetings a year, and I would get to go to both of them. The next time my assistant on his time off would go to the meeting.

Q. At those meetings, in your presence, has anybody from the Texas Company ever threatened you or any other dealer with lease cancellation or any other unfavorable treatment if you didn't buy some or all of the Firestone or Goodrich line? A. No, sir. They sure haven't.

Q. Do you get to talk to the other dealers at those meetings? (5474) A. As a rule I don't hang around too long. If my meeting is adjourned I go right on out home.

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Ray V. Bailey, for Respondents—Cross

Q. Has any Texas dealer ever told you or complained to you to the effect that the Texas Company has told him they cancelled his lease or otherwise would treat him badly or unfavorably if he didn't handle the product of Firestone and Goodrich? A. No, sir; definitely not.

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Cross-examination by Mr. Dias:

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(5475) Q. Handling all these products other than Firestone or Goodrich, I take it that you have no need then for the credit card; is that correct? Do you have a Texaco credit card system? A. Yes.

Q. You don't charge these Gates' batteries and tires on those, do you? A. Yes, I put them on.

Q. You do? A. Yes.

Q. Do you offer extended credit to customers? A. We have only had a few. We usually carry our own credit on tires and batteries if a man doesn't have money. We carry (5476) our own credit system.

Q. You have your own credit system? A. Yes, sir.

Q. Weren't you at one time concerned about the fact that you were restricted by the credit cards to Firestone and Goodrich? A. No, sir.

Mr. Lorenzen: I think I will object to the form of that question. I think the credit card speaks for itself as to whether or not there is any restriction on it.

By Mr. Dias:

Q. Didn't you consider that restrictive? Isn't that one of the things that you discussed with Mr. Ott, the fact that you couldn't charge your Gates' tires and batteries? A.

No. He mentioned something about that, and I told him to go ahead and put them on there and see what happened, because the only time I have ever got balled out for putting something on the credit card was when I put a carton of cigarettes on there one time, and wrote out "cigarettes," and the man called, "Am I running a grocery store or service station."

Q. Who told you that? A. The bulk plant manager, the head of the plant.

Q. You never heard any complaints about putting Gates' tires or batteries on? (5477) A. No, sir.

Q. Are you identified with Gates' tires and batteries on the credit slip? A. I don't know whether he puts—Jimmy does, my assistant—when he writes them, but I do.

Q. You do? A. Yes.

Q. And you have never had any complaints? A. No complaints.

Q. Have you ever had customers who receive credit on a Gates tire or battery fail to pay? A. No. If they did all they do is send it back to me and I take care of it.

Q. Who would do that, Texaco? A. The Company. Yes.

Q. That has happened? A. No, not yet.

Q. How do you know that that is what Texaco would do? A. That is what they have done with other items that I put on and the customer didn't pay.

Q. With items other than cigarettes did they do that with? A. Well, say, for instance, if a card had been cancelled out and I didn't know about it, then they would, if I put something on, they would send it back to me.

Q. Has that actually happened? (5478) A. Yes.

Q. How recently? A. We had two last year.

Q. Can you tell us what the situation was? What was it that you gave credit on? A. That was gas, oil, and grease.

Q. Do you recall the amount involved? A. One was $5.65, the other was $7.10, I believe.

Q. Those were two different occasions? A. Yes.

Q. And subsequently Texaco asked you for reimbursement on those amounts; is that correct? A. Yes.

Q. What was the reason for that? A. The card had been cancelled but I hadn't been notified. I mean, hadn't gotten the notice.

Q. You had not received the notice as of the time you extended credit? A. We get a notice once a month on cancellations.

Q. And this happened to occur between the time of your usual notification? A. One of them had moved away from the city and didn't leave any forwarding address. Probably his card was still active but we couldn't locate him.

Q. And they returned that credit slip then to you to make (5479) it good; is that correct? A. Yes. The salesman brings it out and we repay him.

Q. Do you get that credit machine free? A. No, sir. We are paying one-half of one percent. I understand we are going to get a little refund back on that at the end of the year.

Q. How do you get this machine? Do you buy it outright or do they give it to you? A. They gave it to us.

Q. But then they charge you so much per month? A. Every $100 worth of credit card business you run they charge you fifty cents.

Q. Is this the first year you have had this system? A. We just started that stamping system January 1 of this year?

Q. And this is the first time that they have rented or charged you something? A. Yes, sir.

Q. Heretofore there has been no charge? A. No. You had to do all your writing. Instead of having the stamp machine you had to write it out.

Q. Up to January 1 of this year you had to write everything out? A. Yes, sir. The card number, the man's name and address, and the sale, whatever it consists of.

(5480) Q. Including the product, that you sold? A. Yes.

Q. Starting, or going back prior to January of this year, at that time did you list Gates' tires and Gates' batteries on those charge slips when you made a sale of TBA? A. I don't—we haven't made too many sales of Gates' tires on Texaco credit cards. I dare say not over three or four.

Q. Not over three? A. Three or four a month, that I know of myself.

Q. In how long a period? A. The last three or four years.

Q. And is that because of the restriction on the card? A. No, sir. I didn't do anything about that. They didn't specify on the back of the card any brand of tires, I don't believe. Of course, I didn't read it too carefully.

One time it read that you could put on anything except label charges, pertaining to the automobile, they restricted that. Now you can add label charges.

Q. Getting back to the new card that has been issued this year, you don't have any idea of whether or not you are being charged for the machine or not? A. Oh, yes, I know, because it is deducted every time you turn it in to the Company.

Q. And is that the cost of the machine one-half of one (5481) percent? A. Yes.

Q. Were those the figures? A. That is what we call rental on it.

Q. Rental? A. Yes.

Q. Of everything that is charged via the machine, is that correct? A. Yes. In other words, if you write up $500 they take off $2.50 of the amount.

Q. And that goes on month after month? A. Yes.

Q. When do you make that settlement? A. At the end of the year I understand they are going to charge a flat rate of $3.00 a month. All over that will be mailed back by check. That is the way I understood.

Q. How do they know how much business has gone through your credit machine? Do they compute that from these tags or stubs that you turn over? A. We have to list them on a form, and then total them. When we total them we put them in an envelope and deduct one-half of one percent and then you turn them in that way.

Q. Turn them in to whom? A. To the Texas Company.

Q. This Division office in Norfolk? (5482) A. The gasoline or motor oil, the truck driver picks them up.

Q. These Gates' batteries that you have in the station, I think you said that you have about 200 of them? A. It is close to 200.

Q. I suppose they are dry batteries? A. I got a special deal. One day the man called me up in Richmond. He said he had about a hundred, if I could— if I could see my way clear to take them all he would give me an extra 25 percent.

Q. Are they dry batteries? A. Eighteen of them was wet.

Q. And the rest are dry? A. The rest are dry.

Q. You mentioned that you didn't keep them in the window because of the sunshine. Did you say that sunshine would hurt the batteries? A. It makes them fade. Even the dry.

Q. The outside appearance? A. Yes.

Q. It has no effect on the strength of the battery? A. No, not the dry batteries. It has an effect on the merchandise and you can't sell them. If you kept it in a paper carton like they come to your place, people wouldn't know whether it was a battery or a watermelon in the carton.

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(5484) ALMON G. LANE was called as a witness and, after being properly and duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Mr. Lane, will you give your full name and home address to the reporter? A. Almon G. Lane, 66 Queensbury Street, Boston, Massachusetts.

Q. Are you in the service station business? A. Yes, sir.

Q. At what location? A. 190 Cambridge Street, Allston.

Q. What type of gasoline do you sell? A. Texaco.

Q. Do you have a lease? A. Yes, sir.

Q. From the Texas Company? A. Yes, sir.

Q. And it is one of those leases which renews itself each year? A. That is correct.

Q. For how long have you had it? A. Since October 1955.

Q. Before that time were you connected with the same station (5485) at the same location for some time? A. Since September 1937.

Q. Were you actively there operating the station? A. That is correct.

Q. Then, in October 1955 you bought out the fellow who owned it before you? A. That's right.

Q. He also had a lease from the Texas Company, did he? A. Yes, sir.

Q. About what is the gallonage of your station? A. 40,000 gallons a month.

Q. And you handle TBA? A. Yes, sir.

Q. Will you tell us why you handle it? A. Well, it is necessary, it goes hand in hand with gasoline, each one reciprocal to the other.

Q. You use that $50.00 word as though you went to Dartmouth College. Did you? A. No. I went to a very

good non-sectarian college in Lewiston, Maine. Bates College.

Q. Bates? A. That is correct.

Q. Can you tell me what type of TBA you handle? A. I don't understand.

Q. I mean make. Let's start with tires. (5486) A. I have Firestone and Goodyear tires, and Fram filters, Gates radiator hoses and fan belts.

Q. What kind of batteries? A. Autolite; occasionally, Delco.

Q. You don't stock too much of anything, do you? A. No.

Q. How many Firestone tires do you stock? A. Probably two.

Q. How many Goodyear tires do you stock? A. Just about the same in Goodyear.

Q. You mean also about two? A. Two, that is correct.

Q. You sell quite a few tires, do you? A. Yes, I do.

Q. How do you sell them? On a pickup basis? A. That's right.

Q. What sort of tires do you pick up most? A. Firestone.

Q. Then, Goodyear, is it? A. And Goodyear, yes, sir.

Q. You pick them up on the basis of what the customer demands? A. Not necessarily. The type of customers that I have are primarily doctors and lawyers, and they leave their cars and we pick up what we think is appropriate to the job, to the car.

Q. And then, they accept your judgment? (5487) A. Definitely.

Q. Do you often pick up anything other than the nationally advertised line of tires? A. No.

Q. Usually you put on one of the nationally advertised tires? A. That is correct.

Q. And most often Firestone? A. That is right.

Q. And the doctors and lawyers are satisfied with that? A. That's right.

Q. How many batteries do you stock now? A. I have one Autolite battery in my place.

Q. And that is the only battery you have? A. That is correct.

Q. And again do you sell those on a pickup basis? A. Pickup basis.

Q. Is your supply point near at hand? A. Very close.

Q. How close? A. Within five minutes going and coming.

Q. And does the same apply to your tire supply points? A. That is right.

Q. That is the reason you stock so little? A. That is correct.

Q. So you don't have your own funds tied up in inventory? (5488) A. No.

Q. Do you have signs on your place advertising the tires that you handle? A. I do.

Q. And does that go both for Firestone and for Goodyear? A. That's right.

Q. I show you a picture of a fence and a tire ad, a "friendship" fence. A. Yes, sir.

Q. Is that a fence on your premises? A. That is.

Mr. Lorenzen: I ask to have this marked Exhibit 69-A. And this photograph as 69-B.

(Whereupon, the documents referred to were marked Respondents' Exhibit 69-A and -B for identification.)

By Mr. Lorenzen:

Q. I show you Respondents' Exhibit 69-B and ask you if that is the Firestone sign which you testified you have? A. Yes, sir.

Q. Are those the Goodyear signs which you said you have? A. Yes, sir.

Q. For how long a time have signs like that been up in about that location? A. Well, before I had the station.

Q. Before you had it. (5489) A. Yes.

Q. Have they been up there continuously except when the fence was being painted? A. That's right.

Q. Those signs were up at the time you opened the station under your lease; is that right? A. Yes, sir.

Q. I show you Exhibit 69-A and ask you to tell us what those signs are on the front of that station. They are a little illegible on the photograph. A. Those are advertising my Autolite batteries.

Q. There is a clock there. What does that advertise? A. Autolite batteries.

Q. Does it say Autolite batteries on it? A. It says Autolite Stay-Full Batteries right on the face of the clock, and it is illuminated at night.

Q. I see some square signs with writing on it, either side of the lube bay door. A. Those are to which I have referred as being the advertisements for my Autolite batteries.

Q. That is in addition to the clock? A. That's right.

Q. For how long a time have you had some type of advertisement for Autolite batteries on your station? A. Practically all the time.

(5490) Q. Since you have— A. (interposing) Since I have owned the station.

Q. Did you open with Autolite? A. Yes, sir.

Q. When you took your lease you had Autolite? A. That is correct.

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Voir dire examination by Mr. Dias:

Q. Did you take these pictures? A. No, sir, I didn't.

Q. They were taken by the Alfred Brown Studio? A. I couldn't say. I don't know.

Q. Do you know when they were taken? A. Probably a month or more ago.

Q. Did you know the man who took the pictures? A. No.

Q. Were you there the day the pictures were taken? A. No, I was away.

Mr. Dias: No objection.

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(5491) *Direct examination (resumed) by Mr. Lorenzen:*

Q. Do you openly display your Autolite batteries, such as you have? A. Surely.

Q. And your Goodyear tires? A. Yes, sir.

Q. From what source do you buy your accessories? A. Firestone Stores, Automotive Distributors, an outfit called Everett Auto Parts, and Columbia Auto Parts.

Q. The last three, I believe you have mentioned, are not either Firestone or Goodrich supply points, are they? A. That's right.

Q. They are not? A. No, they are not.

Q. Do you ever buy Delco batteries from Everett Auto Parts? A. Occasionally.

Q. And what do you buy—the general line of accessories from them? A. From Automotive Distributors I purchase primarily all my accessories.

Q. Where do you get your Gates fan belts? A. From Automotive Distributors.

Q. When you said you bought it from Firestone, the same dealer from whom you buy the Firestone tire also sells the (5492) Gates, doesn't he? A. That is correct.

Q. So that while you buy from the same man from whom you buy Firestone tires, the merchandise you buy is not in the Firestone line? A. That's right.

Q. Isn't that right? A. That is correct.

Q. In fact, you buy your Autolite batteries from the same man who sells the Firestone tires? A. That's right. That is correct.

Q. Such batteries as you stock are dry charge, are they? A. Yes.

Q. Are most of your sales dry charge? A. I beg your pardon?

Q. Are most of the sales that you make, of batteries, the dry charge type of battery? A. They are all dry charge.

Q. All dry charge? A. Yes, sir.

Q. Do you find that more satisfactory? A. That's right.

Q. You know, of course, don't you, that the Texas Company recommends the Goodrich and Firestone line? A. Yes, sir.

(5493) Q. What was your understanding with respect to whether you had to buy some or all of that line in order to keep your lease? A. There was no stipulation made that I had to purchase anything. I could purchase what I wished from whom I wished.

Q. And was that your understanding of the Texas Company's policy? A. That is correct.

Q. And you acted accordingly? A. I have.

Q. Do you find that the Texas Company was of any assistance to you in marketing your TBA? A. Definitely.

Q. What kind of help do you get? A. Well, the salesman gives us constructive ideas on how to market, and we receive Texaco magazines that illustrate different ways to sell merchandise. They have dealer meetings and there are all sorts of constructive suggestions that are received.

Almon G. Lane, for Respondents—Resumed, Direct

Q. Do you find that that is as useful for marketing your Goodyear tires and Autolite batteries and your accessories as they are in marketing Firestone products? A. All you do is just apply the principle that they extend to any product, and you are successful with it.

Q. And you find that they are useful?

(5494) Q. By the way, do you use this "S-75" system? A. That follow-up system?

Q. Yes. A. It is very good.

Q. Is that something that the Texas Company furnishes to you as its dealer? A. That's right.

Q. And you use that as a follow-up to your own customers? A. That's right.

Q. Does your Texas salesman, or whatever other contact you have with the Texas Company, know that you sell these Goodyear tires and have this Goodyear sign? A. Yes, he does.

Q. And the Autolite batteries? A. Yes, sir.

Q. And they know that the accessories which you buy are not in the Goodrich or Firestone line? A. That's right.

Q. They know that? A. They know that.

Q. At any time has any threat been made to you that your lease would be cancelled or that you would be treated badly in some other way if you didn't stick with the Firestone or Goodrich line? A. No, sir.

(5495) Q. You said that you got some help from dealers' meetings. Will you tell us where those dealers' meetings are held and about how many Texas dealers attend? A. They are held in Boston, Framingham, and probably—it is up to the convenience of the size of the building they are using as to how many attend, because you are never going to have all the dealers there are in Boston. Probably 35, 30 at a time attend the meetings.

(5496) Q. You think about that many attend, on the average? A. Yes.

Q. Have you had a chance to get acquainted with them? A. Oh, yes.

Q. Have you talked shop with them after the meeting? A. Yes.

Q. At any time in the course of these meetings has anyone from the Texas Company threatened you, or in your presence any of the dealers, with lease cancellation or with any other unfavorable treatment if they didn't handle some or all of the Firestone or Goodrich line? A. No.

Q. Nothing like that has happened? A. Nothing like that.

Q. Have any of the dealers, other Texas dealers, ever told you or complained to you that they have been threatened with lease cancellation or other unfavorable conduct if they didn't handle— A. No.

Q. (continuing)—the Firestone or Goodrich line? A. Never has been any such comment as that made.

Q. You have your Gates' fan belts displayed, too, haven't you? A. Yes, sir.

Q. On wall racks with the Gates' name on it? (5497) A. That's right.

Mr. Lorenzen: That is all.

Cross-examination by Mr. Dias:

Q. I am a little confused on the Firestone purchases there. You purchased at the Firestone stores? A. That is correct.

Q. Do I understand that you also get Autolite batteries at the Firestone store? A. No. There are two Firestone —there are two suppliers of Firestone tires. One is the Firestone store at which I purchase, that I purchase nothing but Firestone tires from. There is another store which

supplies primarily all my TBA items which, coincidentally, furnishes Firestone tires. And occasionally I purchase Firestone tires there when I happen to be there purchasing a TBA product and it is convenient for me to pick up Firestone tires.

Q. But the bulk of your Firestone tire purchases, as I understand it, are made at the Firestone stores? A. I would say they are pretty near even.

Q. Would you give us the name of this other store that incidentally sells Firestone products? A. Automotive Distributors.

Q. Just to be sure the record is clear, Automotive Distributors sells various products, including Firestone tires? (5498) A. That is correct.

Q. And also Autolite batteries? A. That is correct.

Q. And other items? A. Yes.

Q. You buy the bulk of your accessories from Automotive Distributors? A. That is correct.

Q. I think you told us you bought Fram filters, Gates' hose and fan belts? A. Yes.

Q. Do you buy those from Automotive? A. Yes.

Q. What about your plugs? A. Champion plugs from them.

Q. And windshield wiper equipment? A. That's right.

Q. Do you do any repair work at your station? A. Yes, sir.

Q. Do you do much of it? A. Well, quite a bit, yes.

Q. Do you compute that in your TBA sales monthly, that is, the parts that you use in your repair work? A. Unless it is a TBA item.

Q. Do you consider a muffler, for example—

(5499) (Continuing)—or brakes or shocks? A. Tires, batteries, accessories, such as plugs, fan belts, radiator hoses, such as that.

Almon G. Lane, for Respondents—Cross

Q. What are your gas sales monthly? Around 40,000 gallons? A. That's right.

Q. Dollarwise, can you give us an approximate figure? A. Well, it will fluctuate according to the season. But, say, around $10,000.

Q. Per month? A. Yes.

Q. That is, 40,000 gallons will sell for about $10,000 per month? A. That's right.

Q. What do your tires, batteries, and accessories sales run per month? A. Say, $2500, around there.

Q. Of that $2500, what would be your estimate as the amount that is done in the tire business, tire sales? A. I should say my tires would approximate maybe 50 percent of it.

Q. When the customer leaves a call with you, I think you said he leaves it up to you as to what type of tire to put on? A. In the majority of instances, yes.

Q. Unless he specifies the type tire, do you normally (5500) replace it with a Firestone? A. That is correct.

Q. How about Goodrich? You don't deal with Goodrich at all? A. No, I don't.

Q. Is there a Goodrich distributor anywhere near you? A. No, not anywhere near me. There is a Goodrich distributor, but it is quite a ways.

Q. Do you have any competition at all from Goodrich? A. No. It is too far.

Q. The former owner of your station, what was his name? A. Mr. Ralph Downey, — D-o-w-n-e-y.

Q. Did he have a trade name? A. Yes. Aye's Petroleum Company Incorporated.

Q. Was the station known as the Aye's Petroleum Company, Inc.? A. That's right.

Q. Isn't that a little unusual for a service station? Was there anything— A. That was an independent station

previous to the time I had it. Consequently, he could have any kind of a name he wanted on it.

Q. I think you said that he carried Firestone? A. That's right.

Q. Did he carry any Goodrich? A. No. As a matter of fact, I am carrying exactly what he (5501) had.

Q. I see. And were you employed at one time by Texaco? A. No.

Q. By the Texaco Company? A. No, sir.

Q. You were not? A. No, sir.

Q. Do you attend those dealer meetings very often? A. Not as often as I should, but I get in as many as I can.

Mr. Dias: I have nothing else.

Redirect examination by Mr. Lorentzen:

Q. This 50 percent of your TBA you said is in tire sales? A. Yes.

Q. That includes the Goodyear sales as well as the Firestone, does it not? A. Definitely.

Q. And any other tires that you sell? A. That's right.

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Recross examination by Mr. Dias:

Q. You mentioned any other tires. I didn't realize you sold any others. I thought it was Firestone and Goodyear? (5502) A. No. Goodyear, and Firestone, and—I don't have any other tires.

Almon G. Lane, for Respondents—Resumed, Redirect

R. Leo Leonard, for Respondents—Direct

Redirect examination (resumed) by Mr. Lorenzen:

Q. Do you pick up any others if people want them? A. I have had requests to pick up maybe a Royal tire, but where I have to go for a Royal tire is too far. What I make on it I can get on the price that I get on a Firestone tire. Consequently I discourage them. If they insist on a Royal tire I guess I don't get the sale.

Q. Do you feel that you make the best profit that you can make on the Firestone tire? A. Definitely.

Q. And that is why you push the sale of those? A. Yes. It is a good tire, I get the best discount I can get on any type of tire. It is a high-priced tire, quality.

Mr. Lorenzen: That is all.

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(5503) R. LEO LEONARD was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your full name and address to the reporter? A. R. Leo Leonard, Lexington, North Carolina.

Q. You are in the service station business? A. Yes, sir.

Q. Do you sell Texaco gasoline? A. Yes, sir.

Q. At what location? A. Third Avenue and Main Street.

Q. You have been there for some twenty years? A. Yes, sir.

Q. About what is the gallonage of your station? A. Around 10,000 gallons.

Q. Do you handle any TBA? A. Yes, sir.

Q. You are the R. L. Leonard, at Third and Main Streets, Lexington, and your principal product has been Seiberling tires? A. Yes, sir.

Q. That is how you are listed on Exhibit 35. Do you still (5504) handle Seiberling? A. Yes, sir.

Q. One hundred percent? A. Yes, sir.

Q. How long have you been a Seiberling dealer? A. About 35 years.

Q. What kind of batteries do you handle? A. Autolite.

Q. And you have done that for a long time, too? A. Yes, a good while.

Q. Twenty years? A. Perhaps. I don't recall. We had a couple more before that.

Q. From whom do you buy your accessories? A. From Smith Distributing Company, Winston-Salem; Myers Auto Parts, Lexington; United Auto Service. That is about the bulk of them.

Q. You buy nothing from Firestone and Goodrich? A. No.

Q. Sometimes in late 1951 or early 1952 did anyone from the Texas Company make a particular campaign or effort to get you to stop handling the Seiberling tires? A. No, sir.

Q. You have been aware, have you, that the Texas Company recommends to its dealers the Firestone and Goodrich lines? (5505) A. Oh, yes, yes.

Q. But you have also known you could buy what you wanted to? A. Yes, sir.

Q. And you have done so? A. Yes.

Q. Have the sources from which you buy your TBA changed to any extent in the whole twenty years you have been at this station? A. Not too much, no. Probably taken on a new distributor or something.

Q. But you handled Seiberling the whole time? A. Yes, we have had Seiberling the whole time, and Autolite.

Q. And the whole time you have bought from people other than Firestone and Goodrich? A. How is that?

Q. And the whole time you have bought from suppliers other than Firestone and Goodrich? A. Yes.

Q. As far as your accessories go? A. That is right.

Q. Do you attend dealer meetings? A. Yes, I have attended them.

Q. A good many of them? A. Yes, a good many.

Q. At any time at those meetings have you heard any threat (5506) made to any dealer that his lease might be cancelled if he didn't buy some or all of the Firestone or Goodrich lines? A. No, I have never heard that.

Q. Have you gotten acquainted with other dealers at those meetings? A. Oh, yes, yes. I know a good many of them.

Q. Do you know other Texaco dealers? A. Yes, sir.

Q. Have you talked with them? A. Yes, sir.

Q. Talk shop with them? A. Yes, we talk business, and socially.

Q. At any time have any of those dealers ever complained— A. No, I have never heard them, no.

Q. No complaint about any threat that their lease would be cancelled or that the Texas Company would treat them badly in some other way if they didn't buy some Firestone and Goodrich? A. No. I have never heard anyone say that.

Q. I think you told us your gallonage was between ten and fifteen thousand gallons a month. A. Yes.

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(5507) *Cross examination by Mr. Dias:*

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(5508) Q. Do you do any auto repair work there? A. Yes, sir.

Q. And recapping? A. Yes, sir.

Q. Don't you run some sort of a wholesale business there, too? A. Yes, sir.

Q. And you sell service station equipment? A. Supplies principally.

Q. What does that entail? A. Oils, greases, and white-wall cleaner, spark plugs, service station supplies in general.

Q. You sell accessories there, too? A. Some, yes.

Q. What type accessory? (5509) A. Fan belts and wiper blades and—

Q. (Interposing) What kind of fan belts do you sell? A. Gates.

Q. Do you sell these at wholesale to what? Service stations? A. That's right.

Q. How many service stations do you sell to? A. I don't know how many we have.

Q. Can you give me some estimate? A. We cover all the county. There probably must be at least 50 or more.

Q. And do you sell to other Texaco stations? A. Yes.

Q. Can you name some of them? A. South Main Texaco is the only one in town.

Q. What is the name? A. South Main Texaco.

Q. Is he the only other Texaco station in town? A. The only one in the city limits. There may be some out of town.

Q. Your station at Third and Main, has that been open continuously from the time you took over in 1949 up to date? A. Yes. It has been open since '23.

Q. It wasn't closed at all at any time? A. No.

Q. Would a piece of mail addressed to the Texaco station (5510) at Main and Third Streets, Lexington, North Carolina—that would be your station, wouldn't it? A. Yes, sir; that is the location.

Q. Why do you suppose that piece of mail was returned marked "out of business"? A. I wouldn't know.

Q. You are sure your station was open at that time? A. Yes, sir.

Q. How many Texaco stations in all are there in Lexington, do you have any idea? A. In the city limits?

Q. Yes. A. There are only two, I think, in the city limits.

Q. Just yourself and this other station? A. Yes.

Q. What does this other Texaco station carry in the line of tires and batteries? A. I don't think he stocks anything.

Q. Nothing at all? A. I don't think so.

Q. Is he a lessee, too? A. I don't know how he operates. I guess he is.

Q. You don't know? A. No.

Q. Do you know who owns the property that you are at? (5511) A. Yes, sir.

Q. Who? A. Doctor C. R. Sharp and C. S. Leonard estate, who was my brother.

Q. And do they lease the property to Texaco? Is that the situation? And Texaco, in turn, leases it to you? Is that right? A. No, sir. They lease it to me, and I lease it, in turn, to Texaco, and then back to me.

Q. You lease it to Texaco and Texaco, in turn, leases it back to you? A. I have a lease with the property owners.

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Harold Crawford, for Respondents—Direct

(5517) HAROLD CRAWFORD was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Royall:

Q. What is your name? A. Harold Crawford.

Q. Where do you live, Mr. Crawford? A. 187 Linden Avenue, Middletown, New York.

Q. Are you a lessee of a Texas service station? A. Yes.

Q. Where is that located? A. 76 East Main Street, Middletown, New York.

Q. Is that the regular type of one-year, renewable lease that you have? A. Yes, sir.

Q. How long have you been a lessee of that station? A. Approximately nineteen years.

Q. What is your monthly gallonage of gasoline? A. Approximately 18,000.

(5518) Q. What are your monthly sales of TBA? A. Percentage-wise?

Q. No, just in dollars. What are they per month? How much do you sell in tires, batteries and accessories in one month on the average? A. Six to eight hundred dollars a month.

Q. Do you carry a pretty full line of tires, batteries, and accessories? A. Yes, sir.

Q. What part of your TBA is tires? What percentage? A. Approximately 45-50 percent.

Q. What is the percentage of your batteries? A. Fifteen to twenty percent.

Q. And the rest of it is accessories? A. Yes, sir.

Q. What benefit do you derive from your TBA activities? A. It brings me in added income, and brings me additional customers.

Q. Does that in effect increase your gasoline gallonage, also? A. Yes, sir.

Q. What brand of tires do you carry? A. What brand do I get?

Q. Do you carry. A. Firestone.

(5519) Q. All your tires except those that are pick-ups, are they Firestone? Do you carry any other tires besides Firestone in stock? A. I don't stock any other tires, other than Firestone.

Q. On pick-ups I suppose you get what they want you you to pick up? A. Yes, sir.

Q. Does Firestone do your recapping? A. A little, yes. Most of it is done privately.

Q. Is some of it done by others? A. Yes.

Q. What batteries do you carry? A. Willard and Autolite.

Q. And do you carry any Firestone or Goodrich batteries? A. I have two Firestone batteries in stock.

Q. You have what? A. Two Firestone batteries in stock.

Q. The great majority of your battery business is— A. Willard and Autolite.

Q. Are your accessories bought from Firestone or Goodrich or from others? A. Other sources.

Q. What are some of the companies you buy from? A. Accessories or tires, which?

Q. What is that? (5520) A. Accessories or tires?

Q. You told about the tires. Where do you buy your batteries and accessories? A. I buy Autolite from Harvey Brothers. I buy Willard from the Regional Battery Supply.

Q. Do you buy anything from Middletown Automotive Company? A. Yes, sir, spark plugs, fan belts, oil filters.

Q. Do you buy from S. J. Harding? A. Yes, sir.

Q. What do you buy from them? A. Filters, spark plugs, oil filters, fan belts, chemicals.

Q. Is eighty percent of your recapping done with the Empire Tire Company? A. Yes, sir.

Q. Do you buy anything from Automotive Electric? A. Yes, sir.

Q. What do you buy from them? A. Plugs, filters.

Q. Do you buy from Broadway Ignition? A. Yes, sir.

Q. What do you buy from them? A. Chemicals, spark plugs, fan belts, oil filters.

Q. And do you also buy from S. G. Kimball, of Newburgh? A. Yes, sir.

Q. And The State Automotive Supply Company? (5521) A. Yes, sir.

Q. What percentage, overall, of your TBA is not bought from Firestone and Goodrich? A. Sixty percent.

Q. Sixty percent? A. Yes, sir.

Q. Notwithstanding the fact that sixty percent of your TBA is bought from others than Firestone and Goodrich, has the Texas Company done any improvement on your station while that condition existed? A. Yes.

Q. What did they do? A. They put an entirely new building in about nine years ago.

Q. Are all your batteries dry batteries? A. Yes, sir.

Q. What are your reasons for carrying Firestone tires, primarily? A. I personally feel they are a good tire, they are what the public demands and accepts.

(5522) Q. Were you forced to carry them in any way? A. No, sir.

Q. Do you think they are good quality tires? A. Yes, sir; I do.

Q. Do you think they are the best? A. As far as I am concerned they are.

Q. And you think they have better acceptance than any other? A. Yes, sir.

Q. How about the question of adjustment? A. I have never had any problems with adjustments on Firestone.

Q. How about the matter of service that you get? A. I have good service.

Q. Is their source of supply convenient? A. Very convenient.

Q. What percentage of your tires are pick-up tires where people ask for them? A. I would say 50 to 60 percent is pick-up.

Q. Do you have a Firestone decal or sign up? A. I have decals on the windows and I have a Firestone sign displayed outside.

Q. Where did you get them? Who furnished those signs? A. The Firestone Company themselves.

Q. Did you request it? A. Yes, sir; from them.

(5523) Q. You use the Texas credit card, do you? A. Yes.

Q. What do you put on them? What sort of TBA do you put on them? A. Anything.

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Q. Has Texas ever complained to you about charging any non-sponsored goods on those cards? A. No, sir.

Q. And they know you do not buy sponsored accessories and batteries, do they not? A. Yes, sir.

Q. Does Texas recommend Firestone or Goodrich to you, as tires to carry? A. Yes, sir.

Q. They recommend that to you? A. Yes, sir, they do.

Q. Have you ever obligated yourself or promised to carry the tires or accessories or batteries which they recommend? A. No, sir.

Q. Have they ever claimed that you are under obligation (5524) to do so? A. No, sir.

Q. Did you, by any chance, happen to have a conversation with any of the Texas representatives about whether

or not you could make your own decisions on buying TBA? Did they talk to you about it at one time? A. Yes. A few years back, probably three or four years ago, Mr. Kessler, who represents the TBA out of New York, stopped in on his usual call and we discussed the TBA setup.

Q. That was on his regular call? A. Yes. Routine call.

Q. At that time you had acted independently in your purchase, had you not? A. Yes, sir.

Q. And you didn't raise or he didn't raise any question about that, did he? A. No, sir.

Q. What did he say in the call about it? A. He recommended of course the additional lines which they sponsor, that I was free to buy whatever I wanted to.

Q. And did you act on that assumption before and after that conversation? A. Yes, sir.

Q. Did you ever get from time to time this letter about oil discounts? (5525) A. Yes, sir.

Q. Do you recall whether that had something in it about independents? A. Yes, sir, it did.

Q. I suppose you don't remember the exact words? A. No, I don't.

Q. Do you and have you at all times felt free to buy what TBA you wanted and from whom you wanted? A. Yes, sir.

Q. Has anyone ever threatened you, anybody from the Texas Company, because you bought the majority of your items from non-sponsored sources? A. No, sir.

Q. Has that matter arisen in any way in connection with rebuilding your station for you? A. No, sir.

Q. Or in connection with any other dealings you have had with Texas? A. No, sir.

Q. Are your non-sponsored items displayed? A. Yes, sir.

Q. Are some of them in stands or racks? A. Batteries are in stands where they can see them.

Q. I believe you handle Gates' belts, do you not, for example? (5526) A. Yes, sir.

Q. Where are they carried or shown? A. They are displayed on the wall of the lube room or the wash room, where anybody can see them.

Q. Has that been the situation over the past several years? A. Yes, sir.

Q. Where do you carry your batteries? A. In a display room right at the front window where everybody can see them.

Q. You spoke of Willard batteries. Do you advertise those openly? A. I have an ad in the classified section of the telephone directory and also occasionally on the radio and newspaper.

Q. You say you bought your tires from Firestone. Where do you buy your tubes? A. Well, I buy them from several. I have Goodyear, U. S. Royal, and Firestone tubes.

Mr. Royall: I would like to have marked for identification, your Honor, for possible introduction, two photographs Respondent's Exhibits 70-A and -B.

(The documents referred to were marked Respondent's Exhibits 70-A and -B, for identification.)

By Mr. Royall:

Q. I hand you two photographs and ask you, are they photographs of portions of your station? (5527) A. Yes, sir, they are.

Q. When were they taken, do you know? A. February.

Q. Do they represent the situation that has existed as to display in those portions of your station for the last several years? A. Yes, sir, they do.

Q. I will ask you about 70-A. Are there any tubes of companies other than Firestone or Goodrich displayed in there, and would you— A. Yes, sir, there are Goodyear tubes right there (indicating).

Q. That is on the top shelf? A. Yes, sir.

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Q. Does the second picture show Willard batteries? A. Willard and Autolite.

Q. That is 70-B.

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(5529) Q. Did any Texas representatives ever fuss with you about displaying these items? A. No, sir.

Q. Did they ever quarrel with you about it? A. No, sir.

Q. Did they ever ask you to display them elsewhere? A. No, sir.

Q. Or to hide them? A. No, sir.

Q. Has the Texas Company in any way helped you with your TBA operations? A. Yes, they have.

Q. What have they done? A. They have made suggestions which have been helpful in promoting sales. Well, through their national advertising alone brings in additional customers.

Q. And is their assistance of value to you in non-sponsored goods as well as sponsored goods? A. Yes, sir.

Q. Do you get the dealers' magazine? A. Yes, sir.

Q. Do you attend dealers' meetings? A. Yes, sir.

Q. About how often are they held? (5530) A. About twice a year.

Q. Do you know approximately how many would usually be there? A. Around 40.

Q. Do you find them helpful in selling your TBA, sponsored or non-sponsored? A. Yes, sir.

Q. At these meetings have you ever heard any Texas representative criticize or threaten any dealer because he carried non-sponsored goods? A. No, sir.

Q. Do you get around and talk to these dealers a fair amount? A. Yes, sir.

Q. Do you talk about your business? A. I talk shop.

Q. Do you have a sort of a social feature of it? A. Yes, sir.

Q. Even during the social feature do you still talk shop? A. Yes, sir.

Q. Do you talk about the TBA situation and the gasoline situation and everything else? A. Everything in general.

Q. At any of those meetings have you ever heard any dealer complain or state that the Texas Company was threatening them or forcing them to buy any particular brand of TBA? (5531) A. No, sir.

Q. Your station is doing pretty well? A. Satisfactory.

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Cross-examination by Mr. Dias:

Q. Yours is a social affair after the business meetings? A. Yes, sir.

Q. Tell us exactly what kind of problems you talk about during this social affair? A. Well, it might be price, the answers to some of it, how to overcome them, or some particular dealer might have some item that might be moving and he is doing a good job with, or some problem he might have mechanically on a new car. Covering quite an area as far as service station operation is concerned.

Q. Is there anything else that you talk about? A. Well, that is usually the main topics.

Q. Do you ever get into each other's problems, personal problems? A. Well, how personal? Not too much, no.

Q. Incidentally, I think in that picture, 70-B, was it, I (5532) noted the two Firestone batteries, that you called our attention to, and I think you stated that they were the same two that you mentioned earlier? A. Yes.

Q. How long have you had those batteries there? A. I have had those batteries probably since December.

Q. 1957? A. Yes.

Q. What is wrong with them? A. There is nothing wrong. I had those batteries for the simple reason that I run out of both Willard and Autolite of that particular size and replaced them with Firestone, which was handy at the time. My other suppliers is approximately 25 miles from me.

Q. Is there any other reason they haven't sold? A. I just don't push them, perhaps.

Q. What do you think of the Firestone battery? A. It is a good battery, although the acceptance on Autolite and Willard is better as far as I am concerned.

Q. Those Gates belts in your lube room, are they in Gates sleeves too? A. Yes, sir.

Q. Would you mind telling us the brand name of your spark plugs, filters, fan belts, and so on? Fan belts we have. A. Spark plugs I have AC and Champion. Filters I have AC (5533) and Fram.

Q. How about your chemicals? A. I have DuPont, I have the various additives. Do you want the names of those?

Q. The additives? A. Yes.

Q. Yes. A. I have Marvel oil, Hastings, CD-2. They are too numerous to name.

Q. On this credit card business, do you itemize these non-sponsored products when you sell them on credit? A. There isn't too much room to itemize them.

Q. That is as of January 1st of this year there isn't too much room, isn't that so? A. Yes.

Q. What about prior to this year? A. If it were a tire, I would just mark the word tire and the amount.

Q. You didn't designate Firestone, U. S. Royal, or anything else? A. No, sir.

Q. How about accessories? A. Well, it would be the same that way. If it were a filter, I would mark the word filter or battery or spark plugs.

Mr. Dias: I have nothing further.

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(5534) ARTHUR NEUFELD was called as a witness and, after being properly and duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your full name and address to the reporter, please? A. Arthur Neufeld, 3601 Johnson Avenue, Bronx, New York.

Q. Is your station located in the Bronx, too? A. Yes, sir. 341 Grand Concourse, Bronx, New York.

Q. No matter what the columnists say, that is part of New York City, isn't it? A. Yes, sir.

Q. That station is a gasoline service station? (5535) A. Yes, sir.

Q. And you sell Texaco gasoline? A. Yes, sir.

Q. Do you lease the station from the Texas Company? A. Yes, sir.

Q. Do you have one of those leases which renews itself every year? A. Yes, sir.

Q. For how long have you been a lessee there? A. November 1946.

Q. About what is the average monthly gasoline gallonage of your station? A. 33,000 a month.

Q. In addition to the gasoline sales, do you handle TBA? A. Yes, sir.

Q. Do you like to handle TBA? A. It is a necessity to my business.

Q. Do you make money on TBA sales? A. I do.

Q. When you say "necessity," is it necessary for any other reason? A. It is part of my business to have TBA, and coincides with the gasoline and bringing in trade.

Q. And that is your own choice? A. Yes, sir.

(5536) Q. Do you have an understanding of what the Texas Company's policy is respecting TBA? A. I do.

Q. What do you think it is? A. Well, they have sponsored programs of tires and batteries, of Firestone and Goodrich.

Q. Do you know whether you have to buy some or all of the Firestone or Goodrich? A. No, sir.

Q. Do you understand that you may buy whatever you wish? A. I do.

Q. And do you feel free to do so? A. I do.

Q. And have you done so? A. I do.

Q. You have done so? A. I have done so.

Q. Has anybody from the Texas Company ever suggested to you that you had to buy some or all of the Firestone or Goodrich lines— A. (Interposing) No, sir.

Q. (Continuing) —and that if you didn't do so, your lease might be cancelled? A. No, sir.

Q. Or that the Texas Company would treat you badly in some (5537) other way? A. No, sir.

Q. No suggestions like that have ever been made to you? A. None whatsoever.

Q. Will you tell us the principal sources from which you buy your TBA? A. Firestone Company—Firestone stores.

Q. What do you buy from the Firestone stores? A. I buy tires and tubes, and accessories—filters and some additives.

Q. When you say "accessories," those are the only accessories you buy from them, is that right? A. That is correct.

Q. That is filters and some additives? A. Additives.

Q. Tell us the names of the companies from whom you buy most of your accessories. A. Bronx Gear and Bearing Company; Light Sales—they are out of business now; Schaffer; Veterans Auto Supply. That is about all I can remember right now.

Q. From the Bronx Gear and Bearing Company and Veterans Auto, you buy a whole list of accessories, do you not? A. I do.

Q. Additives and chemicals? A. Correct.

(5538) Q. Anti-freeze? A. Sometimes.

Q. You buy some Prestone? A. Bronx Gear and Bearing handle Dupont products—Zerex.

Q. You buy some from them? A. I do.

Q. And Vets Auto Supply? A. Prestone. I buy from them.

Q. And do you buy battery cables? A. Yes, sir.

Q. And bulbs? A. Yes, sir.

Q. Caps? A. Yes, sir.

Q. Rugs? A. Yes, sir.

Q. Cleaners? A. Yes, sir.

Q. Fan belts? A. Yes, sir.

Q. What kind of fanbelts? A. I purchase their fanbelts from Light Sales—Gates fanbelts.

Q. And radiator hose, is that also Gates? A. Thermo, Gates, whatever I can grab my hands on.

(5539) Q. Wherever you can get the best buy? A. Wherever I can get the best buy.

Q. You buy your spark plugs from the Gear Company and Vets Auto? A. And Bronx Gear and Bearing and M. Schaffer and Light Sales.

Q. How about Thermoid? A. I purchase from the above-mentioned, all of them.

Q. And waxes and polishes? A. I don't handle that.

Q. Wiper blades? A. I purchase from all of them.

Q. What kind of batteries do you handle and from what sources do you buy those? A. I handle the Exide battery and I buy that from the Electric Storage Battery Company, who is the Exide people.

Q. How many tires do you have in stock now? A. About ten.

Q. And those are Firestone? A. Firestone tires.

Q. Of all your tire sales, what percent do you figure you sell out of stock, and what percent do you get on a pick-up basis? A. The majority of my tires are on pick-up basis. I would say 80 percent pick-up, 20 percent in stock.

(5540) Q. Have you, while you were a dealer at this Texaco station, handled tires other than Firestone? A. I did, and I do. I handled Armstrong tires, U. S. tires, General tires, whatever the customer wants.

Q. At one time did you stock some Armstrong tires? A. I did.

Q. What was your experience with those? A. I used to purchase Firestone tires from a Firestone store salesman and he changed to—he resigned his job and went with the Armstrong people and I became friendly with him and I purchased Armstrong tires off him.

Q. Then, why didn't you continue with Armstrong tires? A. Well, they didn't stand up the way I expected, and the warrantee wasn't living up to its policy.

Q. Are you satisfied with Firestone? A. I certainly am.

Q. You handled Firestone, hadn't you, for many years before you became a Texaco dealer? A. Oh, I have been

handling Firestone tires—I was employed with the Socony-Vacuum Oil Company for 17 years—about 28 years.

Q. And during all that time you have been satisfied with the Firestone products? A. Yes, sir.

Q. Do you handle Firestone because you are afraid the Texas (5541) Company might cancel your lease or treat you badly if you didn't handle it? A. No, sir.

Q. You feel free to change if you could get a better tire? A. Anytime at all.

Q. Does public acceptance of Firestone have anything to do with your handling it? A. That is one reason, and their warrantee. They live up to their warrantee.

Q. How about price? A. Price, I get a good price. I get a good discount off the Firestone people. It gives me a margin to work with.

Q. Do you feel that Firestone is the best tire that you can handle from your own business point of view? A. Yes, sir.

Q. And is that the reason you handle it? A. I certainly do.

Q. Of all of your TBA tell me about what percent do you think is in tires and what percent is in batteries and accessories?

Mr. Dias: Can we have some dollar figures if we are going to have percentages?

Mr. Lorenzen: I will be glad to, if he has an estimate.

The Witness: I can give you an approximate figure on it. It is about 20 percent tires and about 80 percent (5542) accessories. You can figure about $200 a month tires and about $400 to $500 on accessories.

Q. You think your dollar figures are better than your percentage figures? A. Well, I can't quote exactly, but I am giving you a rough idea.

Q. You think your dollar figures are fairly accurate? A. I would say so.

Q. We will take those then instead of the percentages. A. All right.

Q. And you have a small amount in battery sales, do you? A. Yes, sir.

Q. In addition to the figure you have given us? A. That is correct.

Q. Do you display all of your TBA openly? A. Yes, sir.

Q. Has anyone from the Texas Company ever told you to hide it? A. No, sir.

Q. And you keep your Gates fanbelts on the usual Gates rack, do you? A. The Gates belts are in the lubratorium, in the front of the lubratorium on a rack.

Q. Do they have the Gates name? A. Above our heads, with the Gates name on them.

(5543) Q. And they have the Gates sleeves on the belts? A. Yes, sir.

Q. How about your Exide batteries, are those openly displayed? A. I have a small office, and as you drive in it is on an Exide rack. You can see the batteries. As you walk in you face it. It is right in the office on a rack, Exide batteries, with the Exide stand.

Q. You can see it in through the front door? A. Oh, yes, sir.

Q. I show you a photograph and ask you if that is your Exide battery rack? A. It is.

Mr. Lorenzen: I ask to have this marked as Respondent's Exhibit 71.

(Whereupon, the document referred to was marked Respondents' Exhibit 71 for identification.)

By Mr. Lorenzen:

Q. Have you had this Exide rack shown on Exhibit 71 for several years? A. I have.

Q. Has it looked like that? A. Yes, sir. Exact location, exact place.

Q. And does it look like that now? A. Yes, sir.

(5544) Q. I notice on that particular photograph that you have one of these distinguished service plaques above the Exide stand. Is that there all the time? A. No, sir. It hangs on the wall to the right of that door which is next to the Exide stand. We took this plaque off to identify the picture.

Q. And aside from that movement of the plaque over the Exide sign, is there any other change which you made before this picture was taken? A. None whatsoever.

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(5546) Q. Have you ever been told to hide this TBA, Gates fan belts and Exide batteries? A. No, sir.

Q. Has anybody from the Texas Company ever suggested to you that your lease might be cancelled or you will be treated badly in any way if you didn't stop this display of Gates and Exide? A. No, sir.

Q. Do you at times pick up tires other than Firestone? A. I do.

Q. When you do, do you bring those to your station? A. I do.

Q. Are they there openly? A. Yes, sir.

Q. Has anyone from the Texas Company ever told you to take them out or not to handle other brands of tires? A. No, sir.

(5547) Q. Did your discontinuing with the Armstrong tires have anything to do with any suggestion made to you by the Texas Company? A. No, sir.

Q. That was entirely your own choice? A. That is right, and I will buy them again if a customer wants them.

Q. Can you estimate about what percentage of your total TBA you buy from the Firestone supply point? A. About 25 percent, I figure.

Q. Dollar-wise, everything except the tires and filters, substantially you buy from other sources? A. Oh, yes.

Q. So we can figure that out from the dollar figures you gave us? A. Correct.

Q. Does the Texas Company do anything to assist you in marketing your TBA? A. Oh, yes.

Q. What do they do? A. We have quite a number of merchandising programs and the salesman is always merchandising and assisting. In all my years of experience I pick up quite a lot of merchandising ideas.

Q. Do you attend any dealer meetings? (5548) A. Yes, sir.

Q. Will you tell us how often those are held? A. Well, in our territory I would say about three or four a year.

Q. How many dealers attend? A. I think I missed one in eleven years.

Q. How many other dealers attend? A. How many other dealers attend? I am sorry. I misunderstood you. I think we have about thirty or forty.

Q. Do you have any larger meetings which take in more dealers than that? A. Not too often, but we had them where they took in practically 100 or 150 men.

Q. That included Manhattan as well as the Bronx, did it? A. And part of Westchester County.

Q. At those meetings do you get any tips on merchandising TBA? A. It is strictly a merchandising program. I do.

Q. At those meetings has anyone connected with the Texas Company ever threatened you, or in your presence

any other dealer of the Texas Company with lease cancellation or some other unfavorable conduct if they didn't handle some or all of the Firestone or Goodrich lines? A. No, sir.

Q. Do you get around to talk with other dealers? (5549) A. All the time.

Q. Are you fairly friendly with a lot of them? A. Most of them.

Q. At any time have any of the Texas dealers told you that the Texas Company has threatened them with lease cancellation or any other unfavorable conduct if they didn't handle some or all of the Firestone and Goodrich lines? A. No, sir.

Q. That has never happened? A. Never heard of it.

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Cross examination by Mr. Dias:

Q. Have you ever heard of some dealers who thought they ought to buy Firestone or Goodrich because Texas suggested it? A. No, sir.

Q. Never heard of that? A. Never heard of it.

Q. What is the brand name of the filters that you carry? A. Up to date I carry the AC filter.

Q. And you buy those from Firestone? A. I was buying them from Bronx Gear and Bearing, Light Sales, M. Schaffer, and Firestone came out with the AC filter and their price is much cheaper, so I am buying from them.

(5550) Q. When did you shift to Firestone on the filters? A. On the filters I would say about a year and a half ago.

Q. What other filters do Firestone carry? A. They carry the Firestone filter, that I know, which I don't handle.

Q. Do they handle Fram, too? A. I don't know.

Q. Have you ever stocked Fram? A. Yes.

Q. Where did you get those? A. Would you mind repeating that?

Q. Where do you buy your Fram filters? A. I didn't buy many, but I think it was Bronx Gear and Bearing, and M. Schaffer.

Q. On the shift from Firestone to Armstrong, when did that take place? A. I would say about seven years ago.

(5551) Q. How long did you stay with Armstrong? A. I was with them—well, I had Firestone, I had Armstrong, whatever the customer wanted. I would say about eight months.

Q. That was about seven years ago? A. Yes, sir.

Q. On these pick-up tires, do you pick up whatever it is that the customer demands, or asks for? Is that the way you pick them up? A. Whatever the customer wants I pick up. Whatever is good for the business.

Q. What brand of plug do you carry? A. All plugs—AC, Autolite, Champion.

Q. And your wiper blades? A. Trico and Anderson.

Q. Is that Anderson? A. Anderson.

Q. You mentioned that you have ten Firestone in stock; is that correct? A. Yes, sir.

Q. Is that your normal stock of tires? A. I usually carry even less than that, sometimes.

Q. Do you carry anything other than Firestone in the station at this time? A. Right now, no. But our turnover is quick. Most of our sales are left at the station and we fill their needs.

(5552) Q. You have been buying the filters from Firestone for the last year or year and a half, was it, you say? A. I have been buying filters from Firestone a long time. But very few Firestone filters.

Q. What is the other brand that they sell that you do buy? A. AC and Firestone. I don't carry the Firestone no more.

Q. How long have you been carrying AC? A year or a year and a half? A. I handled AC for years.

Q. But you have been buying it from Firestone? A. Firestone since they took it in about a year and a half ago.

Q. Can you give us some idea of your volume of business in AC filters per month? Isn't that a fast-moving product? A. That is a great accessory for the gasoline filling station business. I would say we average about 6 to 8 filters a day.

Q. Are you open 7 days a week? A. Well, with the seventh day we cut down on Sunday maintenance on the rack. You can break it down on 6 filters a day because we close down Sunday. We don't close the lubratorium but we are not in action as we are for the six days.

Q. That is approximately 40 a week that you sell, anyway? A. Yes, sir.

Q. What is your monthly volume in filters? Let me explain. You mentioned these figures at $200 a month for tires and (5553) $400 to $500 a month on accessories. You stated or indicated that your 25 percent could be figured from that $400 to $500. Would that be correct? A. Mostly 25 percent of that quotation is for filters.

Q. The $400 to $500? A. That's right.

Q. That would represent your filter purchases per month? A. Yes, sir.

Q. Is there another retail outlet for Goodrich or Firestone products in your area? A. Yes, sir.

Q. Will you tell us who and where? A. There is a Firestone store across the street from me, right opposite, that is called Mac's Auto and Body and Fender Company.

Q. What do they sell? A. Auto accessories, appliances and toys and tires and batteries, and so forth.

Q. Full Firestone line? A. Full Firestone line.

Q. Are there any other Firestone competitors near by? A. I have quite a number of service stations built around me. They all handle Firestone.

Q. They all do? A. They all do.

(5554) Q. Do any of them handle Goodrich? A. That, I can't tell you.

Q. Is there any Goodrich store or Goodrich outlet anywhere nearby? A. Well, that is a good ways off. I would say about three and a half or four miles away.

Q. Do you ever stock or carry or pick up Goodrich tires? A. If a customer wants it. I don't stock them, but if he wants it we get them.

Q. Where do you get them? A. Off Goodrich Tire and Rubber Company, on East Fordham Road, Bronx, New York.

Q. That is quite a way from your station? A. Yes.

Q. There is no retail outlet for Goodrich products that you know of nearby? A. None whatsoever.

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(5555) *Redirect examination by Mr. Lorenzen:*

Q. I am a little confused on the figure now. What do you think is your total TBA volume a month? Counting tires, batteries and accessories. Have you any estimate? A. I know 80 percent is accessories, as I quoted, and 20 percent tires. But in dollars and cents I might be off that figure a little because I can't give you an exact quotation.

Q. As I understood it, your testimony was that of all of your TBA you thought you bought about a quarter of it from the Firestone store, or the Firestone supply point. A. The 25 percent was mostly filters.

Q. Mostly the filters? A. That's right.

Q. What about your tires? A. Tires are very little, as you see.

Q. I see. They don't amount to much. Mostly 25 percent is for filters.

Q. But that also includes the tires? (5556) A. Well, I would say if you want to break it right down, split the straw, I would say 30 percent—5 percent tires, 25 percent—

Q. (interposing) That is what I wanted to get, the total figures. You figure you buy 30 percent of your total TBA from Firestone? A. Correct, sir.

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MAX EDWARD MANDELL was called as a witness for the Respondent and, after being properly and duly sworn, was examined and testified as follows:

Direct examination by Mr. Royall:

Q. Will you state your full name to the reporter? A. Max Edward Mandell.

Q. Where do you live? A. 37 Westboum Parkway, Hartford, Connecticut.

Q. Are you the lessee of a Texas service station? A. Yes, sir.

Q. Where is it located? A. 369 Woodland Street.

(5557) Q. You have the normal one-year renewable lease? A. That's right.

Q. How long have you been a lessee of that station? A. Approximately 13 years.

Q. What is your monthly volume of gasoline sales? A. Between 30,000 and 31,000.

Q. And do you sell a rather full line of TBA? A. Everything.

Q. What are your monthly sales of TBA? A. Approximately 40 percent tires, 15 percent batteries, and 45 percent accessories.

Q. What are your dollar sales, all of them, together of TBA? A. A month?

Q. Yes. A. I would say between $2,200 and $2,500.

Q. Why do you carry TBA? A. It is a part of the gasoline business, brings in customers and also increases your gallonage and part of the service station operation.

Q. You say you made a profit on it, too? A. Definitely.

Q. You say TBA increases gallonage? A. That's right.

Q. Did you take that station over, from someone else? (5558) A. That's right.

Q. What tires did your predecessor sell? A. He didn't have very many of anything. He was only in there a short period of time—about three months.

Q. What tires do you sell and stock now? A. Firestone, Goodrich, and Goodyear.

Q. Do you in addition to that pick up tires? A. We pick up as we need them.

Q. When requested by customers? A. That's right.

Q. Who does your recapping? A. New York Tire Company.

Q. That is not connected with any of the companies you mentioned? A. No, sir.

Q. What percent of your tires are Goodyears that you stock? A. I would say about 35 or 40 percent.

Q. What kind of batteries do you handle? A. Autolite and Delco.

Q. Are any of your accessories purchased from Firestone or Goodrich? A. None whatsoever.

Q. What would be your best estimate of what proportion of your total TBA—tires, batteries, and accessories—were not purchased from Goodrich or Firestone? (5559) A. I would say roughly about 70 or 75 percent.

Q. In connection with the batteries, what type do you have? Charge? A. They are 100 percent dry charge battery.

Q. Are you familiar with the policy of the Texas Company as to the independence of the dealer in purchasing his TBA? A. Yes, sir.

Q. Do you consider yourself entirely free to purchase what you want from whom you want? A. That's right, sir.

Q. Has the Texas Company in any way tried to force you to purchase a particular brand? A. They never have.

Q. Or have they threatened you or criticized you for handling the 70 to 75 percent of your goods as non-sponsored lines? A. Never.

Q. Would you feel entirely free to change the type of tires or any other of them that you purchase, or TBA if you thought it would be to your advantage to do so? A. Anytime I want.

Q. When did you first take on Greer? A. Approximately four or five years ago.

Q. Was there any criticism from the Texas Company when you did that? (5560) A. No.

Q. Are your tires and batteries and accessories displayed openly and publicly in your station? A. Yes. The station was renovated just approximately two years ago and new shelves and new tire racks that completely surround the bay are in full view.

Mr. Royall: I would like to have these exhibits marked for identification as Respondents' Exhibits 72-A and -B.

(Whereupon, the documents referred to were marked Respondents' Exhibits 72-A and -B for identification.)

By Mr. Royall:

Q. I hand you Exhibits 72-A and -B and ask you if they represent portions of your station as they have appeared since the time of the renovation? A. That's right.

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(5561) Q. I notice on Respondents' Exhibit 72-A there are some dark-colored tires, and adjoining it on the same shelf are some tires covered with paper. What is the reason for that difference? A. All tires that are whitewalls come wrapped in paper. All major companies wrap their tires in paper, and the black ones are unwrapped.

Q. The five black tires which adjoin directly those colored, what brand are they? A. I can't see the reading, but from the tread design I would say they are Greer's.

Q. Do you know what the ones covered with paper are? A. These are Firestone, and these are Goodrich. This one is Greer. There is one Greer. I can tell by the labels.

(5562) Q. These two dark tires over to the left, what are they? A. Those are Firestone Town and Country.

Q. On 72-B, what part of your station is it? A. This is between the second and third bays. This is the bench that was built in the renovation period.

Q. Have these displays of your non-sponsored TBA been seen by a Texas salesman? A. Definitely. Everytime he comes.

Q. Has there ever been to you, any protest or threats in connection with your display of those? A. Never.

Q. Has there been any suggestion that you should remove them or conceal them? A. No, sir.

Q. And has that been the situation which existed during the entire time you have had the station? A. Yes, sir.

Q. Do you have any signs from any of these tire companies on your station? A. We have one Goodrich sign on the fence, and there is—when the station was renovated, Akron Truck put up new decals on the window.

Q. Where did those signs come from? A. They came from a truck from Akron.

Q. And none of them came from the Texas Company? (5563) A. No. Texas Company didn't have anything to do with it.

Q. What hours do you run your station? A. I might be the envy of a gas station operator. I operate from 7:00 in the morning to 6:30 at night. We close on Sundays and we close all holidays.

Q. Has there ever been any protest to you or complaint from the Texas Company about that? A. No, sir.

(5564) Q. Do you use Texas Company credit cards? A. Yes, sir.

Q. Do you put all types of goods on them? A. Practically everything.

Q. Everything? You mean sponsored and non-sponsored? A. Yes, sir.

Q. And has there ever been any complaint about putting a tire on that happened to be a Goodyear tire, or any accessories which were bought from others than sponsored companies? A. No, sir.

Q. As to these accessories and batteries which you say you purchased from others than Goodrich or Firestone, from whom do you buy your batteries? What supply points? A. Winkler Auto Supply and Magic Auto Supply.

Q. Do you buy also accessories from them? A. That's right, sir.

Q. Are they your major suppliers of those items? A. They are two of the three.

Q. Which is the third one? A. Acme Auto.

Q. What do they sell you? A. Delco batteries and other accessories pertaining to service station operation.

Q. In addition to that, do you buy from a Goodyear store? A. Yes, sir.

(5565) Q. The New York Tire Company? A. Yes, sir.

Q. And the Lincoln Auto Supply Company? A. Yes, sir.

Q. Do you make your own decision as to what type of TBA and from whom you purchase it? A. Yes, sir.

Q. Is that done in your own interest? A. That's right.

Q. Do you carry Gates' belts? A. Yes, sir.

Q. How are they displayed? A. They are in the third wall of the lube room, a rack, with Gates' sleeves on them.

Q. Do you attend dealer meetings? A. Approximately twice a year.

Q. Where are they held? A. Locally in Hartford at one of the hotels, generally.

Q. How many dealers usually are there? A. I would say 50 to 75 dealers from the area.

Q. At those meetings do you talk formally and informally with these dealers? A. That's right.

Q. And discuss all your problems? A. Of service station operation.

(5566) Q. During those meetings have you ever heard any Texas Company officials threaten or try to compel the purchase of TBA from Firestone or Goodrich? A. No, sir.

Q. Have you ever heard any dealer state that he had been threatened or criticized for buying non-sponsored goods? A. I never have.

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Cross-examination by Mr. Dias:

Q. In connection with these dealer meetings you were asked whether or not dealers discussed all their problems with you. Would you have any way of knowing whether dealers discussed all their problems with you? A. No, not all their problems, but we discuss business in general.

Q. I believe you indicated that your station hours were a little unusual? A. That's right.

Q. Do you know anybody in the area who does the same thing? A. There are one or two stations in my immediate area who do the same.

Q. Are they Texaco? A. No, sir.

(5567) Q. Aren't you in an unusual location in that you are not near any big highways? A. I am only one block from it.

Q. Aren't there gas stations along those highways? A. They are open.

Q. And haven't you found through experience that on Sundays and holidays the motorist doesn't normally stop at your place? A. I am in a particular situation where I only have approximately less than one percent of transient business. Mine is a regular business.

Q. How often does the Texaco salesman call on you? A. I would say approximately once every two or three weeks.

Q. Can you tell us the purpose of the call? A. We hope his call is to deliver checks. But generally to take an order on oil or stuff like that, pertaining to the station.

Q. What sort of checks does he deliver? You say to deliver checks. A. Checks.

Q. I don't understand. Will you tell us what the checks are for. A. Rental checks that are rebatable to us.

Q. Rental? A. That's right.

Q. Rental on what? (5568) A. We pay a strict gallonage rental, and a check is written monthly, a rebate.

Q. Do you have a flat rental fee? A. No, I don't have a—well, I have a flat fee that I pay the gasoline truck when it comes in, and we work on a prorated ratio of gallonage.

Q. I still don't understand why there would be a rebate. If you pay so much per gallon why is there any rebate? A. Well, over a specific amount, it is a degrading scale.

Q. What else does he do ordinarily on his calls? Anything else that you can think of? A. Nothing. Asks if there is anything wrong with the station operation, and maintenance.

Q. Do you buy your Firestone tires from whom? A. From the Capital Tire and Rubber Company, and Firestone store also.

Q. What other products do you buy from those two sources? A. Nothing. Just tires.

Q. Just tires? A. Just tires.

Q. How about Goodrich? A. Just tires.

Q. And what is your source of supply? A. B. F. Goodrich Company.

Q. How long have you been carrying the Autolite and Delco (5569) batteries? A. I would say approximately five percent.

Q. Didn't you at one time carry Firestone and Exide? A. When I originally came in I handled Exide. I didn't handle Firestone.

Q. Never handled Firestone? A. I might have had a few way back. But I don't recall.

Q. How about Goodrich? Any Goodrich batteries? A. We have had a Goodrich deal for, I think, a one-shot deal, a Price battery that we bought from them at one time. That was all.

Q. How long ago was that? A. It might be a year or two ago.

Q. What brand of filters do you carry? A. AC and Fram.

Q. Plugs? A. All three—Autolite, AC, and Champion.

Mr. Dias: That is all.

Redirect examination by Mr. Royall:

Q. Texas does recommend Firestone and Goodrich to you? A. They recommend, but we buy what we please.

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A. James De Ambra, for Respondents—Direct

(5570) A. JAMES DE AMBRA was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your full name and home address to the reporter please? A. A. James DeAmbra, 24 Edendale Avenue, Pawtucket, Rhode Island.

Q. Are you in the service station business? A. Yes, sir.

Q. What sort of gasoline do you sell? A. Texaco.

Q. At what location? A. 76 Newport Avenue, Pawtucket.

Q. As I recall, Pawtucket is practically part of Providence. A. East Providence.

Q. It is all in one big metropolitan sector, is it not? A. Yes, sir. That is right.

Q. Until recently you have been in there under one of these leases which renews itself each year? A. Yes, sir.

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(5571) Q. Your father has been in the business of selling Texaco gasoline, also, for some time, has he not? A. Yes, sir.

Q. After you came out of college you leased this station, did you? A. Yes, sir.

Q. Or did you work for your father for a while? A. I worked for my father for a short period and then I went on my own.

Q. And then you leased this station? A. Yes, sir.

Q. What is the gallonage of your station now? A. 45,000 to 50,000 per month.

Q. Per month? A. Yes, sir.

Q. Do you handle TBA at that station? A. Yes, sir.

Q. Will you tell us your reasons for handling it? A. To make my station a one-stop station, to increase my profits.

Q. "One-stop," you mean the customer can get gasoline, TBA, (5572) and anything else he needs for his car. A. Yes, sir.

Q. Do you find that is a good idea? A. Very good.

Q. What has been and is your understanding of the Texas Company's TBA policy? A. They sponsor certain products, but we are free to buy whatever we wish.

Q. And they recommend Firestone and Goodrich to you? A. Yes, sir.

Q. And you know that? A. I do.

Q. And you have known that for some time? A. Yes, sir.

Q. You say you have also understood you could buy what you wanted to. Have you in fact done so? A. I have, yes, sir.

Q. Has anyone from the Texas Company ever indicated to you that they were not serious about that policy, and that in fact you had to buy some Firestone and Goodrich? A. No, sir.

Q. Nobody has ever told you that they would cancel your lease or otherwise treat you badly if you didn't? A. No, sir.

Q. Who are your principal suppliers of TBA? (5573) A. Mannolini Auto Supply; Fuller Battery Supply—

Q. Before you go further let's get you to tell us what do you buy from Mannolini? A. My chemicals, spark plugs, things that I run out of, actually. No tires whatsoever, or batteries.

Q. Do you buy fan belts and filters from them? A. Filters I do, yes.

Q. Thermostats? A. Yes, sir.

Q. Generally do you buy a substantial portion of your TBA line from them? Of your accessories. A. Yes. It runs a pretty good percentage.

Q. The next company was— A. Fuller Battery Supply.

Q. What do you buy from them? A. I buy all my Willard Batteries from them.

Q. Is that the battery which you handle principally? A. Yes, sir. I am a distributor for it.

Q. You are a distributor for Willard? A. Yes, sir.

Q. How many would you say you have in stock now? A. 25 or 30.

Q. Do you handle any other kind of battery? A. I handle a local battery—Mule.

Q. And about how many of those do you have in stock? (5574) A. A dozen or fifteen.

Q. Do you have any other batteries in stock? A. No, sir.

Q. From what other sources do you buy your TBA? A. Stewart Distributors, Associated Distributors.

Q. You buy your Mule batteries from Associated? A. That is right.

Q. And also a general line of TBA items? A. Yes, sir.

Q. And from Stewart Distributors you buy a general line of TBA items? A. That is right.

Q. What other? A. Mellor's Auto Parts.

Q. What do you buy from them? A. Mufflers, brake lining, tail pipes.

Q. Any other types of TBA such as fan belts? A. Fan belts, radiator hoses.

Q. Do you buy anything from Stillman Tire Company? A. I buy all my Goodyear tires from Stillman Tire Company.

Q. You stock Goodyear tires? A. I stock Goodyear, yes, sir.

Q. And how many Goodyear tires do you have in stock now? A. About fifty.

Q. In addition to Goodyear tires, do you stock any Firestone? (5575) A. Yes, sir. I have about fifty Firestone tires.

Q. Tell me from whom do you buy those Firestone tires? A. I buy the tires through my father.

Q. You do not buy them from a Firestone supply point, but from your father? A. From my father.

Q. Your father handles Firestone tires? A. Yes, sir.

Q. Do you know what kind of batteries he handles? A. Willard, Delco, and Autolite, I believe.

Q. What kind of fan belts do you have? A. Gates.

Q. Do you display those? A. I do, in a lube bay on a Gates wall rack.

Q. You display and advertise your Goodyear tires? A. Yes, sir.

Q. And do you display and advertise your Willard batteries? A. I do.

Q. What sort of seat cushions do you handle? A. I can't think of the name of it offhand.

Q. Crawford? A. Yes, Crawford. It is Crawford.

Q. Do you have a stand with the advertising? A. I have a display right in front of the door.

Q. Are you listed in the telephone book under Willard (5576) batteries? A. Yes, sir.

Mr. Lorenzen: I ask to have these pictures marked Respondent's Exhibits 73-A, B, and C, and D.

(The pictures were marked Respondent's Exhibits 73-A through D for identification.)

By Mr. Lorenzen:

Q. I show you Respondent's Exhibit 73-A through D and ask you whether you can recognize those photographs. A. The first one is the front picture of my station.

Q. That is 73-A. A. This one is the side window.

Q. That is 73-B. A. The battery stand is as you come in the office door to the right. It hits you right as you come in the door.

Q. That is 73-C. A. And this is the furtherest lubritorium.

Q. That is 73-D. A. That is right.

Q. Do you know about when those pictures were taken? A. About two months ago.

Q. For how long a time before that did your station have this type of advertising and display? A. All the time.

Q. What is that? (5577) A. All the time.

Q. And does it still have this type of advertising? A. Yes, sir.

Q. The Gates fan belts shown on 73-D is a permanent installation, is it not? A. Definitely.

Q. That has been there all the time? A. Ever since I opened it.

Q. And this Willard battery stand on 73-C, is that one you have all the time? A. That is permanent, yes, sir.

Q. And it is located in that situation? A. Yes, sir.

Q. On 73-B, which is your window, is that a permanent Willard decal? A. Permanent Willard decal.

Q. Do you change the other signs? A. I just changed, yes. I change the advertising matter each month. It is Goodyear. It is a Goodyear window.

Q. That is a Goodyear window and you always have a Goodyear advertisement of that type? A. Yes, sir.

Q. On 73-A, is that a typical display? A. That is typical, yes. This is something there every day of the week.

(5578) Q. Do you keep this Crawford cushion stand out where it is available? A. Yes, sir, out front.

Q. And this Bardahl additive? A. Yes, sir.

Q. None of your accessories are bought from Firestone or Goodrich, are they? A. No, none at all.

Q. The only product of Firestone or Goodrich which you buy is from your father? A. That is right.

Q. And that is tires? A. Yes, sir.

Q. Do you have a Firestone decal on your station, also? A. Yes, sir, I do.

Q. I think that shows on one of these pictures. A. I believe so.

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(5580) Q. Has anyone from the Texas Company suggested to you that you should stop this display of tires and batteries and the advertising as shown on these Exhibits 73-A, -B, -C, and -D? A. No, sir.

Q. Have they told you they would cancel your lease or otherwise treat you badly if you didn't stop it? A. No, sir.

Q. Has this pattern of buying TBA existed ever since you opened your station? A. Yes, sir. Ever since the day I opened.

Q. You just said that there was some rehabilitation going on at your station. So that in the light of this kind of TBA that you are handling, the Texas Company is still rehabilitating your station? A. Yes, sir.

Q. What are they going to do to it? A. They are going to add another bay, porcelainize the front, and they have already bought a lot next door and macadamized it.

(5581) Q. And they have done that for your station? A. Yes, sir.

Q. And have they demanded of you that you give up handling the Greer tires or the Willard batteries or these other accessories? A. Definitely not.

Q. Have you agreed to do anything like that? A. No, sir.

Q. I asked you some time ago about your lease. As a matter of fact, the Texas Company has now just recently given you a lease that runs for three years instead of one, hasn't it? A. That is right.

Q. Have you, as a condition of getting that lease, agreed to change your buying habits and TBA in any way? A. None whatsoever.

Q. You have made no commitment of that kind? A. No.

Q. Can you tell me approximately what percent of your TBA is in tires and what percent is in accessory items? A. A. Do you want a dollar value?

Q. Mr. Dias seems to like that, if you can give it to us. A. I would say about $800 in tires; about $200 in batteries, about $1,100 or $1,200 in other accessories.

Q. Are your tire sales divided about equally between Firestone and Goodyear? (5582) A. Just about, yes, sir.

Q. So that the only thing that you buy from Firestone and Goodyear would amount to about 20 percent of your total TBA? A. I think it will run a little closer to 30.

Q. Thirty percent? A. I would say so.

Q. Do you get any help from the Texas Company in connection with the marketing of your TBA? A. Yes, sir.

Q. What sort of help do you get? A. I have a sort of salesman who is always in helping me put up displays, even though they are non-sponsored.

Q. Do you get any help from meetings? Do you attend dealers' meetings? A. Yes, I attend meetings.

Q. Is TBA merchandising discussed there? A. Yes, sir.

Q. Do you get any help from that? A. I sure do.

Q. Do you find that you can apply that to the sale of your TBA items even if they are not Firestone? A. Yes, sir.

Q. Do other dealers attend those meetings? A. Yes, sir.

Q. About how many? (5583) A. About 20 or 30.

Q. About how often are those meetings held? A. They are held about four or six times a year, I believe.

Q. About how many do you attend? A. I attend about two a year.

Q. At any time at those meetings has anyone connected with the Texas Company threatened you or in your presence any of the other dealers with lease cancellation or any other unfavorable conduct if they didn't buy some or all of the Firestone and Goodrich line? A. No, sir.

Q. At those meetings do you get to talk to some other dealers? A. I do.

Q. And do you discuss shop with them a little bit? A. Completely shop.

Q. During those discussions, has anything been said to you by those other dealers to the effect that they have been threatened with lease cancellation or other unfavorable conduct by the Texas Company? A. No, sir.

Q. Nothing like that has ever happened? A. No, sir.

Q. On what sort of stands do you display your tires? A. Goodyear.

Q. You don't happen to have any Firestone stands? (5584) A. No, sir. Just Goodyear.

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Cross examination by Mr. Dias:

Q. Isn't your station located in a sort of a vacation land? A. No.

Q. Isn't Pawtucket more or less a seaside resort? A. Oh, no. It is industrial.

Q. Do you go through it on the way to— A. (interposing) There is a nice race track across the street from me.

Q. There is a race track across the street? A. Yes, sir.

Q. What I was curious about, the 45,000 to 50,000 gallons per month, I think you specified that that is what you are now selling. Is that your monthly average throughout the year? A. Yes, sir.

Q. Not only when the track is open? A. Oh, no.

Q. When was it that you got this three-year lease? A. I think it went into effect March 1st of this year.

Q. March 1st of this year? A. Yes, sir.

(5585) Q. Were you familiar with your one-year lease? A. Yes, sir.

Q. And the various provisions of it? A. Yes, sir.

Q. Are you now familiar with your three-year lease? A. Yes, sir.

Q. Can you tell us some of the terms?

Mr. Lorenzen: I object to that. The one-year lease is in evidence. It certainly speaks for itself.

Mr. Dias: I am asking him about the three-year lease. This is something new.

Hearing Examiner Kolb: The objection will be sustained.

By Mr. Dias:

Q. Do you have a copy of that three-year lease? A. Not with me, no.

Q. Can you send us a copy of it? A. It is the only copy I have.

Q. Can it be photostated or copied? Or maybe Texas will send us a copy.

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(5587) The Witness: I can recall it is the same as the one-year lease except it is for a termination of three years.

By Mr. Dias:

Q. What is the cancellation period involved? Is that on an annual basis, ten days' notice, or what is the situation in connection with that? A. I believe it is 30 days' notice.

Q. In other words, you have a three-year lease, terminable on 30 days' notice by either party; is that correct? A. I wouldn't be quoted on that. I would rather not be quoted.

Q. You don't know? A. I would say no.

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(5589) *By Mr. Dias:*

Q. What sort of a station does your father have? It is a Texaco station? A. Texaco, yes, sir.

Q. Is he a distributor for Firestone? A. He is a distributor.

Q. Distributor? A. Yes, sir.

Q. Is he a lessee, also? A. Yes, sir.

(5590) Q. And does he buy his TBA products from Firestone direct? A. He buys his tires, I know. That is all I know he buys.

Q. Do you know where he buys those tires? A. Hartford, Connecticut.

Q. From a Firestone store— A. (interposing) Yes, sir.

Q. (continuing) —or supply point.

These meetings that you attend, are they regularly scheduled meetings? In other words, at the beginning of the year do you get a notice that there will be a meeting this date, that or the other? A. No, they notify us about a week in advance.

Q. About a week in advance? A. Yes, sir.

Q. Can you tell us how that comes about, who notifies you and what they say and so on? A. They send you a card,

the salesman does, stating that there will be a meeting at such and such a place and at such and such a date. And usually they will let you know what the topic of discussion is.

Q. Are there any retail outlets of Goodrich TBA in your area? A. Yes, sir.

Q. Can you tell me who they are and where they are located? A. Ridge Tire Company, Pawtucket.

Q. Any others? (5591) A. Not in Pawtucket. That is the only one I know of.

Q. How about other Firestone retail outlets? A. The Firestone store, Pawtucket, Rhode Island.

Q. The Firestone store in Pawtucket? A. Yes, sir.

Q. Are there any other retail outlets located nearby? A. Not in Pawtucket.

Q. Not in Pawtucket.

Are there other Texaco stations in Pawtucket? A. Yes, sir.

Q. Can you tell me how many, approximately? A. I would say 15 to 20.

Q. Are you familiar with those stations? A. Not too familiar.

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(5592) Q. This rehabilitation of the station, you are paying for that, in effect, are you not? Doesn't your rent go up? A. No, sir.

Q. It does not? A. No, sir. I have a new rental, also.

Q. Sir? A. They gave me a new rental, also.

Q. They gave you a new rental? A. When they gave me a lease it was also signed with a new rental.

Q. Don't I read in there that you are not paying an additional amount? A. For one bay, sir. The additional rental charge for the one bay per month to be added.

Q. Tell us again what sort of rehabilitation they are going to do about the station. A. They are putting another

bay on it, going to porcelainize it. They already bought the lot and macadamized that lot. They are putting in a new heating unit. And the only thing I am to pay for is $25.00 a month for the new bay.

Q. And for how long? Is there any specified period?

(5593) A. For the termination of the lease.

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(5594) PIERCE W. JOHNSTON was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your name and address to the reporter? A. Pierce W. Johnston, 1405 Grant Avenue, Wilmington.

Q. Are you in the service station business, Mr. Johnston? A. Yes.

Q. Where? A. Pennsylvania Avenue and Union, Wilmington, Delaware.

Q. What sort of gasoline do you sell? A. Texaco.

Q. Do you have a lease from the Texas Company? A. Yes.

Q. It is one of those that renews itself each year? A. Yes.

Q. How long have you been at this location? A. I have been there a little over ten years as a dealer; 22 years before that as an employee.

Q. You handle TBA? A. Yes, I do.

Q. Why do you handle it? A. To increase profits, more gallonage.

(5595) Q. Have you had an understanding since you have been a lessee of the policy of the Texas Company respecting TBA? A. Yes, I have.

Q. What has been your understanding? A. They recommend Goodrich and Firestone tires. But my understanding is that I could buy anything that I wanted, any line that I wanted.

Q. And you understood they recommended the Firestone and Goodrich line to you? A. Yes.

Q. Have you followed that recommendation in part? A. Only as far as tires go, and not because the salesman of the Goodrich Company is a personal friend of mine.

Q. So it is just a coincidence? A. Yes.

Mr. Dias: I object to the characterization. I move that it be stricken.

Hearing Examiner Kolb: The statement of counsel may be stricken.

By Mr. Lorenzen:

Q. You stated that you knew the Goodrich salesman? A. Yes.

Q. And is that the reason you bought the Goodrich line? A. That is the reason.

Q. You said that is only as far as tires go. So you do (5596) stock the Goodrich tire? A. I stock Goodrich tires.

Q. And how many do you have in stock now? A. Approximately 25.

Q. Of your total tire sales, what percent do you think is out of stock, and what percent is on a pick-up basis? A. Say, 75 percent on a pick-up basis.

Q. What kind of batteries do you stock? A. National and Delco.

Q. About how many National's do you have in stock? A. Between 18 and 20.

Q. And how many Delco's? A. Five or six.

Q. Do you have any others? A. No.

Q. When you took over this station as a lessee, with what kind of TBA did you open that station? A. Fundamentally the same as we have now, with the exception of tires. At that time we were handling U. S. tires.

Q. Did you make any commitment when you signed the lease to buy Firestone and Goodrich? A. None whatever.

Q. And you opened actually with the U. S. tires and the National batteries? A. Yes, sir.

(5597) Q. Will you tell us the occasion for changing over later on from U. S. to Goodrich? A. The Goodrich salesman, Charles Yoder, called on me—as I said, he is a personal friend of mine—and gave me a very good price on Goodrich tires, so I stocked them.

Q. And is that the reason you went to Goodrich? A. Yes.

Q. Do you feel free to change back if you later get a better deal on a better tire at some other line? A. At any time.

Q. You do not feel that the Texas Company would cancel your lease or otherwise treat you badly if you did so? A. No, indeed.

Q. About what is the gallonage of your station? A. $30,000 a month.

Q. Will you give us the names of some of the principal supply houses which supply your TBA? A. Miller Car Service; Adams Parts; Taylor Auto; Potts Battery; Keils; Holt Tire Company; Wood Krewsen; Sterling Auto.

Q. Do you buy all of your accessories from one of the houses other than Firestone or Goodrich? A. Yes.

Q. What kind of filters do you handle? A. Wix.

(5598) Q. Is that a pretty good business with you, too? A. Yes, very good.

Q. Do you display all of your TBA? A. Everything is displayed.

Q. Do you have Gates fan belts? A. Thermoid and Goodyear.

Q. Thermoid and Goodyear? A. Fan belts.

Q. Do you display those? A. Yes, sir.

Q. With the names on them? A. Yes.

Q. What sort of a rack do you hang them on? A. I have a rack right in the lube bay.

Q. Does it have a name on it? A. Yes, sir.

Q. What? A. Thermoid. One rack has Thermoid and the other rack has Goodyear.

Q. And it has the names right on it? A. Yes.

Q. How about your National batteries? Are those displayed? A. They are displayed on National battery stands.

Q. In your store? A. Yes.

(5599) Q. Were any pictures taken, do you know? A. I don't think there were any pictures taken.

Q. These National batteries are openly displayed on National battery stands? A. They are.

Q. From Keils do you buy Goodyear tires? A. I buy Goodyear tires from Keils when a customer insists on Goodyear.

Q. What do you find about customers' demand for tires in your community? A. I find that Goodrich has wide acceptance from most all my customers. It is highly advertised on radio, TV. I have no trouble whatever selling them.

Q. Is that among the reasons for your handling that line? A. Yes. Consumers Digest, it is top on the list.

Q. Can you divide your TBA sales percentagewise among tires and tubes and batteries and other accessories? A. I think it will run 33 percent for each, approximately.

Q. Do you know about what the total of your TBA sales are on the average? A. It will run around $3,000 a month.

Q. Of that $3,000, one-third is in tires? A. Yes. One-third would be in batteries.

Q. And that one-third includes your Goodrich tires plus any other tires that you may get for a customer who doesn't (5600) want Goodrich? A. Yes.

Q. And all the rest of your TBA is bought from supply points other than Firestone and Goodrich? A. Yes, sir.

Q. You say you openly display all your TBA. Does your Texas salesman or zone manager, whoever calls on you, know that you have this TBA which is not in the Firestone or Goodrich line? A. Yes, sir.

Q. Have they even told you to hide it? A. Never.

Q. Not to display it? A. Never.

Q. Have they ever suggested to you that they cancel your lease or otherwise treat you badly if you didn't dispose of this line of TBA? A. Never.

Q. Do you attend dealers' meetings? A. Twice a year.

Q. Do you find that the Texas Company is helpful to you at all in the selling of your TBA? A. I think they are very helpful.

Q. What do they do for you? A. Well, we get the dealer magazine once a month. At these (5601) meetings they show us films, how to approach a customer on the driveway, check his fan belt, radiator hose, wiper blades. They have been very helpful.

Q. At the dealers' meetings is anything discussed with respect to your merchandising of TBA? A. Yes.

Q. Do you find that helpful? A. Very helpful.

Q. Have you told me about how many dealers attend these meetings? A. Between 20 and 25.

Q. And they are held about twice a year, did you say? A. Yes. Spring and fall.

Q. About how many do you attend? A. I try not to miss any.

Q. At those meetings, do you become acquainted with other dealers? A. Yes.

Q. Talk with them? A. Yes.

Q. Discuss shop with them? A. Yes.

Q. At any time at those meetings has anyone from the Texas Company threatened you or in your presence any of the other Texas dealers with lease cancellation or any other (5602) unfavorable conduct or treatment if they didn't handle some or all of the Firestone or Goodrich line? A. No.

Q. Has any dealer ever told you, whether at these meetings or any other place, that any one from the Texas Company has threatened such dealer with lease cancellation or other unfavorable treatment if they didn't handle some or all of the Firestone and Goodrich line? A. No.

Q. You feel free, do you, to sell and display and advertise whatever line of TBA you think is best for you? A. I certainly do.

Q. Are you listed in the telephone book under any TBA product? A. In the yellow pages, under "National Batteries".

Q. Do you do any advertising, radio or newspaper? A. Newspaper advertising, about four times a year, National batteries and Goodrich tires.

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(5603) *Cross examination by Mr. Dias*:

Q. Do you have a trade name, Mr. Johnston? A. Yes.

Q. What is it? A. Mac's Service.

Q. No wonder I couldn't find it in the directory.

At these dealer meetings, has any dealer ever told you that he wasn't having trouble with Texaco? A. That he wasn't?

Q. Wasn't having trouble, yes. A. I have never had any comment they were having trouble.

Q. You never had anybody tell you that they weren't having trouble. A. That they weren't? Would you repeat that?

Q. The fact is that they don't talk about their personal problems, do they? A. Not very much, no.

Q. On these tires, can you give us some estimate of the number of tires, Goodrich tires that you sell during the year? A. I have a list with me for the year. This is for 1957. We purchased $7,435.99 worth of Goodrich tires.

Q. What other figures do you have? A. From Motor Service—

Q. What other tires? May I have a look at that? (5604) A. Yes. (Handing)

Q. Why don't you read all these figures? A. All right.

Mr. Lorenzen: Why don't we just mark it?

Mr. Dias: I think it will be better if he just reads it in.

Mr. Lorenzen: All right.

The Witness: Motor Car Service, $2,038.20. That is for Champion plugs, mufflers, tail pipes, and other parts.

By Mr. Dias:

Q. Before you go on: How much of that would be mufflers, tail pipes, and other parts? A. Mufflers and tail pipes would comprise about half of it.

Q. About fifty percent of it. Any other hard parts like piston rings? A. No, sir.

Q. Shocks and brakes? A. Shock absorbers.

Q. Brakes? A. Brake lining we get from Wood Krewsen. That is $2,077. That is brake lining and oil filters.

Q. What would be the percentage there? How much brake lining and how much oil filters? A. I would say, again, about half.

Q. In connection with that last one: In addition to brake (5605) lining, would there be any other so-called repair parts like mufflers, tail pipes, et cetera? A. No.

Q. Next? A. Holt Tire Company.

Q. What do you purchase there? A. $1,716. And that is two-thirds of that for retreads. And the other would be for new U. S. tires.

Q. That is all you purchased from them? A. Yes.

Q. The next one? A. Keils, $485. That is Goodyear tires.

Q. That is all you purchased from them? A. Yes.

Q. Next? A. Potts Battery, $6,050. That is for National batteries, Champion spark plugs.

Q. Anything else? A. Yes. They do our generator work, too.

Q. Is that all that you get from them? A. Yes.

Q. Will you break that $6,050 down as to generator work? A. $4,500 of that is for batteries.

Sterling Auto, $329. That is just parts, Ford parts.

Q. What kind of parts? Repair parts? (5606) A. Repair parts.

Q. That had been picked up for a particular job or jobs? A. A particular job.

Taylor Auto Sales, $249.10. That is DuPont MOA detergent and mufflers.

Q. How much of that is for mufflers? A. About $100.

Q. Anything else from that firm? A. No.

Q. Next? A. Delaware Tire, we have that, Goodrich tires.

Q. That is your Goodrich distributor, is it? A. Yes.

Q. Where are they located? A. 38th and Market.

Q. In? A. Wilmington. $7,435.

Mr. Lorenzen: Is it clear that is not a duplication? You have asked him for that twice now.

By Mr. Dias:

Q. That $7,435 is the figure you first mentioned when I first started cross-examination? A. Yes.

Q. I think that is clear. A. Wood Krewsen, $2,077.

(5607) Q. What is that for? A. Filters and brake lining.

Q. Can you break down that $2,077 figure? A. I would say half of that is for brake lining and the other half filters.

Q. Fifty-fifty, brake lining and filters? A. Yes.

Delaware Oldsmobile, that is mufflers.

F. W. Diver Company, $1,003. That is mostly mufflers.

A Chevrolet dealer, Adams Parts, $11,589. That is fan belts, radiator hose, Delco batteries, AC spark plugs, battery cables, chemicals.

Firestone Stores, $320. That is tires.

Q. That completes it? A. That completes it.

Q. Thank you very much.

Do you ever pick up batteries or other accessories at the request of customers? Do customers have a choice of batteries? A. They have a choice. Very rarely do we have to get another battery. They take our word for it on National.

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(5609) WILLIAM LINTON was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your name and home address to the reporter please? A. William Linton, 100 Flintlock Road, Newark, Delaware.

Q. How far is Newark from Wilmington? A. Seven miles.

Q. You are in the service station business? A. Yes, sir.

Q. At what location? A. Capital Trail and McKee's Lane.

Q. In Newark? A. In Newark, Delaware.

Q. You are a lessee? A. Yes, sir.

Q. Do you have one of these leases which renews itself (5610) each year? A. That is right.

Q. For how long have you been a lessee at that location? A. I think sixteen months.

Q. Was that a new station? A. Yes, sir.

Q. So you opened it up as a new station? A. That is right.

Q. What kind of batteries did you have in stock when you opened up? A. Delco.

Q. Before you took that lease, did you make any commitment with the Texas Company to handle some or all of the Firestone or Goodrich line? A. No.

Q. No commitment whatever? A. No, sir.

Q. You do handle a more or less full line of TBA now, do you, at your station? A. That is right.

Q. Do you find it helps in your business? A. It does, yes.

Q. And that is why you do it? A. Yes.

Q. It is your own choice? (5611) A. It is my own choice.

Q. When you took over this new station, and up to the present time, what has been your understanding as to the Texas Company's TBA policy? A. I understand they sponsor Goodyear and Firestone.

Q. And did you have any understanding as to whether you had to handle the Goodyear or the Firestone line? A. I had an understanding that we didn't have to.

Q. That is, that you could handle what you wanted? A. That is right.

Q. And have you acted on that understanding? A. I have.

Q. Has anyone from the Texas Company ever told you since you opened that if you didn't handle some or all of the Firestone or Goodrich line that your lease would be cancelled? A. No.

Q. Or that they would treat you badly in some other way? A. No.

Q. What is the amount of your gasoline gallonage, average? A. Approximately 20,000, monthly.

Q. Is that your average now? A. Yes.

Q. Will you tell us the sources from which you buy your TBA? A. Firestone.

Q. What do you buy from Firestone? (5612) A. Tires.

Q. How many Firestone tires do you have in stock? A. Approximately twelve.

Q. Do you stock any other tires? A. Yes.

Q. What other tires do you stock? A. Cooper.

Q. You are happy with them—I don't know that you heard Mr. Llewellyn testify—

Mr. Dias: I object.

By Mr. Lorenzen:

Q. You are happy with the Cooper tires? A. From the price line, yes, sir.

Q. You use them as a price-line tire? A. That is right.

Q. And your quality line is Firestone? A. That is right.

Q. And that is the way you handle them and sell them? A. Yes.

Q. You stock them both? A. Yes.

Q. Openly? A. Yes, sir.

Q. About what percent of your tires do you figure you sell out of stock and about what percent do you pick up? (5613) A. Approximately forty out of stock, sixty on a pick-up basis.

Q. And you say that tires are the only things you buy from Firestone? A. Yes.

Q. Who are your other suppliers of TBA items? A. Kennett Auto Parts, at Kennett Square, Pennsylvania.

Q. Do they handle any tires? A. No.

Q. Do you buy most of your accessories and batteries from them?

Mr. Dias: I object to that. We haven't heard yet where he buys anything. Now we find out he buys most of his—let the witness testify.

By Mr. Lorenzen:

Q. Tell us what you buy from Kennett Auto Parts. A. Bowers batteries.

Q. Bowers? A. Bowers.

Q. How many of those do you have in stock? A. Approximately twelve.

Q. Do you buy any other batteries from them? A. No.

Q. What else? Go down the list of accessories items and tell us what you buy from them as best you know. (3614) A. DuPont lines, chemicals and polishes, wiper blades; spark plugs; filters. Most anything in the automotive line.

Q. Fan belts? A. Fan belts—Gates fan belts.

Q. Cleaners? A. I didn't hear you.

Q. Cleaners—DuPont cleaners? A. Yes. Chemicals.

Q. Radiator hose? A. Yes.

Q. You said filters, did you not? A. Yes, sir.

Q. Spark plugs? A. That is right.

Q. Did you include waxes and polishes in chemicals when you said you bought chemicals from them? A. I did.

Q. Is that the house from which you buy most of your accessory items? A. Yes, sir.

Q. And your batteries? A. The Bowers batteries. I buy the Delco batteries from Cecil Auto Parts, Elkton, Maryland.

Q. How many Delco batteries do you have in stock? A. Approximately ten.

(5615) Q. And how many Bowers? A. Approximately twelve.

Q. Do you have Firestone and Goodrich batteries in stock? A. I have one Firestone.

Q. What type of battery is that? A. That is a 12-volt battery, a premium grade battery.

Q. And that is the only one you have? A. Yes, sir.

Q. Is that about normal, a normal battery supply? A. Yes, sir.

Q. Do you buy any accessory items from any other suppliers? A. Taylor Auto Supply, Wilmington, Delaware.

Q. What do you buy from them? A. Some filters, wiper blades.

Q. Any fan belts? A. Some.

Q. But most of those you buy from Kennett? A. That is right, yes, sir.

Q. How about Newark Auto Parts? A. I did at one time. I don't any more, no.

Q. What did you buy from them? A. They had a delivery wagon that came by once a week, and whatever I happened to be in need of at the time I bought from them.

Q. Now they don't have the delivery wagon any more? (5616) A. No.

Q. So you don't buy from them? A. That is right.

(5617) Q. From whom do you buy your Cooper tires? A. Wilmington Tire Company.

Q. How do you display your tires? A. In racks.

Q. Inside and outside? A. Inside and outside; yes, sir.

Q. What names do you have on those racks? A. I had the Firestone tires in the first rack, and the Cooper tires in the Cooper rack.

Q. And it has the name "Cooper" on it? A. Yes, sir.

Q. And anybody can see it? A. Yes, sir.

Q. These Gates' fan belts, do you display those? A. Yes, sir.

Q. On the Gates' rack? A. Yes, on the Gates' rack.

Q. With the Gates' name on top of it? A. That's right.

Q. And do the fan belts have the name "Gates" on them? A. They do.

Q. Has anybody from the Texas Company ever told you to hide any of these TBA items, or threatened to cancel your lease if you didn't get rid of the Cooper tires or the Bowers or Delco batteries? A. No.

(5618) Q. Or any of the accessories? A. No, sir.

Q. Have they ever told you they would treat you badly if you didn't buy the Firestone or Goodrich line? A. No.

Q. Do you feel free to buy whatever TBA items you yourself choose? A. I do.

Q. Is that what you have done? A. That is what I have done; yes, sir.

Q. You figure these lines that you sell are the best for your own business? A. I do.

Q. Can you tell me approximately what percent of your total TBA sales are in tires and tubes, and about what percent is in batteries and accessories? A. Tires, approximately 40 percent. Batteries and other accessories, 60.

Q. About how much of that is in batteries, do you know? A. Perhaps 20.

Q. Are you satisfied with your Firestone service and adjustment policy? A. Yes, sir.

Q. What do you find about your customer demand for Firestone tires? (5619) A. Well, the Firestone tire has

good acceptance, I find, and they are not—to me they are not as hard to sell as perhaps some of the other brands. I get good service and their adjustment policy is good and that is about it.

Q. And are those among the reasons why you handle the Firestone? A. That is some; yes, sir.

Q. What assistance do you get, if any, from the Texas Company in connection with marketing your TBA? A. Well, the salesman, dealer meetings, magazine, and they also send window streamers, and also from the salesman himself, he helps out quite a bit.

Q. About how many dealers attend your dealers' meetings? A. Approximately 20.

Q. And about how often are those dealers' meetings held? A. I would say, about three times a year. I am not sure of that.

Q. About how many do you attend? A. I have attended all, so far, excepting one.

Q. At those meetings, has any one from the Texas Company ever threatened you, or any other dealer, with lease cancellation, or any other unfavorable treatment if you didn't handle some or all of the Firestone or Goodrich line? A. No.

Q. Have you become acquainted with the other dealers at (5620) these meetings? A. Some, yes.

Q. And have you talked with them? A. Yes.

Q. After the meetings? A. Yes, sir.

Q. Have they at the meetings—have any of them at the meetings or any other time told you or indicated to you that the Texas Company was threatening them in any way in connection with their TBA purchases? A. No.

Q. Did the Texas Company know that you were opening this new station with the Delco batteries? A. I—yes. The reason I hesitated on that, the salesman was there and he helped me open. So—

Q. So he knew they were there? A. He knew they were there. He helped me put them up.

Q. By the way, the Texas Company gave you a Dealer's loan to help you open that station, didn't they? A. They did; yes, sir.

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Cross examination by Mr. Dias:

Q. Can you break down your tire business a little for us, (5621) and tell us how many Firestone tires, and how many Cooper? A. Do you mean that I sell?

Q. Sell during the year, yes. A. I could approximate it for you.

Q. Firestone outnumbered the Cooper, did they not? A. Yes, sir.

Q. By how many, can you tell us that? A. I would say Firestone 60 percent, Cooper, 40.

Q. How many of those dealer meetings have you attended? A. I think, four.

Q. And have the representatives of either Firestone or Goodrich been there? A. No.

Q. Not at any of those that you attended? A. Not that I attended, no.

Q. You also mentioned that Firestone is not as hard to sell as other brands. What experience have you had with other brands? A. I meant by that, I think that Firestone has a better acceptance. I think people know them better.

Q. What do you base that on? A. Advertising, and service.

Q. Do you have more people calling for them? Or do you convince more people that they ought to buy Firestone? Or are they easier to sell? (5622) A. I think any name-brand product is easier to sell if the price is near the same.

Q. Aren't U. S. Royal or Goodyear name-brands? A. Yes.

Q. Do you think Firestone sells easier than either of those two? A. As far as I am concerned, they do, yes.

Q. You are at the traffic circle there, aren't you? A. Yes, sir.

Q. Are there any retailers of Goodrich or Firestone products near you? A. Yes, I think so.

Q. Can you tell us which, Goodrich or Firestone, or both. Tell us first about Goodrich. A. You are talking retail?

Q. Yes. A. There is a retail Goodrich about two blocks —three blocks from me.

Q. Is that the closest one to you? A. Yes, sir.

Q. What about others? Are there any others, any other Goodrich retailers? A. I don't—not that I know of.

Q. How about Firestone? A. There is one Firestone retailer, perhaps a half-mile.

(5623) Q. Is that a store, a Firestone store? A. A service station.

Q. What about Goodrich? Is that a Goodrich store? A. Service station.

Q. Are there other Texaco stations in Newark? A. Yes, sir.

Q. Is Newark a suburb of Wilmington, or is it a separate little community? A. Newark is a city of its own.

Q. Do you know how many other Texaco stations are in Newark? A. Two.

Q. Just two others? A. Yes.

Q. Do you know those stations pretty well? A. Yes.

Q. Can you tell us what they carry in the line of TBA? A. I can tell you tires. Their TBA, I couldn't.

Q. Tires? A. One has B. F. Goodrich and the other has Gates.

Q. Gates? A. Gates.

Q. Is that all the other one carries, just the Gates? A. That is all I know of.

Q. On Goodrich, is that the station you referred to as (5624) being the other Goodrich retailer near your station? A. Yes.

Q. You don't know what type batteries that station carries? A. No, sir.

Q. Have you ever met those operators at your meetings? A. No. We are in different districts.

Q. Both in Newark but in different districts? A. Yes, sir. There is a dividing line there.

Q. How many of those dealers would you say you became acquainted with at dealers' meetings in the four times you have been there? Would it be many? A. Close acquaintance?

Q. Yes. A. Not any.

Q. None at all? A. No.

Mr. Dias: That is all.

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(5625) BURNEY BARKER was called as a witness and, after being properly and duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Please state your full name and local address to the reporter. A. Burney Barker, 1451 Cheshire Way, North Atlanta, Georgia.

Q. Mr. Barker, you are not a dealer selling Texaco gasoline at this time? A. At the present, no, sir.

Q. Will you tell me when you were a dealer? A. From 1948 to '56.

Q. Where was the location of your station? A. At first, it was at Spring and Fifth, Atlanta, Georgia; then, I was in Brookhaven, on 4200 Peach Tree Road—4101 Peach Tree Road.

Q. You had leases at those locations from the Texas Company? A. Yes, sir.

Q. And those were the leases that expired at the end of each—not expired, but renewed themselves at the end of each year? A. Yes, sir.

(5626) Q. During the time when you were a lessee, did you hold some civic positions? A. Yes, sir.

Mr. Dias: I object. I don't see the relevancy.

Hearing Examiner Kolb: I don't think that is material.

Mr. Lorenzen: Your Honor, I would like to be heard on that, because I think it is quite important. The charge here is that these dealers are being pushed around by the Texas Company and compelled to buy a particular line of TBA. Of all the dealers we have looked for, assiduously, anywhere, the only one whom I found who is practically 100 percent in line is this gentleman, who has been the mayor of his town; he has been on the civic council; he has been active in all kinds of civic affairs. It seems to me it is most important to establish those factors in order that your Honor may evaluate his answer as to why he chose this particular line of TBA.

Hearing Examiner Kolb: I don't agree with you. I don't think being the mayor of a town or anything else has anything to do with this proceeding.

Mr. Lorenzen: Wouldn't it help your Honor to evaluate the man's character and the weight of his testimony to know that he has had positions of trust and confidence?

Hearing Examiner Kolb: I have known some mayors in my life whom I had felt were not.

Mr. Lorenzen: I am speechless.

(5627) Hearing Examiner Kolb: The objection will be sustained.

Mr. Lorenzen: May my statement go as an offer of proof, your Honor, that I would like to make with this witness?

Hearing Examiner Kolb: All right. You can make an offer of proof.

Mr. Lorenzen: I would like to offer to prove that Mr. Barker has been a member of the city council and zoning board of the town of North Atlanta; that he has been mayor of the town of North Atlanta; that he has been active in the Elks and the Shriners, Moose, and Kiwanis; that he is a member of the peace officers association, and I think he still is active and holds a badge as a peace officer.

By Mr. Lorenzen:

Q. Mr. Barker, you gave us the opening date when you first became a lessee, did you? A. Yes, sir. '48 to '56.

Q. And the address of that station. That was until 1952. Is that right? A. Yes, sir.

Q. Then, you gave us the second set of dates. What were those? A. That was from '52 to '56.

Q. About what was the gallonage of the station which you (5628) operated from '52 to '56? A. Approximately 25,000 a month.

Q. Did you handle TBA at that station? A. Yes, sir.

Q. Will you tell us why you handled it? A. Well, I think most motorists like a one-stop service where they can get everything you have to offer there, and I think it helps your business to have a one-stop service.

Q. Was it your own choice that you handle TBA? A. Yes, sir.

Q. Tell me, did you have an understanding at that time as to what was the Texas Company's TBA policy? A. Yes, sir. They recommended to me what they had to offer, what they have. But I had Firestone before I went with Texas.

Q. What was your understanding as to whether you had to handle the Firestone line? A. No, sir, I didn't have to handle any certain brand. We could buy as we liked.

Q. You understood— A. (interposing) As far as TBA goes.

Q. You understood that you could buy what you liked? A. As far as TBA, yes, sir.

Q. There wasn't any doubt about that in your mind? A. No, sir.

Q. Can you tell me, did you have discussions as to the policy (5629) of the Texas Company and as to whether you could buy what you liked with any particular employees of the Texas Company? A. The first person came to me was Mr. Walter Jones, when I went with them in '48, which he told me they sponsored some TBA programs, but he also told me at the same time that I was an independent dealer and was free to buy whatever I chose, and that also applied again when I moved out to Brookhaven on Peach Tree Road, and also Mr. Charley Fitts has told me the same thing.

Q. That is the Mr. Charley Fitts who has been zoning manager in Atlanta more recently than Mr. Jones? A. Yes, sir. Mr. Jones wasn't zoning manager. He was, I guess you would call him—

Q. (interposing) Salesman? A. A salesman.

Q. And the Charley Fitts is the Mr. Charles Fitts who was zoning manager? A. Yes, sir.

Q. And you had that understanding that you could buy from whomever you pleased after you talked with Mr. Fitts? A. Yes, sir.

Q. As well as Mr. Jones? A. Yes, sir.

Q. There is no doubt in your mind about that? A. That is correct, sir.

(5630) Q. You said you handled Firestone. Tell us how you came about to handle Firestone and why you chose it? A. Well, if I may explain the first part of it, I came out of service and I bought half of a station with Shell at that time. My partner had never carried any TBA at all. He only sold gas and oil. I wanted to carry the full line, so I, in turn, called Firestone out on Whitehall Street at that time, and their salesman came out, and I ordered Firestone from them and TBA at that time.

And I have Firestone ever since.

When I moved over to Spring and Fifth, from Shell—I was at Piedmont and Forest with Shell at first, and I moved from Piedmont and Forest with Shell to Fifth and Spring with Shell, and the station there was carrying Goodyear tires, which is a good tire also, but I still liked Firestone. I took out the Goodyear and put Firestone in the station.

When I moved over to Texaco, in '48, I still carried Firestone. There was some stuff there that was not Firestone at that time, but I installed Firestone all the way through.

Q. And was that your own choice? A. That is my own choice.

Q. Did that have anything to do with the Texas Company telling you what kind of TBA you had to handle? A. No, sir. I think, as far as I was concerned, it was a good tire. Firestone had one of the best tires made. And (5631) that isn't the only reason I carried them. I had

one of the best deals they had. I had an "A" deal which is the same buying power as their stores carry, and I couldn't get a better deal from nobody else.

Q. You say you couldn't have gotten a better deal? A. I couldn't have gotten a better deal from no one else. And they had national advertising, so I couldn't see where I was wrong in doing it.

Q. Now about the other Firestone item? You also chose those, did you not? A. I carried everything Firestone and Texaco throughout.

Q. Was that your own choice? A. That is my own choice.

Q. Why did you carry the Firestone batteries and the line of Firestone accessories? A. Well, I didn't—one of the main reasons in carrying the stuff, I had several reasons. I had one salesman call on me from Firestone, and one from Texaco. I only had two men call on me. I had one catalog to go by, as far as prices were concerned. I didn't have to look through catalogues to find my prices. I didn't worry about salesmen contacting me all the time and tying me up. I think it is a better deal throughout to have one brand of stuff in your place.

Q. So you found it was simplest to deal only with one salesman and one catalog and one set of prices? (5632) A. I sure did.

Q. And those were among your principal reasons for staying with the Firestone line; is that correct? A. With the national advertising, too, they had, with that.

Q. And that was something you made up your own mind about; is that correct? A. Yes, sir.

Q. How did you find your customers' acceptance of the Firestone products to be? A. Very well. Firestone was very acceptable, and I think the majority of people took my word, trusted me in doing what I thought was right

for their car, and I think that went a long ways with saving the customer.

Q. Toward the latter part of your operations in the service station, do you remember there came a time when Firestone introduced dry charge batteries? A. Yes, sir.

Q. Did you handle those? A. Altogether, sir. As soon as I got rid of my wet charge I handled dry charge altogether. That is the only thing I handled.

Q. Did you find that better from the point of view of your business? A. Yes, sir. You always had a fresh battery.

Q. And you found that to be advantageous? (5633) A. Yes, sir.

Q. How did you first happen to get sold on Firestone tires?

Mr. Dias: I object, your Honor. I think that has been gone into at quite some length.

Mr. Lorenzen: He told us he put it into the Shell station but he didn't say why.

Mr. Dias: I don't think it will make any difference if it has to do with the Shell station. I think that is pretty well covered.

Mr. Lorenzen: I will withdraw it.

By Mr. Lorenzen:

Q. Did you obtain any help from the Texas Company in connection with the marketing of your TBA? A. Yes, sir, I did.

Q. What sort of help did you get? A. The salesman would give us assistance if he could, and help us in arranging our stock and displaying our merchandise. We got dealer magazines monthly. We had regular meetings throughout the year. I think that is sufficient, I believe.

Q. Did you use this S-75 follow-up system? A. I did, altogether, sir.

Q. And that was something the Texas Company furnished its dealers to help TBA sales; is that right? A. Yes, sir.

Q. About how many dealers attended the dealers' meetings at (5634) which you were present? A. Well, they broke it up. They couldn't have them all in one day, of course, and they divided it up. The one I would go to there would be 15 or 20 at the one meeting.

Q. About how many of those meetings were held during the year? A. Approximately three or four a year, sir.

Q. About how many of those did you attend? A. I don't recall missing a one of them.

Q. Both inside and outside the meetings did you become acquainted with dealers who sold Texaco gasoline? A. I knew most of them personally, yes, sir.

Q. At any time did you hear any representative of the Texas Company threaten any dealer with lease cancellation or any other adverse treatment if he didn't handle some or all of the Firestone or Goodrich line? A. No, sir.

Q. Did any of the dealers with whom you became acquainted ever tell you that any such threat, that is, of lease cancellation or unfavorable treatment, had been made to them by anyone from the Texas Company if they didn't handle the Firestone and Goodrich line? A. No, sir.

Q. Did anyone ever complain to you that Mr. Fitts had told them that if they didn't handle a Firestone or Goodrich line that (5635) they would be treated with disfavor by the Texas Company? A. No, sir.

Q. You are not employed by the Texas Company in any way, now? A. No, sir.

Q. You own your own garage business; is that right? A. Yes, sir.

Q. And by the way, do you still have your Firestone franchise? A. I still have it, sir.

Q. And you don't sell any Texaco gasoline, do you, at this garage? A. No, sir.

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Cross examination by Mr. Dias:

Q. Did the Firestone people ever attend any of these meetings? A. Not the dealer meetings.

Q. Never were there? A. No, sir.

Q. There has been a lot of discussion about these dry batteries. Can you tell us something about them? Do you as a dealer have a little more to do with a dry battery than (5636) with a wet battery? A. How do you mean, more to do?

Q. As I understand it, you take a wet battery and you put it in the car and you are away. With a dry battery, don't you have some preparation? A. You have to put acid into it.

Q. Sir? A. You have to pour acid into it.

Q. Don't you have to give it a quick charge? A. Not necessarily, no, sir. At first, you did. It is very seldom you have to do that anymore.

Q. When did that change? A. Frankly, I have quick-charged very few of them.

Q. Don't you recall when Firestone first came out there was an instruction sheet came with the dry charge and they recommended 15 to 20 minutes? A. They recommended, sir, but I have a quick charge—frankly, I didn't bother.

Q. You would let the customer's generators pick it up? A. Pick it up right away, sir.

Q. So that customer got maybe a half charge or three-quarter charge battery in his car, is that right? A. It doesn't mean that definitely, sir, I wouldn't say that. Be-

cause if he drove one block, if his car was even cranked, if his motor started up, his battery was charging. I wouldn't (5637) say he got a half charge battery.

Q. On the other hand, with a wet battery the station would keep it fresh or supply it, and he would have a fully-charged battery? A. A wet battery might be two years old if you buy it some places. It is possible. It might be on the gentleman's shelf two years. That is not as good as you could get.

Q. I say if the battery is fresh. A. If it is fresh. But you can't always be sure of them being fresh, sir.

Q. That is true.

My point is, is there any difference between a fresh wet battery and a dry charge battery in performance or any other way? A. I wouldn't think so, if it is fresh, no, sir.

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(5638) MILTON ELLINGTON was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your name and address to the reporter please? A. Milton Ellington, 419 North Church Street, Thomaston, Georgia.

Q. Are you in the service station business? A. Yes, sir.

Q. At what location? A. 107 North Church Street, Thomaston, Georgia.

Q. Do you have a lease? A. Yes, sir.

Q. From the Texas Company? A. Yes, sir.

Q. Is that one of these leases which renews itself each year? A. Yes, sir.

Q. And you sell Texaco gasoline? A. Yes, sir.

Q. Approximately what is the gallonage of your station? (5639) A. 18,000 a month.

Q. How long have you been at that station? A. Almost eleven years.

Q. Do you do anything else other than operate this service station at the present time? A. What is that?

Q. Do you do anything else besides operate this service station? A. Yes, sir. I am a member of the City Council in Thomaston.

Q. Do you handle any TBA? A. Yes, sir.

Q. Will you tell us your reasons for handling it? A. I handle it to make the business more profitable.

Q. Have you had an understanding as to the Texas Company's TBA policy since you have been in that station? A. Yes, sir.

Q. What has that been? A. I know that Texaco has a suggested program, but I know I am free to sell anything that I want to.

Q. And have you acted on that assumption? A. Yes, sir.

Q. Do you know that the Texas Company recommends the Firestone and Goodrich lines? A. Yes, sir.

Q. Will you tell us what sort of tires you stock now? (5640) A. I stock mostly Dunlop tires.

Q. About how many of those do you have in stock? A. Approximately thirty.

Q. Do you have any Firestone in stock? A. No, sir.

Q. You do have some Goodrich, don't you? A. Yes. I have four. I had them yesterday.

Q. Four? A. Yes, sir.

Q. That is all? A. Yes, sir.

Q. How about batteries? What kind of batteries do you stock now? A. Delco and US.

Q. How many Delcos? A. Approximately twenty.

Q. How many US? A. I have two.

Q. From what sources do you buy your accessories? A. I buy them from Karp Auto Parts; Keenan Auto Parts; E. L. Johnston and Company; and Auto Supply and Equipment Company.

Q. None of those are Firestone or Goodrich distributors, are they? A. No, sir.

Q. So the only thing that you buy from either Firestone or (5641) Goodrich is a small amount of Goodrich tires? A. Yes, sir.

Q. Is that more or less on a pick-up basis? A. Yes, sir.

Q. Do you have any particular reason for handling so much of the Goodrich product as you do handle? A. Yes, sir. In the town where I live, the B. F. Goodrich Company has a tire cord mill there. It is the largest mill in the world. About thirty percent of our population is employed by the B. F. Goodrich Company. I have customers that work there, and they want Goodrich tires. I buy Goodrich tires for that reason.

Q. Has anyone from the Texas Company ever told you that they would cancel your lease, or treat you badly in some other way if you didn't handle some or all of the Goodrich or Firestone line? A. No, sir.

Q. Do you display all of your TBA? A. Yes, sir.

Q. Do you have any kind of a Dunlop tire sign? A. Yes, sir. I have a Dunlop tire sign in my window.

Q. Do you have any Goodrich or Firestone signs or decals on your windows? A. No, sir.

Q. How about your batteries; do you display those? (5642) A. Yes, sir.

Q. Openly? A. Yes, sir. Right in the sales room.

Q. Right in the sales room? A. Yes, sir.

Q. With the name Delco on them? A. Yes, sir. It is on the Delco battery rack.

Q. By the way, you had some pictures taken in your station, did you? A. Yes, sir.

Q. Do you know what has become of them? A. No, sir, I don't.

Q. You don't have them? A. No, sir.

Q. What sort of fan belts do you have? A. Dayton.

Q. Also, radiator hose? A. Yes, sir.

Q. Do you display those? A. Yes, sir.

Q. How? A. I have them in the sales room on racks above the windows.

Q. Do they have the name Dayton on them? A. Yes, sir.

Q. Has anyone from the Texas Company ever told you you would (5643) have to stop this display of Dunlop tires and Dayton belts and hose and Delco batteries or else they might cancel your lease? A. No, sir.

Q. Or they would be mean to you in some other way? A. No, sir.

Q. Nothing like that? A. Never have.

Q. Does the Company regularly paint your station and maintain your property? A. Yes, sir. They painted my station once a year.

Q. As of the present time you do have some wet-charge as well as some dry-charge batteries? A. I only have two wet-charge batteries. Those are US Royal.

Q. Do you find the dry-charge more desirable? A. Yes, sir.

Q. And are you in the process of changing entirely to the dry-charge? A. Yes, sir.

Mr. Lorenzen: That is all.

Cross examination by Mr. Dias:

Q. Mr. Ellington, did you give us the date that you started in the station? A. March 3, 1948.

Q. Was that a brand-new station? (5644) A. No, sir.

Q. From whom did you get the station? A. I bought it from G. F. Haygood.

Q. Haygood? A. Yes, sir.

Q. Do you know who owns this property? A. Yes, sir. It belongs to the Texas Company.

Q. Where do you purchase your gasoline? A. I buy it from a consignee.

Q. Where is he located? A. In Thomaston, Georgia.

Q. What is his name? A. J. F. Haygood.

Q. What is the relationship between you and Mr. Haygood? A. He is my brother-in-law.

Mr. Dias: Nothing further.

(Witness excused.)

Mr. Lorenzen: Mr. Franklin.

Whereupon ALFRED A. FRANKLIN was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your name and home address? (5645) A. Alfred A. Franklin, 315 Linwood Avenue, East Point, Georgia.

Q. Are you in the service station business? A. Yes, sir.

Q. At what location? A. 718 Ponce de Leon Avenue, Atlanta, Georgia.

Q. Do you sell Texaco gasoline? A. Yes, sir.

Q. Do you have a lease from the Texas Company? A. Yes, sir.

Q. Is that one of these leases which renews itself each year? A. Yes, sir.

Q. Before that time, were you employed by the Firestone Company? A. Yes, sir.

Q. For how long a period of time? A. Approximately nine years, sir.

Q. During that time were you doing anything else other than working for Firestone? A. I was going to school at night, sir.

Q. Did you get a college and a law degree? A. Yes, sir.

Mr. Dias: I object. May I have a ruling?

Hearing Examiner Kolb: Let the answer stand.

(5646) *By Mr. Lorenzen:*

Q. When did you become a lessee of the Texas Company? A. Eight years ago, sir.

Q. What is the gallonage of your station now? A. Approximately 38,000 a month.

Q. When you took that station did you have any understanding as to the Texas Company's TBA policy? A. Yes, sir.

Q. What was your understanding? A. That they sponsored Goodrich and Firestone, but as an independent dealer you had a choice of any product you wished to sell.

Q. Was that told you specifically? A. Yes, sir.

Q. Have you had anything to do with Mr. Charles Fitts while you have been a lessee of the Texas Company? A. Yes, sir.

Q. Have you ever had any discussion with him about the Texas TBA policy? A. Not in regard to the TBA problem—I mean, policy.

Q. He was a supervisor, was he, of the man who talked to you? A. No, sir. I became a dealer before Mr. Fitts came to Atlanta.

Q. Who was the man who talked to you about this? A. Mr. Strickland and Mr. Andrews.

(5647) Q. Who was salesman of the Texas Company? A. Yes, sir,

Q. Just before you took over this station was the time when you were employed by Firestone; is that correct? A. Yes, sir.

Q. I assume you handle Firestone at the station? A. Yes, sir.

Q. Did you on your own place the order for Firestone when you took over the station? A. I didn't understand you.

Q. I will withdraw the question.

Did you make any commitment to the Texas Company when you took over the station that you would handle Firestone or any other TBA products? A. No, sir.

Q. Whatever you took was your own choice? A. Yes, sir.

Q. And you chose Firestone? A. Yes, sir.

Q. You buy nearly all of the TBA, do you not, from Firestone? A. Yes, sir.

Q. What do you find with respect to the customers' acceptance of the Firestone product which you sell? A. Good, sir.

Q. If you felt that the acceptance was dropping and you could (5648) do better with some other line, would you feel free to handle it? A. Yes, sir.

Q. And would you do so? A. Yes, sir.

Q. Have you been satisfied with the service, adjustment policy, and price that you have gotten from Firestone? A. Yes, sir.

Q. What about your own satisfaction with the quality of the Firestone line? A. Well-pleased, sir.

(5649) Q. Do you get any help from the Texas Company in connection with marketing your TBA? A. Yes, sir.

Q. What sort of help do you get? A. We have furnished a monthly Texas magazine. We are invited to a number of product meetings per year where the products and how it works are explained. We are also invited to the annual sales meeting sponsored by the Company. The Company also furnishes us with banners which advertise

our gas and motor oils. And in addition to that our sales representative comes by every so often and sits down and talks with us in regard to our business, personal solicitations, solicitations by 'phone, through the S-75 which they furnish us. And in addition to that we always feel free to call any of the boys above the salesman in regard to help.

Q. You said you had—did you say how many dealers' meetings you had a year? A. They vary, sir, from five to six, including the product meetings.

Q. About how many dealers are at those meetings? A. On the product meeting they try to break it down where the dealers don't have to go too far to attend, and it will be 20 to 25 at those.

Q. How about the other meetings? A. It will be 150 to 200.

(5650) Q. At those meetings, have you had occasion to become acquainted with the other dealers? A. Yes, sir.

Q. Have you talked to them? A. Yes, sir.

Q. Informally after the meeting? A. Yes, sir.

Q. At any of those meetings has any one from the Texas Company ever threatened any Texaco dealer with lease cancellation or with any other discriminatory conduct if he didn't handle some or all of the Firestone or Goodrich line? A. No, sir.

Q. Has any dealer with whom you have become acquainted ever told you that the threat to cancel his lease or otherwise treat him badly has been made to him by the Texas Company if he did not handle some or all of the Firestone or Goodrich line? A. No, sir.

Q. No dealer has ever made any such statement? A. That's right.

Q. Let me call your attention specifically to the testimony appearing on page 2108 of the stenographer's minutes. Mr. Boyd asked Guy Walter Scott, a salesman of the G. T. Duke Company, the following question:

"What about the Ben Franklin Station on Ponce De Leon, Mr. Scott? What reason did he give you, if any, for not (5651) buying from you?"

"Answer: He was satisfied with the line of tires he was carrying, and he didn't think it advisable to put in any different line."

Now, I ask you to assume that Ben Franklin on Ponce De Leon Avenue is you. A. I am sometimes referred to as that, sir.

Q. As Ben Franklin? A. Yes, sir.

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(5652) Q. I am asking you whether you ever told Mr. Guy Duke that you didn't want to handle his tires because it would be inadvisable for you to do so for fear of some reprisal from the Texas Company? A. No, sir; I never told him that with that in mind.

Q. And if you told him that it was not advisable, that had to do with business considerations? A. Yes, sir. I didn't want to handle two lines of tires.

Q. And it had nothing to do with any pressure or anything like that from the Texas Company? A. No, sir.

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Cross-examination by Mr. Dias:

Q. Mr. Franklin, let me hand you the transcript, page 2108, and ask you to read lines 17 to 19. A. All right.

Q. Does that indicate that you told him anything that you didn't tell him? A. I don't recall the exact words that was used. But this (5653) would cover the context of our conversation.

Q. As it is written in the transcript? A. Only I don't recall the word "advisable". But I mean I do recall hav-

ing talked with him after he showed me his tires, and I told him I didn't think I would care to add another line to my business.

Q. You are an educated man. Doesn't that indicate to you, doesn't that say the same thing in substance that you mentioned?

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A. With the word "advisable" in there, sir, it would be my decision as to whether I wished to carry another line of tires only, and not because it might have been construed as another interpretation.

(5654) *By Mr. Dias:*

Q. The point is, would you say that this gentleman was not testifying truthfully when he quoted the language that he quoted as having come from you? A. Sir—

Q. Regardless of what your meaning was? A. It was some several years ago, and I do not recall the exact words, sir.

Q. You gave us a gallonage of 38,000 per month? A. Yes, sir.

Q. You didn't tell us which station that was. Would you mind telling us which one of your stations? A. 718 Ponce De Leon.

Q. That is Station No. 1? A. Yes, sir.

Q. When did you open Station No. 2? A. My brother opened it in May, a year ago. This past May, a year ago.

Q. May of 1957? A. Yes, sir.

Q. You have an interest in that station? A. Yes, sir. I am financing it.

Q. What is the gallonage in that station? A. Approximately 28,000, I believe.

Q. And is the full line of Firestone TBA also carried in (5655) that station? A. No, sir.

Q. What do you carry there? A. My brother runs it and he uses the U. S. retreads.

Q. U. S. retreads? That is in the tires? A. Yes, sir.

Q. And is that all he handles in tires? He handles no new tires? A. He handles the Firestone tires.

Q. Then I guess I don't understand. What are these U. S. retreads? A. Recaps, sir.

Q. You mean he handles those, too? A. Yes, sir. Instead of handling Firestone recaps he handles U. S. recaps.

Q. For new tires he handles Firestone? A. Yes, sir.

Q. What about batteries and accessories? A. Firestone.

Q. How about Station No. 3? A. With the exception of some special recaps that they have bought from U. S., it is 100 percent Firestone.

Q. And what is your monthly gallonage there? A. Approximately 20,000.

Q. Can you give us some idea of when that station opened? (5656) A. Last December, sir.

Q. Are all these stations leased stations? A. Yes, sir.

Q. In addition, you have another one, did you, to open soon, or has opened, isn't that so? Aren't you opening a fourth station? A. Yes, sir.

Q. Have you signed up for TBA products for that station yet? A. Yes, sir. It will be Firestone.

Q. It will be Firestone? A. Yes, sir.

* * *

(5661) LEE R. MOSS, JR. was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Please give your name and address to the reporter. A. Lee R, Moss, Jr., Route 1, Rutledge, Georgia.

Q. What is your business? A. I operated a Texas service station at 204 North Main Street, Madison, Georgia.

Q. You don't operate it now? A. No, sir.

Q. What is your business now? A. I work for International Paper Company.

Q. No connection with the Texas Company? A. No, sir.

Q. This station which you operated on Main Street in Madison, Georgia, is that the same station as Mr. Sam Fielding operated? A. Yes, sir.

Q. What happened? Did you take over from him? A. No, sir. I sold to him.

(5662) Q. You were the dealer who sold to Mr. Fielding? A. Yes, sir.

Q. For how long were you a dealer at that location? A. Six years, sir, approximately.

Q. Did you have a lease on that station from the Texas Company? A. Yes, sir.

Q. Was it one of these leases which renewed itself each year? A. Yes, sir.

Q. There is some testimony in the record in this case that this particular station was one of three filling stations to which the Prior Tire Company sold TBA, and the testimony was that this station and two others were on private lease, whatever that means. I want to know, did you have a regular lease from the Texas Company that renewed itself each year? A. I had a regular lease that renewed itself each year from the Texas Company.

Q. And neither you nor any relative or relation of yours leased that property to the Texas Company? A. No, sir.

Q. The record reference is to Mr. Avery's testimony on Pages 2090 and 2096.

You handled TBA at this station, did you? A. Yes, sir.

Q. You found it helped in your business? (5663) A. I handled it for the profit I got out of it for my business.

Q. That was your own choice? A. Yes, sir.

Q. During the time you were a dealer, did you have an understanding as to the TBA policy of the Texas Company? A. Yes, sir.

Q. Did you act on that understanding? A. Yes, sir.

Q. What was your understanding? A. My understanding was that they sponsored B. F. Goodrich and Firestone products, but it was my understanding that I could handle any product I wished to handle for a profit.

Q. And you did do so? A. Yes, sir.

Q. Will you tell us what sort of tires and batteries you handled while you were there? A. I handled Hood tires, sir, and I handled Bowers batteries, and also some National batteries which I picked up there in town.

Q. The Hood line and the Bowers line were your two principal lines? A. They were my principal line, yes.

Q. Did you also sometimes pick up a few items of Goodrich tires? (5664) A. I also had eight Goodrich tires that I kept in stock all of the time.

Q. And about how many Hood tires did you keep in stock? A. Twenty-one, sir.

Q. That was generally the number that you had? A. Yes, sir.

Q. And about how many Bowers and National batteries did you keep in stock? A. I kept a stock of six Bowers batteries, and I did keep three Goodrich dry-charge batteries in stock.

Q. Let me ask you about that. Those Bowers were wet-charge? A. Yes, sir.

Q. Did Bowers have any dry-charge? A. Not at that time.

Q. Did the fact that Goodrich had dry-charge have anything to do with your stocking those three? A. Yes, sir. I wanted to stock the dry-charge batteries, the ones that I kept in stock.

Q. And that was your own choice? A. Yes, sir.

Q. It had nothing to do with wanting to please the Texas Company or because you were scared of the Texas Company? A. No, sir.

(5665) Q. How about your Goodrich tires? Will you tell us why you handled those? A. I handled it because of the people would come in and ask for, specifically ask for Goodrich tires.

Q. You found there was some demand for the Goodrich tire? A. Yes, sir.

Q. Was that the reason you handled those tires? A. Well, that was the reason I handled those; yes, sir.

Q. Was there any other reason you want to tell us about? A. No, sir.

Q. What about the accessories? From what source did you get those? A. I bought some from Auto Supply in Madison; and I bought some from Auto Supply Service truck that came around and called on me every two weeks from Elberton, Georgia.

Q. Did you buy most of your accessories from the Auto Supply Company? A. Yes, sir.

Q. What sort of fan belts did that include? A. I handled Gates' fan belts.

Q. Did you display those? A. Yes, sir.

Q. On a Gates' rack? A. Yes, sir.

Q. With the Gates' name? (5666) A. Yes, sir.

Q. And the Gates' sleeve? A. Yes, sir.

Q. How about your Dunlop tires and Bowers and National batteries, did you display those? A. Yes, sir. It was Hood tires, sir.

Q. I am sorry. Hood tires? A. Yes, sir.

Q. You did display those? A. Yes, sir; right on the rack.

Q. Openly? A. Yes, sir.

Q. Anybody could see them? A. Right on the rack with my Goodrich tires.

Q. Where were your batteries, National and Bowers? A. On the shelf inside the station office.

Q. Right in the sales office? A. Yes, sir.

Q. Did you have any of those Hood tires displayed outside of your station? A. I had a rack with eight, with the Hood emblem on top of the rack, sitting—I kept it sitting right out in front of my station all the time, sir.

Q. Did anybody from the Texas Company ever tell you to stop handling the Hood and Bowers and National lines under (5667) penalty of having your lease cancelled? A. No, sir.

Q. Did they ever tell you they would treat you badly in some other way if you didn't stop that? A. No, sir.

Q. When you took over that station, that is, when you first went in there as a lessee, did you start with the same line of TBA? A. No, sir.

Q. What did you have then? A. Well, I didn't have very much of anything, sir. I had one Gates' tire and I believe it was one Gates' battery.

I believe that is right. I just don't recall what brand it was.

Q. That is all that was there? A. That was all that was there in the tire and battery line.

Q. You took that over from the dealer who was there ahead of you? A. Yes, sir.

Q. Then when you put in an order for TBA, what did you order? A. I ordered Hood tires, sir, and I ordered some Goodrich tires later on.

Q. You ordered the Hood tires first? (5668) A. Let me see. I believe I ordered the Goodrich first, sir.

Q. I just want to be sure you don't get the record wrong here. Mr. Dias will ask you. A. I did order the Goodrich tires first.

Q. Then you ordered the Hood tires? A. Yes, sir.

Q. Was that very soon afterwards? A. Well, I used my pick-up service until I got to where I could stock me some tires. That was about 7 months after I had opened the station for myself that I did order the Goodrich tires, and then within the next month I started handling Hood tires, too, sir.

Q. So during the first 7 months it was all on a pick-up basis? A. Yes, sir.

Q. And then, within a month of each other, you ordered the Goodrich and the Hoods? A. Yes, sir.

Q. That was your own choice? A. Yes, sir.

Q. It was a question of finances— A. Yes, sir.

Q. (continuing) —which determined that? A. Yes, sir.

Q. Who does your recapping for you? A. Snow Tire Company, Athens, Georgia.

(5669) Q. That is not a Firestone or Goodrich operation, is it? A. No. It is not a distributing point. They do handle some Goodrich tires there, sir.

Q. But it is not a supply point? A. No, sir.

Q. Do you have any dealers' meetings where you were located? Did you have any? A. I attended the spring meetings of the Texas Company at Avondale Estates one year.

Q. How many of those meetings did you attend? A. I attended—well, I attended eight of them, sir, but I run the

station two years for a brother-in-law of mine before I bought it out.

Q. So you attended before you took the lease? A. Yes, sir.

Q. At those dealer meetings, did you ever hear anyone from the Texas Company suggest that any dealer would have his lease cancelled or be treated badly in some other way if he didn't handle some or all of the Goodrich or Firestone lines? A. No, sir.

(5670) Q. In the course of those meetings did you become acquainted with other dealers? A. Quite a number of them, sir.

Q. About how many other dealers do you think attended those meetings? A. There were around 150, sir.

Q. At any time did any of those dealers tell you that anyone from the Texas Company had threatened to cancel their lease or treat them badly in any other way if they didn't handle some or all of the Goodrich or Firestone line? A. No, sir.

Q. Did you display all of your TRA openly? A. Yes, sir.

Q. You made no effort to hide it? A. No, sir.

Q. And no one from the Texas Company ever suggested that you do hide it? A. No, sir.

Q. You caught the Gates' Mystery Man, did you? A. I caught him five times, sir.

* * *

Q. Tell the Court who the Gates' Mystery Man is. A. He is just a fellow who rides around through the summer (5671) vacation months. Maybe it will be he and his wife. They will ride around. They have a map with their destinations marked out on it, and they will drive up in your station and maybe they will ask you to check their oil and water, maybe not even buy gas or anything from

you, and they will have an old worn out fanbelt on it and it will just be flopping most of the time, and I happened to catch him each time he came in my station, and I do have at home the five plaques with five silver dollars to each plaque on them that I have caught him.

Mr. Dias: May I move to strike that? I don't see the relevancy of that story at all. It is very interesting, but I don't believe it is relevant.

Mr. Lorenzen: He is openly a Gates dealer, and the Gates man calls on him.

Mr. Dias: He testified to that. We know now that he had Gates belts in there. The fact that he won five dollars I don't think is very important.

Mr. Lorenzen: $25.00.

Hearing Examiner Kolb: I will let the answer stand. Go ahead.

By Mr. Lorenzen:

Q. When you say you bought the station from your brother-in-law, that just means bought the business? A. Yes, sir.

Q. It had nothing to do with the underlying lease being from (5672) the Texas Company? A. No, sir.

Q. So, when you bought that business, did anyone from the Texas Company object to your taking over the small supply of Gates TBA that was in there? A. No, sir.

Q. The tire or the battery? A. No, sir.

Q. When you sold the station, did you sell to your succeeding dealer your Hood and Bowers line as well as all of the other TBA that was in there? A. Yes, sir.

Q. He bought your entire inventory? A. Yes, sir.

Q. Did the Texas Company make any objection to that? A. No, sir.

Mr. Lorenzen: I think that is all.

Cross examination by Mr. Dias:

Q. Mr. Moss, when did you go into the station? When did you take a lease on it? A. 1950.

Q. Early in the year? A. In the fall, sir.

Q. I believe you stated that you had been working for your (5673) brother-in-law? A. Yes, sir.

Q. For how long a period? A. Two years. Approximately two years.

Q. Did you say that you ran the station for him? A. Yes, sir.

Q. Was he ill that he couldn't run it himself? A. No, sir; he was in another business.

Q. And at that time that he was in the station, was the property ever owned by the Ford people? A. Yes, sir.

Q. You started in the fall of 1950. When did you terminate? A. In '56, sir.

Q. You were there six years? A. Yes, sir.

Q. As a lessee? A. Yes, sir.

Q. Getting back to the Ford people, did they own the property? A. The Ford man, dealer, owned the building and all, and the Texas Company leased it from him.

Q. From Ford? A. And then he, in turn, leased it from the Texas Company.

Q. Where did your brother work? A. My brother-in-law, sir?

Q. Yes. (5674) A. He was in the pulp wood business.

Q. In what? A. Pulp wood business.

Q. Was he related in any way to the Ford man? A. No, sir.

Q. How long had your brother-in-law had that station? A. I believe about approximately two and a half years.

Q. Was it a new station when he moved in? A. No, sir.

Q. Can you give us some idea of how old it was? A. Sir, it was put up there while I was in the army, and I don't know exactly the year it was put up.

Q. In your opinion, was that station in a good location? A. In a fine location, sir.

Q. Was it an up-to-date station? A. No, sir.

Q. Had the station ever been empty at any time? A. Not as I know of.

Q. And was business—you say business was good, or would you say it was good? A. Well, it was good for me, sir.

Q. How about for your brother-in-law? A. I was building it up for him all the time.

Q. Can you give me some idea of the gallonage in that station? A. When I started working for him it was pumping around (5675) 7,000 to 8,000 gallons per month.

Q. And when you took it over? A. It was pumping around 10,000 gallons per month.

Q. As I understand it, you sell no TBA to speak of? Very little? A. Just what I could pick up when I opened it up.

Q. During the years that you were there, how did the gallonage go? Up or— A. I picked it up. It was pumping from 10,000 to 15,000 gallons per month.

Q. Average throughout the year? A. Yes, sir.

Q. Do you know whether or not Texaco had difficulty getting operators to operate that station? A. No, sir.

Q. You don't know? A. No, sir.

Q. I am a little bit confused about when you started buying your various products after you got into the station. Just check me out on this. After you went in, in 1950, in the fall of 1950, and about seven months later you ordered a supply of Goodrich tires? A. Tires.

Q. And batteries? A. And batteries.

(5676) Q. And accessories? A. No, sir.

Q. No accessories? A. No, sir.

Q. Just tires and batteries? A. Just tires and batteries.

Q. That would have been when? Sometime in 1951? A. Yes, sir.

Q. When would you guess? About May or June? A. I would say in May, sir.

Q. Do you recall the volume of Goodrich that you purchased at that time? A. I purchased eight tires and three batteries.

Q. Can you tell us where you purchased them? A. From Mr. H. C. Hicks, the gasoline consignee, from Covington, Georgia.

Q. He was your Texaco consignee, was he? A. Yes, sir.

Q. Then, did you discontinue purchasing Goodrich tires and batteries, or did you buy them from time to time over the years? A. I kept those in stock from year to year, sir.

Q. And did you have some Goodrich signs about the place, did you not? A. I had one Goodrich decal, over the little small window in front.

(5677) Q. And that was there all the time you were there? A. Yes, sir. It was put there before I had taken the station over.

Q. You mentioned having recapping done by Snow. Can you give us Snow's name and address? A. Snow Tire Company, Athens, Georgia.

Q. That is all? Athens, Georgia? A. It is a street, sir, but I just don't recall it.

Q. And you say that he handled Goodrich tires? A. He had some Goodrich tires.

Q. How about batteries? Did he handle Goodrich batteries, too? A. Not that I know of, sir.

Q. You got Goodrich batteries from your consignee? A. That's right.

Q. At these dealer meetings, you attended while you were operating the station for your brother-in-law and also while you were running the station on your own, is that correct? A. Yes, sir.

Q. (continuing) —did you at any time at those meetings see Goodrich or Firestone representatives at those meetings? A. Not as I know, sir.

Q. You were at eight meetings? How many did you attend? A. Approximately eight.

Q. Eight, over an eight-year period? (5678) A. Yes, sir.

Q. How many did they have per year? A. One per year, sir.

Q. And at none of those eight meetings you saw a Goodrich or Firestone representative? A. Goodrich and Firestone, they had displays in the room, but I didn't personally meet—

Q. (interposing) You personally weren't introduced to them? A. No, sir.

Q. But more than likely they were there since they had the displays there? A. Could have been, sir.

Q. How well did you know all the dealers that you talked to there? A. I became personally—knew several of them, sir.

Q. Several? Out of the 150 there were several that you became personally acquainted with? A. Yes, sir.

Q. And how did the meetings operate? A. Well, they showed us how our oils and our gas and lubricants had been improved over the year, each year.

Q. Is that all? Did they discuss TBA at those meetings? A. They told us if they could be of any help to us in any way to call on them, on anything we wanted them to help us on, sir.

Q. Anything else that they discussed during the business part (5679) of the meeting? A. Not as I recall, sir.

Q. After the business meeting was over, then, you had a social gathering, did you? A. Well, we would gather out and talk together, us operators would, sir.

Q. And at that time that is when you became acquainted with those dealers? A. Yes, sir.

Q. Did you know these dealers well enough that they would tell you all their problems? A. I don't imagine they would tell me exactly their home problems.

Q. And you think that they would tell you their business problems, do you? A. Yes, sir.

Q. Did any of them ever tell you that they were not having any trouble with Texaco? A. All of them told me they never had any trouble.

Q. They just met with you outside and said, "We are not having any trouble"? A. No, sir, not like that, no, sir.

Q. How would that come up then? A. We would be discussing things, together, about our stations, and how we could help each other with it, sir.

(5680) Q. In other words, it was more or less an exchange of ideas on how to sell products? A. That's right.

Q. You would have no occasion to discuss troubles with Texaco at that time, would you? A. No, sir, we did not.

Q. Can you give us some idea of the total volume of TBA that you carried in your station? Let's start in—when you took over there was only that one battery and one tire? A. Yes, sir.

Q. I take it for the next seven months that you just got them in as you could afford to stock them, more on a pick-up basis? A. Yes, sir.

Q. Thereafter, what was your normal stock of TBA? A. My normal stock, I would carry around 21 Hood tires, sir, and I would carry around eight Goodrich tires, and I would carry around six Bowers batteries, and I would carry about three Goodrich batteries.

Q. How about accessories, filters and that sort of thing? A. I carried a stock of Fram filters.

Q. You mentioned Gates belts and hose. How about plugs? A. I hardly ever carried any plugs because I was there in the Ford Building and I could go back there and pick up my plugs at the same buying price that I could go across the street or (5681) anywhere else and buy, sir.

Q. The station was right in the Ford building? A. Right in the building with the Ford place.

Q. That was located in Madison, Georgia, was it? A. Yes, sir.

Q. Is Madison a suburb of Atlanta? A. No, sir.

Q. Did you ever operate a station in Panama City, Florida? A. No, sir.

Q. How far is Madison from Atlanta? A. Sixty-two miles, sir.

Q. Did you have the credit card system available to you there? A. Yes, sir.

Q. And did you charge those non-sponsored products on the credit card? A. Yes, sir.

Q. And you, on your credit slips, noted that they were Hood tires and other non-sponsored products, did you? A. I just put, if I sold one tire, I put "one tire".

Q. You didn't specify the brand name? A. No, sir.

Q. Why didn't you do that? A. Well, because—I did it my own self because I didn't figure it was anybody's business what kind of tires I sold, sir.

Q. Especially Texaco's? (5682) A. Nobody's business.

Q. Aren't those credit cards, or weren't they at that time, limited to Firestone and Goodrich tires? A. Didn't—

Mr. Lorenzen (interposing): Wait a minute. What time are you talking about.

Mr. Dias: He was there from 1956.

Mr. Lorenzen: He was there to 1956. During most of that time there wasn't even a suggestion of what you call a limitation on the back of the card.

(5683) *By Mr. Dias:*

Q. When in 1956 did you leave? A. Well, I left actually it was the middle of '56.

Q. Did you operate any differently from January 1, 1956, to the middle of 1956? A. No, sir.

Q. And you continued to charge tires, just as tires? You didn't specify? A. I don't recall selling but one set of tires on the credit card, sir.

Q. How about— A. In '56.

Q. How about other accessories, batteries? Did you sell those on credit cards? A. I sold them on credit cards.

Q. And in those instances, and including the one set of tires, were they Goodrich or other tires? A. They were Firestone, sir.

Q. They were Firestone? A. Yes, sir.

Q. When did you start taking on the Firestone line? A. I did not take it on. This customer of mine specified that he wanted a set of Firestone tires on his car, and I went and picked those up.

Q. How many other times during the course of your lease did (5684) you buy Firestone tires? Do you recall? A. No, sir; I don't.

Q. Did you sell Goodrich tires on a pick-up basis also? A. No, sir.

Q. You did not? A. No, sir.

Q. In other words, if you didn't have it in stock you didn't sell the tire? A. I couldn't get it, sir, in time to sell it.

Q. What about your consignee? How far away was he located? A. Twenty-seven miles, I believe.

Q. How far away was Snow? A. Twenty-eight miles.

Q. How often did the salesmen come around to see you there? A. I would say he came around approximately every three months.

Q. Texaco salesman? A. Yes, sir.

Q. Did the consignee himself ever come down to see you? A. Yes, sir.

Q. That was the salesman you are talking about? A. That was the Texas salesman, who called on me approximately every three months.

Q. What was the population of Madison, do you recall? A. About 3,500 I imagine, sir.

(5685) Q. Were there other Texaco stations in town? A. No, sir.

Q. You were the only one? A. Yes, sir.

Mr. Dias: Thank you. I have nothing else.

Redirect examination by Mr. Lorenzen:

Q. To get this cleared up, the consignee calls on you in addition to the— A. In addition to the Texas salesman; yes, sir.

Q. And did the Texas District Zone Manager ever call on you, too? A. Yes, sir.

Q. For how long a time was this stock that Mr. Dias talked to you about, of 21 Hood tires and 8 Goodrich tires, for how long a time was that your normal stock? A. Around five years.

Q. Right from the time you placed your first orders as you testified for those two tires? A. Yes, sir.

Q. Did they ever happen to show you any of these TBA sales assistance movies at these dealer meetings that you had? A. Yes, sir.

Q. That was another thing that happened at those meetings? (5686) A. Yes, sir; it was.

Q. Did you find those movies to be helpful to you in selling TBA? A. Yes, sir.

Mr. Lorenzen: That is all.

Recross examination by Mr. Dias:

Q. I thought you understood my question when you insisted that the consignee called on you only once every three months. I did specify the Texaco salesman. I would like to clarify that. Who was your Texaco salesman? A. Mr. T. O. Andrews.

Q. He is with the Texaco Company; he is not with this consignee? A. No, sir.

Q. The consignee you saw once every three months? A. No, sir. The Texaco salesman, Mr. Andrews.

Q. He is the man that you saw once every three months? A. Yes, sir.

Q. Did the Texas consignee ever come to your station? A. Yes, sir.

Q. How often did he come? A. Well, I would say he would come down maybe twice a month, sir.

Q. The Zone Manager or any other Texaco personnel, were they (5687) in there regularly in your station? A. I believe I have got Mr. T. O. Andrews—he is the Zone Manager.

Q. We won't quibble. What I am mainly interested in—I won't quibble with you as to whether Andrews is the Zone Manager or salesman.

The only thing I want to clarify is who from the Texas Company either directly or connected with the consignee came to see you, and when and how often. A. Mr. T. O. Andrews.

Q. And you don't know whether he was a salesman or a Zone Manager or some other official; is that it? A. I believe he was the Zoning Manager.

Q. He was the Zone Manager. And he is the man who came in every three months? A. Yes.

Q. Was there another person, a Texaco salesman, who came to see you from the Texaco Company? A. No, sir.

Q. There was not? A. No, sir.

Q. Other than that, the only other person connected with Texaco was this consignee? A. Yes, sir.

Q. Who came down about twice a month? (5698) A. Yes, sir.

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By Mr. Dias:

Q. Tell us why he called on you? A. He drove his own delivery truck sometimes, and had to call on me that way with the gas.

Q. So, in other words, he came down to deliver gasoline? A. Yes, sir.

Q. And at that time did he have any other conversation with you? A. He asked me; was there anything that he could help me with any way, most every time he came down.

Q. Every time he would come down he would ask you that? A. Yes, sir.

Q. And that was twice a month you got deliveries of gas? A. That was when he came down, approximately how much he came down.

(5689) Q. Are you sure those are the only folks that ever came down and talked to you? A. Yes, sir.

Q. And that is about the extent of the consignee's discussion with you? A. Yes, sir.

Q. Did you say that he did or did not carry Goodrich tires and batteries? A. He does carry Goodrich batteries and tires. You mean the consignee?

Q. Yes. A. Yes, sir.

Q. When he came down to see you he didn't try to sell you any Goodrich tires or batteries? A. No, sir.

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(5690) O'NEAL EMBRY was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Please state your full name and home address to the reporter. A. O'Neal Embry, 3255 Embry Circle, Chamblee, Georgia.

Q. Will you tell us what your present business is? A. Building contractor.

Q. Do you build anything for the Texas Company? A. No, sir.

Q. At one time were you in the service station business? A. Yes, I was.

Q. At what location? A. 3500 Memorial Drive, Southeast, Decatur, Georgia.

Q. For how long were you in the business in that station? A. Approximately two years.

Q. Were you in there as a lessee for two years? A. No, that is not right.

Q. Tell us just what is right. A. I was in there as a contract dealer.

Q. For what time? A. From '54 until '55.

(5691) Q. And then— A. I was a lessee.

Q. So you owned the property, or you leased it from some one else from 1954 to 1955? A. That is right.

Q. And you had a supply contract with the Texas Company? A. That is correct.

* * *

Q. We have you now to 1955. What month? A. October.

Q. Up to that time you owned the property and had a supply contract with the Texas Company? A. No, I did not own the property.

Q. You leased it? A. I leased it.

Q. From whom? (5692) A. My brother.

Q. You leased it from your brother? A. That is right.

Q. Then you had a supply contract with the Texas Company? A. That is correct.

Q. In October 1955 what happened? A. My brother sold the property to the Texas Company and I, in turn, leased the station from the Texas Company.

Q. At that time you were in on one of these standard leases that renews itself from year to year; is that right? A. Yes.

Q. About what is the gallonage—what was the gallonage of this station while you operated it? A. Approximately 30,000 gallons per month.

Mr. Dias: I missed that.

The Witness: 30,000 gallons a month.

By Mr. Lorenzen:

Q. Decatur is near Atlanta, is it? A. That is correct.

Q. Sort of part of it? A. It is metropolitan Atlanta.

Q. Metropolitan Atlanta? A. That is right.

Q. Did you handle TBA at this station? A. Yes.

(5693) Q. Will you tell us why you handled it? A. For money-making operation.

Q. And it did make money for you? A. Yes, it did.

Q. That was your own choice to handle TBA? A. Yes, it was.

Q. You handled it at the time when you were a contract dealer, did you? A. That is right.

Q. And you handled it also when you were a lease dealer? A. That is correct.

Q. Will you tell us what kind of TBA, what brand of TBA, you handled in the way of tires and batteries? A.

Goodrich and Southern batteries. I handled some Goodyear tires and some US Royal tires. Also sold some Firestone.

Q. Did you handle the same type of brands both during the time you were a contract dealer and the time you were a lessee dealer? A. Yes.

Q. You had the same sort of buying patterns? A. Yes, sir.

Q. Before and after? A. That is correct.

Q. Tell me what the time relationship is between your signing up with the Goodrich Company to handle some Goodrich (5694) products and your selecting the Texas Company as your supplier under the supply contract? A. In '54 I was working for the Georgia Power Company and Mr. Miller contacted me at Gainesville, Georgia, in reference to running a station. He was with the Goodrich Company. He approached me on the subject of using Goodrich products, which I told him I would let him know, and I went into the area where I was planning on leasing a station and I looked around and I found that Goodrich Stores were not in the area and the stations were not handling Goodrich products, and I decided to use B. F. Goodrich products.

Q. Was that before or after you had decided what kind of gasoline you were going to sell at the station? A. I had never met anybody from the Texas Company, at that time.

Q. So that you made your supply contract with the Texas Company after you had made your deal with Goodrich? A. I beg your pardon?

Q. Or after you had made your commitment with Goodrich? Is that what you said? A. I signed with Goodrich before I ever built the station.

Q. You signed with Goodrich before you ever built the station? A. That is correct.

Q. At what time did you decide to take a supply contract (5695) with the Texas Company to handle the Texas gasoline? Was that afterwards? A. It was afterwards. I don't remember just when it was.

Q. But you remember definitely it was after you had signed the deal with Goodrich? A. That is correct.

Q. Then you selected Texaco and you did handle Texaco in that station on a supply contract basis? Is that correct? A. Well, I didn't select Texaco. My brother, he selected Texaco, and I in turn leased the station from him.

Q. Then when he sold the station you took your lease from the Texas Company? A. That is right.

Q. At that time did the Texas Company tell you they wouldn't give you a lease unless you got rid of the Southern batteries and the tires other than Goodrich which you were handling at the time? A. No.

Q. Was anything like that said to you at all? A. No, there wasn't.

Q. Since you went in that station, was there ever any threat made to you that your lease would be cancelled or you would be treated badly in some other way— A. No, sir.

Q. —unless you stopped handling these Southern batteries (5696) and these other tires? A. No, sir.

Q. What kind of fan belts do you handle? A. B. F. Goodrich.

Q. And you also bought some of your other accessory line from the B. F. Goodrich Company, did you? A. That is right.

Q. Did you do any business with the Gordy Tire Company? A. Yes, I did.

Q. You bought what? What kind of tires? A. Mostly farm implement tires, heavy truck tires.

Q. Do you mean by that tractor tires, that sort of tires? A. Tractors, tractor wagons.

Q. How about Reddick Sales Service, what did you buy from them? A. Special size truck tires that I couldn't find at other places.

Q. And from whom did you buy such US tires as you purchased? A. The US Royal distributor on Houston Street.

Q. You had some of your recapping done by Goodrich, did you? A. Had some of it.

Q. Where was the rest of it done? A. Stovall Tire Company, Decatur, Georgia.

Q. How about your seat covers, from what source did you buy those? (5697) A. I bought them from Keystone, I believe, in Atlanta.

Q. That is not a Firestone or Goodrich distributor? A. No, it is not.

Q. Did you buy anything from Alexander Seewall? A. Yes.

Q. He was not a Firestone or Goodrich distributor? A. No, he wasn't.

Q. What did you buy from him? A. I bought Prestone and I bought thermostats. That was most of the stuff that I bought from him.

Q. From whom did you buy your cleaners? A. Globe Chemical Company.

Q. And from whom did you buy your Southern batteries? A. Southern battery Company.

Q. When you retired from the service station business and went into this building business did you sell your successor your whole inventory? A. Yes.

Q. Whatever was in it? A. Yes.

Q. Whether it was in the Firestone or Goodrich line or not? A. That is right.

Q. Did the Texas Company make any objection to that? A. None.

Q. During the time you were operating this station did you (5698) ever attend any dealer meetings? A. I attended one dealer meeting.

Q. During that meeting did you hear any threat being made to any Texas dealer that his lease would be cancelled or he would be treated badly in any other way if he didn't handle some or all of the Firestone or Goodrich line? A. No, I didn't.

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Cross-examination by Mr. Dias:

Q. You attended one meeting and heard no threat? A. That is correct.

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(5700) *By Mr. Dias:*

Q. Who succeeded you at that station, Mr. Embry? A. John Tate.

Q. And did you sell it to him or did you lease the station? A. I sold it to him.

Q. Do you know who Richard Smathers is? A. Yes, I do.

Q. Can you tell us something about him; who was he? A. He was the dealer that bought the station from Mr. Tate.

Q. You mean he was after Mr. Tate in your station? A. That is correct.

Q. He wasn't there before you at the station that you ran? A. No.

Q. Do I understand that the station was brand new when you took it over? A. Yes.

Q. You folks built it and you moved in; is that correct? A. That is correct.

Q. Can you tell me when you went into that station? It was in 1954 sometime, wasn't it? A. It was in June of 1954.

Q. And you took over the station? A. Yes, sir.

Q. You opened it up. When you opened it up, did you have TBA on hand? (5701) A. Yes.

Q. What TBA did you have on hand? Tires, first. A. At the time I opened the station, I only had Goodrich.

Q. And batteries? A. B. F. Goodrich.

Q. And accessories? A. B. F. Goodrich.

Q. Where did you buy those? A. From B. F. Goodrich store, Courtland Street.

Q. How long did you continue to carry that line? The full line, I mean. A. I carried a full line all the time.

Q. Did you say that this gentleman who talked to you while you were at the Georgia Power Company is a friend of yours? A. No, sir, I had never met him.

Q. You had never met him? A. No, sir.

Q. That is Mr. Miller? A. Miller.

Q. How do you suppose he just walked up to you and asked you if you would like to carry Goodrich tires in a station that you didn't know about?

Mr. Lorenzen: I object to that question. The witness couldn't possibly answer that.

Mr. Dias: I didn't think so either.

(5702) Mr. Lorenzen: I think it ought to be withdrawn.

Mr. Dias: I disagree. We will wait for a ruling.

Hearing Examiner Kolb: Objection overruled.

By Mr. Dias:

Q. You can answer. A. I can tell you how he walked up to me.

Q. That is what I asked you. A. He knocked on my door.

Q. At home? A. At home.

Q. Was he just soliciting everybody, do you know? A. He didn't tell me how he got my name, and I really wasn't interested in it at the time because it was going to be a future date before I opened the station.

Q. At the time you knew you were going to open a station, did you? A. I knew I was going to open a station.

Q. And can you tell us when it was that he first called on you? A. No, I can't.

Q. You moved into the station in June of 1954. Does that help you fix the time that Mr. Miller walked in on you and asked you if you wanted to carry Goodrich? A. I believe it was the latter part of '53 or '54.

Q. Early '54 or latter part of '53? (5703) A. I believe that is correct.

Q. Was the station under construction at the time? A. The lot had been graded.

Q. Had been graded, but there had been no ground breaking or anything else? A. Well, I would call grading the lot ground breaking.

Q. Could you tell from what was accomplished on the lot that that was going to be a service station? A. The first time I seen it, I could not tell there was going to be anything on the lot.

Q. And that is the time he called on you, this Miller from Goodrich? A. That's right.

Q. You were in the station as a contract operator or from 1954—June 1954 until October 1955; is that correct? A. That is correct.

Q. Then, was it sometime in October 1955 that you took over as a lessee? A. Yes, sir.

Q. When did you leave the station, then? A. August 1, 1956.

Q. I think you stated that during all that time you carried the full line of Goodrich TBA, is that correct? A. That's right.

Q. Did you carry some Firestone also? (5704) A. I only carried Firestone tires. When a customer asked for them I would pick them up at Spring and Baker Street store.

Q. At the Firestone store? A. Yes, sir.

Q. Did you buy anything else from Firestone? A. No.

Q. Was that Southern battery that you carried, was that your price line? They were cheaper batteries, were they? A. Yes.

Q. And you carried that for convenience purposes, because it was a cheaper line? A. It was more competitive.

Q. Was your primary line a Goodrich battery? A. Yes, it was.

Q. Did you ever have any Firestone batteries in there? A. No.

Q. These farm implement tires that you bought from Gordey, did Goodrich carry farm implement tires? A. Yes, they did.

Q. Did Firestone carry them, too? A. Yes, they did.

Q. How about the special size truck tires that you couldn't find elsewhere? A. Occasionally, you would have a call for somebody would tear up a tire and wanted recap. The carcass of special size (5705) truck tires is very hard to get. We had to locate them wherever we could.

Q. That is when you dealt with Reddick? A. That is correct.

Q. On these implement tires that you bought from Gordey, did Gordey sell any other type of tire? A. Yes.

Q. What type? A. Dayton Thoroughbred and Gillette.

Q. Did you ever buy any of those from Gordey? A. No, I didn't.

Q. When did you buy U. S. Royal tires? A. I bought tires numerous times. I don't remember.

Q. Was that on a pick-up basis as customers asked for them? A. No, they were on special occasions when they would be overstocked with special size tires and would give an extra five or ten percent off I would buy a few sets of tires.

Q. What year was that? During 1956? A. It was both years.

Q. '55 and '56? A. Yes.

Q. What did your inventory consist of when you sold out to your successor? You had Goodrich tires there, did you? A. I did.

Q. And Goodrich batteries? (5706) A. That is correct?

Q. And Goodrich accessories? A. Yes, sir.

Mr. Dias: I have nothing further.

Redirect examination by Mr. Lorenzen:

Q. The U. S. tires Mr. Dias asked you about, you stocked those in your station when you got these special deals? A. That's right.

Q. Along with your other stock? A. Yes, sir.

Q. There is one other question—I didn't know whether you testified differently on cross-examination from what was on direct—and that is the Southern batteries. Did you stock those both before October 1955 and afterwards, or just afterwards? A. Before and afterwards.

Q. Before and after? There was some question that Mr. Dias asked you about buying only Goodrich. The fact is that you bought them both before and after? A. That's correct.

Q. And stocked them openly, both before and after? A. That's correct.

Q. So, there was no difference at all in either your buying or your stocking habits before and after you became a lessee? (5707) A. That's right.

Q. Mr. Dias also asked you about the Goodrich batteries being your primary line, and the Southern batteries being the secondary line. Was the fact that the Goodrich batteries were the dry charge and the Southern the wet? A. That is primarily the reason.

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(5708) P. K. CONNER was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Please state your full name and address to the reporter. A. P. K. Conner, 130 Fort Street, Monroe, Georgia.

Q. You stuck to the service station business, have you? A. Yes, sir.

Q. Are you still in it? A. (No response.)

Q. Where is your service station located? A. 219 East Spring Street, Monroe, Georgia.

Q. Do you sell Texaco gasoline? A. Yes, sir.

Q. Do you have a lease from the Texas Company? A. Yes, sir.

Q. And is that one of these leases that renews itself each year? A. That is correct.

Q. What has been the gallonage of your station? A. Ten to twelve thousand gallons a month.

Q. For how long have you been in that location? (5709) A. Since December, 1949.

Q. You have been a lessee dealer all that time? A. That is correct.

Q. Have you handled TBA in that station? A. Yes, sir.

Q. What have been your reasons for handling that? A. Trying to make a little extra money on my operation.

Q. You find it does that for you? A. Yes, it helps.

Q. What sort of tires do you stock? A. Dayton.

Q. About how many do you have in stock? A. Around 20.

Q. And do you have any others in stock? A. Two or three Pennsylvania.

Q. Any Firestone or any Goodrich? A. No, sir.

Q. What kind of batteries do you stock? A. Excello and Delco.

Q. Do you have any Firestone or any Goodrich? A. No, sir.

Q. For how long a time has that been your buying pattern? A. Since I have been where I am.

Q. Do you mean from the very beginning? A. Yes, sir.

(5710) Q. You have always handled Dayton and Pennsylvania? A. Yes, sir.

Q. By the way, from whom do you buy the Dayton tires? A. Gordy Tire Company of Atlanta.

Q. Gordy Tire Company of Atlanta? A. Yes, sir.

Q. Where do you get your Pennsylvania tires? A. Jack Baggett's Auto Parts and Recap Shop, Lawrenceville, Georgia.

Mr. Dias: What do you get from him?

The Witness: Get Pennsylvania tires from him. He also does some recapping for me.

By Mr. Lorenzen:

Q. He also does recapping for you? A. Yes, sir; that's right.

Q. Do you have all your recapping done there? A. No, sir. Gordy does some of my recapping for me, in addition to selling the Dayton tires that I take from him. I take Dayton tires and get recapping done from Gordy.

Q. From whom do you get Delco and Excello batteries? A. I buy Excello from a man by the name of Raft Miller who works out of Atlanta. I buy the Delco from Monroe Auto Supply Company, locally.

Q. Are most of your customers local people around Monroe, Georgia, whom you know? (5711) A. Most of the TBA customers are; yes, sir.

Q. Do they take your word and your recommendation for the tires that you sell? A. Yes, sir.

Q. While we are on this Gordy Tire Company and tires, let me ask you: Do you do any advertising, radio advertising of your tires? A. I have three radio programs a week.

Q. Are those sponsored— A. They hit me with the expense of the advertising.

Q. Gordy does? A. Yes, sir.

Q. And you feature the Gordy tires in that advertising? A. Yes, sir.

Q. From whom do you buy your accessory items? A. I buy some from Monroe Auto Supply.

Q. That is not a Firestone or Goodrich supply point, is it? A. No, sir. Some from Hughe Tyner, Danielsville, Georgia; and some from some of the wagon jobbers who call by my place.

Q. Are those the principal sources? A. Those are the primary sources of supply.

Q. For your accessories? A. Yes, sir.

Q. So you buy very little Goodrich or Firestone? A. That's right.

(5712) Q. Has this method of buying been in accordance with your understanding of the Texas Company's TBA policy? A. Yes, sir.

Q. You understood you could buy anything you wanted? A. Yes, sir.

Q. And you have done so? A. Yes, sir.

Q. Tell me, have you known the Texas Company recommends any particular line? A. I knew they recommended Goodrich and Firestone.

Q. And you have known that all along? A. Yes, sir.

Q. Has any one from the Texas Company ever told you that your lease might be cancelled or that you would be treated badly in any other way if you didn't stop buying this TBA which is not in the Firestone and Goodrich line? A. No, sir.

Q. No such threat or ssuggestion has ever been made to you? A. No, sir.

Q. Has any one from the Texas Company ever told you to hide or not display your tires and batteries? A. No, sir.

Q. Do you display them? A. Yes, sir.

Q. Openly and publicly? (5713) A. Yes, sir. That is a good means of selling.

Q. And also your batteries, do you display those? A. Yes, sir.

Q. Openly and publicly? A. Yes, sir.

Q. And the name appears in the display? A. Yes, sir.

Q. Do you keep your Dayton tires out front? A. Yes, sir.

Q. With the Dayton name appearing on them? A. Yes, sir.

Q. Has the Texas Company been of any help to you in marketing your TBA items? A. Well, they send me a little monthly bulletin that gives suggested items on selling. We

also have a spring dealer conference at which time they give items on effective marketing for the parts that we handle.

Q. Do you find that you can apply those to the type of TBA you handle? A. I find them helpful.

(5714) Q. Where are those dealer meetings held? A. Avondale Estates is where all except one was held, which was held at Athens, Georgia, which is nearer my home town than Avondale Estates was.

Q. About how many dealer meetings have you attended, would you say? A. I suppose I have attended one annually, since 1949.

Q. And about how many dealers are at those meetings? A. I would say 150, roughly.

Q. At any time at those meetings has anyone from the Texas Company suggested that any dealers or dealers' leases in general might be cancelled if they didn't buy some or all of the Firestone or Goodrich line? A. No, sir.

Q. Have you had a chance to talk to some of the dealers at the meetings? A. Well, we have never talked too much because they would have these meetings at the end of the day, and our work is long and hard, and by the time we would go in and eat and then enjoy the film it would be time to go home, so there wasn't much passing of words after you got outside. So for that reason we didn't talk about problems but very little.

Q. You said, when you eat. Did you eat together with the dealers? A. We would eat together with the dealers and then have the (5715) film following the meeting. Then they would have a custom of giving buttons or lapel pins for the men who had been with them for a number of years. Of course, they had ceremonies attending that. By the time we got through it would be time to start home to get rest for another day.

Q. In the course of that, since 1949, whether at the dealer meetings or otherwise, has any Texas dealer ever told you that the suggestion had been made to him that his lease might be cancelled or he would be treated badly in some other way if he didn't handle the Firestone or Goodrich line, or some of it? A. I have never heard it discussed in any way by anyone.

* * *

Cross-examination by Mr. Dias:

Q. Is Monroe a suburb of Atlanta? A. No, sir, it is 45 miles east of Atlanta.

Q. You don't own this property? A. No, sir, I just lease it.

Q. Or no relative or friend owns it? A. A friend owns it.

Q. Who is the friend? A. Mr. J. T. Sigman, the Chevrolet man there.

Q. Is he a close friend of yours? A. No, sir, I just have a passing acquaintance with him.

Q. How long have you known him? (5716) A. I have known Mr. Sigman fifteen years.

Q. Don't you have income from other sources? A. No, sir.

Q. You do not? A. No, sir.

Q. You don't have the donut shop any more? A. No, sir.

Q. Monuments? A. No, sir.

Q. When did you get rid of those? A. I don't remember. I just kept them a short time.

Q. Did you say that you purchased new tires from Gordy? A. Yes, sir.

Q. You purchased a lot of recaps, too, didn't you? A. Yes, sir.

Q. And you never purchased any Goodrich or Firestone tires at all? A. I have taken a few from Mr. Hicks, at Goodrich, when I had an order from them, if he was coming my way to where I could get the customer to wait. My supply point is 25 miles from where I am. If the man is in a hurry, he couldn't wait.

Q. Which supply point is 25 miles? A. Where my gasoline comes from.

Q. Does he also sell TBA? A. He also sells the Goodrich line.

(5717) Q. Twenty-five miles away? A. Yes, sir.

Q. Is there a Firestone store nearby? A. There is a Firestone store in the town.

Q. Where are they located? A. On Broad Street.

Q. Very close to your place? A. Three or four blocks from where I am located.

Q. Are there any other retail outlets in town that sell Goodrich or Firestone products? A. Not to my knowledge.

Q. By "retail outlets" I mean stores or stations. A. Not to my knowledge.

Q. Did you operate the same station in 1947, too? A. No, sir. I operated a Standard station in 1947.

Q. That was a Standard station? A. Yes, sir.

Q. You didn't carry Goodrich or Firestone there, did you? A. No, sir. I handled Atlas there.

Q. Have you received any complaints whatsoever from the Texas Company in connection with your business recently? A. No, sir.

Q. Or from Mr. Hicks, your consignee? A. No, sir.

Q. Are there any other Texaco stations in town? (5718) A. One other.

Q. Where is he located? A. He is located on the opposite end of town from me, on the same highway.

Q. Do you know him very well? A. Not too well. I know his name.

Q. What is his name? A. R. L. Jones.

Q. Have you been in or near his station? Do you know his station at all? A. I know where the station is located, yes.

Q. What does he carry? A. He runs a recap shop and sells a few new tires.

Q. What brand? A. Goodrich.

Q. Do you know what kind of batteries he carries? A. I am not sure. I think I saw some Excellos in his shop the other day.

Mr. Dias: That is all.

Redirect examination by Mr. Lorenzen:

Q. The lease which you have is definitely with the Texas Company? A. Yes, sir, that is right.

Q. You have no leasing arrangement at all with this (5719) Chevrolet fellow? A. No, sir.

Mr. Lorenzen: That is all.

* * *

(5720) C. T. FITTS was called as a witness for the Respondent and, having been previously duly sworn, testified as follows:

Direct examination:

Mr. Lorenzen: Mr. Fitts was called as a witness for the Government in Atlanta. He has been on the stand before.

By Mr. Lorenzen:

Q. Will you state your full name? A. C. T. Fitts, 5656 Pine Branch Road, Columbia, South Carolina.

Q. Mr. Fitts, you testified before when Mr. Dias called you in Atlanta? A. Yes, I did.

Q. At that time you were zone manager? A. Zone manager, yes.

Q. In Atlanta? A. Yes.

Q. You no longer hold that position? (5721) A. No.

Q. You are district manager, are you? A. I am district manager, yes.

Q. At Columbia? A. Yes.

Q. South Carolina? A. Yes.

Q. For how long were you zone manager in Atlanta? A. From January 1, 1952, through June 30, 1957.

Q. And for how long before that time were you employed by the Texas Company? A. I have been an employee of the Texas Company for twenty years.

Q. Will you look at Respondent's Exhibits 30, 31, and 32 and tell me whether, during the time you were zone manager in Atlanta, you were acquainted with the policies of the Texas Company set out in those exhibits? A. Yes, I did receive these and I am very familiar with them.

Q. What was your understanding as to the Texas Company's TBA policy during the time you were zone manager in Atlanta? A. We have two sponsored lines of TBA—Goodrich and Firestone. However, we respect the rights of the dealer as an independent businessman, and he is free to purchase any TBA that he sees fit.

Q. Was that your understanding even before the date of that (5722) first letter, which was 1952? A. Yes, sir.

Q. That is, that letter did not create any change in policy? A. It did not.

Q. Was it among your duties to transmit that policy of the Texas Company, among others, to the salesmen and others who operated under you? A. Yes, it was.

Q. Did you do so? A. I did.

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(5723) Q. What, if anything, was included among your duties with respect to transmitting to the dealers the TBA policy of the Texas Company? A. It was my duty as zone manager to go over our policy letters thoroughly with the salesmen and discuss it with them and explain anything that they did not understand.

Q. What, if anything, was there among your duties with respect to transmitting the Texas Company's TBA policy to the dealers whom you installed? A. We always advised the dealers of our policy on TBA.

Q. Did you consider that as part of your duties? A. Yes, I did.

Q. Do you recall any occasion while you were zone manager when you departed from your understanding of the Texas Company's TBA policy in connection with the installation of any dealer? A. No.

Q. Did you have anything to do with the installation of Ben D. Watkins, a Texaco dealer at Roswell Road, Atlanta? A. Yes, sir.

Q. I ask you specifically whether in that case you departed in any respect from the Texas Company's TBA policy in your (5724) talk with that dealer? A. No.

Q. Did you tell that dealer that he was not supposed to carry any tire except either Firestone or Goodrich? A. No.

(5725) Q. I was quoting testimony appearing at page 2108 of the record.

Do you have any knowledge of the connection which Mr. Watkins had with the Firestone distributor or Com-

pany? A. Yes. He was a former dealer of Firestone's in Columbus, Georgia, and during the time that he was a Firestone dealer he became very friendly with some of the Firestone salaried personnel.

Mr. Dias: I object to the answer, your Honor. It is obviously a conclusion.

Hearing Examiner Kolb: Overruled.

By Mr. Lorenzen:

Q. Did you get that information from him? A. Yes.

Q. Did you have anything to do with the installation of Mr. Berry, of the Berry Service Station, Piedmont Avenue? A. Yes, I did.

Q. In connection with his installation, and your talks with him, did you depart in any way from the policy of the Texas Company with respect to TBA as you understood it? A. No, sir.

Q. Quoting from page 2109 of the record, did you ever tell him that, "it would not please the oil company"—and I am ending the quote there—if he handled some tires sold by a salesman of the G. T. Duke Company? A. No.

Q. Could you tell us something about Mr. Berry's financial (5726) condition and his ability to carry a full line of TBA? A. His financial position wouldn't permit him to carry a full line or a full stock of TBA.

Q. Did you ever tell Mr. Berry, or did you ever instruct any of your salesmen to tell Mr. Berry—and I am referring now to page 2111 of the record—that the Texas Company was very hard to get along with unless he carried tires of Firestone or Goodrich? A. No, sir.

Q. And did you ever tell him that it would make the Texas Company awfully unhappy, such as getting small repairs done and things of that nature about the station, if he didn't carry Firestone or Goodrich? A. No, sir.

Q. Did you ever refuse to make any repairs on the Berry station or get small things done for him because of the TBA purchases or the types of purchases that he made? A. No, sir.

Q. General Royall calls my attention to the fact that I may have unconsciously indicated that the testimony to which I had reference was testimony by the dealers. Of course, it wasn't. It is hearsay testimony by a salesman for one of the companies to which I had reference.

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(5727) Q. Did you have anything to do with the installation of Earl M. Gause—is it G-a-u-s-e? A. Gause—G-a-u-s-e. Yes, I did.

Q. In connection with that installation and your conversation with him did you depart in any way from the policy of the Texas Company with respect to TBA as you understood it? A. No, sir.

Q. Did you ever tell him that he could handle no other brand than Firestone or Goodrich? A. No, sir.

Q. Did you have anything to do with the installation of Mr. Herman Gilbert— A. Yes, sir.

Q. (continuing)—at 1686, Jonesborough Road? A. Yes, I did.

Q. In the course of that installation in your conversations with Mr. Gilbert, did you ever depart from the policy of the Texas Company with respect to TBA as you understood it? A. No, sir.

Q. And referring to the testimony at page 2022, did you ever tell Mr. Gilbert, "Well, they didn't tell us that they would expect us to handle Firestone or B. F. Goodrich". Did you tell him that? A. No, sir.

(5728) Q. Did you have anything to do with the installation of Mr. H. Arpin—A-r-p-i-n—Koehler—K-o-e-h-l-e-r, as a dealer? A. Yes.

Q. In connection with his installation in your conversations with him, did you ever depart in any way from the established TBA policy of the Texas Company? A. No, sir.

Q. By the way, do you know whether Mr. Arpin had any connection with the Goodrich Company before he became a Texas dealer? A. At one time he was a salaried employee for Goodrich.

Q. Do you recall Douglas C. Scott, a dealer, at 556 Candler Road? A. Yes.

Q. You had nothing to do with his installation, did you? A. Yes.

Q. You did have something to do with it? A. Yes, I did.

Q. You mean you were responsible for getting him in? A. I sure was.

Q. In connection with his installation, did you tell him—did you depart in any way from the Texas Company's TBA policy as you understood it? A. No, sir.

Q. Your experience with Mr. Scott was somewhat unfortunate, (5729) was it not?

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First, did you ever tell him that he had only a choice of either Firestone or Goodrich? A. No, sir.

Q. Do you know whether or not it is a fact that he carried non-sponsored merchandise? A. He did.

Q. And you knew about it? A. Yes.

Q. Did you make any effort to cancel him out on that account? A. I did not.

(5730) Q. You did tell us that in all the time that you were down there in Atlanta there was only one lease cancellation, when you testified before. Could you tell us who that was? A. Douglas C. Scott.

Q. That is the one we were talking about, and you installed him? A. That's right.

Q. Will you tell us the reasons for cancelling him? A. Excessive drinking.

Q. You would go along with his testimony that his back room sometimes looked like a bar? A. Yes, it did.

Q. Was that one of the reasons you cancelled him? A. Yes.

Q. Did you ever talk to him about these drinking habits? A. On a number of occasions.

Q. Did you hear him testify in this case? A. I did.

Q. Was he defiant about his drinking habits when you talked to him? A. He was defiant.

Q. How about Mr. Richard Tidwell; did you have anything to do with his installation as a dealer? A. Yes, sir.

Q. In connection with his installation, did you depart in (5731) any way from the policy of the Texas Company as you understood it? A. No, sir.

Q. What had been Mr. Tidwell's experience in the service station business? A. He hadn't had any previous experience in the service station business.

Q. Did he consult with you on occasion with respect to the conduct of his business? A. Quite often.

Q. And did those consultations include anything about TBA? A. Yes, at one time he talked to us about handling TBA.

Q. What was the substance of that consultation? A. He asked my opinion about his handling a second line tire.

Q. By that, you mean an off-brand line? A. Yes, that's right.

Q. Poor quality line? A. That's right.

Q. And what did you tell him? A. We told him that he was handling premium petroleum products, and we would suggest to him that he not handle an off-line brand tire, it might create customer dissatisfaction and not only affect his TBA business but his gasoline business as well.

Q. I want to ask you specifically, did you tell him on that (5732) occasion, "Dick, we can not tell you not to handle those tires, but we attempt to be more lenient or look with favor on our dealers who are more loyal to us"? A. No, sir.

Q. That appears on page 1974 of the record.

After the time when you had this tire conversation, do you know that he carried TBA which was not in the Firestone and Goodrich line? A. Yes, he did.

Q. Do you remember any specific things in this case? A. Yes, Lee had some Sheffield batteries.

Q. Did you tell him to get those out of the station? A. No.

Q. Did you threaten to cancel his lease? A. No, sir.

Q. Did you tell him that you wouldn't look with favor on him unless he got those out? A. No, sir.

Q. When Mr. Tidwell decided to leave his service station, will you tell us why he told you that he wanted to leave? A. Mr. Tidwell stated that it was his decision to go with a major airline, and he would appreciate if we would find a party that had the necessary capital to buy him out.

Q. And did you do so? A. We did.

(5733) Q. And the party bought him out? A. Yes.

Q. The departure of Mr. Tidwell, did it have anything whatever to do with TBA? A. No, sir.

Q. Did you have anything to do with the installation of Mr. L. C. Smith as a dealer? A. Yes, I did.

Q. Will you tell us whether or not in connection with his installation you departed in any way from the TBA policy of the Texas Company as you understood it? A. No, sir.

Q. Did you tell him at any time that, "It would be better for him to string along with Goodrich"? A. No, sir.

Q. That is quoted from page 2112.

In fact, do you know whether or not Mr. Smith openly handled TBA items which were not in the Goodrich or Firestone line? A. Yes, sir, he does.

Q. What did he handle? A. Southern batteries.

Q. Is he still a lessee? A. Yes, he is.

Q. Is he still handling Southern batteries? (5734) A. The last time I visited the service station, yes.

Q. Do you know to what extent, if any, he advertises those Southern batteries? A. Yes, he did. He advertised in the yellow pages of the telephone directory.

Q. And did that advertisement still appear in the directory the last time you had a look? A. The last time I looked, yes.

Q. Have you ever threatened him with a cancellation or treating him badly in any other way if he didn't get rid of those Southern batteries? A. No, sir.

Q. Did you have anything to do with the installation of Mr. O. L. Hardin, at 511 Flat Shoals Avenue? A. No, I did not.

Q. Was he a dealer during the time when you were zone manager in Atlanta? A. Yes, he was.

Q. Did you ever have occasion to talk to him? A. I talked to him on several occasions. I don't ever remember having any conversation with him regarding TBA.

Q. Did he ever complain to you that any kind of pressure was being put on him, or anything of that kind? A. No, sir.

Q. During your entire connection with the Texas Company, (5735) were there any instances that you know of where any dealer has lost a lease because he didn't do that which the Texas Company told him to do in connection with handling TBA? A. No, sir.

Q. The quotation relating to Mr. L. C. Smith was the testimony of Guy Scott, who purported to quote somebody else on page 2112 of the record. And the testimony con-

cerning Mr. Hardin was the testimony of John D. Hulme, a salesman, who purported to quote someone else on page 1936 of the record.

As far as you know, Mr. Fitts, did you adhere to the TBA policy of the Texas Company as you have testified you understood it in connection with all of your dealers—A. (interposing) Yes, sir.

Q. (continuing) —whom you either installed or with whom you talked or with whom you counselled? A. Yes, sir.

Q. In connection with all of these dealings with the dealers, did you have in mind as part of that policy a letter which you identified as Exhibit 26—now in evidence—when you testified previously: "I emphasize again that the Texaco dealer is an independent businessman and he must be permitted to operate as one. Anyone who violates these policies may be subject to immediate dismissal from the company's service." A. Yes, sir.

(5736) Q. That was a communication from the New York office to you, among others? A. Yes, sir.

Q. And had you that in mind at all times? A. Yes, sir.

Mr. Lorenzen: That is all.

Cross examination by Mr. Dias:

Q. You were in the position of zone manager from January 1952 to June of 1957, Mr. Fitts? A. Yes, through June of 1957.

Q. And did you have a bit of turnover of dealers in that length of time? A. Yes, we had several dealer changes.

Q. Wasn't it quite extensive, about a 25 or 30 percent turnover in those five years? A. I am not familiar with the percentage, but I don't think it was excessive. We had a number of dealers in the Atlanta area.

Q. How many? A. I don't have those records, but I would say in the neighborhood of 95.

Q. There were 95 dealers there approximately when you started? Now, of those 95, how many would be your approximation that changed hands, dealerships that changed hands in those five (5737) years? A. That would be impossible for me to answer. I really don't know.

Q. Can you give us some idea on a yearly basis? Or is that impossible? A. I couldn't give you the percentage on a yearly basis, no, sir.

Q. All right. Can you tell us when your conversations took place with Mr. Ben Watkins? A. Would you clarify that? The statements regarding—

Q. (interposing) Did you help get him into a station? You were there at the time of the negotiations? A. Yes. He came to me and applied for the service station.

Q. Can you tell us when that was? A. Not offhand, without looking at the records, I could not.

Q. How about Mr. Berry? A. I couldn't give you those dates, either. I would have to refer to the records on those dates.

Q. Was the same true of Mr. Gilbert? A. Yes.

Q. And Mr. Koehler, Mr. Scott, Mr. Tidwell, Mr. L. C. Smith, and this last name I am a little confused on—S. T. Hulme? A. I don't know the gentleman. He wasn't a dealer of ours.

Q. And you can't tell us anything about their introduction into the service station business as Texaco operators, even (5738) though you negotiated those stations with them; is that correct? A. Yes, I can give you some information on the indoctrination of a dealer, when he came to us and applied for a station.

Q. I understand that. But can you give us any idea of the date when the first negotiated? A. No, sir, I cannot give you the approximate date.

Q. Why do the conversations that you had with them stand out so in your mind? A. That is a strict policy of the Texas Company to explain to the dealer that he is an independent merchant, and he can buy TBA merchandise from whatever source that he sees fit.

Q. And as you interviewed each of these witnesses, I assume that you took out these policy letters and showed them to the prospective dealers? A. No, sir, I did not.

Q. You have a bag full of them at all times with you, don't you? A. No, sir, I do not. I am very well acquainted with them though, even though I don't have them in my possession at all times.

Q. On cross-examination Mr. Tidwell was asked this question: "In your transactions with Mr. Fitts there was a background of extreme close friendliness between the two of them, was there not?" Mr. Tidwell answered, "Yes, with everyone connected (5739) both with Texaco and Firestone." Was that answer untrue? A. I can't speak for anybody except myself. I was very friendly with Mr. Tidwell.

Q. Did he ever indicate to you that he might not be friendly to you? A. No, sir, he did not.

Q. What do you think of that gentleman? A. I think he is a very high-type gentleman.

Q. Did Mr. Tidwell ever take your suggestions in connection with the advice you had to offer him? A. Yes, he surely did.

Q. Did you ever display any traits or make any statements to him that would indicate that he, Tidwell, was not on a good standing with you? A. No, sir.

Q. As a matter of fact, you wrote him a letter of recommendation when he moved over to the airline, did you not? A. Yes, sir, I did.

Q. Did you praise him and his character when you wrote this letter of recommendation? A. I gave him a

good recommendation. I didn't have any reason to do otherwise.

Q. In your experience with him, was he the type of man that would lie to a person? A. No, sir, I don't think Mr. Tidwell would lie.

(5740) Q. How many times do you suppose you talked to Mr. Scott about his drinking? A. I talk to Mr. Scott on a number of occasions about his drinking.

Q. Can you give us something more specific as to when, approximately? A. I can give you the approximate number of times.

Q. All right. A. I would say ten, eleven, twelve times.

Q. When did he go in that station, do you know? A. I can't tell you when he went in, but I can tell you when he came out.

Q. He has already told us that. A. Not the exact date. It was in January of—the approximate date was January of 1954, if I am not mistaken.

Mr. Lorenzen: He said he went in or out?

The Witness: In.

By Mr. Dias:

Q. Disregarding this alleged drinking for a minute, was he or was he not a good station operator? A. In some respects, yes.

Q. What respects were those? A. Well, at first he did a good business, but he started losing business prior to the time that he lost his lease.

Q. That is about what? A four or three year span?

(5741) How long did he do good business in your judgment? A. Well, he did a good business for about 18 months, somewhere in that neighborhood.

Q. And what do you consider good business? A. For that particular location?

Q. Yes. A. I would say in the neighborhood of $28,000 or $30,000.

(5742) Q. What about TBA sales? A. That would have to be approximate, too, sir.

Q. All right. A. I would say in the neighborhood of $1500 a month.

Q. And he was doing that 18 months, was he? A. I am not referring to TBA.

Q. Sir? A. I couldn't tell you about the TBA figures for that time.

Q. I wish you would. A. I have no knowledge of his TBA figures. I haven't looked at the records in a considerable length of time.

Q. I am trying to get your idea of a good operator. As I understand your testimony so far, for the first 18 months he was what you considered to be a good operator. Am I correct so far? A. Well, I would say he did a good business. He wasn't a credit to the Texas Company; no, sir.

Q. He did a good business? A. Yes, sir.

Q. And you were satisfied with his running of the station? A. Not altogether; no, sir.

Q. What complaints did you make to him during those first 18 months? A. Well, primarily for drinking.

Q. And can you tell us how often you complained about that (5743) during those first 18 months? A. Well, during the entire period of the time that he was in the service station I would say that we complained to him 10, 11, or 12 times. I can't break them down by years; no, sir. That would be impossible.

Q. How often do you suppose you visited the station in a year's time? A I visited on a number of occasions. I would say, however, I would go by seeing Mr. Scott every 60 days or each month on the average.

Q. On each of those visits did you complain about his drinking? A. No, sir. He wasn't there a lot of the time.

Q. During those first 18 months—Texas renewed his lease after the first year; is that correct? A. Yes, sir; we did. It automatically renewed itself.

Q. And after that first 18 months, is it your testimony that his business declined? A. It started declining; yes, sir.

Q. Did you then make further comments on that to him? A. We did our best to get him to quit drinking; yes, we did.

Q. What did his business drop to after the first 18 months? A. I couldn't give you the exact figures. I haven't looked at the records in some time.

Q. Were they less than $28,000 or $30,000? (5744) A. Oh, yes, yes, considerably less.

Q. And his TBA was less than $1500 a month, was it? A. I don't know what his TBA figures are. I couldn't give you those figures.

Q. And how long did that continue? A. I would say primarily for the last year that he was in the service station.

Q. But when that business started declining, his lease was renewed again, was it not? A. Possibly it declined some, yes. Not to the point of being alarmed about the volume of business that he was doing.

Q. Nor about his personal habits? A. Yes, sir. We had always been concerned about his personal habits and we did our best to influence them and get him to discontinue his drinking at the service station as his place of business.

Q. Have you ever personally seen him under the influence of liquor? A. A number of occasions.

Q. What do you consider as being under the influence? A. Well, I have seen him a number of times when he was happy-handed or you could smell it on him very well, or

you could tell by his conversation that he had been drinking.

Q. Does that make him incompetent to run a station? A. I would think so; yes, sir.

(5745) Q. Did you carry on a conversation with him at the time? A. Yes, I did.

Q. And he didn't meet your approval, did he, in his condition? Is that your testimony? A. No, sir; I don't approve of even discussing business if I can help it, with a man that is drinking. But that is about the only time that I could catch Mr. Scott, when he was drinking.

Q. When did he start buying these other TBA products, do you recall? A. No, sir; I can not give you that information.

Q. Isn't it a fact that your comments, or Texaco's objection to the alleged drinking, or what they considered to be excessive drinking, only came up after he started buying other than Goodrich products? A. No, sir.

Q. Is Mr. Scott a member of the Georgia Petroleum Retailers Association? A. I do not know.

Q. Do you recall your conversation with him about the extra Coca Cola box? A. No, sir; I can't recall discussing an extra Coca Cola machine in his service station.

Q. The only thing you remember is his drinking? And the fact— (5746) A. We talked about other matters. But we were primarily concerned about his drinking.

Q. What other matters did you talk about? Do you recall that? A. Solicitation, how he was coming along with his business, service.

Q. Do you recall any complaints from customers about Mr. Scott? A. Not directly to me, but we had some complaints. In fact, we had some complaints in writing, or one complaint in writing, let me put in on that basis.

Q. Do you recall what that involved? A. Yes, sir. He had waxed a customer's automobile and apparently he, or

some of his help, got into the car and had grease all over the clothes and marked up the seats.

Q. I thought there was something wrong with the wax job itself? A. I think there was something wrong with the wax job also.

Q. That is as you remember it now, that they messed up the seats? A. We had a complaint on the wax job and also the seats.

Q. What other complaint did you get on him? A. I didn't get any direct complaints. It would be hearsay if I answered that.

Q. You recall Mr. Gilbert? A. Yes, sir.

(5747) Q. Do you recall discussing hours of operation with him? A. Yes, sir.

Q. What did you tell him? A. I called Mr. Gilbert one night after I had been by the service station. I hadn't been by it to see Mr. Gilbert but I was in that area and I noticed that his service station was closed. I called him and asked if he knew that his service station was closed, because in numerous cases the dealers' attendants left with the service stations at night will close them up and go home and not maintain the hours that the dealer usually operates.

Q. That is the only reason you called him? A. Yes, due to the fact his station was closed. That is correct.

Q. You didn't suggest to him of course that he should stay open later? A. I definitely did suggest that he be competitive in his hours of operation. I thought it was good business.

Q. As a matter of fact, you insisted on it, didn't you? A. No, sir, I did not insist on it. I suggested to him that he be competitive in his hours of operation.

Q. Wasn't it because of your suggestions that he decided he couldn't stay open those longer hours, and got out? A. No, sir, it was not.

Q. Why do you suppose he got out? (5748) A. He got out due to his health. His doctor's advice.

Q. What was your impression of Mr. Gilbert? A. I think Mr. Gilbert was a fine fellow.

Q. Wasn't Mr. Gilbert a member of the Georgia Association of Petroleum Retailers? A. I couldn't answer that for you. I do not know.

Q. At the time that you were negotiating this station with Mr. Gilbert, can you tell us a little bit about that? Do you recall the circumstances in connection with that transaction? A. Yes, sir. He came to my office, he and Mr. Patton, and I discussed the service station.

Q. Can you tell us when that was? A. No, sir, I couldn't give you the dates.

Q. Where did the discussion take place? A. In my office, at Dorrville, Georgia.

Q. Were you three the only people present? A. To my knowledge we were the only three, yes, sir.

Q. You are quite sure there was nobody else there at the time? A. I wouldn't say positively, but as well as I remember there were only three of us.

Q. Will you tell us what you told him at that time in connection with your recommendation of Firestone and Goodrich? A. We told Mr. Gilbert we had two sponsored lines of TBA—Goodrich and Firestone—and we recommended both of those lines to him very highly. We also told him that he was a (5749) free and independent businessman, and he could purchase from whatever sources he saw fit.

Q. And that is all? A. Yes, sir.

Q. And you and—did you say Mr. Patton? A. Yes, sir.

Q. Who is Mr. Patton? A. Mr. Patton is a salesman.

Q. And Mr. Gilbert—were the only three present? A. To my knowledge, yes.

Q. If you remember the gist of the conversation, why don't you remember who else was there to the point where you can say that there was or was not anyone else there? A. We always explain our TBA policy to every dealer that we are going to install in a service station. The company that I represent, they are very strict and insist that we explain our TBA policy. At the same time we certainly recommend the sponsored line and point out the many advantages by handling either Firestone or Goodrich.

Q. When Tidwell talked to you about those cheaper tires, do you recall the exact conversation? A. No, sir, I do not recall the exact conversation.

Q. Do you know anything or do you recall anything about the clock incident at Mr. Scott's station? A. Yes, sir.

(5750) Q. What do you remember about it? A. That is a porcelain enamel station. Mr. Scott saw fit to bore a hole in the porcelain enamel, or one panel of the porcelain enamel, and installed the clock. We suggested to Mr. Scott that he remove it and we would plug up the porcelain enamel as we were getting some leaks in the office. Apparently the water was seeping down through the masonry part of the service station from that hole in the porcelain enamel.

Q. This was just a suggestion on your part? A. Yes, sir. We did suggest to him. That is right.

Q. Didn't you about a month or two after that come around trying to sell him a clock, or a salesman? A. Definitely not. To my knowledge we have never sold any clocks.

Q. And you don't recall telling Scott that "one cold-drink box was enough." A. No, sir, I do not.

Q. These policy letters, RX-30, 31, and 32—do you want to see those again or do you recall those? A. Yes, I recall those. I looked at them a few minutes ago.

Q. I am not going to ask you anything specific about them other than have you ever shown those to your dealers in your area? A. No, sir, to my knowledge we have never shown a policy (5751) letter to a dealer. We have always relayed that to them verbally.

Q. How many repairs did you make on Mr. Berry's station, do you recall? A. I couldn't give you the number of repairs.

Q. Can you tell us that you did make repairs? A. I am sure we did. I don't usually make minor repairs. That is, the salesmen usually make minor repairs. If the expenditure involved runs over a certain amount, then I am supposed to approve the expenditure.

Q. Do you recall any expenditure that would involve an amount that would have to be approved by you in connection with this station? A. No, sir.

Q. And you don't know then whether or not the smaller repairs were made? A. I am sure during the course of time that he was in there some smaller repairs were made, but I couldn't define it.

Q. Nor can you state that there were any made, can you? You don't know. A. Not definitely, but due to the time that he was in there, I am sure that he had some trouble with some of his equipment or the building that it was our responsibility to repair.

Q. Have you personally ever escorted any Firestone or (5752) Goodrich representatives around to the stations of the various Texaco stations in your area? I am talking about Atlanta now. A. I have probably been in the service stations with Firestone or Goodrich representatives, but I can't recall any specific visit that we made, no, sir. Actually, that wasn't part of my duties as a zone manager.

Q. But it has occurred, has it not? A. I couldn't say definitely that I have ever—that I have, but there is a possibility that I have been in the service stations with a Firestone or Goodrich representative.

C. T. Fitts, for Respondents—Redirect

Q. You mentioned that Mr. Scott was the only dealer that you have checked out? What terminology did you use there? A. That was during a five-and-a-half year period, from January 1, 1952, to June 30, 1957.

Q. My question wasn't clear; I am sorry. He is the only dealer that you ever cancelled or checked out? Which term did you use? A. That Mr. Scott was the only one that lost his lease during that period.

Q. Do you distinguish between cancelling him and non-renewal of lease? A. That would be the same.

Q. It would be the same thing? A. Yes, sir.

Q. In other words, if an option or lease is not picked up, (5753) that is the same as being cancelled out, is it? A. Yes, sir. We have to give a prior written notice to the expiration date of the lease. They automatically renew themselves otherwise.

Q. How much time do you usually give them? A. I believe that is thirty days prior to the anniversary date. Either ten or thirty.

Mr. Dias: I have nothing further.

Redirect examination by Mr. Lorenzen:

Q. When you stated that you thought Mr. Tidwell wouldn't tell a lie—calling your attention to his testimony to which I called your attention on direct examination—do you believe in that instance he was mistaken in his recollection? A. Yes. I don't think Mr. Tidwell remembered our conversation exactly.

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E. L. Patton, for Respondents—Direct

(5754) E. L. PATTON was called as a witness, and, after being properly and duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your name and address to the reporter? A. E. L. Patton, 351 Hill Street, Atlanta, Georgia.

Q. Are you employed by the Texas Company? A. I am.

Q. In what capacity? A. At the present time I am a merchandising salesman.

Q. How long have you been employed in that capacity? A. Since July 1, 1953.

Q. And before that were you employed by the company? A. Yes, sir.

Q. What were you doing then? A. Well, from '48 to '53 I was a dealer trainer, representing dealer training. And from '48 back to 1928 I worked on various jobs from service station operation, warehouse man, cashier, assistant agent, agent, and I don't know the number of jobs that I didn't work on.

Q. Always with the Texas Company? A. Since 1928.

Q. And in the neighborhood of Atlanta? (5755) A. Atlanta and various points that they sent me to, like Savannah, Valdosta, as agent relieving where they had maybe a change of consignee or something.

Q. Was Mr. Fitts your superior during the time that he was zone manager in Atlanta? A. From July 1, 1953, until he left and was transferred to Columbia, South Carolina.

Q. During the time that you acted as dealers' training representative and the time that you have been a salesman, tell me, have you been acquainted with the Texas Company's TBA policy as set out in Exhibits 30, 31, and 32 (handing documents to the witness)? A. Yes, I am.

Q. Were you also acquainted with the policy statement contained in Exhibit 26? Look at 26-D and -E. A. In this book?

Q. Yes. Which concludes with the statement: "I emphasize again that the Texaco dealer is an independent businessman and he must be permitted to operate as one. Anyone who violates these policies may be subject to immediate dismissal from the company's service." A. Yes, sir, this letter was shown to me by Mr. M. D. White, when I went on the dealer training job. This letter was written before I was on the dealer training job, but he showed it to me as I was going out working with the dealers.

(5756) Q. Did you understand that you might be subject to dismissal if you didn't respect the independence of the Texaco dealer? A. Yes, sir, he made that very clear.

Q. Did you have that in mind in your dealings with the Texaco dealers with whom you came in contact? A. With every dealer that I had any contact with, yes, sir.

Q. Did you have anything to do with the installation of Mr. Herman Gilbert? A. I did.

Q. Did you accompany him to this Dorrville plant for his talk with Mr. Fitts? A. He was there on two occasions.

Q. Were you there with him? A. Yes, sir.

Q. And was Mr. Fitts there? A. Yes, sir.

Q. Was that in connection with his installation as a dealer? A. Yes, sir.

Q. At that time did either you or Mr. Fitts tell him, and I am quoting from page 2022 of the record, that you "would expect us to handle Firestone or B. F. Goodrich"? A. No, I didn't tell him that.

Q. Did you hear Mr. Fitts tell him that? A. No, sir.

Q. During that talk with him, do you recall whether there (5757) was any violation of the Texas Company's TBA policy as you understood it? A. I didn't get that.

(The reporter read the pending question.)
The Witness: No, sir, there wasn't.

By Mr. Lorenzen:

Q. There was not? A. No, sir.

Q. In the case of Mr. Gilbert, do you happen to know what his principal tire business was after he came into that station? A. He handled the Firestone line.

Q. Was it new tires or something else? A. No, Mr. Gilbert was in a location that handled and sold more recap tires in that neighborhood because of the clientele, the type of customers they had. Because the cars that were in that neighborhood, they sold more recap tires than they did new tires, and he bought a good many recaps from the Ponders Tires Company.

Q. That was a very substantial part of his tire business, was it? A. I would say it was 65 percent of it. The biggest part of it.

Q. Did you ever threaten to cancel Mr. Gilbert's lease or to treat him badly in any other way because he was handling the (5758) recap tires from that company? A. No, sir.

Q. Did he have much in the way of accessories in that station? A. No, sir. He didn't carry too large a stock. He just carried very few new tires. He had around maybe six or eight new tires that he had bought from the outgoing dealer who was in there before he was. I don't believe he sold more than three or four of them. The biggest part of his business was recap business.

Q. How about accessories? Did he handle filters? A. Yes, sir.

Q. Did you observe anything about those? A. He handled oil filters from two or three different sources. He bought some from Firestone and some from Westend Auto

Supply and from different people who come by there in the station, hauling supplies in the trucks.

He didn't carry too large a stock. He bought them as he needed them.

Q. Do you know whether Mr. Gilbert had a service station before he came with the Texas Company and leased its station? A. He had a Cities Service station on Stuart.

Q. What kind of TBA was he handling there?

Mr. Dias: I object, your Honor.

Hearing Examiner Kolb: Objection overruled.

The Witness: He had Firestone.

(5759) *By Mr. Lorenzen:*

Q. Do you know whether that was a line recommended by Cities Service? A. A. No, sir. He just handled Firestone at that station.

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(5760) Q. Are you acquainted with Douglas Scott? A. Yes, sir.

Q. Did you have anything to do with him as a salesman or dealers' training representative? A. He was in my territory. I installed him in the service station.

Q. Did you go with him when he went to Dorrville to see Mr. Fitts? A. He came up to the plant to see us, yes.

Q. At that time did you or Mr. Fitts tell Mr. Scott, "You have to take your choice, either Firestone or Goodrich"? A. No, sir, we did not.

Q. At that time did you observe any violation of the Texas Company's TBA policy as you understood it? A. No, sir.

Q. Did you tell us what your understanding was of the Texas Company's TBA policy? Perhaps I forgot to ask

you. I just asked you if you were familiar with those letters. What was your understanding? A. My understanding of the TBA policy of the Company is that we recommend two suggested lines: Firestone and Goodrich. But when we talk to a dealer, we also make it plain to him that he does not have to buy those two lines, that it is just a suggestion and we recommend them to him because they are (5761) good tires.

Q. Was that entire policy, including the fact that the dealer could buy where he wanted to, or whatever you said, explained as far as you can recollect in each case where a dealer was installed where you were present? A. With every dealer that I have ever installed, that has been explained to him, yes.

Q. And as far as you can recollect, there was no violation, no difference in the case of Mr. Scott? A. No, sir. We never varied from that policy.

Q. Mr. Scott's lease ultimately was not renewed; do you recall that? A. Yes, sir.

Q. Will you tell us the—were you his salesman at the time? A. No, sir. Do you mean when he left the station?

Q. Yes. A. No, sir, I wasn't. Mr. Brown was.

Q. So the recommendation about cancellation came from Mr. Brown and not from you? A. That is right, sir.

Q. Were you his salesman for some time during the time he was in there? A. All the time except about six months.

Q. During those six months, will you tell us whether you (5762) had any talk with Mr. Scott about his drinking? A. Yes, sir, I did.

Q. What did you tell him? A. Well, naturally I told him I didn't think it was a good idea for him to be drinking around the station, it hurts business, business would decline, and it just wasn't a good idea for any businessman to drink while he was on the job.

Q. Did you observe anything about Mr. Scott's drinking while you were at his station talking to him? A. Yes, sir. I have been in any number of times and he would be under the influence of whiskey.

Q. Mr. Scott testified at Page 2016: "Mr. Patton never asked me about taking a drink. He just told me never to let anybody get drunk around there." A. I never asked him to take a drink with me, no, sir. I don't drink on the job.

Q. I don't think he meant that. He meant you never discussed with him the question of his drinking. A. I misunderstood your question there.

Q. You may have misunderstood his testimony. A. I told Doug any number of times that he should quit his drinking because it was hurting his business and took him —I mean told him that he shouldn't do it and he knew he shouldn't, that it was definitely the cause of him losing business at the station. I had any number of complaints.

(5763) Q. At any time while you were his salesman, did you make a recommendation that his lease be cancelled because of anything having to do with TBA? A. No, sir.

Q. Do you recall some dealers known as Green and Presley, at 1238 DeKalb Avenue? A. Yes.

Q. I want to call your attention to the testimony of Mr. William B. Price, sales manager of the Prior Tire Company, to the effect that Mr. Green and Mr. Presley had an old, dilapidated station. This is on Page 2081. They had an old, dilapidated station and in that station they handled Hood tires and Exide batteries exclusively. But that after a new station was built there were no Hood tires on display there at all.

I want to know whether you have had occasion to observe the type of TBA displayed by Messrs. Green and Presley, both in the new station and the old station? A. I did.

Q. You had some connection with that station, did you? I mean you had some duty? A. At that time I was working at the Texas Company plant in Atlanta, and I made deliveries back in 1947, 1948, and 1949 to the station.

Q. So you had a chance to see what was there? (5764) A. Yes, sir.

Q. Quite often? A. Yes, sir.

Q. Will you tell us when the station was rebuilt? A. The station was rebuilt in 1949, I believe it was. Started around 1948 and the first part of 1949. Finished in 1949 some time.

Q. Would it be your recollection that the last complete year of operation in the old station was in 1948? A. 1948, yes, sir. They started remodeling in the early part of 1949, is my best recollection of it.

Q. And the year of remodeling was 1949? A. Yes, sir.

Q. And then the first full year of operation in the new station was 1950? A. That is right.

Q. But there was some operation in the new station in 1949? A. That is right.

Q. Tell me what you observed with respect to the TBA that they had there. Was it Hood and Exide exclusively, before the remodeling began? A. He carried Hood tires and he also had some Firestone tires and Exide batteries.

Q. Will you tell me what you observed after the remodeling finished with respect to— (5765) A. He still had the Hood tires and Firestone tires because he had a very large stock and he still had them in the new station after they finished the station.

Q. Both kinds? A. Yes, sir.

Q. Do you know whether the amount of TBA that he bought from Firestone in 1948, before the station was remodeled, was less than what he bought in 1950 after the station was remodeled? A. It was practically the same.

Q. Within a few dollars? A. Yes, sir, within a few dollars.

Q. How about the gasoline volume? Do you know if that stayed practically the same in the old station as against the new station? A. No, sir. In 1948—do you want approximate figures on gallonage?

Q. If you happen to know them? A. I do. I happened to look it up. It was 164,000 gallons in 1948 and some odd, and in 1950—you said 1950?

Q. Yes. A. The station pumped an average of 229,000 gallons in 1950. The reason I know this, I had that station later on as one of my stations. I had the figures back for eight or ten years and I happened to be looking over them.

(5766) Q. Did the cancellation of the—you also knew you were going to testify about this? A. Sir?

Q. You also knew we were going to ask you to testify about this when you came up here? A. Yes, sir.

Q. Do you know about Green and Presley leaving that station ultimately? A. Yes, sir, I knew when they left.

Q. Did that departure have anything whatever to do with TBA? A. No, sir. They asked for us to get someone to buy them out, they were going to Florida to operate a service station in Florida.

Q. Did they do that? A. Yes, sir, they did.

Q. Are you acquainted with Mr. O. L. Hardin, a Texas dealer at 511 Flat Shoals Avenue? A. I am.

Q. There was some testimony by Mr. Hulme, at Page 1928, about Mr. Hardin, which says that "Since 1954, he (Hardin) was supposed to have said to Mr. Hulme that the Texas Company objected to having any other brand except the one particular brand in stock there."

Do you know whether Mr. Hardin carries in stock merchandise other than—I guess it must be either Firestone or (5767) Goodrich that Mr. Hulme must have had in mind?

A. Yes, sir. He bought tires from Gordy Tire Company and recapped tires from Ponders Tire Company.

Q. And you knew about that? A. Also, recaps from Gordy Tire Company. Yes, sir, I was a salesman at that station from 1933.

Q. Do you recommend that the station lease ought to be cancelled or he should be treated badly in some way because he was buying from the Gordy Tire Company and from Ponders Tire Company? A. I didn't say anything to him about it because he was buying at those two places.

Q. And you didn't recommend that his lease be cancelled? A. No, sir. He is still in the station. He was there Friday before I left home.

Q. Happy there, as far as you know? A. Yes, sir. They are going to build him a new station out there.

Q. There was some testimony by Mr. William Bridges, a salesman of Reddick Sales Company, Page 1944, who said that "A Texaco dealer by the name of E. A. Gresham, Moorland Avenue and Atlantic, told him in 1954 that he couldn't handle, he couldn't sell the Lee and Goodrich tubes because he has a tie-up with the Goodrich people."

Tell me, do you know what sort of tires Mr. Gresham has (5768) been selling since 1954? A. He had the Lee and Goodrich lines. He still has some Lee tires at the station now.

Q. And he has ever since 1954? A. To my best knowledge he has had some there all the time, yes.

Q. Were you a salesman for him? A. I was his salesman part of the time, 1953, 1954, and 1955.

Q. Did you ever tell him that his lease would be cancelled or some other evil fate would befall him as far as the Texas Company is concerned if he didn't stop handling those Lee tires? A. I never told any dealer that.

Q. And you didn't tell him? A. No.

Q. The same salesman testified that one A. B. Lloyd—this is at Page 1945—"a Texaco dealer at Jonesboro Avenue, told him that he was tied up with the Firestone people and they wouldn't like for him—that the only way that he can sell them was to just get an order for them and put them on right that same day. He couldn't stock them."

I think what he meant is that Mr. Bridges claimed he could only sell this Mr. Lloyd tires on a pick-up basis. A. That is right.

(5769) Q. Tell me, in general, how did Mr. Lloyd handle his tires? A. That is the same station that Mr. Gilbert had. He bought out Mr. Gilbert's station. I told you in a previous statement that they sold a lot of recaps there. He did sell some of the tires to that gentleman that he is speaking of, that that gentleman was trying to sell him, I think it was Lee. But he picked them up as he sold them. He didn't put too much stock in the station, didn't carry a very large stock.

Q. Did he have a large stock of Firestone tires? A. No, sir, he did not. More recaps than anything else.

(5770) Q. Do you know anything about a former dealer named L. C. Smith? A. Yes, sir.

Q. Do you know what kind of tires—do you know whether he had a service station before he became a lessee of the Texas Company? A. Yes. He had a Gulf station.

Q. Do you know what he was handling there? A. He handled the Gulf tire and also he sold some B. F. Goodrich tires, he told us.

Q. He handled the Goodrich tires also after he went over with Texaco? A. That's right.

Q. Do you know a dealer by the name of Hardin? A. Hardin?

Q. Yes. A. Yes, I know him.

Q. We were talking about L. C. Smith. Is that the same one? A. Sir?

Q. Weren't we talking about L. C. Smith, who used to be a Gulf dealer? A. Yes, sir.

Q. Who is this fellow Hardin—H-A-R-D-I-N? A. He is the dealer in East Atlanta that we were talking about a while ago.

(5771) Mr. Dias: Flat Shoals?

The Witness: Yes, sir. O. L. Hardin.

By Mr. Lorenzen:

Q. He handled Gordy recaps? A. Yes, sir.

Q. Did he also handle Sheffield batteries? A. That's right, sir. I believe instead of Sheffield, it was Southern batteries. It wasn't Sheffield.

Q. Southern batteries? A. Yes, sir.

Q. I thought I had asked you but I may not have. It is quicker to ask you than to ask the stenographer to go back.

Did you tell Mr. A. B. Lloyd that he couldn't stock the kind of tires that Mr. Reddick was selling? A. No, sir, I did not.

Mr. Lorenzen: That is all.

Cross examination by Mr. Dias:

Q. Mr. Patton, have you been in on many negotiations for stations, new or old, where the dealer changed? A. Only the new stations. I opened up the majority of them. Most of them are new stations, new dealers installed. There have been very few changes in my territory since I have been a salesman.

Q. Then, aside from Scott, how many would you say—

(5772) A. (interposing) I didn't have anything to do with Scott.

Q. You weren't there? A. I wasn't the salesman. Mr. Brown was.

Q. Didn't you say that Scott came up to the plant at Dorrville in connection with this station? A. All these fellows come up to see us about a station. That is where they come to see us, yes, sir.

Q. I guess I didn't make myself clear then.

Scott came up to Dorrville to talk about opening a station, getting a station? A. That's right, yes, sir.

Q. He spoke to you and to Mr. Fitts? A. That's right.

Q. How many similar instances have you sat in on? In other words, how many dealers have you interviewed, or prospective dealers? A. I would say ten or twelve, with other salesmen and myself, too, in my territory.

Q. In all that time that you were with the company—A. (interposing) Yes, sir.

Q. (continuing) —in that capacity.

Can you tell us what is the usual procedure in interviewing a prospective lessee? A. Do you mean a dealer?

Q. A dealer, yes. Do you ask him for his qualifications? (5773) A. He fills out an application on credit. We have to always check the dealer's credit before he goes into a service station.

Q. And are you concerned with his prior experience? A. Well, that is all included in the application, yes.

Q. What other things are considered when you hire or take on a new lessee? A. I usually check a man's character around his neighborhood where he lives, to find out what kind of man he is. Sometimes we make mistakes, sometimes we do all right.

Q. Did you check on Scott? A. I did, but I was badly fooled on him.

Q. In what way were you fooled? A. Well, I found out about his drinking, that he just took an occasional drink. It turned out to be more than occasional.

Q. When did you first find that out? A. What is that?

Q. When did you first find out that he took more than an occasional drink? A. Well, Doug did good business for about a year, and then he started drinking in the station, too.

Q. When he applied for the station, is it your testimony that he didn't drink at all? A. I didn't know anything about it before he came to us. I didn't know anything about what he had done before he came to the station, no, sir.

(5774) Q. Did he at any time ever operate another station? A. No, sir. He had a bread route, the Merida Bread Company, as a salesman, a bread salesman.

Q. He came from the bread company to Texas. Those were his successive jobs? A. Yes, sir.

Q. First, as a bread salesman, and then opened up a station for Texaco? A. Yes, sir. He had been there for 15 or 20 years.

Q. Had been with the bread company that long? A. Yes, sir.

Q. In doing a little research on his background, did you find out whether or not he had been drunk with the bread company? A. No, sir. I didn't check with the bread company. I just checked out with the neighborhood, and everybody seemed to think he was a nice fellow and gave him a good recommendation. That is the only thing you can do on a character reference.

Q. You were satisfied at the time at least that he was fit to take the station? A. Yes, sir.

Q. How long after he got into the station, how long was it before you decided that he wasn't fit to stay in the station? A. I didn't—I mentioned a minute ago that it was about (5775) a year after he had been in the station that he started drinking at the station. I mentioned it to him several times that he shouldn't do it, that it was bad for his business, and didn't help him any by drinking, any man, in his place of business.

Q. Was it your impression that he was drunk? A. No, I didn't say he was drunk. He was drinking on the job. It was bad to go out and wait on a lady customer with whiskey on his breath. I don't think it was a good idea.

Q. Did he have trouble with customers along that line? A. No, after I talked with Doug, after he started drinking he would get away from the station and leave the boys there to run the station. He did that later on. It got to where business was falling off on the service station.

Q. Do you recall the incident of the clock? A. Yes, sir, I do.

Q. Can you tell us something about that? A. I went out one day and he had this clock up on the wall, on the outside of this porcelain enamel building and drilled three holes in it. About a week or two later we had a heavy rain and water started coming into the office, in the service station there. He told me he had a leaking roof. I checked on that and found it was coming through the porcelain enamel hole where he put the clock up and we asked him to remove the clock.

(5776) Q. And that would have cured the leak, would it? A. We had to go in there and plug the holes, and finally had to put a new panel on the building, take that panel out and put a new one in.

Q. Can you tell us about that wax job? A. Yes, sir.

Q. What do you know about that? A. I remember something about the wax job. It was a customer refused to pay the credit card on it because he charged them, I don't remember the exact amount charged on the wax job, but there was a complaint there that whoever delivered the car back got all the seat covers greasy. Got them dirty and they couldn't be cleaned, and there was something wrong with the wax job, it wasn't done right.

Q. Did you check the customer's car yourself? A. I saw the car in the station being waxed that day, but I didn't see it when it left, no, sir.

Q. You don't know whether it was a justified complaint or not then, is that it? A. Well, the customer had been a customer of the Texas Company a long time on credit cards and they made the complaint to the Texas Company.

Q. And you just automatically pay all complaints? A. No, sir. Mr. Scott paid the customer the money back himself, after arguing with the customer quite a while he (5777) finally paid the customer, refunded the money to him.

Q. He would have no occasion to refund the money to the customer if it was put on the credit card, would he? A. He didn't pay for it.

Q. Sir? A. He didn't pay the Texas Company.

Q. Who didn't? A. The customer.

Q. That is the point. Wasn't the wax job put on the credit slip? A. That's right.

Q. Then, why would Scott pay the customer? A. The customer refused to pay for the job.

Q. Then, the customer got a wax job and $10.00 to boot? A. No, sir, he didn't get the money. Doug paid the Texas Company.

Q. He paid the Texas Company and not the customer? A. Yes, sir.

Q. As a matter of fact, he gave you the money? A. No, sir. He turned it in to a driver.

Q. You weren't the driver at that time? A. No, sir. I was a salesman.

Q. Wasn't there a little difference of opinion on that job as to whether or not the job was or was not faultily done? A. No, sir. His son was in the station, and I remember now (5778) that we are talking about it, his son which does work with him there at the time, got two

colored boys who had done the job and made them go back and try to clean the seat. That is what his son told me—before the job left. It wasn't done right because the son said something to me about it before it left the station.

Q. In connection with Mr. Gilbert, were you at the Dorrville plant when negotiaitons went on with him for the station? A. I was.

Q. And who do you recall being present at that time? A. Mr. Gilbert was up there twice, to the best of my recollection. He came up once. Mr. Fitts was there to talk to him. The second time he come up his nephew was with him. Mr. Fitts wasn't there.

Q. Mr. Gilbert's nephew was there? A. Mr. Gilbert's nephew. I believe it was the nephew, yes. He helped him run the station for a while.

Q. You don't know his name, do you? A. I can't recollect. He didn't stay with him about two or three months. I don't remember his name at the present time.

Q. At any rate, Gilbert visited Dorrville on two occasions? A. That's right.

Q. On one occasion he spoke to Mr. Fitts and yourself? A. That's right.

Q. That was the first visit, was it? (5779) A. Yes.

Q. And at that time Mr. Gilbert was alone, was he? A. Yes, sir, he was. He brought his nephew back the second time.

Q. How long after the first visit, do you recall? A. It was the next week, as best I can remember.

Q. Mr. Fitts was not present? A. No, sir.

Q. You spoke with him alone? A. Yes, sir.

Q. When did he sign his lease? A. I don't remember the exact date.

Q. I didn't mean the date. I mean, did he sign the lease on the first visit or the second? A. He didn't sign the

lease on either visit. He signed the lease at the station when we took inventory with the dealer, Mr. Dean, who was there. He signed the lease the day he went in the service station.

Q. And was the nephew there with him at that time? A. Who?

Q. His nephew? A. Yes, sir.

Q. Were you and Mr. Fitts both there at that time? A. No, sir. Mr. Fitts wasn't there. I was there.

Q. Then, actually that would be the third occasion, wouldn't it? The visit with Mr. Fitts and yourself at Dorrville; then, (5780) the second one with Mr. Gilbert and his nephew and yourself— A. (interposing) That's right.

Q. (continuing) —at Dorrville; and the third time was with you and Mr. Gilbert at the station when he signed the lease. Is that correct? A. That is the usual procedure. You sign the lease when you check the man in the service station, yes, sir.

Q. And you knew where he was buying his TBA, did you? I think you said Ponders Tire Company? A. Yes, sir, he bought some recaps from Ponders.

Q. Where else did he buy? A. Firestone Tire and Rubber Company.

Q. Do you recall any other place? A. Yes. He bought accessories from Genuine Parts Company, and he bought them from Westend Auto Supply.

Q. Anybody else? A. I imagine so, but I don't remember the exact names of the companies he bought from because he was in business in a Cities Service station. He had been buying for years from that station and I imagine he bought from several other companies, yes.

Q. You know he bought from these? A. I know he bought from those two, yes.

Q. You saw the salesman in there, did you? A. Yes, I have seen the salesman in there.

(5781) Q. For each? A. And the trucks, too, bringing the merchandise in.

Q. How often did you visit Mr. Gilbert's station? A. Well, at that time I had about 18 stations. I got around to every one of my stations at least once a week and sometimes more. He was close to my neighborhood, not too far from where I live, and I got there quite often.

Q. What was the occasion for your visit to these stations? What transpired? Did you try to sell gasoline and oil and that sort of thing? A. Yes, sir. Naturally, we try to sell our own products, gasoline and oil. Of course, gasoline, we don't fool too much with taking orders on gasoline because that is handled through a dispatcher. But on the oils and greases, the salesman checks stocks, talks to the dealers about merchandising oil, and we work with him on the S-75 system, the follow-up system which helps get more customers into the station and make more revenue out of the business, and make house-to-house calls, call on people in the neighborhood, business people.

Q. You do that for the dealer? A. Yes, sir. We work with him and ask him if he has any problems. You also have to look after the maintenance of the building.

Q. How about his bookkeeping? Do you help him with that? A. I usually recommend if he hasn't got a bookkeeper to get (5782) a good set of books and have a bookkeeper keep his books for him, because a service station man doesn't have time to keep books and try to sell and do the right selling job. It is cheap enough to have a bookkeeper.

Q. Doesn't Texaco have some sort of bookkeeping system that they recommend? A. Well, no, we don't have any ourselves. We recommend they get a good bookkeeping system from some source: National Cash Register,

different local bookkeeping companies in Atlanta. We recommend that they have a good bookkeeping system.

Q. How about record keeping in general? Do you help with that? A. Yes, sir.

Q. Straighten out his files and that sort of thing? A. I never did go in a man's files unless he asked me about something. If he wanted to find out something, to be straightened out, I wouldn't go in his office through his desk or something like that. It wasn't my place.

Q. On this Green and Presley station, can you tell us the source of their TBA now? A. They are not in business there anymore.

Q. I realize that. A. You mean what they are doing now?

Q. No. You mentioned that they had an old station between '47 and '48, built a new station, building in '49 and completed (5783) in '50. A. Completed in '49.

Q. Then, you mentioned that at the old station they carried Hood, Firestone, Exide batteries, and in the new station they carried Hood and Firestone. A. He carried batteries, too.

Q. Firestone? A. They hadn't completely closed down. They kept the little building over there, a shack where they kept the merchandise in, and carried the tires and things home, and when they got the new station built they put them in there when they opened up.

Q. In other words, when they took in the new station, they took in there the stock that they had in the old? A. Yes, sir.

Q. Do you recall the size of their stock of Exide batteries and Firestone tires and so on? A. I would say, I don't remember the exact number, they had anywhere from 20 to 30 tires on hand at all times.

(5784) Q. Was that Firestone? A. It would be Firestone and Hood. Hood and Firestone is what they carried.

Q. How many Hood did they have in that batch, do you have any idea? A. I would say it was 50/50.

Q. And they continued to carry those Hoods all the time they were in the new station? A. They carried them up until the latter part of '49 and they changed then to B. F. Goodrich.

Q. Goodrich? A. That's right.

Q. Did they have Goodrich and Firestone then, those two lines? A. No, sir. They carried Firestone—they went to B. F. Goodrich line in the latter part of '49 and the station was completed, because B. F. Goodrich warehouse was located just down the street from where they built and it was more convenient for them to go down there and get their purchases. That is what they told me.

Q. When they were in the new station they carried the B. F. Goodrich line? A. Yes, sir.

Q. Batteries and accessories? A. Yes, sir.

(5785) Q. The full line of TBA? A. I imagine so. They bought from other sources besides B. F. Goodrich.

Q. They did— A. They still bought tires and I imagine they bought some more Hoods, too. They didn't stock a complete line of all of them but they bought them on a pick-up basis.

Q. You know that they took on the Goodrich line? A. Yes, sir; they put in B. F. Goodrich.

Q. Mr. Hardin—is that H-a-r-d-i-n? A. It is H-a-r-d-i-n.

Q. In addition to purchases that they made from Gordy and Ponders, who else did they buy from? A. Firestone.

Q. And do you recall what they purchased from Firestone? A. They purchased tires and they purchased accessory items.

Q. How about some of those dry batteries? Did they get those from Firestone? A. They did, when they first

opened up, buy Firestone batteries but they switched to the other battery line.

Q. Which other? A. You just called it a while ago. What was it? Southern batteries?

Southern batteries is what they had.

Q. That was it? (5786) A. Yes, sir. They still have it.

Q. How about accessories? Did they carry Firestone accessories, too? A. They bought some because the Firestone Auto Supply store was up the street from their station. They bought some, and they bought from other sources, too.

Q. Mr. Gresham, I believe you said he carried Lee and Goodyear tires? A. That's right.

Q. Can you give us some idea of how many of each? A. Gresham carries anywhere from 20 to 40 tires, I think, in his station most of the time. About that many.

Q. How many would be Goodrich and how many Lee? A. It varied. I would say maybe 50/50, is about what he had, about the time he is talking about.

Q. How about batteries and accessories? Do you recall what he purchased? A. Yes, sir. He bought some accessories from B. F. Goodrich and he bought from Genuine parts in East Atlanta, and he also bought from the Firestone store. He bought some accessories from them. East Atlanta Auto Supply, too.

Q. How about this L. C. Smith? What tires did he carry? A. L. C. Smith had the B. F. Goodrich line of tires.

Q. How about batteries? A. He had B. F. Goodrich batteries, and I believe Southern (5787) batteries. He sold some of those.

Q. Not many of those? A. Yes, quite a few.

Q. How about accessories? A. I imagine B. F. Goodrich accessories. I didn't call on L. C. Smith. I was a

salesman. I did know he had the B. F. Goodrich line in his station.

Q. You knew that? A. Yes. I helped him open the station up. I was on a different job then as dealer training.

Q. What is that, "dealer training"? A. Dealer training?

Q. Yes. A. Working with the service station man.

Q. You go from station to station giving advice? A. That, and also holding conferences. On product information and things like that.

Q. Do you carry out the Texaco policy recommending Goodrich or Firestone TBA? A. A dealer's training job, he doesn't go into dealers to recommend anything to him. You go in there in a meeting with the idea of bringing information to him, a merchandising idea, helping him to sell more of the petroleum products and also TBA—tires, batteries and accessories.

Q. And you never recommend TBA to him? (5788) A. Not as a dealer training, you wouldn't; no, sir.

Q. How many stations do you cover now? Let me first of all ask this: At this time you are a merchandise salesman, is that correct? A. That's right.

Q. And have been since July 1, 1953? A. That's right.

Q. During that period—just restrict your answer to that period, July 1, 1953 to date—you call on you think 18 stations throughout Atlanta in your territory? A. You mean now?

Q. Yes. A. I have 28 now.

Q. It grew from 18 to 28 over the years from July, 1953 to now? A. Yes.

Q. Of those 28, can you tell us how many carry Firestone and/or Goodrich products? A. Of the 28 right now?

Q. Yes. A. I could if I took a pencil and paper and figured it out right quick, if you want me to. I can just

jot down which ones are which. I have some dealers who have U. S. Royal.

Q. All right. Mention those, too.

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(5789) A. This is about right. I think there is one station under construction. I said 28. A lot of those stations sell those brands of tires but carry other tires, too.

Mr. Dias: I would like the record to show that there are 12 stations carrying Firestone products.

By Mr. Dias:

Q. Is that correct? A. Yes.

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(5790) A lot of them carry most of them and other tires, too. You asked the question, how many carry different lines. I told you those were the lines. They carry other tires, too. If you did that you would have about twice as many stations listed there.

Q. You have counted your 28 stations? A. Yes, sir.

Q. And the figures you gave us here show the number of stations that carry Firestone? A. Yes.

Q. The number of stations that carry Goodrich? A. Yes, sir.

Q. And the number of stations that carry U. S.? A. You can take some of those carrying U. S. They have Firestone tires, too.

Q. There are four shown for U. S. How many of those four (5791) also carry Firestone? A. Two of them.

Q. Two of the four also carry Firestone? A. That's right.

Q. And is the same true with Goodrich and those that you listed under Goodrich and Firestone? Some of them carry both or all three? A. They carry them or pick them up and sell different brands. They have both lines.

Q. Listed under Goodrich there are 10 stations listed as carrying Goodrich. That gives us a total of 26 out of the 28. What about the other two stations? A. One of them is under construction and is not quite completed yet. It is in my territory. I haven't anybody assigned to it. And the other carries Armstrong batteries. I didn't list that because you didn't ask me about it.

Q. I am coming to it.

Is he a lessee? A. He is a Texaco third party lease dealer.

Q. Then we will alter the list to show one Texaco lessee carrying Armstrong. Are those the full 28 stations? That accounts for the 28 that you cover? A. Those are the ones I call on, yes.

Q. What is your area, by the way? A. It is part of the Southeast side of Atlanta and all of (5792) the Southwest side of Atlanta. I have one station in Covington, Georgia. He also has—I made a mistake. He has Armstrong tires, too. Doug Ivey.

Q. What is the name of the other gentleman who carries Armstrong? A. Mr. Roy Thornton, and Excello batteries.

Q. How do you spell his name? A. T-h-o-r-n-t-o-n.

Q. Is that the name of the station or is there a trade name? A. Roy Thornton Service Station and Doug Ivey Service Station.

Q. Did I ask you about Mr. L. C. Smith? A. Yes, sir.

Q. Who has Mr. Scott's station right now? Douglas Scott? A. Who is the salesman?

Q. No. Who is running the station? Is that your territory? A. No, sir; that is not my territory.

Q. How about Mr. Gilbert? A. Mr. Gilbert's station?

Q. Yes. Do you know who is running that? A. Yes. Mr. Roy Cook.

Q. And do you know the hours he keeps there? A. He opens at 7 and closes at 10:30 to 11:00 o'clock at night.

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(5793) *Redirect examination by Mr. Lorenzen:*

Q. On this Green and Presley situation, I don't know whether we got confused on dates. I noticed, I think on direct examination, that that old station was in operation all of 1948. A. 'Forty-eight.

Q. And it was rebuilt in 1949? A. 'Forty-nine.

Q. And it was operated again for a complete year, 1950; is that right? A. That's right.

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(5795) Q. When did the change to Goodrich come? Some time after that? A. The latter part of 1949 is when they changed to B. F. Goodrich, after the new station was completed they went to B. F. Goodrich, yes.

Q. So the change to Goodrich was— A. In 1949.

Q. In 1949? A. Yes, sir.

Q. Now about these tire figures that Mr. Dias put in the record that he invited me to ask you about some more. Those numbers that you gave him showing dealers who handle the Firestone or Goodrich or US or Armstrong line don't mean that those dealers don't handle some other line, too? A. You mean just a while ago?

Q. Yes. A. Thornton?

Q. No, all of them. A. They all handle different lines of tires, yes, sir. They can handle anything they want. They can buy from any source they want to.

Q. And they do handle different lines? A. Yes, sir.

Q. So what you gave him was only the principal line of each one? (5796) A. Yes, sir.

Q. And not other lines that they might handle? A. Dealers don't sell—if a customer comes in and wants to buy a tire, he is crazy if he doesn't go out and get that tire rather than lose that sale. I would want to do it.

Q. These fellows who handle the Armstrong tires, they display those tires? A. Yes, sir.

Q. Can any other dealer of a Texas Company who happens to go by the station belonging to this station see those tires? A. Yes, sir, in the shed.

Q. And do those Armstrong fellows attend dealer meetings? A. Yes, sir.

Q. And you don't keep them apart from the other dealers so that he can't talk to them? A. No, sir.

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(5797) Q. Do you go to these dealer meetings? A. I hold the dealer meetings.

Q. After the meetings do the dealers talk with each other? A. Sometimes they sit around for an hour or two and talk, yes, sir.

Q. They talk shop? A. They just talk in general about different things, yes, sir.

Q. Do they talk about their service stations? A. They exchange ideas on how to operate their business.

Q. And you say these two Armstrong fellows attend the meetings, too? A. Yes, they come to the meetings.

Q. Mr. L. C. Smith, who you said handled Southern batteries, of course he is still a dealer as far as you know? A. Yes, sir. A good one.

Q. And he does a big business in Southern batteries; do you know that? (5798) A. He still has Southern batteries at his station.

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By Mr. Lorenzen:

Q. On direct examination do you recall there was a question as to whether the TBA on which the Texas Company got commissions sold by Messrs. Green and Presley was about the same in 1948 as it was in 1950? A. Yes, sir.

Q. Do you recall that? (5799) A. Yes, sir.

Q. Didn't you tell me that within a few dollars it was the same? A. About the same within two or three dollars difference.

Q. And wasn't that based upon your looking up the records to see what the amount of the commissions were that the Texas Company got? A. Yes, sir, it was.

Q. And do you know approximately what it was in 1948 and what it was in 1950? A. You mean about the amount of money?

Q. Yes. A. About $115 and a few cents in 1948, and around $118 in 1950.

Mr. Lorenzen: Does that clear it up?

Further recross examination by Mr. Dias:

Q. Do you keep current with these commissions that are earned? A. Do I keep current with them?

Q. Yes, with commissions that are earned by various stations on behalf of Texaco. A. In my territory, yes, sir.

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(5800) *By Mr. Dias:*

Q. Let me ask one more question. As a merchandise salesman you do keep track of these commissions that are earned? A. No, sir, I don't.

Q. You do not? A. No, sir.

Q. You do keep track of the merchandise that they buy? A. Well, I know pretty well how much they buy. The

service station stock. I know what they are buying. After 29 years I ought to be able to know a little bit about it.

Q. Yes. And you know the wholesale and retail prices. A. That is right. I know what they buy because I have run the stations myself for dealers and have seen the merchandise. A lot of times they will be out to lunch. I know what they pay for them.

(5801) Q. And of course you know what they sell for? A. Sure. I buy them for my wife's car sometimes. I ought to know what I pay for them.

Q. Is that the only way you know what the general resale price is on these items? Or do you just keep familiar with that? A. Naturally, me being a salesman of the Company, I would know what the—going around service stations—what dealers sell merchandise for. It is marked on the shelves.

Q. I understand. I agree that is so. But you limited it to your wife's car. A. I thought that is what you asked.

Q. No. I wanted to know as a general proposition— A. Most dealers mark their merchandise, the retail prices on their merchandise.

Q. And you also know what they are paying for it when they buy it? A. I know sometimes what the price is, yes. Sometimes I don't.

Q. Sometimes— A. The prices on tires and batteries vary from time to time. It is hard to keep up with it even being a dealer. They change a lot.

Q. You can make a pretty good estimate, can you? A. Yes, I believe I could.

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(5802) *Further redirect examination by Mr. Lorenzen:*

Q. At any time have you used these estimates or whatever you call it, as the basis for threatening a dealer with lease cancellation or any other unfavorable conduct if he

didn't buy some or all of the Firestone or Goodrich line? A. No, sir, I have never threatened any dealer.

Q. You didn't produce those figures for any such purpose, did you? A. No, sir.

(5803) *Further recross examination by Mr. Dias:*

Q. Do you use those figures to further urge dealers to buy the sponsored products? A. I don't use the figures in that respect at all. I think you misunderstood me. I just know what the prices are, after being a salesman.

Q. I understand. You don't use that information to threaten people to buy? A. No, sir. Never have.

Q. But if they are not buying as much Firestone or Goodrich as you think they should, do you urge them to buy?

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A. I don't tell a dealer what to buy at all. I told you that at the beginning. I tell them to buy what they want to. I don't tell a dealer what to buy. They are independent merchants and buy what they want.

Q. I understand that. As a salesman, isn't it your duty to promote your products, to promote the sale of your products? A. Texaco products, yes.

(5804) Q. Doesn't Texaco promote the sale or suggest that dealers purchase Firestone and Goodrich TBA? A. We recommend the two lines to them, yes.

Q. If a dealer's sales or purchases of Firestone or Goodrich products are not what you think they might be, or could be, do you urge or recommend that that dealer buy more and sell more? A. No, sir.

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B. C. Chiles, for Respondents—Direct

(5805) B. C. CHILES was called as a witness for the Respondent and, after being properly and duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Please state your full name. A. B. C. Chiles, 334 West Cottage, Pulaski, Tennessee.

Q. You operate a service station, do you? A. I do.

Q. Where? A. Pulaski, Highway 64-West.

Q. You sell Texaco gasoline? A. I do.

Q. Do you have a lease from the Texas Company which renews itself each year? A. I do.

Q. And you have been at that location for 12 years? A. Yes, sir.

(5806) Q. What is the gallonage of your station? A. About an average of 15,000.

Q. Do you handle TBA? A. I do.

Q. Do you find it helps you in your business? A. I do.

Q. Is that why you handle it? A. Yes, sir.

Q. What kind of TBA do you have there? Let's start out with the name of the tires and how many of each you have in stock. A. At present I have about 40, something like that, Dunlop, and about 25 Greer. And about seven or eight National.

Q. Do you have any Firestone? A. I think there are two.

Q. Is that about the way your stocking has been for some time past? A. It has.

Q. This Greer line is one that you have had on and off? A. I have had it on and off for the past six years.

Q. What happens when you don't have Greer? Do you have more of some other brand or Dunlop? A. Usually.

Q. What other brand? A. Dunlop.

Q. You have more Dunlops when you don't have Greer? (5807) A. That's right.

Q. What about batteries? A. Hester.

Q. And about how many of those do you have? A. I usually stock about eight.

Q. What did you have before you carried Hester? A. Winters.

Q. That was some five years ago? A. About five.

Q. What did you have before you had the Winters? A. Southern.

Q. You opened with those? A. I opened with Southern.

Q. How about your accessories; from what source do you get those? A. Parts houses—auto parts.

Q. Do you get any of those from either a Firestone or Goodrich supply point? A. No, I don't.

Q. So, the only thing that you get from either Firestone or Goodrich is you pick up a tire or two once in a while? A. That's right.

Q. And that is the extent of your purchases of Firestone or Goodrich? A. Yes.

(5808) Q. And that has been true for years before today? A. Yes.

Q. Do you advertise the Dunlop tires? A. I do.

Q. Are you listed in the phone book under any TBA item? A. I think so. I am not sure the way it reads. I just renewed it and I don't know how the new one reads.

Q. What is your best recollection? A. Dunlop and Firestone tires, I believe.

Q. You think you are listed under both? A. Yes, sir.

Q. How about your display? Do you display the Dunlop tires? A. I do.

Q. And the Greer tires? A. I do.

Q. In this last go around with Greer, you have just taken them on within the last six months? A. That's right.

Q. Do you display your Hester batteries? A. I do.

Q. Do you have a sign in the window about those? A. Yes, I have a light.

Q. A light sign? A. Yes. It is about three feet long by 12 inches wide with a fluorescent light.

Q. And that sign you haven't had there too long, have you? (5809) A. About six months, I think.

Q. And before that, did you have any sign advertising Hesters? A. No. I had a Dunlop sign in the window.

Q. Dunlop sign? A. Yes.

Q. Inside your store do you still have a franchise Dunlop dealer sign? A. I do.

Q. Is that quite visible? A. Yes.

Q. Anybody can see it? A. That's right. Driving along in front of the station you can see it.

Q. Can anybody see the Dunlop tires? A. Yes. They are in the rack.

Q. And the Greer tires? A. That's right.

Q. You make no effort to hide them? A. No.

Q. What sort of fanbelts do you have? A. Dayton.

Q. Do you display those on the rack with the name "Dayton" on it? A. The rack across the back end of the lube and wash bay. It runs all the way across.

(5810) Q. Does it have the name "Dayton" on it? A. It does.

Q. During the time you have been in this station, has the Texas Company furnished you with any new pumps? A. Yes.

Q. And has the Texas Company painted your station? A. Yes.

Q. At any time has any one from the Texas Company threatened you with a cancellation of your lease, or suggested to you that you would be treated badly in any way if you didn't buy some or all of the Firestone or Goodrich line? A. No.

Q. You said that you were listed under Firestone tires. Do you find that—tell me whether or not there is a class of your customers who you find are attracted by the Fire-

stone advertising? A. Well, I find it helps the transient trade.

Q. The transient trade you think is helped by the Firestone sign? A. I think so.

Q. And you sell your Dunlop tires mostly to your local customers? A. That's right.

Q. Just give us the name of the principal supply house from which you buy your accessories? (5811) A. Church Auto Parts; Lewisburg; D. H. Diegler; and—there are different ones. I have several more. I guess Motor Parts. I guess that is about it.

Q. Has anyone from the Texas Company ever suggested to you that you shouldn't display these items of TBA? A. No.

Q. Or that any kind of reprisal would be taken against you if you did display the Dunlop line or the Hester line? A. No.

Q. Or the Greer line? A. No.

(5812) Q. Have you, during the time you have been a dealer, attended dealers' meetings? A. I have.

Q. Where, and about how many dealers have been there? A. Well, we usually have a spring dealer meeting once a year, and as well as I remember I haven't missed one since I have been with the Company. I haven't missed any.

Q. About how many dealers are there? A. I would say, from 100 to 150.

Q. At any of these meetings has any one from the Texas Company ever suggested that any dealer would have his lease cancelled or would be treated badly in any way if he didn't buy some or all of the Firestone or Goodrich line? A. No.

Q. Have you become acquainted with any of the dealers in those meetings? A. Several of them.

Q. At any time, have any of the dealers told you that the Texas Company had suggested to them or threatened them with lease cancellation, or with any other kind of bad treatment if they didn't buy some or all of the Firestone or Goodrich line? A. No.

Q. Have you felt all along that you are free to buy any TBA that you thought was best for you? A. Yes.

(5813) Q. Have you acted on that idea? A. I have.

Q. Have you understood that the Texas Company does recommend Firestone and Goodrich? A. Yes.

Q. You have known that? A. I have known it ever since I have been with the Company.

Q. And you have also known that you could buy where you wanted to if you didn't want to go along with the recommendation? A. I have.

Mr. Lorenzen: That is all.

Cross-examination by Mr. Dias:

Q. How many are "several," Mr. Chiles? You mentioned that you knew several of these dealers at the meetings. A. I would say approximately 10 or 15.

Q. Do you know who owns the property that your station is on? A. Yes.

Q. Who? A. Jimmy Townsend. That is all I know, just Jimmy Townsend.

Q. Any relative of yours? A. No.

Q. Friend? A. No. I have only seen him one time. I met him one time, that I can recollect.

(5814) Q. Can you give us the date that you started with Texaco? A. 'Forty-six.

Q. 'Forty-six? A. February, 1946.

Q. And you have been with them continuously since then? A. I have.

Q. Do you have another station? A. Not now.

Q. Did you at one time? A. I did.

Q. Where was that located? A. The north end of town, North First Street.

Q. Was that another Texaco? A. No.

Q. What was that? A. Shell.

Q. When did you give that up? A. In October.

Q. Of which year? A. Last year.

Q. Nineteen— A. 'Fifty-seven.

Q. Did you transfer your stock from that Shell station over— A. I did not.

(5815) Q. You sold that out complete? A. Yes.

Q. Do you get any of your TBA products that you stock now on consignment? A. No.

Q. Can you give us some idea of the size of Pulaski? A. About 7,000.

Q. Are there other Texaco stations in town? A. One more.

Q. Where is he located? A. North First Street. Highway 31, North.

Q. That isn't your "ex-" Shell station, is it? A. No.

Q. Do you know what kind of TBA he carries? A. Gillette, I think.

Q. Is there a Firestone retail outlet in town? A. Yes.

Q. Where is that located? A. Tennessee Recappers, North First Street.

Q. How far are you from— A. You said "retail"?

Q. Yes. Store or station or anything else? A. It is retail.

Q. That is North First Street? A. Yes.

(5816) Q. How far are you from North First Street? A. Four blocks. Wait a minute. North First Street, he is about a half-mile from where this place is located.

Q. Is that the only place in town where you can buy Firestone products? A. No.

B. C. Chiles, for Respondents—Redirect

F. H. Worsham, for Respondents—Direct

Q. What is the closest place to your station that you can buy Firestone? A. Texas Company.

Q. Texas Company? A. The consignee.

Q. Where is he located? A. A quarter of a mile from Route 64 Highway.

Q. Are you related to the consignee? A. No, sir.

Q. How about Goodrich? Where is the nearest retail outlet for Goodrich? A. About 18 miles.

Mr. Dias: I have nothing further.

Redirect examination by Mr. Lorenzen:

Q. How far do you have to go to get Dunlop or Goodyear tires? A. About 70 miles. Nashville.

Q. And your Firestone consignee is within a quarter mile of you? I mean the Texas consignee who handles Firestone is (5817) within a quarter mile of you? A. That's right.

Mr. Lorenzen: That is all.

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(5822) F. H. WORSHAM was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your name to the reporter please? A. F. H. Worsham.

Q. Where do you live? A. Grenada, Mississippi.

Q. Are you in the service station business? A. Yes, sir.

Q. Where is that located? A. U. S. Highway 51.

Q. In Grenada? A. In Grenada.

Q. Do you sell Texaco gasoline there? A. Right.

Q. Do you lease your service station from the Texas Company? A. Yes, sir.

Q. Do you have one of these leases which renews itself each year? (5823) A. Yes, sir.

Q. About what is the gallonage of your station? A. About 18,000.

Q. Do you handle TBA at the station? A. Yes, sir.

Q. Why do you do that? A. To make money.

Q. What kind of tires do you have there? A. General.

Q. About how many do you have in stock? A. About fifty.

Q. Do you stock any other tires? A. No.

Q. What sort of batteries do you have there? A. Southern.

Q. About how many of those do you have in stock? A. About 12 or 15.

Q. Do you stock any others? A. No.

Q. How about your accessories? Generally from what source do you buy those? A. Independent jobbers—D&N, Osborn-Abston.

Q. Is that where you get most of your accessories? A. That is right.

Q. That includes Dayton fan belts and radiator hose? (5824) A. That is right.

Q. Do you display that on Dayton racks? A. Cabinet, yes, sir.

Q. Dayton cabinet? A. Yes, sir.

Q. And they have the name Dayton on them? A. Yes, sir.

Q. Do you buy anything from Freeman Tire and Supply Company? A. A few tires.

Q. What kind of tires? A. Goodrich.

Q. And do you stock those or is it on a pick-up basis? A. On a pick-up basis.

Q. Do you display your General tires? A. Yes, sir.

Q. And your Southern batteries? A. Yes, sir.

Q. Openly? A. Yes, sir.

Q. And the same goes for all of your accessories? A. That is right.

Q. Do you try to hide any of them? A. No, sir.

Q. Does the Texas Company know that you stock these Generals and Southern batteries and the Dayton belts? (5825) A. Yes, sir, I guess so.

Q. Does the Texas station manager come into your station quite often? A. Yes, sir, about once a week.

Q. He lives in your town? A. Yes, sir.

Q. You display those General tires in the front of your station, do you? A. Yes, sir.

Q. Anybody can see them? A. That is right.

Q. Where are your Southern batteries displayed? A. They are in the office, in the window.

Q. In the window of the office? A. Yes, sir.

Q. Where anybody can see them? A. Yes, sir.

(5826) Q. Tell me, even though you don't stock any Goodrich tires, don't you have a Goodrich decal in that station? A. I have decals on my windows, yes, sir.

Q. You have a decal in your window? A. Yes, sir.

Q. Will you tell us the reason for having that? A. Well, to attract tourist business mostly.

Q. You think the name "Goodrich" attracts tourist business to your station? A. I think so. It is a popular brand.

Q. Is that the reason you have this sign even though you don't stock any of the tires? A. That's right.

Q. Tell me, do you have an understanding as to what the Texas Company's TBA policy is? A. Yes, sir. To sell either Firestone or Goodrich.

Q. You know that they sell it and recommend it? A. Yes, sir.

Q. Do you also know that you could buy any place you wanted to? A. Yes, sir.

Q. And you did do so? A. I did.

Q. And you are doing so now? A. Yes.

(5627) Q. Percentagewise, have you got any idea of how much this pick-up of Goodrich tires amounts to, of your total? A. Probably 15 percent of my sales.

Q. And that is the total of the Firestone or Goodrich line that you buy? A. That's right.

Q. That is all? A. That's right.

Q. Do you find that you get any help from the Texas Company in connection with marketing your TBA? A. Repeat that, please.

Q. Do you figure you get any help from the Texas Company in selling the TBA to your customers? A. Yes, sir.

Q. What sort of help do you think you get? A. Well, selling on the driveway teaches you to sell; merchandising.

Q. Where do you find that the Texas Company gives you that kind of help? A. At the sales meeting, training meeting.

Q. How many of those meetings do you attend? A. About twice a year.

Q. About how many dealers attend those meetings? A. In the spring meeting, I would say 25, and just a regular dealer meeting, probably about eight.

(5828) Q. Do you know what is the division point of the Texas Company which has to do with your station? A. Will you repeat that please.

Q. Do you know what the division point is of the Texas Company, where the division manager is? A. Yes, sir.

Q. Where is it? A. Jackson, Mississippi. The division manager.

Q. He is at Jackson? A. I believe so.

Q. Is there any connection with New Orleans? A. Yes, sir. New Orleans is division headquarters, I believe.

Q. New Orleans is the division headquarters? A. I think so.

Q. And you are in the Jackson district? A. Yes, sir.

Q. At any time in the course of those meetings has anyone from the Texas Company suggested that any dealer's lease might be cancelled or that he would be treated badly in some other way if he didn't handle some or all of the Firestone or Goodrich line? A. No.

Q. Have you become acquainted with the dealers, other Texaco dealers at those meetings? A. Well, yes, sir.

(5829) Q. Do you know some of them well enough to talk to? A. Yes, sir.

Q. Have you talked to quite a few of them? A. Oh, yes.

Q. Have you talked to them after the meetings, after the formal part of the meetings? A. Yes, sir.

Q. At any time have any of those dealers told you that they had been threatened in anyway by the Texas Company to the effect that their lease might be cancelled or that they would be treated badly in some other way— A. (interposing) No.

Q. (continuing)—if they didn't handle some or all of the Firestone or Goodrich line? A. No.

Q. Nothing like that has ever been told to you or suggested to you? A. No.

Q. In addition to the service station business, you also have a recapping business, do you? A. Yes, sir.

Q. And that is a General Tire type of recapping; is that correct? A. Yes, sir.

Q. And the Texas Company knows that you conduct that? (5830) A. Oh, yes.

Q. That is conducted right on your own property back of the station, is it not? A. Right.

Q. When I asked you whether it was a General recapping, I meant the trade name "General Tire Recapping". Did you mean that, too? A. That's right.

Cross examination by Mr. Dias:

Q. Is that General Tire or is that a Grenada tire shop? A. I moved recently. It is Doc's Tire Shop now.

Q. Not General? That isn't the name of it? A. I sell General tires. No, it isn't the name.

Q. I think the record is getting confused. You are not talking about the brand "General Tire", are you? You mean general in respect to all types of tires? A. General Tire.

Q. Is that title— A. (interposing) That is the title of the tire.

Q. That is the trade name? A. The trade name.

Q. And that is the one that you sell in the tire shop, is that it? A. Yes. And service station, too.

(5831) Q. That is, the General Tire? A. That's right.

Q. Do you do any other kind of business in that tire store? A. No.

Q. Did I understand that you did recapping? A. Recapping, yes.

Q. You do recapping and sell the General Tire? A. That's right.

Q. And did you say that you own the property back of this station where the tire business is located? A. Yes.

Q. Who owns the property where the station is located? A. Mr. Knox Pierce, consignee.

Q. Is he any relative of yours? A. No, sir.

Q. At these dealer meetings you say that there are about 20 or 25 who attend in the spring and eight who attend the regular meeting. At any of these meetings have you seen Texaco or Firestone salesmen? Have they been there? A. Yes, sir.

Q. In your conversations with the other dealers, I got the impression that you didn't know too many of them personally; is that correct? A. I know some.

Q. You know some? (5832) A. Yes.

Q. Would you say a few? A. Yes, sir.

Q. The answer is yes? A. Yes.

Q. How many Texaco stations are in Grenada? A. Four, including mine.

Q. Is there a Firestone retail outlet located anywhere near you? A. No, sir.

Q. Is there one in town? A. No, sir.

Q. How about Goodrich; is there a Goodrich retail outlet? A. Yes, sir.

Q. Where is that located? A. About two doors from my service station.

Q. What type of outlet is that? A. That is retail.

Q. It is a B. F. Goodrich store? A. A store.

Q. In addition to the Goodrich decal, don't you also have a large Goodrich tire sign near your building? A. No, sir.

Q. You do not? A. No, sir.

(5833) Q. How long has that been, do you know? A. I never have had a large Goodrich sign.

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Q. Did you say or were you asked whether or not you carried any Firestone accessories? A. No, sir.

Q. You do not? A. No, sir.

Q. No radiator cleaner? A. No, sir.

Q. Sidewall cleaner? A. No, sir.

Q. And you are quite sure that you have never had a Goodrich tire sign near the building now or at any time recently? A. No, sir. I didn't.

Q. Is there any significance in that that you didn't? Is it possible somebody else may have had one there? (5834) A. I think there is a sign in the intersection of No. 8 and 51. 444 used to be a Goodrich dealer years ago and the

sign still remains there, but I don't have anything to do with that.

Q. How close is that to your place? A. It adjoins my lot.

Q. Just about how far away from your station is it in a matter of feet? Can you give us an idea? A. About 75 or a hundred feet.

Mr. Dias: I have nothing further.

Redirect examination by Mr. Lorenzen:

Q. I want to get this sign situation straightened out. You say there used to be a Goodrich dealer near your lot, adjoining your lot? A. It is a billboard near there.

Q. It is a bill— A. (interposing) It doesn't have anything to do with mine.

Q. It is a Goodrich billboard? A. That's right.

Q. And it has nothing to do with your operation at all? A. That's right.

Q. You don't pay for it or maintain it? A. No, sir.

Q. You have nothing whatever to do with it? A. No, sir.

(5835) Q. It isn't on your land? A. No, sir.

Q. You were asked about whether there is a Goodrich store near you. Is that a store from which you pick up your Goodrich tires? A. That's right.

Q. And your General tires you pick up where? A. One hundred miles away—Memphis.

Q. I don't think there was any confusion but I think you told Mr. Dias, as you told me, that you stock General tires in your station as well as in your recapping plant? A. I display them there. I keep most of my stock in the recapping plant.

Q. But you have a display in your station? A. Yes, sir.

F. H, Worsham, for Respondents—Recross

Kenneth Heth, for Respondents—Direct

Q. You told me out in front of your station? A. Yes, sir.

Q. In your recapping do you use the General—what do you call it, Camelback? A. Some, yes, sir.

Q. They have a peculiar tread design on it which is peculiar to General? A. I have an independent tread. I just buy their rubber.

Q. You just buy their rubber? A. Yes, sir.

(5836) Mr. Lorenzen: That is all.

Recross examination by Mr. Dias:

Q. Do you do any Goodrich recapping? A. No, sir.

Q. You do not? A. No, sir.

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(5837) KENNETH HETH was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you please state your full name to the reporter? A. My name is Kenneth Heth.

Q. Where do you live? A. I live at 2846 Burlington, Dallas, Texas.

Q. Are you in the service station business? A. Yes, sir.

Q. Where is the location of your station? A. 3800 West Davis, Dallas, Texas.

Q. Do you sell Texaco gasoline there? A. Yes, sir.

Q. Do you have a lease from the Texas Company? A. Yes, sir.

Q. About what is the gallonage at your station? A. About 25,000 gallons a month.

Q. Is the lease which you have one of those which renews itself each year? A. Yes, sir.

Q. Do you handle TBA at that station? (5838) A. Yes, sir.

Q. Will you tell us why you handle it? A. For a profit.

Q. Is that your own decision? A. Yes, sir.

Q. Tell me, have you had an understanding of the Texas Company's TBA policy while you have been a lessee? A. Say that again, please, sir.

Q. Have you had an understanding of the Texas Company's TBA policy while you have been a lessee? A. Yes, sir.

Q. What has been that understanding? A. I knew that they recommended Firestone and Goodrich products.

Q. What was your understanding as to whether you had to buy the Firestone or Goodrich line? A. Even though I knew that they recommended those lines, I also knew that I didn't have to buy them; that I could buy my merchandise from whom I pleased, and I had.

Q. Was that made clear to you from the beginning? A. I beg your pardon?

Q. Was that made clear to you from the beginning? A. Yes, sir; it was.

Q. By the way, how long have you been in that station? A. It will be eight years this fall.

(5839) Q. At the time when you took over that station, what kind of batteries were in there? A. They were Continental batteries.

Q. When you signed the lease, did the Texas Company tell you that you would have to put those Continental batteries out of there? A. No, sir.

Q. Tell us, did you attempt to sell those Continental batteries to your customers? A. Yes, sir.

Q. Did you try to build up the business? A. I did, sir.

Q. Did you succeed? A. No, sir; I couldn't.

Q. And what finally happened about those Continental batteries? A. The Continental battery representative came one day and took them out and he told me that he was taking them out—they were in their on consignment—he told me that he was taking them out because I wasn't selling enough batteries to justify leaving them there.

Q. Did you ask him to take them out? A. No, sir.

Q. He came in on his own hook and took them out? A. Yes, sir.

(5840) Q. Then after he did that, what did you do about batteries? A. I ordered a stock of Firestone batteries.

Q. What success have you had in connection with those batteries? A. Very good success. I built up a real good battery business.

Q. Some time after you had built this business up did the Continental Battery Company get in touch with you again? A. Yes, sir. I can't recall just how far back it has been, but there was a representative came to call on me and I didn't do any business with him whatsoever.

Q. That was after you had built your business up again? A. That's right, sir.

Q. What about your battery situation now? Do you handle only Firestone? A. I handle some Delco and I also sell some Willard.

Q. As well as the Firestone? A. Yes, sir.

Q. At any time, either when you had the Continental batteries or now that you have the Willards or the Delco's in addition to the Firestone, has any representative of the Texas Company told you that they might cancel your lease or treat you badly in some other way if you didn't stop handling those batteries? A. No, sir.

(5841) Q. Do you buy some of your accessories from Firestone? A. I do.

Q. Do you buy some of your tires from Firestone? A. I do.

Q. In fact you buy all your stocking tires from Firestone now, do you not? A. That's right.

Q. Since you have been a lessee have you handled any other kind of tires in that station? A. Yes, sir; I have. I at one time carried a stock of Gates' tires. And I have sold quite a number of Goodyear tires.

Q. What was your success with that stock of Gates' tires as far as selling them to your customers? A. Well, it wasn't a success. I had a hard time selling them. They didn't have enough public acceptance in that area.

Q. Will you tell me the reason why you handle the Firestone tire now? A. I might say that I have been in the automobile service business all my life, and that has been a long time now, and I handle them because I feel like they are the best tire that is made, the best tire that you can buy.

Q. Is that the reason you handle them? A. Yes, sir.

Q. Do you handle them because you think if you don't handle (5842) them the Texas Company might cancel your lease? A. No, sir.

Q. How long have you been in the automobile business? A. Forty years.

Q. At one time did you order some tires from the Meggs Tire Company? A. Yes, sir.

Q. What kind of tires were those? A. They were Diamond tires.

Q. Did he deliver them to you? A. No, sir; they were unable to make delivery. I ordered quite a stock of them and they were unable to make the delivery.

Q. Do you display the Delco batteries which you have in stock, openly? A. Yes, sir.

Q. In your office? A. Yes, sir.

Q. What about fan belts; what kind of fan belts do you have? A. My regular stock that I carry the most of is Firestone, but I do have some Gates and all my air conditioning belts that I sell—and I sell quite a lot of air conditioning belts—are Gates.

Q. Do you display those openly? (5843) A. Yes, sir.

Q. You make no effort to hide them? A. No, sir.

Q. About how many of your tires do you think you sell out of stock, and how many do you sell on a pick-up basis? A. I would say about 50 percent.

Q. But you have quite a large stock of tires even so, don't you? A. Yes, sir. I carry a stock of about 60 tires at all times.

Q. Nevertheless, about half of your sales are on a pick-up basis? A. That's right, sir.

Q. Do you buy—in addition to Firestone, let me have the name of some of the houses from which you buy accessories. A. I believe that I buy most of my accessories other than from Firestone, of which the most of them come from Cliff Texas Automotive—

Q. That is not related to the Texas Company? A. Not at all. They are independent jobbers.

Q. Do I understand your answer correctly, you had a couple of "mosts" in there. Do you mean that you buy more accessories outside of the Firestone line than you buy in it? A. I do.

Q. Then you said that most of those accessories which you (5844) buy outside of the Firestone line you get from Cliff Automotive? A. From two suppliers there: From Cliff Automotive and Texas Automotive, and I also buy considerable from Hargett Electric Company. I buy my Delco batteries from Hargett Electric Company.

Q. Do you buy anything from Brownlee Automotive? A. They are out of business at this time, sir.

Q. You did used to buy quite substantially from them? A. Yes, sir; I did.

Q. Do you buy anything from Beard and Stone Electric Company? A. Yes, sir; I do.

Q. Anything from Johnson Automotive? A. I used to buy quite a bit from Johnson Automotive, but I don't buy very much any more.

Q. Has that anything to do with the Texas Company influencing you not to buy from them? A. No, sir.

Q. It is your own business reasons? A. Yes, sir.

Q. What was your reason for stopping your dealings with Johnson Automotive? A. My wife keeps my books, and I have always taken a lot of pride in being able to pay my bills by the 10th of the (5845) month. I try to do that religiously. Somehow, some way, my wife failed to mail them a check so that their bill, their account, would be paid by the 10th of the month. She misplaced their invoice or something happened that they didn't get paid. And when the 15th of the month came they wrote me a very nasty letter and because of that I ceased doing business with them and I only buy from them when it is something that I just can't get anywhere else.

(5846) Q. What do you find about the acceptance among your customers of Firestone tires as a brand? A. It has, in my way of thinking, perfect acceptance. Any time that I have a customer come along that is in the market for a tire or a battery, I have no trouble whatsoever of selling them a Firestone tire or a Firestone battery.

Q. Tell me, do you have any number of customers ask you by brand name for Firestone tires? A. I do.

Q. Of your customers, how many do you think ask you for them that way? A. I would say 99 percent.

Q. Do you mean they ask specifically for the Firestone tire? A. That is right, sir.

Q. Would you feel free to change to any other kind of tires if you found that popular acceptance fell off and you could make more money with some other tires? A. Yes, sir.

Q. No doubt about that in your mind? A. No, sir.

Q. You don't think the Texas Company would cancel your lease or treat you badly in other ways if you did so? A. No, sir.

Q. Do you get any help from the Texas Company in marketing your TBA? (5847) A. The only help I get is through the dealer meetings.

Q. And what kind of help do you get from those meetings? A. They show training films on driveway selling and lubrication bay selling, which is helpful—which has been helpful.

Q. You are pretty much an old timer at this business and don't need much help; is that right? A. I feel that way about it, sir.

Q. About how many dealers attend these dealer meetings? A. They are held in a series of, I believe, four days in a week, and of course there are just a certain number of dealers go each day, or certain days. The days that I go I would say there are about 125 or 150.

Q. Are those meetings held in Dallas? A. That is right, sir.

Q. At those meetings has anyone from the Texas Company ever suggested to anyone that their lease might be cancelled or that they would be treated badly in some other way if they didn't handle some or all of the Firestone or Goodrich line? A. No, sir.

Q. Nothing like that has ever happened? A. No, sir.

Q. Do you get acquainted with the other dealers at those meetings? A. Yes, sir.

Q. Do you talk with them? (5848) A. Yes, sir.

Q. At those meetings is there a lot of gossip that goes around, like what we call "scuttlebutt"? A. Oh, there naturally is visiting going on. But I don't remember there was anything in particular. Just sort of general.

Q. Let me ask you this: At any time have you heard, whether in the course of this visiting or in the course of any specific conversation, that the Texas Company had threatened any dealer with lease cancellation or with any other mean kind of treatment if they didn't handle some or all of the Firestone or Goodrich line? A. No, sir.

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(5849) *Cross-examination by Mr. Dias:*

Q. At these meetings do you tell these dealers your personal problems? A. No, sir.

Q. These get-togethers after the meetings are just social gatherings, and that is about all? A. That's right, sir.

Q. You stock about 60 Firestone tires; and you say that constitutes about 50 percent of your tire sales, out of stock, and the other 50 percent of sales are on a pick-up basis? A. That's right, sir.

Q. In that pick-up business do you often pick up sizes of Firestone tires that you don't have in stock? A. Well, of course, when I replenish my stock it is a variety of sizes and types of tires, that's right; when I replenish my stock. But when I pick up it is a specific sale that I have made, like a set of tires, or maybe two tires like I don't have in stock, or something like that.

Q. And generally speaking, those are Firestone, are they not? A. That's right.

Q. Can you give us some idea of your dollar volume of TBA sales? A. At this time it is running about $1800 a month.

(5850) Q. You say, "at this time." Is that an increase or decrease, or what is the situation? A. It is an increase, a big increase.

Q. Over what? This time last year? A. Even this time last year or just a few months back.

Q. Is there any reason for that? Is this the heavy buying season for tires? A. Well, it is, yes; that's right. But my business as a whole is better than it was a year ago.

Q. Can you give us an average monthly TBA sales figure rather than the high point right now? A. I would say $1200.

Q. Twelve hundred dollars would be a good average over the year? A. Yes, sir.

Q. Of that $1200 worth of sales, can you give us some idea of the volume done in sales of Firestone tires? A. Well, of course the most of it would be in Firestone tires and batteries. The most of it.

Q. What would "most" represent? 80 percent or 90 percent? A. If we were hitting an average of $1200 a month I would say about $900 a month would be in tires and batteries.

Q. You carry Firestone filters, do you not? A. Yes, sir.

Q. Isn't that the next biggest selling item among the (5851) accessories field? A. I carry several brands of filters, and I would say my filters are quite an item. I carry AC filters, Fram filters, and Firestone filters. I sell more AC filters and Fram filters than I do Firestone because I cater to regular equipment as much as I can.

Q. Where do you obtain your AC filters? A. I buy most of my filters from Cliff Automotive.

Q. Does that include the Fram, too? A. Yes, sir.

Q. And Firestone, of course, you buy at Firestone? A. That's right.

Q. Your Firestone store is your supply point, is it not? A. That's right, sir, for Firestone products.

Q. As to the filter business, can you give us some idea of the volume of your filter business? A. No, sir, I wouldn't attempt to, without some books to refer to because it would be just a guess if I did, and it would be inaccurate.

Q. Does Firestone have air conditioner belts? A. I believe they did, but I might say I don't like their air conditioner belts.

Q. But their regular belts you do like? A. Yes, sir.

Q. And that is your regular line in the fan belt, the (5852) Firestone fan belt is your regular line? A. Yes, sir. I have more Firestone fan belts than I do anything else. But I do have some Gates' belts.

Q. Can you give us any idea of the volume of your sales of the Firestone fan belts? A. Oh, I don't do a big business in belts. It would be a guess as to what I did. I would really rather not because it would be a guess and not accurate.

Q. On that occasion when you ordered tires from Meggs, can you recall when that was? A. It was during the Korean War when tires were hard to get.

(5853) Q. When you first moved into the station and found those Continental batteries, how—I don't believe we established this: When did you move into the station? A. It was in the fall of 1950.

Q. What kind of tires were there at that time? A. Well, there weren't many tires at all. There was a very small stock of tires, but there were Firestone tires in there. I think there were only five.

Q. And then, you found this large consignment of Continental batteries there, is that correct? A. Well, I knew they were there when I bought the station.

Q. I say they were there when you did? A. Yes.

Q. How many batteries were there, do you recall? A. I would say approximately ten.

Q. What was the name of the gentleman you bought this station from? A. Ed Goodwin.

Q. What sort of accessories were in the station? A. There was a very small stock. I would say in general it wasn't anything particular. It was very small and very poor stock.

Q. How long did you carry the Continental batteries, or try to sell those ten Continental batteries? A. I would say about approximately five or six months.

(5854) Q. And you didn't sell any in that time? A. Oh, yes, I sold some, but not good. Not to amount to anything.

Q. I think one of the reasons you like Firestone is because of the public acceptance, national advertising, and that sort of thing; is that right? A. Well, no. I just like Firestone. As I testified before, I have been in the business all my life and I have sold and serviced and been around Firestone a long time. I think they are the finest tire that is made and I really feel that way.

Q. What about batteries; do you feel the same way about their battery? A. Yes, sir.

Q. And you always have? A. Yes, sir. They have a very good adjustment policy on them if we should have any trouble with them.

Q. After that five or six months—when you moved into the station and you had those five Firestone tires, did you order an additional stock of Firestone? A. Yes, sir. I put in a stock of Firestone tires right away.

Q. That was how many? About the 60 that you usually carry? A. No. At first I didn't buy that many. I would say—it would be not accurate—but I would say possibly 30.

Kenneth Heth, for Respondents—Recross

Charles W. Moore, for Respondents—Direct

Q. Did you take on a line of Firestone accessories, too? A. Well, I took on a line of accessories. I bought at (5855) various places. I didn't particularly buy Firestone accessories. I just bought Firestone one place and then another until I did stock the station up with a pretty good stock of accessories.

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(5857) *Recross examination by Mr. Dias:*

Q. On that $1,200 figure, and $900 for the tires and so on, are they cost figures or sales figures? A. Cost figures.

Q. Would you mind giving us your sales figures on that? A. I can't give that to you. I don't know. If I had my books here, I could. I might tell you that I go more by what I pay for them. I know how much my bills run every month and about how much I have to pay for them.

Q. Just so that we have the same type of figures to consider in each instance, the $1,800 high that you mentioned is a cost figure? A. That's right, sir.

Q. Just as the $1,200 average is a cost figure? A. That's right.

Q. And the $900 sales figure is a cost figure? A. That's right.

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(5858) CHARLES W. MOORE was called as a witness and, after being properly and duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your name to the reporter, please? A. Charles W. Moore.

Q. Where do you live? A. Dallas, Texas.

Q. That town is big enough so that you had better give us a street number and name. A. 1623 Taft Street.

Q. You are not in the service station business now, are you? A. No, sir.

Q. Some other type of filling station? (5859) A. Yes, sir.

Q. I am just being facetious. You are in the liquor business now? A. Yes, sir.

Q. It is not connected with the Texas Company at all? A. No, sir.

Q. For what years were you in the service station business? A. From the spring of '50 to December '56.

Q. Did your departure from the Texas Company have anything to do with TBA? A. No, sir.

Q. It was your own choice to get out of the business? A. Yes, sir.

Q. While you were in the station, did you handle TBA? A. Yes, sir.

Q. And during that time did you have an understanding as to the TBA policy of the Texas Company? A. Yes, sir.

Q. What did you understand it to be? A. Well, the policy was to handle Firestone or Goodrich. They suggested one or the other.

Q. What was your understanding as to whether it was necessary for you to handle the Firestone or Goodrich line in order to get your lease or to stay in that station? A. No, sir.

(5860) Q. You understood you didn't have to? A. I didn't have to handle anything that I didn't want to handle.

Q. And you are sure that was your understanding? A. Yes, sir.

Q. No doubt about that? A. That's right.

Q. Before you were in that service station did you have any experience with the product of any tire company? A. Yes, sir.

Q. Tell us about that. A. Well, I always bought Firestone tires and batteries for the equipment that I had anything to do with, with the pipe line department.

Q. And you had to do with buying? A. Yes, sir. Quite a bit of it.

Q. That pipe line was the Texas Pipe Line Company? A. Yes, sir.

Q. For how many years were you with that company? A. A little over 19 years.

Q. And during that time, during how much of that time did you use this Firestone equipment? A. All the time.

Q. What did you decide about it, whether it was good or bad or indifferent? (5861) A. Well, it was good. Excellent.

Q. Was that your own decision? A. Yes, sir.

Q. Based on your own experience? A. Yes, sir.

Q. Did that have anything to do with the type of tires and batteries which you handled at your service station, that experience that you had? A. Yes, sir.

Q. While you were in that station did you have much of a stock of either tires or batteries? A. No, sir.

Q. About how many Firestones did you stock there? A. I would say eight.

Q. And about how many batteries? A. About six.

Q. In addition to those Firestones which you stocked, did you sell and handle other lines of tires and batteries? A. Yes, sir.

Q. About how many of your tires did you sell out of stock and about how many were on a pick-up basis? A. Most of them were on a pick-up basis.

Q. And did you pick up whatever type of tires the customer wanted? A. Yes, sir.

(5862) Q. Generals? A. Yes, sir.

Q. Any other kind that he wanted? A. Yes, sir.

Q. When you picked those tires up, did you ever have them sitting openly in your store, or did you hide them and slip them out of your station fast? A. I displayed them.

Q. So that anybody could see them? A. Yes, sir.

Q. Including anybody from the Texas Company? A. Yes, sir.

Q. And no one ever told you to hide them or not to display them? A. No, sir.

Q. Did anyone from the Texas Company ever tell you if you didn't stick to the Firestone line that your lease would be cancelled or that you would be treated badly in some other way? A. No, sir.

Q. That never happened to you the whole time you were there? A. No, sir.

Q. How about acessories; will you tell me the kind of fanbelts that you had? A. Gates and Thermoid and Firestone.

Q. Will you tell me whether or not you displayed all of the (5863) types of fanbelts which you had? A. Yes, sir.

Q. With the identification on the fanbelts? A. Yes, sir.

Q. So that anybody could see it was a Gates or a Thermoid? A. Yes, sir.

Q. And you were not afraid that someone from the Texas Company would cancel your lease or treat you badly in some way if you displayed those Thermoid and Gates? A. No, sir.

Q. During the time you were a lessee, did you feel free to go into any kind of TBA that you thought was best for your operation? A. Yes, sir.

Q. And if you wanted to stock something other than Firestone, would you have felt free to do so?

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The Witness: Yes, sir.

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Q. Was it your own decision that you decided the Firestone tires and batteries would be best for your business? A. Yes, sir.

Q. Was that decision brought about by any fear that you had (5864) that the Texas Company wouldn't give you the lease or would cancel your lease if you didn't handle the Firestone? A. No, sir.

Q. It was entirely your own decision? A. Yes, sir.

Q. Did you buy some of your TBA items from Johnson Automotive? A. Yes, sir.

Q. You bought some from Skelly Automotive? A. Yes, sir.

Really, it is Cliff Automotive.

Mr. Dias: Instead of what?

The Witness: Skelly.

(5865) *By Mr. Lorenzen:*

Q. Did you get any help from the Texas Company in connection with selling your TBA? A. Yes, sir.

Q. What sort of help did you get? A. Through meetings. They had meetings. And through the salesman calling on you.

Q. You say you got help at those meetings? A. Yes, sir.

Q. Did they have movies? A. Yes, sir.

Q. And other displays of TBA? A. Yes, sir.

Q. And did that display have the Firestone name or the Goodrich name on it? A. Yes, sir.

Q. About what was the gallonage of your station? Can you remember? A. It would be a guess. 12,000.

Q. Approximately on the average, a month? A. Yes, sir.

Q. During the time that you were in that station were you satisfied with the delivery and service given you by the Firestone supply point? A. Yes, sir.

(5866) Q. And the price deal that you had with them? A. Yes, sir.

Q. In addition to attending these dealer meetings did you use the Texas S-75 follow-up system in connection with your customers? A. Yes, sir.

Q. And did you find that helpful? A. Yes, sir.

Q. That is the system that is useful in connection with TBA sales, is it not? A. Yes, sir.

Q. How many of these dealer meetings did you attend, would you say? A. Ninety percent of them.

Q. About how many were held? A. Well, there were four, I guess, a year. Between that I don't know how many. I mean, you know, four main ones.

Q. There were some other ones, too? A. Yes.

Q. You think you attended about ninety percent of them? A. Yes, sir.

Q. Did you get acquainted with dealers at those meetings? A. Yes, sir.

Q. Did you talk to them after the meetings? A. Yes, sir.

(5867) Q. About how many dealers attended the four main meetings? A. I would say over a hundred.

Q. And a smaller number at the other meetings? A. Yes, sir.

Q. At any time at any of those meetings did anyone from the Texas Company suggest that your lease or the lease of any other dealer might be cancelled or that you would be treated badly in any other way if you didn't handle the Firestone or Goodrich line? A. No, sir.

Q. Or part of that line? A. No, sir.

Q. Did any dealer ever tell you at any time that the Texas Company had suggested to him that his lease might

be cancelled or that he would be treated badly in some other way if he didn't handle some or all of the Firestone or Goodrich line? A. No, sir.

Q. While you were in that station what did you find about whether there was any popular demand for Continental batteries? A. There wasn't any popular demand of Continental batteries.

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Cross examination by Mr. Dias:

Q. When you say "no popular demand," you mean nobody asked for them? (5868) A. No one.

Q. Sir? A. No one.

Q. Ever asked you? A. Asked me.

Q. The popularity was restricted to your station rather than the general popularity of the City of Dallas; is that correct? A. Sure.

Q. At these dealer meetings, can you explain those business meetings? What happened at the business part of the meeting? A. Well, they ran a film.

Q. Was there any lecture of any sort? A. Yes, sir.

Q. Who usually gave that? A. Well, the salesman probably gave it.

Q. Texaco salesman? A. Yes, sir.

Q. Did you ever hear a Firestone or Goodrich man speak at those things? A. No, sir.

Q. Never did. And they were never at those meetings? A. I have seen them.

Q. Firestone and Goodrich men? A. Yes.

Q. I think the question was asked—what other displays of (5869) TBA were there? I think there may have been a little confusion. Did you ever see any other brands of TBA other than Firestone or Goodrich on display at those meetings? A. No, sir.

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(5871) Q. Do you recall what you purchased from Johnson Automotive? A. Well, fan belts and hose, some tubes.

Q. Is that about all? A. Pick-ups of parts, when you are making repairs and stuff of that sort.

Q. Other than tools and repair parts, what did you buy from them, in addition to those items that you have mentioned? A. Zerex antifreeze.

Q. Was that on a pick-up basis, also, or did they deliver? A. They had a salesman.

Q. You dealt with him regularly? A. Well, he came by once a week.

Q. Did you place an order with him generally once a week, or how often? A. I don't know how often. I have bought things from him.

Q. Can you give us any idea of the volume of your purchases from Johnson? A. It was small.

Q. What is small—one dollar, five dollars, or ten dollars? A. I don't remember any figures.

Q. What do you consider small? A. Well, just pick-ups and things of that sort. And when I ordered my antifreeze I ordered antifreeze from him.

Q. These tires that you picked up for customers, were they (5872) generally mounted on the cars for them and drove off with them? A. No, sir.

Q. They were not? A. No, sir.

Q. What was the occasion? A. When we ordered a set of tires, maybe they would stay there two or three days. I had customers across the street, you know. Sun Oil Company customers.

Q. And they would order tires? Sun Oil? A. Yes, sir. They don't have any outlet.

Q. They would order tires and a couple of days later come back and pick them up and you would put them on for them? A. Yes.

Q. Do you have any relation by blood or marriage working for the Texas Company right now? A. No, sir.

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(5873) ORVILLE L. JERNIGAN was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Mr. Jernigan, will you give your full name to the reporter, please? A. Orville L. Jernigan, 9518 Micheal Lane, Dallas, Texas.

Q. You are in the service station business now? A. Yes, sir.

Q. Where is your station located? A. 800 South Ervay.

Q. About what is the gallonage of your station? A. Approximately 30,000 gallons per month.

Q. How long have you been there? A. Approximately five years.

Q. When you first started in that station, did you have a lease from the Texas Company? A. Yes, sir.

Q. And now your lease is no longer from the Texas Company? A. No, sir.

Q. Did you handle TBA there during the whole time? A. Yes, sir.

(5874) Q. During that time did you have an understanding as to the TBA policy of the Texas Company? A. Yes, sir.

Q. What has been that understanding? A. At the time I went in business the Texas Company recommended Firestone or B. F. Goodrich, and that I could handle anything that I so desired.

Q. Did you understand clearly that you could handle anything you wanted? A. Yes, sir.

Q. Did you handle TBA? A. Yes, sir.

Q. And was that your own choice? A. Yes, sir.

Q. Why did you handle it? A. Because the Texas Company salesman recommended it.

Q. And did you find the recommendation to have been a good one? A. Yes, sir.

Q. How about the type of TBA you handled there; was it mostly all Firestone? A. Yes, sir.

Q. Will you tell us why you started to handle Firestone when you got into that station? A. When I got into the station the Texas Company salesman (5875) recommended Firestone and B. F. Goodrich and I didn't know much about either one and I just had in this stock that I bought from the other dealer about $50 or $60 worth of old truck tubes there. I asked the Firestone man if he would give me credit on it if I would take Firestone, and he did.

Q. So you followed the recommendation of the Texas Company salesman? A. Yes, sir.

Q. And how did you find it to be from a business point of view? A. Profitable.

Q. You have continued with Firestone ever since? A. Yes, sir.

Q. Tell me, when you had this station under lease from the Texas Company, did you handle any batteries other than the Firestone's? A. Yes, sir.

Q. What kind? A. Champion batteries.

Q. What sort of an experience did you have with those? A. Champion batteries I took on consignment. And after about six months I began to sell quite a few. But a little later on I was adjusting more batteries than I was selling.

Q. That means you had bad batteries that came back, and you had to make an adjustment on them? (5876) A. That's right. Yes, sir.

Q. Was that the reason you gave it up? A. Yes, sir.

Q. Was there any other reason, such as that you didn't think you ought to handle it because the Texas Company wouldn't like it? A. No, sir.

Q. It was your own business decision? A. Yes, sir.

Q. Both to take them on and then to discontinue them? A. Yes, sir.

Q. During the time you were in that station, did the Continental Battery Company make any effort to sell you Continental batteries? A. Quite a few times.

Q. Did you have a salesman who kept after you? A. Yes, sir.

Q. Did you want to handle the Continental batteries? A. No, sir.

Q. What did you do to discourage the salesman? A. I told him I had to handle Firestone batteries.

Q. Was there any basis in fact for that statement? A. Just to get rid of him.

Q. Did you think that you had to handle Firestone, because the Texas Company wouldn't like it if you didn't? (5877) A. No, sir.

Q. The only reason you made that statement was to get rid of him? A. Yes, sir.

(5878) Q. As a matter of fact, at the time when you made that statement, Mr. Jernigan, you knew that the underlying lease on this property was owned by your father-in-law, didn't you? A. Yes, sir.

Q. And it was the type of lease that your father-in-law could have cancelled at the end of any year? A. Yes, sir.

Q. Ultimately, your father-in-law did cancel the lease and you took it over; is that correct? A. It expired.

Q. The lease expired? A. Yes, sir.

Q. And then, you took it over? A. Yes, sir.

Q. That was after you had been in the station for two years? A. Yes, sir.

Q. Now, I understand that your only relation with the Texas Company is a supply contract? A. Yes, sir.

Q. They supply you with Texaco gasoline? A. Yes, sir.

Q. Has there been any change whatever in your TBA buying habits as between the time when you were a lessee and when you became a contract dealer of the Texas Company? A. No, sir.

(5879) Q. None whatever? A. No, sir.

Q. How about Firestone? Do you still handle it as much and to the same extent as you handled it when you were a lessee? A. More so.

Q. You handle more Firestone now than you did before? A. Yes, sir.

Q. Have you found it to be a profitable item to you? A. Yes, sir.

Q. And you have been satisfied with the Firestone deal? A. Yes, sir.

Q. The deliveries, the adjustments? A. Yes, sir.

Q. And the quality? A. Yes, sir.

Q. Your station is located in downtown Dallas, is it? A. Yes, sir.

Q. Do you find that there is a difference between that type of station and the neighborhood type of station?

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(5880) The Witness: Yes, sir.

By Mr. Lorenzen:

Q. With respect to TBA, what do you find the difference to be? A. They look for a national brand.

Q. That is, where you do not have the personal contact with your customers, they look for a national brand? A. Yes, sir.

Q. Is that one of the reasons that you are handling Firestone? A. Yes, sir.

Q. Does your Firestone salesman call on you often? A. Yes, sir.

Q. How often? A. Normally, twice a week.

Q. In addition to Firestone, while you were a lessee and now that you are a contract dealer, did you buy accessories from some source other than Firestone? A. Yes, sir.

Q. What were your principal sources for accessories other than Firestone? A. Gates Auto Supply, Auto Appliance.

Q. Those are two companies—one is Gates and the other is Auto? A. That's right.

(5881) Q. What sort of fan belts did you handle while you were a lessee and that you handle now? A. Gates.

Q. Both before and after— A. (interposing) Yes, sir.

Q. (continuing) —you became a lessee and stopped being a lessee, did you display those openly? A. Yes, sir.

Q. Has there been any change whatever with respect to your policy with respect to your display of TBA merchandise— A. (interposing) No, sir.

Q. (continuing) —both before and after you were a lessee? A. No, sir.

Q. I think that should be before and after you were a contract dealer. I got the sequence backwards. A. No, sir.

Q. Are you bothered with a lot of salesmen who come in and try to sell you merchandise? A. Yes, sir.

Q. And it takes some time and some excuses to get rid of them? A. Yes, sir.

Q. Do you stock any batteries other than dry charge? A. No, sir.

Q. By the way, you said that you were new in the business when you took over this station. Did you have an acquaintance (5882) with a Firestone or Goodrich sales-

man or supply point before you leased the station from the Texas Company? A. No, sir.

Q. Did the Texas Company do anything about introducing you to the salesmen from those companies? A. At the time I leased my station, he did.

Q. They introduced you to both of them? A, As I remember rightly, it was just Firestone.

Q. Was that your selection? A. The station was Firestone before I came there, yes, sir.

Q. And then, you say that you accepted the recommendation for Firestone? A. Yes, sir.

Q. And you asked to be introduced? A. Yes, sir.

Q. And the introduction was made by your Texaco salesman? A. Yes, sir.

Q. Do you get any help from the Texas Company in marketing your TBA? A. Yes, sir.

Q. What sort of help? A. Well, my dealers help me display my merchandise.

Q. Do you mean the salesmen? A. Yes, sir. And we have spring and fall meetings.

Q. About how many people attend those meetings? (5883) A. Over a hundred.

Q. Do you still attend the meetings? A. Yes, sir.

Q. In the course of those meetings at any time has anyone from the Texas Company made any suggestion that any dealer's lease would be cancelled if he didn't handle some or all of the Firestone or Goodrich line? A. No, sir.

Q. Did you become acquainted with some of the other dealers? A. Yes, sir.

Q. Are you acquainted with them? A. Yes, sir.

Q. Did you talk with them at the meetings? A. Yes, sir.

Q. Have any of them ever told you that it had been suggested to them by the Texas Company that their lease might be cancelled or that they would be treated badly in some other way— A. (interposing) No, sir.

Q. (continuing) —if they didn't handle some or all of the Firestone or Goodrich line? A. No, sir.

Q. Nothing like that has ever happened, or nothing like that has ever been told to you? A. No, sir.

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(5884) Q. When you had those Champion batteries, they were openly displayed? A. Yes, sir.

Q. They had a sign? A. A curb sign, yes.

Q. Out in front of the station? A. Yes, sir.

Q. No one from the Texas Company ever told you that you had to take that sign down? A. No, sir.

Q. You said that your business is expanding in Firestone. Are you going into the muffler and tail pipe business with (5885) Firestone? A. Yes, sir.

Q. That Firestone supply point is very close to you, isn't it? A. Approximately 12 blocks, I would say.

Q. Twelve blocks? A. Yes, sir.

Mr. Lorenzen: That is all.

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(5886) JOHN MC GAHEY was called as a witness and, after being properly and duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your name to the reporter, please? A. John McGahey.

Q. Where do you live? A. 1506 Ash Street, Grand Prairie, Texas.

Q. Is that town a suburb of Dallas? A. Well, we don't like to think so. It is pretty close.

Q. How far away from Dallas are you? A. About 12 miles.

Q. Is your station located in that town? A. Yes, sir. 802 East Main.

Q. That is a service station? A. Yes, sir.

Q. Do you sell Texaco gasoline? A. Yes, sir.

Q. Do you have a lease there? (5887) A. Yes, sir.

Q. It is one of those leases which renews itself each year? A. Yes, sir.

Q. For how long have you been a lessee at that location? A. Eight years.

Q. Before that time were you a lessee of the Texas Company at another location? A. Yes, sir.

Q. What was that location? A. 217 West Main.

Mr. Dias: Grand Prairie?

The Witness: Yes, sir.

By Mr. Lorenzen:

Q. In that station at 217 West Main, what kind of batteries did you handle? A. Well, I handled Excell.

Q. What sort of tires did you handle? A. Firestone.

Q. Tell us how you came to buy the Firestone tires in that station. A. Well, a friend of mine operated a Firestone store just a couple of blocks down the street from me.

Q. Did you go to that friend to buy those tires without the Texas Company having anything to do with it? A. I think I did, yes, sir.

(5888) Q. Did you continue to handle those Excell batteries in the station at 217 West Main right up until you got another station? A. Yes, sir.

Q. Then, when you obtained this other station, was that a better station than you had before? A. Yes, sir.

Q. Did the Texas Company know you were handling those Excell batteries? A. Yes, sir.

Q. Did they tell you you would have to stop handling those batteries in order to get that new station? A. No, sir.

Q. What about the batteries when you went to the new station? A. I moved them with me.

Q. You moved the Excell batteries to the new station with you? A. Yes, sir.

Q. Did the Texas Company tell you that you had to get them out of there, or anything like that? A. No, sir.

Q. Do you still have some Excell batteries at your station? A. Yes, sir. Still handle them.

Q. About half your stock? A. Yes, sir. Approximately half of it.

Q. Tell me, are those a cheaper line of battery? A. Yes, sir.

(5889) Q. What is your premium line of battery? A. Firestone.

Q. Do you find those satisfactory? A. Yes, sir.

Q. Do you handle those because you think they are the best battery for your business? A. I certainly do.

Q. Have you continued to handle the Firestone tires which you first bought through this friend of yours? A. Yes, sir.

Q. Have you been satisfied with those? A. Yes, sir.

Q. Is that your own choice to handle those Firestone tires? A. It is the best tire made, I think.

Q. And you had the best experience with it? A. I certainly have.

Q. You are satisfied with it from the point of view of price and service? A. A hundred percent.

Q. And customer acceptance? A. That's right.

Q. In addition to those Excell batteries have you handled Willard batteries? A. No, sir. I never handled any

Willard batteries, other than what I bought when I bought out 217 West Main. There were (5890) some Willard batteries there.

Q. And some Southland? A. And some Southland, yes, sir.

Q. Did the Texas Company make any opposition to your buying those batteries from the dealer who was in there ahead of you? A. No, sir. I did, I bought some Southland batteries, right after I went in and sold those out the first batteries I bought were Southland.

Q. You jumped back one question. I missed one question in between. Did the Texas Company make any objection to your buying those Willard and Southland batteries from the dealer who handled them ahead of you? A. No, sir.

Q. They knew you bought them? A. They knew I bought them.

Q. You openly kept them in stock? A. Yes, sir.

Q. Then, the Firestone order for batteries that you placed after that was another order for Southland? A. Well, this truck came by, see, and I was low in batteries so I bought some Southland batteries.

Q. After that you put in the Excells, is that right? A. Yes, sir. I wasn't satisfied with Southland.

Q. Do you find this TBA which you are handling of help to you in your business? (5891) A. Yes, sir.

Q. In what way? A. To make money.

Q. To make profit on these items? A. That's right.

Q. What has been your understanding of the Texas Company's TBA policy? A. Well, when I went over to sign the lease, they told me that they recommended Firestone tires and Goodrich tires, but that I was an independent merchant as far as they were concerned and that I could handle anything that I wanted to handle.

Q. They told you all of that? A. Yes, sir.

Q. At any time since they told you that, has anyone from the Texas Company suggested to you that that isn't the policy and that, in fact, you have to buy some or all of the Firestone and Goodrich line? A. No, sir.

Q. Has anybody threatened to cancel your lease or treat you badly in some other way if you didn't stick to the Firestone line? A. No, sir.

Q. Have you felt free to buy any TBA which you thought best for you? A. Yes, sir.

(5892) Q. And is that the basis upon which you have bought? A. That's right.

Q. Let's go into your accessories for a minute. What are your principal suppliers of accessories. You buy some from the Firestone store, don't you? A. Yes, sir.

Q. From whom else do you buy? A. Grand Prairie Auto Supply.

Q. What are some of the items you get from them? A. Filters, fan belts.

Q. What kind of fan belts? A. Gates.

Q. Do you stock those? A. Yes, sir.

Q. Display them? A. Yes, sir.

Q. With the name Gates appearing? A. Yes, sir.

Q. So anybody can see it? A. Everybody. Sitting right next to my desk.

Q. How about those Excell batteries? Where are they located? A. In my office.

Q. On a stand with the name? A. On an Excell battery stand, yes.

Q. Right in your office? (5893) A. Yes, sir.

Q. Your office is the main sales room in the station? A. Yes, sir.

Q. Any others? Do you buy anything from Beard and Stone Electric Company? A. Yes, sir.

Q. What do you buy from them? A. Antifreeze, fanbelts, hoses, just various accessories.

Q. Are there some other suppliers from whom you buy some other TBA items? A. Ralph Clark Auto Supply, Beard and Stone, Texas Automotive, and I buy a lot off of the wagons that come by.

Q. Does Firestone do your recapping? A. Sir?

Q. Does Firestone do the recapping of your tires? A. I don't sell any recap tires. I haven't sold any recaps, no, sir.

Q. So you don't have any recapping done at all? A. No, sir.

Q. Have you handled Exide batteries at one time? A. Exide, I believe I did.

Q. Did you buy anything from the Green Manufacturing Company? A. Excell batteries.

Q. Those are the Excells? A. Yes, sir. Manufactured by the Green Manufacturing Company.

(5894) Q. That is the one we missed. You buy your Excell batteries from the Green Manufacturing Company? A. Yes, sir.

Q. Of all of your TBA, how do you think it is divided as between tires and tubes and batteries and accessories? Can you give us just a rough approximation? A. Yes. I sell 75 percent more accessories than I do tires and batteries.

Q. Do you mean you sell either one? A. Sir?

Q. That percentage is a little too complicated for me. Is a little more than half your business in accessories? A. Yes, sir.

Q. And then, the other half is divided between tires and tubes on the one side, and batteries on the other? A. Yes, sir. That's right.

Q. And is your business there about half and half? A. Yes, sir.

Q. About half in tires and half in batteries? A. Yes, sir.

Q. Is there a Firestone store right close to you? A. Yes, sir, within a couple of blocks.

Q. Is that where you get your supply of Firestone tires? A. Yes, sir.

Q. And Firestone batteries, such as you buy? (5895) A. Yes, sir.

Q. Do you openly display all of your TBA? A. Yes, sir.

Q. Do you make any effort to hide any of it at all? A. I don't hide anything.

Q. Has the Texas Company ever suggested to you that you ought to hide your Gates fanbelts or your Excell batteries or filters or anything of that kind? A. No, sir.

Q. Has anyone from the Texas Company ever threatened to cancel your lease or treat you badly in some other way if you didn't stop selling these Excell batteries and the Gates fanbelts? A. No, sir.

Q. Do you get any help from the Texas Company in marketing your TBA? A. Yes, sir.

Q. What sort of help do you get? A. Well, the salesman, he comes out, helps me display my merchandise, and I go to the dealers' meetings.

Q. What happens at the dealers' meetings? Do you get suggestions there? A. Yes, sir.

Q. Do they show you these movies? A. Yes, sir.

Q. And is the Goodrich and Firestone display of TBA advertisement (5896) made at those meetings? A. Yes, sir.

Q. Do they put up a sort of model display? You say there is a display? A. Yes, sir.

(5897) Q. Do you find that useful even in connection with displaying your Excell batteries and your Gates fan belts? A. I certainly do.

Q. Do you use this S.75 follow-up system? A. Some, yes, sir.

Q. That has to do with some way of keeping track of your customers, doesn't it? A. That's right.

Q. About how many people attend your dealers' meetings? A. I would say approximately a hundred.

Q. Are those the same meetings that the Dallas people go to, or are they different meetings? A. No, they are the same ones. I go to the Dallas meetings.

Q. You are successfully connected with Dallas to go to those meetings? A. Yes, sir.

Q. About how often are those meetings held? A. Well, about three or four times a year.

Q. At that time did you become acquainted with the other dealers? A. Yes, sir.

Q. Did you talk with them? A. Yes, sir.

Q. At any time at those meetings has anybody from the Texas Company suggested to you or to any other dealer that (5898) if you didn't handle some or all of the Firestone or Goodrich line that his lease might be cancelled and he might be treated badly is some other way? A. No, sir.

Q. At those meetings, have any dealers ever told you that any such suggestion has been made to them by the Texas Company? A. No one ever told me that, and I believe if they had you would have heard it at one of those dealer meetings.

Q. You never heard anything like that? A. No, sir; never did.

Q. I am not sure, I seem to be forgetting gallonages in several of these cases. About what is the gallonage of your station now? A. About 30,000 a month.

Q. Do you handle the Firestone mufflers in your station? A. No, sir.

Q. What kind do you handle? A. I just pick mufflers up when I sell one, just pick it up. I usually buy all my mufflers from Grand Prairie Auto Supply.

Mr. Lorenzen: That is all.

Cross examination by Mr. Dias:

Q. I don't believe you gave us the names of the filters that you carry? (5899) A. Well, sir, I carry Firestone, AC, and Fram. A few Purolators once in a while.

Q. I may have misunderstood. Do I understand that you carry only the Excell battery, or do you also carry Firestone? A. I also carry Firestone.

Q. You stock both those batteries? A. Yes, sir.

Q. Can you give us some idea of your stock in each? A. Yes, sir. I have approximately, I would say, 10 Firestone's and 7 or 8 Excells.

Q. You pick up more Firestones as the occasion demands? A. Yes, sir; and Excells.

Q. You lumped your TBA sales. Half of your volume is in accessories, a quarter in batteries and a quarter in tires. That quarter in tires is just almost exclusively Firestone, is it not? A. Yes, sir.

Q. And on your batteries, can you give us some idea of your dollar volume—could you give us dollar volume on TBA? A. I couldn't give you dollar volume, because I don't have my books. But I would say that I sell—I would say that I sell a little over half or more Excells than I do Firestone.

Q. In other words, a few more Excells than Firestone? A. Yes.

Q. On your filters, how do your filters break down? (5900). A. I sell more Firestone filters than I do the others, although I sell a lot of the others.

Q. Do you sell many ACs and Frams? A. Yes, sir.

Q. Will you give us the dates in that first station, 217 West Main? A. Nineteen and forty-seven.

Q. Until when? A. 1949.

Q. '47 to '49.

Had you had any experience in the service station business before you went in there at West Main? A. I was working in a station.

Q. You worked in one? A. Yes, sir.

Q. Was it a Texaco station also? A. No, sir. Sinclair.

Q. Had you handled Firestone tires at the Sinclair station? A. He handled some; yes, sir.

Q. That wasn't normal stock? A pick-up basis? A. A pick-up basis. He didn't handle too many tires of any kind. He handled a few Firestone on a pick-up basis. When he sold a tire we would run and get it.

Q. During your initial interview with the Texas official before you took over the "217" station, will you tell us again (5901) their recommendations relative to TBA? A. Yes, sir. I remember distinctly. I went over and talked to them and they told me, they said, "Mr. McGahey, we recommend Firestone and Goodrich tires and batteries", but they said, "You are an independent operator or merchant as far as we are concerned. You can handle anything you want to handle". That was brought out very clearly to me.

Q. Did they explain to you why they recommended Firestone or Goodrich? A. No, sir; they didn't explain. They said other than that it was a good piece of merchandise.

Q. After that do you recall that you had a friend in the Firestone business— A. Yes, sir.

Q. (continuing) —and you purchased from Firestone.

Your current address is 802 East Main; is that correct? A. Yes, sir.

Q. Do I understand you went in there right after you got out of 217 West Main? A. Yes, sir.

Q. And you have been there ever since? A. Yes, sir.

Q. In other words, that would be from 1950 up to date? A. Yes, sir.

Q. At this second station you are also a lessee? (5902) A. Yes, sir.

Q. As you were at the first station? A. Yes, sir.

Q. And neither you nor any of your relatives own the property? A. No, sir.

I wish they did.

Q. At this current station, are there any retail outlets of Goodrich products? A. Yes, sir. There is a Goodrich store about three blocks from me.

Q. Is it that far away from you? A. Yes, sir.

Q. Any other retailers of Goodrich products? A. No, sir; I don't believe so.

Q. How about Firestone? A. You said retail or wholesale?

Q. Retail. A. Oh, yes, there is; I believe there is another guy sells Goodrich.

Q. Might it be a Conoco? A. No, sir.

Q. You think it is what? A. I think it is Sinclair. I think he sells Goodrich. I am not positive.

(5903) Q. Where is he located in relationship to your station? A. Down the block. Down the street a couple of blocks.

Q. A couple of blocks? A. Yes, sir.

Q. The location of the Firestone store, where is that? A. It is a couple of blocks down the street.

Q. Does that Firestone store sell any gasoline? A. Yes, sir.

Q. And what brand? A. Texaco.

Q. Are there any other Firestone outlets, retail outlets, nearby selling Firestone products? A. No, sir.

Q. Do you know how many other stations there are, Texaco stations, in Grand Prairie? A. I can tell you sir.

Q. All right. A. There are six, I believe, sir.

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(5905) Q. Do you have a credit charge in your station? A. Yes, sir.

Q. Have you ever had the experience of having a credit slip returned for having listed non-sponsored products? A. No, sir.

Q. Have you ever had any credit slip returned for any reason by the Texaco Company? A. One of my boys didn't get one signed one time. They turned it back to me.

Q. Just for signature? A. Yes.

Q. Do you deal with the transient trade very much? A. Yes, sir.

Q. Do you find that credit card a help to your business? A. Yes, sir.

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(5906) *Redirect examination by Mr. Lorenzen:*

Q. Do you put all items that you sell on your credit card, that is, all gasoline and TBA? A. Yes, sir; I put everything on the credit card.

Q. Even though you sell an Excell battery or Gates fan belts? A. Yes, sir.

Mr. Lorenzen: That is all.

Recross examination by Mr. Dias:

Q. On the credit card do you list the name of the item? A. Well, there is not room.

Q. As I understand, there isn't room right now. But up until the first of the year? At that time you itemized

everything? A. There never was much room. No, I don't. I tell you I just write down—if I sell a battery I just write down "battery." I figure if the man's credit is good, if he has a credit card he will pay his bill.

Mr. Dias: That is all.

Further redirect examination by Mr. Lorenzen:

Q. Do you follow that same practice whether it is a (5907) Firestone battery or an Excell battery? A. Yes, sir.

Q. It makes no difference? A. Yes, sir.

Q. As far as your credit card entry goes? A. That's right.

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(5908) L. H. DANIEL, JR. was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Mr. Daniel, will you give your name to the reporter please, and tell him where you live. A. My name is L. H. Daniel, Jr., and I live in Greenville, Texas.

Q. Just so that I don't call you by a nickname, but in order to tie you in with something in the testimony here, you are sometimes referred to as "Dan Daniel"? A. That is right.

Q. Mr. Daniel, what is your business now? A. I am consignee of the Texas Company in Greenville, and also market Firestone merchandise.

Q. Will you tell me what percent of the Firestone merchandise that you market is sold to stations handling

Texaco gasoline? A. In Greenville? Or in general now? Are you including all retailers?

Q. Let's take all. A. I would say that approximately ten per cent of our tire volume goes to Texaco outlets.

(5909) Q. And the other ninety percent of your Firestone is sold elsewhere? A. Elsewhere, right.

Q. Do you have any outside business or income aside from what you get out of your business as a Texaco consignee? A. Yes, we do have outside income.

Q. And in addition to what you have as a Firestone dealer? A. That is right.

Q. Mr. Daniel, were you a Texas Company consignee at a time when a Mr. Fagg Sanford was a dealer who had a lease from the Texas Company? A. It will take a second to clarify that. During that particular period my brother and I were in a partnership there. The consigneeship was in his name at that time. It is in mine now.

Q. You were in partnership at this particular location with your brother? A. That is right. As a matter of fact, he was on leave of absence at that time.

Q. But you were the Dan Daniel who would be at the bulk plant in Greenville? A. That is correct.

Q. There was nobody else by that name? A. No.

Q. You did know that Mr. Fagg Sanford had a lease there for (5910) a couple of years? A. That is right, I did.

Q. And you, as consignee, supplied him with his Texaco gasoline? A. That is right.

Q. Do you know about when this was? A. It would be difficult for me to pinpoint the date. That is probably in the record.

Q. Would November 1953 to November 1955 sound approximately like it? A. That is about right as to the period.

Q. Mr. Sanford testified in this case that he didn't get any complaints about his keeping his station in a clean and healthful condition for the first six months he was there, but that after the six months some kind of complaints were made to him about that, among other things. Do you recall what the situation is about that operation? A. During the initial period of most any dealer there is a time of orientation, and probably there was not any serious complaint during that period. I would assume that he would be acquainted with the operation after that period, and know more of the things that are needful in his business. After that time, of course, we were interested in him becoming a better dealer, and there were efforts made to acquaint him with the proper way to run the business.

Q. By the way, you people own the property and lease to several (5911) of the dealers to whom you furnish the Texaco gasoline, don't you? A. That is right. Approximately seven or eight.

Q. But in this particular situation the Texas Company owned the leasehold? A. That is correct.

Q. So all you did was sell the man whatever he bought from you? A. That is correct.

Q. At the end of the first year of his operation—Mr. Sanford's operation—did you make any recommendation as to whether or not you would like to see his lease renewed? A. Well, at that time we were not particularly approached on the thing. At that time it was our feeling it would have been better to seek another dealer. It didn't appear to us that he was doing a very good job. However, the Company saw fit to renew his lease for another year. His station was dirty, and that sort of thing.

Q. Did your dissatisfaction with Mr. Sanford at that time have anything to do with the fact that he handled some Continental batteries? A. No, sir, it had nothing at all to do with that. Nothing whatsoever.

Q. Were you in the battery business at that time to any extent? A. Very slightly. Very slightly. The big majority of our (5912) business is tire business. The revenue from the battery business is of no consequence.

Q. Relatively speaking, if Mr. Sanford had bought his batteries from you, about what would have been the proportion between that and the income that you got from selling him gasoline?

* * * *

The Witness: Had we sold Sanford all of the batteries, we might have made perhaps a few dollars a year profit. Gasoline we might have made $150 a month, perhaps $200, in that range.

By Mr. Lorenzen:

Q. A month? A. Yes, sir.

Q. And in batteries you would have made just a few dollars a year? A. Just a few dollars a year.

Q. During the time when Mr. Sanford was in there, in addition to the condition in which he kept this property, which he leased, did you have any other difficulties with him? A. Yes, sir, we did. It is mandatory in our operation that you collect when you deliver the gasoline, and he frequently gives a check that proved to be hot. On many occasions the check would come from the bank marked "insufficient funds." (5913) It is difficult to conduct a business that you can't be sure that you are receiving real money for your merchandise.

Q. Was there any discussion between you and Mr. Sanford about the switch of gasoline from one sort of a pump to another? A. Yes, sir. We discussed that with him. It was quite distressing to us becaue we are quite proud of our gasolines and he admitted transferring some 700 gal-

lons of lower-grade gasoline into a tank which contained high-grade gasoline. And his position is, in my opinion, indefensible because he has a huge storage compared to his volume. We deliver to him at his convenience. He of course claimed that he ran out on the weekend and transferred that 700 gallons. Of course he made the additional profit because he sold it at the higher price.

Q. Did you recommend ultimately that Mr. Sanford's lease be cancelled? A. At the end of the first year that was our thinking, and it was strengthened at the end of the second year—our feeling.

Q. Was there any factor in addition to the ones that you have talked about which concerned you at the time you made the recommendation to cancel at the end of the second year? A. Well, it was our feeling that he kept a very dirty establishment. He might keep a brush for rest room cleaning purposes in the front office. I don't mean occasionally but habitually. We touched on that to try to get him to improve it. We naturally tried to get his business on a going basis by trying to (5914) encourage him in various ways. We tried to strengthen him financially. We consigned him tires, even, in order to help him make a go of the thing. But he wasn't in good shape financially during the entire period and I think he progressively became worse toward the end of his stay.

Q. Was there any change in highway location contemplated which had anything to do with your recommendation? A. There was a very profound change in the highway there. Like many smaller towns, it has been by-passed by the highway. That was the problem uppermost in our minds, how to do adequately with a station with a dealer who gave us hot checks, as this change in highways approached, and that of course was very strongly in our thinking as we tried to upgrade our organization toward the end of his tenure.

Q. Was your recommendation that the lease be cancelled influenced in any way whatever by the fact that Mr. Sanford handled some Continental batteries? A. It certainly was not affected in any manner.

Q. Mr. Sanford testified at Page 610 and 1594 that the only threat that was ever made to him was in the summer of 1955 at a meeting at the bulk plant in Greenville, at which Mr. Dan Daniel and Mr. Swan were present. Mr. Swan, so Mr. Sanford testified, more or less insisted that he, Sanford, handle Firestone batteries. Now I am quoting: "He (Swan) told me that I would either handle Firestone or not to expect any (5915) contract to be renewed."

Mr. Daniel, I want to know whether a statement like that, in words or in substance, was made at that time or at any other time to Mr. Sanford at your bulk plant and in your presence. A. No, sir, there was no statement made at that time. I greeted Mr. Sanford when he came in; I was with him during his entire visit. I bid him adieu when he left. There was no statement made like that or at any other time. In fact, I would say there was no statement made like that by anybody.

Q. To that effect or in substance? A. That is correct.

Mr. Dias: In your presence?

The Witness: That is right, in my presence.

By Mr. Lorenzen:

Q. Would you say that that testimony, insofar as it says that that statement was made in your presence, is not accurate? A. That is correct. It is not accurate.

Q. It is not the truth? A. It just didn't take place. That is all.

Q. While you were a consignee, Mr. Daniel, what was your understanding as to the Texas Company's TBA pol-

icy? A. My understanding of the policy is this, sir: That the Company often recommends, the Texas Company often recommends Firestone or Goodrich as being a means of a dealer making additional profit. They are both nationally-known lines. On no (5916) occasion have I seen them do other than suggest that course. We have found it a good course. It has been profitable for us.

Q. Did you know whether or not a dealer, to keep his lease with the Texas Company, had to carry either the Firestone or the Goodrich line or some of it? A. No, sir, they certainly didn't. We had other dealers who carried other lines of tires. It is not mandatory at all.

Q. And you knew that at the time that Mr. Fagg Sanford was a dealer? A. Yes, sir.

Q. And at the time that you recommended the cancellation of his lease? A. That is right.

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Cross examination by Mr. Dias:

Q. Mr. Daniel, can you give us the address of Mr. Sanford's station? A. It is at Lee and Wright Streets.

Q. Has that station changed hands? Who took the station after Sanford left? A. I believe Mr. Thompson replaced Mr. Safford.

Q. How long did he stay? Or is he still there? (5917) A. He was there less than a year.

Q. Do you know why he left? A. He went back into the aircraft business, I believe, with Temco. It was a voluntary thing. I don't recall the details specifically. It was voluntary.

Q. Can you give us roughly some idea of his tenure there, the length of time? From 1955 or early 1956, was it? A. I believe the dates were established a while ago.

Q. 1953 to 1955. Now I would like to know about Mr. Thompson. A. Less than a year from the day that Sanford checked out. I don't recall the precise dates. I would say months—three or four months, I would say.

Q. In other words, from the time Sanford checked out this new man Thompson came in and stayed there for a matter of months? A. I believe that is correct.

(5918) Q. Who was the next dealer in there? That would bring us into roughly the middle of 1956, wouldn't it? A. I can't recall the next dealer. I believe we had a number of stations, and we had a number of dealer changes. Scott, I believe, Floyd Scott, followed Mr. Thompson.

Q. And from the middle of '56 until when, or is he still there? A. If I am correct, if there were no intervening dealers, Scott was there in the vicinity of two years.

Q. Is he still there? A. No, sir, he is not there. We now have another dealer there.

Q. He went out—Scott went out this year, is that correct? A. I gave you an answer, sir, that Mr. Scott was there approximately two years. It may have been 18 months. But we now have a dealer who has been there about five months. So, we can date back from the present time approximately five months. I don't commit those dates to memory.

Q. Scott from 1956 to early '58? A. That's right.

Q. And now, you have who? A. Tommy J. Massey.

Q. He is still there? A. He is.

Q. Have each of these dealers carried Firestone tires? Do (5919) they get their Firestone tires from you? A. Not exclusively. The present dealer has acquired some Firestone tires elsewhere.

Q. How about Scott and Tommy? Do you recall their buying habits? A. They bought their Firestone from us, as far as I know.

Q. And batteries? A. The Firestone batteries they acquired came from us. However, there were other batteries sold by Mr. Scott. I don't recall the brands, however.

Q. In connection with that conversation that Mr. Lorenzen spoke to you about, Mr. Swan or Mr. Sanford were always in your presence at that bulk plant, were they? A. Yes, sir.

Q. During the entire course of their visit? A. That is correct.

Q. And you heard a part of the conversation? A. Yes, sir.

Q. You weren't just working over at your desk in one corner of the room while they were discussing this? A. They have a small office and there were three chairs, and they were arranged conference fashion.

Q. Did they arrive at your office together? A. As I recall, Sanford was by me. He came separately. There may have been a pre-arrangement between Swan and Sanford. (5920) There may have been, but they did not arrive together, as I recall.

Q. Is that a common occurrence, to summon dealers into your bulk plant? A. Often when we have a matter to discuss with the dealer we will go to the station. There we have customers coming in. If it is needful to visit with them with any degree of quiet, they come to our place because we won't have interruptions of customers coming in.

Q. Can you give us more information about the transfer of lower grade gas into the higher grade tank that you mentioned before?

First, tell us how do you go about transferring gas from one tank into another. How can the station operator do that? A. The station operator had a couple of extra lengths of hose and he attached them in series to his Fire Chief pump, that is the lower grade gasoline pump, and

then put the discharge nozzle into the fill pipe of the higher grade gasoline, the Sky Chief gasoline.

Q. A station operator has that equipment with him in the station? A. That's right. This one did. He asserted that he did.

Q. Was that transfer of gas occasioned by a leaking tank? A. The transfer, as I recall, was occasioned by the dealer (5921) being negligent in not buying enough gasoline to carry him over the weekend.

Q. Then, you recall nothing about a leaking tank on his premises? A. There was a leaking tank. That was separate.

Q. There was something else? A. That is something else.

Q. Can you tell us about that? A. Mr. Sanford didn't keep a very good set of records and that country has corrosive soil, and you have to keep records on your tanks in order to know if an underground leak occurs. And the underground leak occurred without the dealer knowing it because he kept no records, and finally the gasoline seaped underground and came up a block away. One of the neighbors complained. Then, the dealer realized that he had gas leakage. At that time, when the tank was established to be leaking, it was necessary that we withdraw the gasoline from the tank.

Q. Isn't that the occasion that the gas was withdrawn from one and put into the other? A. No, sir. He did that on more than one occasion when he would run out of gasoline over the weekend. He had mammoth storage; in other words, he had enough storage to run him for two weeks. Normally, we are closed Sundays. And he did not buy enough gasoline to run him from noon Saturday to Monday. And he would run out of gasoline, and he would hook his hose (5922) together and transfer the Fire Chief in-

to the Sky Chief tank, because he did not have enough gas to run over the weekend.

Q. How close to your station is your station to the bulk plant? A. About a mile.

Q. What would be the difficulty in asking you to deliver some gasoline? A. We would be glad to deliver gasoline to him.

Q. Had he asked you for gas and you didn't deliver it, had that occurred? A. No, sir, he had never asked for gasoline and did not receive delivery.

We may have taken a hot check from him when we did deliver, but we always did deliver.

Q. On these hot checks, have you ever been stuck for the money? A. No, sir. He, in all instances, paid. In other words, when it was established the check was hot, he would make coverage at the bank or pick it up himself.

Q. So that you actually lost no money to him, did you? A. Pardon?

Q. You lost no money to Sanford? A. Not on hot checks.

Q. In any other way? A. No. In no manner.

Q. Did you tell us that ten percent of your tire volume goes (5923) to Texaco stations, and 90 percent elsewhere? A. That's correct. That is essentially correct. And that is your overall sales. I understood that to mean all areas where you operate.

I would say that in Greenville perhaps six percent of our total TBA volume goes to Texaco outlets. We furnish Texaco outlets in other consignee's areas, which might bring the figure up to ten percent.

Q. You don't operate only in Greenville? A. No, sir. We operate in a rather wide area.

Q. Can you give us some idea of your area? A. Oh, we might ship tires to Houston, which would be two to

three hundred miles, or the area which we service, which we deliver merchandise to a service station, probably would not be greater than 75 or a hundred as a standard thing. But on many occasions we have shipped tires to other points.

Q. And you would ship tires to Houston, would you? A. Oh, yes.

(5924) Q. Was that leaking gas tank ever fixed for Sanford? A. Yes, sir, it was fixed.

Q. After how many calls and how many complaints had he made to you? A. As soon as the problem came to our attention we saw to it that it was handled. We are extremely sensitive on that point in our country because of long years of experience. In other words, as I mentioned earlier, the soil is corrosive and no amount of precaution will prevent tanks from rotting out. We habitually advise each incoming dealer to carefully check his product, because of that reason. Naturally, we are alert to any word that leakage is occurring.

Q. Who is it that fixed the tank? Did you fix the tank, your company? A. The Texas Company.

Q. The Texas Company? A. Yes. In other words, we engaged a man to fix it for the Texas Company. He removed the tank and put in a new one.

Q. The complaint was first made to you and then you reported that to the Texas Company, is that it? A. It is very likely that I engaged a man to repair that myself.

Q. Did you repair the tank or replace it? A. Replaced it. I used the wrong term. Replaced it.

Q. How long did it take to get a new tank down there? (5925) A. A matter of a day or so. The tanks are in Dallas. We called Dallas and they shipped the tank.

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L. H. Daniel, Jr., for Respondents—Redirect

Charles B. Swann, for Respondents—Direct

Redirect examination by Mr. Lorenzen:

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Q. The problem which you envisioned when you recommended the cancellation of Sanford with this new highway in fact took place, didn't it? A. The highway did change, yes.

Q. And cut off the station? A. That is right.

(5926) Q. And that happened within a month or so after the termination of Mr. Sanford's lease? A. That is correct.

Q. You were explaining this business of pumping gasoline from one tank to another. The pump which is used in that process is the regular pump which is on the island? A. That is correct, the one normally used to deliver gasoline to customers' cars.

Q. He just attached a hose to the nozzle and ran it into the intake of the other tank? A. That is correct.

Q. The territory in which you supply Texaco gasoline to dealers is much less than the territory over which you sell your Firestone product; is that right? A. That is correct.

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(5927) CHARLES B. SWANN, was called as a witness and, after being properly and duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your full name and address to the court reporter, please? A. Charles B. Swann, 2812 Huntley Drive, Oklahoma City.

Q. You are now employed by the Texas Company? A. Yes, sir.

Q. In what capacity? A. District sales representative.

Q. About where is your district located? A. North Central Oklahoma.

Q. Before that, you were also employed by the Texas Company? A. Yes, sir.

Q. In what capacity? A. As zone manager headquartering in Greenville, Texas.

Q. That is the city in which there was a dealer by the name (5928) of C. Fagg Sanford? A. Yes, sir.

Q. When you met Sanford for the first time, were you zone manager down there? A. No, sir.

Q. What was your position when you first met him? A. Actually, the very first time I met him I was dealer training representative. I think I probably met him twice in that capacity, and then worked with him later on as a dealer service representative.

Q. When you talked with him at the station which he operated in Greenville, your capacity was dealer service representative? A. Yes, sir; that's right.

Q. And you were the zone manager in this zone in which his station was located at the time when his lease was not renewed? A. That's right, sir.

Q. Was it your recommendation that the lease be not renewed? A. It was.

Q. Will you tell us the basis for your decision to recommend against the renewal of his lease? A. Well, Mr. Sanford had proved to be somewhat of a marginal dealer. In fact, he was probably a business failure. About 30 to 50 percent of his business was going to be lost due to a highway change, and if he was a failure before the highway change, I was pretty sure he would be afterwards. It was a (5929) matter of either not renewing his lease or him going broke, because there wasn't any question in my mind but what he would go bankrupt if he stayed there in the station after the highway changed.

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Q. Tell us some of the things that you knew about Mr. C. Fagg Sanford which led to your conclusion that he was a business failure. A. Well, his financial position definitely was strained. He definitely did give several checks of insufficient funds for petroleum funds.

Apparently, his operating capital continued to decrease as long as he stayed in there. In other words, he was taking more out of the station than the station was making each month.

Q. That is what led to your conclusion that you would have a bankrupt dealer on your hands if he stayed in there? A. He was on the verge of bankruptcy when he left.

Q. At the time when you recommended the cancellation of his lease, and at the time when you had your conversations with Mr. (5930) Sanford, will you tell me whether you were acquainted with the Texas Company's policy, particularly that relating to TBA, as set out in Exhibits 26, 27, and 28?

Mr. Dias: To save time I will concede that the witness will answer in the affirmative.

Mr. Lorenzen: Let him look and decide whether he knows or not.

Mr. Dias: I will stipulate that he will.

Mr. Lorenzen: Are you going to cross-examine him about it?

Mr. Dias: I don't know.

Mr. Lorenzen: Then, let's let him look.

The Witness: Yes, sir, I received each of these letters and was familiar with them.

By Mr. Lorenzen:

Q. At the time that you talked to Mr. C. Fagg Sanford and recommended the cancellation of his lease, what was your understanding as to the Texas Company's TBA pol-

icy? A. My understanding was just the same as it always had been. Briefly, that was that although the Texas Company didn't sell TBA, they realized that in order for a dealer to be successful and realize his full profit that he should merchandise that merchandise along with his petroleum products. The Texas Company recommended both Firestone and Goodrich as being good lines of merchandise with good acceptance, and that we always (5931) made it a policy to notify the dealer that he was an independent businessman and could choose the brand of TBA that he so desired.

Q. Did you have in mind specifically the reference in that 1948 letter that any employee of the Texas Company who did not respect that independence of the Texas dealer would subject himself to immediate discharge? A. Do you mean Mr. Hochuli's letter?

Q. Yes. A. I sure do remember it.

Q. You knew about it at that time and you still remember it? A. Yes, sir.

Q. Was your recommendation that Mr. Sanford's lease be cancelled based in any way upon the fact that he handled some Continental batteries? A. That is ridiculous. Of course not.

Q. It had nothing to do with it? A. Oh, absolutely nothing.

Q. In the summer of 1955 it is testified to here by Mr. C. Fogg Sanford that you and he and Mr. Dan Daniel had a meeting at the bulk plant in Greenville, and at that time you more or less insisted that he handle Firestone batteries, and I am quoting: "He told me that I would either handle Firestone or not to expect my contract to be renewed."

Did you tell him anything like that in effect or (5932) substance? A. No, sir. No, sir.

Q. And you didn't use those exact words, did you? A. I didn't use—I didn't even imply that.

Q. And to that extent the testimony of Mr. Sanford is just inaccurate? A. He is.

Q. At the time when you recommended the cancellation of this lease, there were other Texaco—there were other dealers who had leases from the Texas Company in your zone, were there not? A. Oh, yes.

Q. Did any of them handle tires and batteries other than Firestone and Goodrich? A. Oh, yes.

Q. How many of them? Quite a few? A. I didn't have many leased stations. I expect about half of them handled other than Firestone and Goodrich.

Q. Did you recommend that any of them be cancelled because of their failure to handle Firestone and Goodrich? A. Oh, of course not.

Q. Did they stay on as dealers as far as you were concerned? A. Certainly.

Q. Mr. Sanford also testified that when he came to sell his station you asked him to dispose of those batteries before he (5933) sold his station, and by "those batteries" he means the Continental batteries he had there. Did you tell him anything like that? A. No, there was some discussion about it.

Q. Tell us what it was. A. I can't—as I recall this is what happened: The incoming dealer told me that he didn't want to buy them from Mr. Sanford; that he didn't want to handle that kind of batteries. I may have told Mr. Sanford that the incoming man told me that. I don't recall.

As I recall, the batteries were there when the change was made, and they probably were returned to the battery company for credit to Mr. Sanford's account. However, I can't say for sure on that because I wasn't there at the time that happened.

Q. Do you know what line pricewise or qualitywise those particular Continental batteries were? A. They were the cheapest made. $7.95 retail price.

Q. Is that a kind of a poor quality battery? A. Well, about the poorest you can get, I imagine.

Q. In this district in which you manage now, do you have any leased stations under you? A. Oh, yes.

(5934) Q. What about the proportion there? Are some of those who don't handle Firestone or Goodrich tires or batteries? A. Oh, yes.

Q. What is the proportion? A. I would say about half of them don't handle Firestone or Goodrich.

Q. The half that do handle it, do they handle Firestone and Goodrich exclusively? A. I don't think I have a single dealer that handles Firestone or Goodrich exclusively.

Q. Have you recommended that any of those dealers be cancelled out because they don't handle the Firestone or Goodrich line? A. I sure haven't.

Mr. Lorenzen: That is all.

Cross examination by Mr. Dias:

Q. Mr. Swann, is it your testimony that in your current area half do not handle Goodrich or Firestone exclusively? What about the other half? Do they handle non-sponsored exclusively? Is that your testimony? A. No, I wouldn't say that they handle non-sponsored exclusively. Probably buy and sell some Firestone or Goodrich. I just don't know.

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(5935) Q. Will you tell us what you said about the half that handle Goodrich or Firestone. A. I don't even recall exactly what I said, but about half of my leased stations in my area at the present time handle some Firestone or Goodrich.

Q. Then as to the other half, is it your testimony that they do not handle any Goodrich or Firestone? A. If they handle any it is negligible. It is just so small I don't know about it if they did.

Q. How strong do these others handle the Goodrich and Firestone lines? A. They stock some of them.

Q. They stock some? A. Yes.

Q. On this $7.95 Continental battery, you said that is the poorest quality. Did you mean poorest quality or cheapest battery, which? A. I don't propose to be a judge of quality of batteries. I know it is the cheapest price.

Q. In other words, you are not a battery expert, are you? (5936) A. No, sir.

Q. I think you also said that you didn't handle many leased stations when you were in Greenville. Is that in the Greenville area? A. I didn't have many leased stations in my area, no, sir.

Q. How many did you have, do you recall? A. Probably nine or ten. I don't recall exactly.

Q. Does that indicate that the other half handled Goodrich or Firestone exclusively? A. In my Greenville area I don't recall of a single dealer who handled either Firestone or Goodrich exclusively, no, sir.

Q. Of those, of the other half that were not handling Goodrich or Firestone, did they refrain from Goodrich or Firestone exclusively, or did they, too, buy some? A. They could have bought some. In fact, I am sure they may have bought some. I frankly just don't know.

Q. When did that highway go through—as I understand it, it took up Sanford's old station, is that right? A. No, sir. The highway was rerouted from in front of his station.

Q. So you lost the business—the business was taken away from that area? A. Yes, sir.

Q. When did that occur? A. That occurred approximately one or two weeks before Mr. (5937) Sanford left the station.

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Q. You talked to Sanford on numerous occasions, did you? A. When?

Q. While you were in Greenville and while he was operating the station. A. Oh, yes.

Q. How often did you say you called on him? A. Mr. Sanford did the service work on the Company car assigned to me, and I expect I probably visited his station at least once a week on an average.

Q. Do you recall a conversation with Sanford in which you said to him, "When I mention something to an operator I expect it to be done"? Do you recall anything like that with him? A. No. I know that I didn't make a statement like that. I can't imagine me making such a statement.

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(Witness excused.)

(5938) CHARLES EUBANKS was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Mr. Eubanks, will you give your name and home address to the reporter? A. Charles Eubanks, Santa Rosa, Texas.

Q. Are you with the service station business? A. Yes, sir.

Q. What sort of gasoline do you sell? A. Texaco.

Q. About what is the gallonage of your station? A. 18,000 to 20,000.

Q. Gallons a month? A. Yes, sir.

Q. For how long have you been a lessee? A. For approximately 9½ years.

Q. So you got in there sometime in 1948? A. '48.

Q. Is this station you are in now, physically the same station in which you started? A. No, sir. They completely tore the old one down and rebuilt the new one in 1953. I opened the new one January 1, 1954.

(5939) Q. At both stations did you handle TBA? A. Yes, sir.

Q. Why did you handle TBA? A. To make money.

Q. Is that your own choice? A. Yes, sir.

Q. During the time you were in this station, did you have an understanding as to the Texas Company's TBA policy? A. Yes, sir.

Q. What was your understanding? A. The Texas Company recommended that the dealer handle Firestone or Goodrich but that it was impressed on him that he was an independent dealer and could buy from whatever source he chose.

Q. Are you sure that was actually told you? A. That was actually told me; yes, sir.

Q. And have you acted in accordance with that policy since? A. Yes, sir.

Q. Now, let me ask you about your TBA buying.

When you first got into that station in 1948, had you been in the service station business before? A. No, sir; I was just out of college.

Q. You were just out of college? A. Yes.

Q. At that time, were you told why the Texas Company (5940) recommended the Firestone line or the Goodrich

line? A. None other than it was just naturally went in good with their national advertising.

Q. Let me ask you this: After that recommendation, what sort of a line did you have in that station when you went in? A. It was Firestone merchandise.

Q. How long did you continue to handle Firestone? A. I just moved out approximately what stock he had in there and gradually replaced it with Goodrich.

Q. That is, the stock you started with was the stock that was in the station? A. Yes, sir. With Firestone.

Q. And then what was the first order that you placed? A. Goodrich.

Q. With the Goodrich Company? A. Yes, sir.

Q. Will you tell me the basis for your selecting Goodrich as the product which you ordered the first time you had a chance to make an order when you were in that station? A. Well, I didn't know too much about the business, and I had a friend whom I had known before who worked with Goodrich, and I went along with him.

Q. You bought from him? A. Yes, sir.

Q. How long did that continue? (5941) A. Until approximately 1952.

Q. Then what happened to this friend of yours who was with Goodrich? A. He was transferred—not transferred but he quit Goodrich and went to work for Goodyear.

Q. Goodyear? A. Yes, sir.

Q. And at that time, was there any change in the TBA which you bought? A. I changed over to Goodyear myself.

Q. You followed your friend to Goodyear? A. I followed my friend to Goodyear.

Q. And at that time, then, did you buy Goodyear tires? A. Yes, sir; I bought Goodyear tires ever since.

Q. How about batteries? A. I stocked Willard batteries.

Q. Was that the situation as of the time when the Texas Company offered to rebuild your station and build you a new one? A. Yes, sir.

Q. You were handling Goodyear tires and you were handling Willard batteries? A. Yes, sir.

Q. As a condition to building you this new station, did the Texas Company tell you you would have to discontinue (5942) handling the Goodyear? A. No, sir.

Q. Did they tell you you would have to discontinue handling Willard batteries? A. No, sir.

Q. Did they tell you that you would have to open the new station with the Firestone or Goodrich line? A. No, sir.

Q. When you did move into the new station, what TBA product did you open? A. Goodyear.

Q. Goodyear tires? A. Yes, sir.

Q. What kind of batteries? A. Willard batteries.

Q. Did you have any Firestone or any Goodrich merchandise in stock? A. No, sir.

Q. Not any? A. None whatsoever.

Q. Have you continued ever since that time to handle the Goodyear line? A. Yes, sir.

Q. And Willard batteries? A. Yes, sir.

(5943) Q. And no Firestone and no Goodrich? A. No Firestone and no Goodrich.

Q. In addition to the Goodyear Tire and Rubber Company, will you tell us who your suppliers of accessories are? A. Straus-Frank.

Q. Is that company a Firestone or Goodrich supply point? A. No, sir.

Q. Any other company? A. I buy a little bit from some smaller companies. Grindle Sales and Barrera Auto Supplies.

Q. Do you display all of your Goodyear merchandise openly? A. Yes, sir.

Q. And all of the other merchandise, too? A. Yes, sir.

Q. Do you have Goodyear signs? A. Yes, sir.

Q. And what about the Willard batteries; are they openly displayed? A. Yes, sir.

Q. Your Texas Company salesman and the district manager know all about it? A. They know everything.

Q. Have they, at any time, indicated to you that they might cancel your lease or look upon you with disfavor if you didn't stop handling this Goodyear line and this Willard line? (5944) A. No, sir.

Q. Or if you didn't stop buying these accessories from Straus-Frank? A. That's right.

Q. Nothing like that has ever happened to you? A. Nothing like that was ever mentioned.

Q. Do you find in this particular neighborhood this tire has had popular acceptance? A. Yes, sir.

Q. Is that one reason you handle it? A. My tire volume doubled when I switched from Goodrich to Goodyear.

Q. You do substantial business in tires, don't you? A. Yes, sir; I do.

Q. A very large business? A. Well, it is fairly large for a service station.

Q. In your situation it is more than your battery and accessories business combined? A. Yes, sir. It is approximately 60 percent.

Q. About how much a month do you figure your total TBA business come to at cost to you? A. Approximately $2500.

Q. A month? A. Yes, sir.

Q. Do you attend the Texas Company dealer meetings? (5945) A. Yes, sir.

Q. At that time, was there any discussion about TBA? A. Yes, sir; there was discussion of selling points.

Mr. Dias: Sir?

The Witness: Discussion of salesmanship on TBA, on the drive and in the lube base.

By Mr. Lorenzen:

Q. Do you find that is helpful to you? A. Yes, sir; very helpful.

Q. And you can use that in the sale even of your Goodyear and Willard? A. Yes, sir.

Q. And the other accessories? A. That's right.

Q. About how many dealers attend those meetings? A. In my area there is never over 10 and 12.

Q. Do you get to know those fairly well? A. Fairly well.

Q. Do you get to talk to them after the meetings? A. Some; yes, sir.

Q. Do you attend any larger meetings? Are there any annual meetings held somewhere where you go? A. The last few years they have changed it to a breakfast meeting, one-time a year, at which time any new products are introduced or—it used to be a spring meeting, at which time (5946) we would have a banquet. But now they have changed that to a breakfast meeting.

Q. Do more people attend now? A. No.

Q. It is still in the same location? A. Yes.

Q. And still the same sized meeting? A. Yes.

Q. At any time at that meeting, has any one from the Texas Company suggested to anyone that the lease might be cancelled or that they would be looked upon with disfavor in some other way if he didn't handle some or all of the Firestone or Goodrich line? A. Not to my knowledge; no, sir.

Q. Has any dealer at those meetings, or at any other time, told you or indicated to you that the Texas Company

had suggested to him that his lease might be cancelled or that they would treat him badly in some other way if he didn't handle some or all of the Firestone or Goodrich line? A. No, sir.

Q. Nothing like that— A. Nothing like that.

Q. (continuing) —has never come to your attention? A. No, sir.

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(5947) *Cross examination by Mr. Dias*:

Q. Mr. Eubanks, do you still have some Firestone signs around your station? A. No, sir. There are some Goodrich decals in the window.

Q. Goodrich? A. Yes, sir.

Q. Not Firestone? A. No, sir.

Q. What did you say they were? Decals? A. Yes.

Q. Are there any Goodrich retail outlets in your area? A. Not in—I am in a small town. Not in that small town. There are in our trade area. But not in the small town.

Q. Is there another service station of any brand right nearby selling Goodrich? A. I believe the Concord dealer handles some Goodrich.

Q. He is about a block away from you, isn't he? A. Yes.

Q. As a matter of fact, there are only two other gas stations in your area; isn't that right? A. That's right.

Q. Conoco is one of them? A. There is one that is closed up.

Q. Sir? (5948) A. There is one that is closed up, which would make four.

Q. It is closed? A. It is closed.

Q. Three in all, operating? A. Yes.

Q. What is the size of Santa Rosa? A. We tripled our population recently. We had a sign up of "400". Now we have one up, "1300".

Q. I thought it was still 400? A. We annexed the Latin-American area of town.

Q. Do I understand that yours is the only Texaco station in town? A. Yes, sir.

Q. Can you tell me something about your business? It is a partnership, is it not? A. Yes, sir.

Q. Who makes up the partnership? A. My father and my brother.

Q. The three of you in all? A. Yes. They don't attend to the station very much. I run the station.

Q. Do they or either of them or you run the tire store that you have? A. I run the whole business.

Q. You run the tire store, too? (5949) A. Yes.

Q. In addition to the tire store, the partnership as a whole has added outside income, has it not? A. We have a little bit of rental property and we also have farming.

Q. Farming? A. Yes, sir.

Q. How about the airport? A. We lease it to a dusting service.

Q. How about the property that your station is on? Who owns that? A. The Texas Company.

Q. You don't own it yourself? A. No, sir.

Q. Is your trade mainly with the farmers in the area? A. Yes, sir. The farmers and the local people.

Q. As a matter of fact, half of your business is on a credit basis, is it not? A. Yes.

Q. That isn't the credit that goes through the Texaco Company? A. I have a good substantial amount with the Texas Company.

Q. I thought you gave them, extended credit yourself? A. I do. But I have a lot of credit-card business also.

Q. In addition to that 50 percent that you do with the (5950) farm trade? A. Yes, sir.

Q. Where is the nearest Firestone supply point? A. Do you mean by that, retail outlet?

Charles Eubanks, for Respondents—Redirect

A. L. McAnally, for Respondents—Direct

Q. The Firestone store. A. The Firestone store would be Harlingen, which would be 10 or 12 miles.

Q. And what about other retail outlets handling Firestone products? How close are they? A. There is Boggus Motor Company in Harlingen. They are a distributor.

Mr. Dias: I have nothing further.

Redirect examination by Mr. Lorenzen:

Q. Where is your Goodyear supply point? A. Harlingen and San Antonio. The pick-up basis is Harlingen and the district warehouse is at San Antonio.

Q. Harlingen is the same place where you said the Goodrich supply point was? A. Firestone and Goodrich, too.

Q. Both Firestone and Goodrich? A. Yes.

Q. And Goodyear? A. Yes.

Q. Same town? (5951) A. Same town.

Q. Was there any other Goodyear retail outlet near you when you took on this Goodyear line? A. There is another dealer about six miles.

Q. Six miles away? A. Yes. He is also a Texaco dealer.

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(5952) A. L. McANALLY was called as a witness for Respondent and, after being properly and duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Please state your full name and address to the reporter. A. A. L. McAnally, 502 West Rost, Hamilton, Texas.

Q. You are in the service station business? A. Yes, sir.

Q. At what location? A. 515 North Rice Street.

Q. Hamilton, Texas? A. Hamilton, Texas.

Q. That isn't a suburb of Dallas either, is it? A. No. It is 135 miles out of Dallas.

Q. Are you on a highway? A. I have one station on a highway. Yes, both stations on the highway. One on 281 and the other on 36.

Q. Do you have a brand new station of which you are a lessee? A. Yes, sir.

Q. At those stations do you handle Texaco gasoline? A. Sure do.

Q. And do you have leases at both stations? A. Yes.

(5953) Q. With the Texas Company? A. Yes, sir.

Q. They are the usual leases that renew themselves each year? A. Yes.

Q. When did you get into the station at 515 North Rice? A. Last October was a year ago.

Q. That is the new one? A. Yes.

Q. Where is the old one? A. 212 North Rice. The old one is 212 North Rice.

Q. How long were you at the one at 212? A. Thirteen years.

Q. In the course of that time did you handle various kinds of TBA? A. Yes, sir, I did.

Q. Do you handle TBA at both stations now? A. Yes, sir.

Q. Are they both going now? A. Yes.

Q. Both are going now. And you handle TBA at both stations? A. Yes, both stations.

Q. Will you tell us why you are handling TBA at both stations? A. For the profit.

Q. Do you make money on the TBA? A. Yes, sir.

(5954) Q. Do you find it helps you bring in customers for your gasoline? A. It sure does.

Q. During the time you have been a lessee of the Texas Company, have you had an understanding as to the TBA policy of the Texas Company? A. Yes, sir.

Q. What has that been? A. Well, they told me they sponsor Firestone and Goodrich tires, but we are independent dealers and we could handle what we wanted to.

Q. You were told that? A. Yes, sir.

Q. Have you acted on that suggestion? A. I sure have.

Q. Tell me what has been your principal line of tires in the old station? A. Most of the time I handled U. S. Royals in the old station.

Q. Did you ever handle any Goodrich or Firestone there? A. Yes, I had a few Goodrich.

Q. At one time or throughout the time? A. A couple of times.

Q. A couple of times? A. Twice.

Q. For how long a period of time? (5955) A. Well, six months one time, and just got one shipment the last time.

Q. Six months at one time and one shipment the other time? A. Yes.

Q. How long did that shipment last? A. It lasted two or three months before I got rid of it. Before I sold it all.

Q. Except for those two occasions, you didn't stock any Goodrich or any tires? A. No, sir.

Q. It was all U. S. tires? A. Yes, sir.

Q. What about batteries? A. At that time I handled U. S. batteries, too.

Q. During the same time? A. Yes.

Q. Now, we are talking about the 13 years you were in the old station? A. Yes.

Q. In 1955, before you got this new station, what sort of tires and batteries were you handling at the old one? A. I changed to Goodyear tires and Reliable batteries.

Q. Goodyear tires and what? A. Reliable batteries.

Q. That is what you had in that station before you got the (5956) lease on the new station? A. Yes, sir.

Q. And the Texas Company gave you the lease on the new station? A. They sure did.

Q. Did they tell you as a condition to getting that lease that you would have to discontinue selling the Goodyear tires and Reliable batteries? A. They did not.

Q. When you opened the new station, what did you open with? A. I opened with Goodyear tires.

Q. Goodyear tires? A. Yes, sir. And Reliable batteries.

Q. And Reliable batteries? A. Yes, sir.

Q. Did the Texas Company tell you they were going to cancel the lease on that station unless you buy the Firestone and Goodrich line? A. No, sir, they did not.

Q. They never told you anything like that? A. No, sir. They told me to tell Greer to put up some decals so the windows wouldn't look so naked.

Q. Did you do that? A. Yes, sir.

Q. Has the salesman of the Texas Company ever tried to sell you on the idea of handling the Firestone and Goodrich line? (5957) A. Not in many years.

Q. You mean you discouraged him? A. Sir?

Q. You discouraged him? A. Yes, I guess I did.

Q. At one time did he try? A. Yes.

Q. But you refused to buy any of the Firestone or Goodrich? A. I sure did.

Q. Except for those two times you tried? A. That's right.

Q. Will you give us the names of some of the suppliers from whom you buy your TBA? A. Well, I buy some from the Shullcalp Company in Dallas.

Q. What do you buy from them? A. I buy seat covers and sealed beam lights, light bulbs of all kinds, all kinds of hardware and accessories.

Q. Where do you buy your tires? A. I buy the tires from Goodyear.

Q. In Dallas? A. Yes, sir.

Q. And batteries? A. I buy batteries from Reliable, San Anton.

Q. Do you buy anything from the Miller Company in Waco? A. Yes. I buy oil filters and windshield wiper blades and (5958) such as that from the Miller Company in Waco.

Q. How about— A. (interposing) And from the Archenhold Company.

Q. Are they the people from whom you buy your main line of accessories? A. Yes, sir. I buy some from open trucks. I buy some off of the Avons Company in Evinsville.

Q. None of those are Firestone or Goodrich supply points, are they? A. No, sir.

Q. You do a pretty substantial tire business, too, don't you? A. Yes, sir.

Q. Do you sell quite a lot more tires than you do either batteries or accessories? A. Yes, sir.

Q. Do you display all of your TBA? A. Yes, sir, I sure do.

Q. Openly? A. Yes, sir.

Q. So the Texas Company knows about it? A. Yes, they know about it.

Q. And you have signs up to advertise your product? A. Yes, sure do.

Q. Has the Texas Company ever told you to take down the signs and take down the advertising? (5959) A. No, sir.

Q. Have they ever told you to discontinue handling the Goodyear line, or the Reliable battery line? A. No, sir, they have not.

Q. Have they ever threatened to cancel the leases on your station if you didn't handle some or all of the Goodrich or Firestone products? A. No, sir.

Q. Do you attend dealers meetings of the Texas Company? A. Sure do,

Q. About how many do you attend? A. Well, on the average about two a year for 20 years.

Q. About how many dealers would you say are at those meetings? A. Well, it varies. When we go to Waco there are about a hundred. When we go to Lampasas or Brownwood, there are not quite so many. Lampasas would be 30 or 40. Brownwood would be about 50. You see, I have been transferred from zone to zone down there, from Waco zone back up to San Angelo and back into Waco.

Q. Do you mean there has been a reorganization in the Texas system of administration in there? A. Yes. They swapped back there.

Q. Physically, your stations are still located in the same place? A. I said in the same place. Just changing district and zone (5960) managers.

Q. At those meetings tell me do you get any information about selling TBA? A. Sure do.

Q. What sort of advice and information do you get? A. Well, they have a good film showing us how to sell on the drive, showing you how to display your stuff so it will be attractive. You have a lecture. It is good for anyone to attend.

Q. Do you find that is helpful in marketing your line of TBA? A. Sure do.

Q. At any of those meetings has anybody from the Texas Company ever suggested to you or to any other dealer in your presence that the lease on his station might be cancelled or that he would be treated badly in some other way if he didn't handle some or all of the Firestone or Goodrich line? A. No, sir, never heard of it.

Q. Nothing like that? A. No, sir.

Q. Do you get to talk to any of the dealers at those meetings? A. Oh, yes. A little bit.

Q. Do you visit with them? A. Yes, sir.

Q. Talk with them quite a bit? (5961) A. Yes.

Q. Have any of those dealers ever said in your presence, or to you, that anybody from the Texas Company has ever suggested to them their lease might be cancelled or they would be treated badly in any other way— A. (interposing) No, sir.

Q. (continuing) —if they didn't handle some or all of the Firestone or Goodrich line? A. No, sir.

Q. Nothing like that has ever come to your attention? A. No, sir. Never heard it mentioned.

(5962) Q. What is the gallonage of your station? A. About 15,000. That is 515 North Rice. That is 15,000.

Q. And what is it at the other station? A. All told, at the other it will run about thirty, with our gasoline, butane, and diesel oil—LP gas.

Q. You say that is about thirty? A. It is about thirty thousand.

Q. So between the two you have about 45,000? A. That is right.

Mr. Lorenzen: That is all.

Cross examination by Mr. Dias:

Q. On that last gallonage figure, 15,000 at 515 North Rice— A. Yes, sir.

Q. —and 30,000 at your other station. A. Yes, sir.

Q. But that 30,000 includes butane? A. Yes. Butane and diesel.

Q. All that together comes to 30,000? A. Yes, sir.

Q. At these dealer meetings, what kind of lectures do you get? A. Well, lectures on how to take care of your busi-

ness, and try to promote more business, and just something that will help you in sales and give you some new ideas.

(5963) Q. At those meetings do you see Firestone and Goodrich displays of TBA? A. Yes, sir, sure do.

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(5964) Q. When did you open up Mac's Truck Town Station? A. 1951.

Q. That is the second station? A. Yes, sir.

Q. Where you sell butane and diesel and so on? A. Yes.

Q. What is the address of that? A. One mile east on 36 Highway.

Q. Is that one mile east of Hamilton? A. Yes. That is one mile east of downtown. It is still in (5965) the city limits, but that has always been our address.

Q. One mile east on Highway 36.

Do you sell any TBA at the Truck Town station? A. Yes, sir.

Q. What type TBA do you sell there? A. Tires, tubes, batteries.

Q. The same brands that you carry— A. Same brands.

Q. Goodyear and all the others that you mentioned? A. Yes, sir.

Q. You also run a restaurant there, do you not? A. Yes, sir.

Q. That is at the one mile east highway? A. Yes, sir.

Q. How many other Texaco stations are in town? A. In the city limits there are three of them.

Q. A total of three? A. Yes, sir. Three besides the two I have.

Q. You say in the city limits. Are you in the city limits? A. Yes.

Q. Do you know those other three stations? A. Yes, sir.

Q. What do they sell in the line of TBA? A. Not any one of them sells anything much. J. Frank Jones gets some stuff from me, batteries, tubes, and whatnot.

(5966) Q. Are there any Firestone stores in town? A. Yes, sir. Big one.

Q. Whereabouts is that? A. It is on West Main.

Q. Is that very far from your station or either one? A. Five or six blocks.

Q. How about Goodrich? Is there a Goodrich store? A. No, there is not a store there. There is a Conoco station that handles Goodrich.

Q. You said something a little while ago about discouraging the Texaco salesman. Can you tell us about that? A. Well, I just never would buy.

Q. How did it come up that you discouraged him? A. I guess they got tired of asking me.

Q. Asking you what? A. Why didn't I handle some Goodrich and Firestone tires.

Q. When was that? A. It has been years ago.

Q. Can you tell us roughly when? A. No, I couldn't. They never bothered me bad no time.

Q. Can you tell us what it is that he said to you that made you think he was urging you to buy? A. They never did urge.

Q. They didn't? A. No.

(5967) Q. Can you tell us what he said? A. No. I have had them say a time or two, "Shorty, when are you going to handle some Goodyear or Firestone for us?" I would say, "Never."

Q. How did you discourage them? A. Just saying, "Never." They knew I meant it.

Mr. Dias: I have nothing further.

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(5972) H. HELMCAMP was called as a witness for Respondent and, after being properly and duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your full name and address to the reporter, please? A. H. Helmcamp.

Q. Where do you live? A. Schulenberg, Texas.

Q. Are you in the business of selling gasoline, among other things? A. Yes, sir.

Q. What sort of gasoline do you sell? A. Texaco.

Q. For how many years have you been selling Texaco gasoline? A. Oh, it is going on 40 years.

Q. Do you have a lease now from the Texas Company? A. Yes, sir.

Q. For how long have you had the lease from the Texas Company? A. Well, ever since '40, 1940, and before that.

(5973) Q. Even before that? A. Yes, sir.

Q. Well, is this one of these leases which renews itself each year? A. How is that?

Q. Is this one of these leases which has a clause in it that it is renewed each year unless it is cancelled? A. I couldn't tell you. I never read it.

Q. How long since you have seen your lease? A. Just looked at it, that is all, and signed it.

Q. How long since you have seen your lease and even had any talk with the Texas Company about it? A. Not since 1940 that I know of.

Q. You don't own this property, do you? A. No, sir.

Q. It is leased to you by the Texas Company? A. That is right.

Q. Now, what sort of TBA do you handle there? A. Well, I handle Goodyear tires and batteries and all other TBA.

Q. You say you handle Goodyear? A. Goodyear.

Q. Tires and batteries? A. Yes, sir.

Q. Do you buy any of your tires or batteries or accessories (5974) from either Firestone or Goodrich? A. No, sir.

Q. And you haven't done that ever? A. No, sir.

Q. Was there ever a time when the salesmen of the Texas Company tried to sell you on the idea of handling Firestone and Goodrich? A. Yes, sir.

Q. Do they still try? A. No, they haven't made any suggestion in a long time.

Q. Now, about what is the gallonage, gasoline gallonage at your station? A. Between 25,000 and 30,000 gallons per month.

Q. Do you do a fairly substantial TBA business there? A. Yes, sir.

Q. About what do you think the dollar volume at cost to you is of your TBA business? A. Well, I buy approximately $40,000 worth of merchandise from Goodyear a year; that is my cost.

Q. That is your cost? A. Yes, sir.

Q. In addition you buy accessories from some other sources? A. Yes, sir.

Q. What is the name of the source from which you buy most of your accessories? (5975) A. Most of my accessories are bought from a little jobber at Moulton, Texas, Gus Fishbeck.

Q. Do you have any other supplier of accessories? A. Strauss Frank Company.

Q. San Antonio? A. San Antonio, yes, sir.

Q. At any time while you have been in this station, has anyone from the Texas Company intimated to you that if you didn't stop handling this Goodyear line and these other accessories that they might stop renewing your lease? A. No, sir.

Q. Have they ever told you that he would treat you badly in some other way? A. No, sir.

Q. Do they maintain your station? A. Yes, sir.

Q. Have they offered to rebuild it for you? A. Yes, they have.

Q. Have they offered to do that? A. Yes, sir.

Q. And what did you tell them? A. I told them I couldn't use it if they rebuilt it, there wouldn't be enough room there.

Q. Is that because you wouldn't have enough space to store your tires? (5976) A. That is right, sir. We don't have the room. We have an old station and we are using the sidewalk. If we rebuild it we would have to move back and there would go my warehouse. They promised to leave it as long as I stay.

Q. And that warehouse is also something that the Texas Company built for you? A. Yes, sir.

Q. And it is covered by the lease? A. Yes, sir.

Q. What you keep in there mostly is this Goodyear product? A. That is right.

Q. You don't keep any Firestone or Goodrich in it? A. No, sir.

Q. In the last couple of years, have you suggested to the Texas Company that you would like to quit and retire? A. I sure have.

Q. And what has been the Texas Company's position on that? A. They told me that I had some good years left, just to stay there a while.

Q. Are you on the Texaco dealers council? A. Yes, sir.

Q. Do you advertise your Goodyear products? A. Yes, sir; I advertise in the newspaper and by direct mail.

Q. And do you have your name and the name "Goodyear" in that advertising? (5977) A. Yes, sir, the material is furnished by Goodyear.

Q. The material is furnished by Goodyear? A. Yes, sir.

Mr. Lorenzen: That is all.

Cross examination by Mr. Dias:

Q. You have been with Texaco for 40 years? A. Practically, yes, sir.

Q. And you became a lessee in 1940? Is that correct? A. No, I think when they acquired the station, I just don't know.

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(5979) Q. After the Texas Company bought it, then you got a lease from the Texas Company? A. Yes, sir.

Q. Up until that time you had been operating under a lease to Mr. Russek, is that correct? A. Yes, sir, operating on a monthly basis.

Q. That started in 1934? A. Somewhere in that neighborhood. I couldn't tell you exactly.

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(5980) Q. Now, I believe you stated that you have carried Goodyear all this time, have you? A. Yes, sir.

Q. Have you ever carried Firestone? A. Oh, I have had a few during the war, when I couldn't buy no tires, but I had any kind of tire I could buy in those days.

Q. Which war was that, War II or Korea? A. War II.

Q. Do you at this time advertise Firestone? A. No, sir.

(5981) Q. You do not? A. No, sir.

Q. You have no decals or signs around the station? A. No.

Q. You are not listed in the phone book as Firestone man? A. No, sir. I don't have any signs or decals at all.

Q. Is there a retail outlet of Firestone products anywhere near you? A. No, sir.

Q. Or in the town of Schulenberg? A. No, sir.

Q. How about Goodrich, is there a retail outlet of Goodrich products? A. They have a Conoco station there.

Q. Where is it located? A. Right across the street from me.

Q. Is that the only outlet for Goodrich? A. That is right.

Q. You sell mainly to the farmers in the area? A. Yes.

Q. And you sell to them on credit, do you? A. Yes.

Q. About 50 percent of your business is on credit, is it not? A. No, not that great.

Q. Is this, how great would it be? (5982) A. Oh, I would say about 20 percent.

Q. How much of your business would you say was devoted to wholesaling? A. Well, on the tire business and battery business, I imagine about 25 or 30 percent, something in that neighborhood.

Q. You limited that to tire and batteries. Are those the only things you sell at wholesale? A. I sell everything that I have in that station.

Q. What else do you have? Do you have accessories? A. I have accessories.

Q. Do you sell any of those at wholesale? A. Yes.

Q. Well, how much would that amount to? A. That is about the same, about 20, 25 percent.

Q. You mean in addition to tire and batteries? You told me— A. (interposing) I mean, overall picture of everything. Tires and batteries and accessories lines, about 20 percent of the total.

Q. Twenty percent? A. I mean 20 percent, yes.

Q. Now, of the retail business, isn't that line that you extend credit to the local customers? A. Yes, sir.

Q. And do you also extend credit on your wholesale business? A. Yes, sir.

(5983) Q. What do your sales consist of mainly to the local people? Farm equipment— A. (interposing) Everything. All the complete—I carry a complete line of tires, that is, farm equipment, for trucks, and automobiles.

Q. What is the population of Schulenberg, Mr. Helmcamp? A. I would say approximately 3,000, maybe a little more.

Q. Is that a suburb of Dallas? A. No, sir.

Q. How far is it from Dallas? A. It is a long way from Dallas, 245 miles. It is half way between Houston and Dallas.

Q. How many stations of all kinds are in your town? A. Oh, there are a lot of stations. I couldn't tell you exactly. There are three of them right around my station, two on the next corner, and two below.

Q. There are five of them right around your place, is there not? A. Well, three of them around, right on each corner there is one, and up north on 77, and then going west on 92, about four there.

Q. Are there any other Texaco stations in town? A. One, sir.

Q. Where is he located? A. He is about two blocks from my station.

(5984) Q. Do you sell him your supplies? A. No, sir, I don't sell to him.

Q. Do you know what TBA he sells? A. Well, he picks it up as he uses it.

Q. He doesn't stock any? A. He stocks very, very little.

Q. Where does he pick it up, do you know? A. Oh, he gets Brasher Supply Company, which is at Weimar, and Harry Auto Supply in Schulenberg.

Q. Do you know what he gets from those supply points? A. He gets everything he uses, belts, batteries, tires.

Q. Are there any Firestone or Goodrich tires among those items? A. I think mostly U. S. tires, and he picks up some off brand tires from somebody there that he sells for truck. I don't know what you call them.

Q. Do you know him very well? A. Yes, sir. He used to work for me.

Q. He used to work for you, you say? A. Yes.

Q. Are you quite sure you don't advertise Firestone Tire's products at this time? A. No, sir.

Q. Or any time in the past? A. No, sir.

(5985) Q. What does this Texaco dealers council consist of? A. Well, there is one dealer out of each area and we meet with officials of the company.

Q. Meet what? A. Meet with officials of the company and try to get better understanding between the company and the dealers. If there is anything to be done to help the dealers.

Q. Do you travel around doing that? A. Oh, I have gone around and talked to some of the dealers, yes. I haven't had any complaints.

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(5986) K. R. ROBERTS was called as a witness for the Respondent and, after being properly and duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Give your name and address to the reporter, please. A. K. R. Roberts, 1935 Colony Drive, Irving, Texas.

Q. Mr. Roberts, you testified before down in Dallas when the counsel supporting the complaint called you, did you not? A. That's true.

Q. At that time you told us you were the TBA representative for the Dallas division, as I recall? A. That is correct.

Q. And you started to tell us what your duties were, and Mr. Dias asked you if they were the same as Mr. Underhill— A. (interposing) That is correct.

Q. (continuing) —and you said you had the same position and he called it a day at that point. Do you remember that? A. Yes, sir.

Q. And that is still the situation? A. Yes, sir.

Q. That you have the same position as Mr. Underhill has? A. Yes, sir.

(5987) Q. It has to do with helping the dealers market their TBA? A. Yes, sir.

Q. And, also, with seeing what you can do about selling Firestone and Goodrich TBA to the dealers? A. That is correct.

Q. Now, I have abbreviated that very much. You have a lot of other things to do, don't you? A. That is true.

Q. And you still say that they are the same duties and functions as Mr. Underhill has described? A. Correct.

Q. You also testified at that time you were acquainted with the Texas Company's letters, which have since been marked in evidence as Exhibits 26, 27, 28, and 29. Have you had a chance to look at them this morning just before you took the stand? A. I have.

Q. Are you acquainted with the Texas Company's TBA policy as stated in those letters? A. I am.

Q. What was your understanding of that policy? A. The Texas Company's TBA policy is briefly this: The company, realizing that dealers need to sell TBA merchandise right along with their petroleum products for two reasons —to make more income for themselves, and to satisfy a greater (5988) number of automobile owners—recommends that a dealer handle a quality product of TBA merchandise. We recommend Firestone and B. F. Goodrich, but we recognize the independence of the dealers to handle

any brand that he chooses or no brand at all. The option is entirely his own.

Q. Have you, in your contacts with dealers and your contacts with the Texas salesmen and dealer service representatives, acted to the best of your ability in accordance with that policy? A. I have.

Q. Have you been acquainted with Exhibit 26-E, which states that the author, who is in the New York office, emphasizes that the Texaco dealer is an independent businessman and must be permitted to operate as one? Anyone who violates these policies may be subject to immediate dismissal from the company service? A. I am very well acquainted with that letter.

Q. At about the date of that letter, did you have any occasion to hear a discussion of that letter by the author of it? A. Yes, sir. I was, if my memory serves me correctly, it was about two months after the letter was issued. That could vary a month before or a few months after that. Mr. Hochuli, who was the author of the letter, I believe at the time, was general sales manager. He was in Tulsa at one of our semi-annual sales meetings, and after the meeting was over, I think Mr. Hochuli just attended a very short part of that meeting, (5989) or maybe none of the meeting, he may have been there on other business, we were in a room one night, having a little happy hour, and Mr. Hochuli gathered us all around him and was very, very specific about this letter and requoted part of his letter, and let us know in no uncertain terms that he meant everything that was in that letter and that he wanted all of us to understand that the policy was to be carried out by all employees.

Q. Did he give you any indication that the sentence in there which says you must respect the independence of the dealer was only put in there for window dressing or for some legal purpose? A. He certainly didn't.

Q. It was your understanding that injunction there meant what it said? A. Yes, sir, he made that very plain.

Q. Have you acted in accordance with that understanding? A. I have.

Q. Now, you were present and you testified in Dallas, when the Government called you to testify, and you heard the complaints made down there which related to the battery sales? A. I did.

Q. Now, do you know in general the trend of battery sales in the Dallas division of the Firestone and Goodrich batteries and Texaco stations? A. I do.

Q. Do you know generally whether it has been an up trend or (5990) a down trend? A. Well, our battery business in late 1955, when the effect of Firestone, who was the first marketer of the dry charge battery followed by B. F. Goodrich—and I believe in our division about the 1st of 1955; they were the two leaders in the market of dry charge batteries—when this trend to dry charge batteries started to take effect and became genuinely known and commonly known by the dealers of the advantages of dry charge batteries, our battery business picked up, because we had a definite advantage over the marketers of wet charge batteries, due to the benefits of longer shelf life at service stations. This continued on through 1956 and 1957, and I would say it hit its peak in the latter part of '56 and the first half of 1957.

Now, as other battery manufacturers came out with dry charge batteries, got their advertising programs going, and doing a good job on that and acquainting all dealers with it, and getting around to soliciting all of the dealers, we now have run into a strong competitive situation, especially from Delco and Southland in the Dallas area, and our battery sales have fallen in the last year, and at the present time, I think we are about 20 percent behind last year's sales in batteries in our Dallas division.

Now, I attribute it all to the fact that the manufacturers of non-sponsored TBA, that is other than Firestone and Goodrich, now have their dry charge battery programs rolling, (5991) and they are just tough competition and are getting more of our business than we would normally get.

Q. So at the time of the hearings down in Dallas, it was pretty nearly the peak of your success in connection with this change-over to dry charge, that was in January of '57? A. January of '57 and our best business came in the last six months of '56 and the first six months of 1957, so that would be pretty well in the middle of our peak period.

Q. Was there a definite up trend in your battery picture with the advent of the dry charge batteries? A. Oh, definitely. It increased beautifully.

Q. Now, were you requested in connection with this case and with your testimony to go out in the Dallas division and come back with some pictures of battery displays, open displays at lessee Texaco dealers' stations? A. I was.

Q. And were you asked in that connection to take pictures of displays of batteries other than Firestone and Goodrich? A. Yes, sir, I was.

Q. Also, of Firestone and Goodrich batteries if such batteries were displayed alongside of the batteries that were other than Firestone? A. That is true.

Q. Was it among your instructions that under no circumstances were you to make any change in the subject matter of the pictures (5992) which you took? A. Those were my instructions.

Q. Was it also your instructions that you were not to let any dealer know ahead of time that you were coming to take those pictures? A. That is true.

Q. So, did you go out and take the pictures? A. Yes, sir, I took the pictures and all the pictures in that album are unposed. They were taken exactly as the display was when I walked into the service station.

Q. You walked into it cold, and did you ask permission to take the pictures? A. Well, certainly, that is only, I would say, good manners to ask the dealer or the dealer employee that I would like to take a picture. In no case was I ever refused.

Q. And you did not, yourself, ask the dealer to make any change whatever? A. None whatever.

Q. This is exactly as the pictures looked on the date when you walked in there? A. That is true.

Q. Now, is each one of these pictures identified by dealer's name, the location of the station, the type of batteries shown in the picture, and the date of the picture? A. True.

(5993) Q. And that represents the actual facts with respect to each one of these pictures? A. That is true.

Q. Now, were you able to take all of these pictures, yourself, or did you have to delegate any of this picture taking to someone else in your office? A. Well, I took all of the pictures that time would permit. There were some stations I was unable to make, Mr. Lorenzen, during this, because of other duties and time element from the time I was requested to make this. But I asked a man in my office, who is the representative of dealer training, Mr. H. L. Cain, who was holding a series of dealer training conferences throughout the State of New Mexico, if he would during his time out there, to take such pictures exactly as I took them in other parts of the division, and I gave him the same instructions that I had and Mr. Cain was nice enough to take a small portion of the pictures that—there are 21 to be exact throughout New Mexico, and he made a good portion of the state. He was not in the Northeastern section of New Mexico, and made no special trip to take pictures in the Northeastern section.

Q. You gave him exactly the same instructions that had been given to you? A. Well, that is true, and that is noth-

ing unusual. We handle things that way a good portion of the time, and make (5994) business decisions on the judgment of a man like Mr. Cain sometimes.

Q. Well, did he report back to you that he had done what you told him? A. Yes, sir, he did.

Q. And he handed you the pictures and the identifications thereof? A. He handed me the pictures with the writing on the back and the date that he took them. Each one of these pictures, so there would be no confusion on identification of the pictures. And that procedure, incidentally, was carried out throughout the picture taking.

Q. And then, the typewritten tags underneath were something prepared in your office? A. Prepared in my office by a stenographer, but she didn't put any picture in the book. I put the pictures in the book personally on all in the first section. Mr. Cain assisted me in putting the pictures in that last section, which contains only 21 of the 238 pictures that are in that album.

Q. And the pictures that Mr. Cain helped you put in the book and which he took, pursuant to the instructions which you gave him, are contained in the last two pages? A. Last two pages.

Q. Everything else is something that you took personally? A. I took personally.

(5995) Q. Now, is this album which I show you the album of pictures which you took or had taken pursuant to the instructions? A. That is the album, yes, sir.

Mr. Lorenzen: Give it the next number, please.

(Whereupon, the document was marked Respondent's Exhibit 74 for identification.)

Mr. Lorenzen: I offer it in evidence.

K. R. Roberts, for Respondents—Voir Dire

(5996) *Voir dire examination by Mr. Dias:*

Q. Mr. Roberts, are you going to be able to tell us which of these cities on each of the pictures are suburbs of Dallas? A. Yes, sir, I can tell you which of the dealer locations are in the suburbs of Dallas.

Q. And on each of these pictures, do they purport to show the full condition of the station or just the situation in connection with batteries? A. They purport to show only the situation of the batteries in Dallas. At the hearing batteries was the only complaint that came up so I didn't take tires. I didn't take the same situation as to tires and accessories.

Q. Do these pictures purport to show all of the stations in each area? A. No, sir, my instructions were to take pictures, time permitting, of the stations that normally stocked the non-sponsored batteries, that is, batteries other than Firestone or B. F. Goodrich, and these pictures, Mr. Dias, gave that representation very, very closely. I would say that situation would be accurate to a very high degree. There were some instances, for instance, Mr. Heth, who testified I believe yesterday or the day before, that the day I was in his station he had only one Delco at that time and it was out where it looked like it was going to be put in a car, so I didn't take (5997) any picture, but Mr. Heth's testimony, Mr. Heth was not at the station when I was there. The attendant was there and he was an extra boy and he said that he didn't know what he normally stocked and Mr. Heth has testified that he normally carried Delco batteries, as well as Firestone batteries. So, there would be exceptions like that that wouldn't be in there; probably exceptions both ways.

Q. More than likely. A. And you will find about six or eight duplications where it was necessary for me to take two pictures at the same location to portray the true stock-

ing condition or stocking habits of that dealer at that particular location.

Q. My point is that this is only part of the picture, is it not? These are only certain stations that you chose and there are other stations in the area that do carry Firestone and Goodrich batteries? A. Yes, sir, there are and probably others that carry non-sponsored batteries.

Q. What do these pictures propose to show, that these particular stations carry these particular products on this particular day? A. The album portrays the normal stocking habits of these particular dealers.

Q. Do you call on each and every one of these dealers? A. Not constantly. I make the whole Division. When I'm (5998) in a territory working, I would call on as many of the dealers as I could.

Q. Could you tell us how often you call on each and every one of these dealers in this album? A. Oh, my goodness, some of those dealers in the album, those particular dealers I had never called on before and there are some of them I have called on a number of times that I didn't get.

Q. My point is that you have testified that this is their normal stock. You don't know that of your own accord? A. Yes, sir.

Q. How do you know that? A. When I went into the stations to take the picture, I asked the man, I said, "Do you stock these normally?"

Q. You don't know it of your own knowledge that they do, is that correct? The man told you? A. Not day in and day out because the buying practices of dealers change. He may get mad at the salesman that is selling him and change. It is virtually impossible.

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K. R. Roberts, for Respondents—Resumed, Direct

(6000) *Direct examination (Resumed) by Mr. Lorenzen:*

Q. Is this Mr. Cain employed in the same office as you are? A. Yes, sir.

Q. Are you in the habit in Division Headquarters to rely upon information received back from the field by people such as Mr. Cain? A. Certainly.

Q. Do they report back to you whenever you ask them for specific information about anything that happens out in the field? A. Yes, sir.

Q. Do you act upon the basis of that type of information? A. Yes, sir.

Q. Do you make business decisions on that basis? A. Yes, sir.

(6001) Q. If any business decision had to be made as to these particular dealers in New Mexico, would you rely upon the type of information contained in that book to reach those decisions? A. Yes, sir.

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(6002) Hearing Examiner Kolb: I think under those circumstances, Mr. Dias's objection is well taken and that Mr. Cain should identify the pictures to show that they were in that condition at the time he took them, the date he took them, and so forth.

Now as to the notations on the bottom of the pictures taken by Mr. Roberts, I will overrule the objection on that. I think that as long as the pictures show the name of the station and the location of the station and Mr. Roberts has testified that was the condition at the time he took the picture, they are admitted for that purpose only to show that station and that condition at the time the picture was taken.

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(6003) Hearing Examiner Kolb: Let the record show that Respondent's Exhibit 74 is received in evidence with the exception of the last two pages, which were identified as having been taken by Mr. Cain. Those will not be received in evidence at this time. Objection is sustained as to those.

(The album referred to, heretofore marked for identification Respondent's Exhibit 74, was received in evidence with the exception of the last two pages.)

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(6004) *By Mr. Lorenzen:*

Q. Mr. Roberts, will you look at page one. There is a picture of a dealer named Herman Herd, H-e-r-d. A. Yes, sir.

Q. Now, just to get the record clear on that, the picture shows some batteries and the name "Champion" is shown on those, is that correct? A. That is correct.

Q. Underneath you have put the dealer's name, "Herman Herd," and you have put "Lessee-Dealer." Does that mean that he has a lease from the Texas Company? (6005) A. That is true.

Q. One of these regular leases which we have been talking about that renews itself each year? A. That is correct.

Q. Underneath that you have "Dallas & Capitol, Canton, Texas," is that the address of the station? A. That is the address of the station.

Q. Then on the lefthand side of the tag, you have put "Champion" and is that the name of the battery? A. That is the name of the battery.

Q. Then on the righthand side you have put the date, "6/2/58," is that correct? A. That is the date the picture was taken.

K. R. Roberts, for Respondents—Resumed, Direct

Q. On occasion, did you on the same date take a good many pictures? A. Yes, there were some days I devoted quite a bit of time to it.

Q. And out in the less populated part of the State, may some of those pictures have been taken on the same day but be several hundred miles apart? A. Oh, yes.

Q. But you took them all yourself? A. I took them all myself.

Q. Now this description which we have given of Mr. Herd's station is typical of all of the descriptions contained in (6006) the book? A. That is correct.

Q. That is the name comes first and then the fact that he is a lessee dealer; then the address of the station and underneath that, the type of battery or batteries shown in the picture? A. Correct.

Q. And the date on which the picture was taken, is that correct? A. That is correct.

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(6012) Q. Now, let's look at the book and look at some of these other pictures, Mr. Roberts. This picture on page one of Mr. Heard's, was that taken in his office in his display room? A. Yes.

Q. And look at the picture of Mr. Whitehurst on the same page, was that taken in his office? A. Yes, sir, that was taken in his office as it goes out to the lube bay.

Q. On page two, will you look at the picture of Mr. Felts, F-e-l-t-s, and tell me whether you recall whether that picture was taken in his office? A. It was taken in his office. I was standing right in the entrance.

Q. Now, on the same page, will you look at the picture of Mr. W. H. Wells' station? A. Yes.

Q. Can you tell me where the Southland batteries are in (6013) that picture and the circumstances under which they appeared there? A. Well, the Southland batteries,

the first letters are visible on the lefthand side of the battery display picture and are located back of that and Mr. Wells had about eight batteries, eight Southland batteries in stock and an equivalent number of B. F. Goodrich batteries and he had received a shipment on this day. His office is very, very crowded with merchandise. He carries a lot of merchandise and a lot of it is stacked on the floor, so you don't have a full view of all of the batteries. There were a lot of them, Goodrich and Southland, but I had to take the pictures exactly as they were and couldn't move anything from the front of them to get a full shot.

Q. Now look at page three, Mr. Watson, was that the only battery that was in his station at the time? A. That was the only battery that was in Mr. Watson's station at the time, but that station normally—

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(6014) Q. Were you there, Mr. Roberts, were you there when you took the picture? A. I took the picture.

Q. Do you have any recollection as to what the rest of his TBA stock was like? A. It was relatively low.

Q. Now, will you look at Mr. McGahey's picture on the same page. A. Which one?

Q. You have two pictures there? A. Yes, sir.

Q. That is what I wanted to have explained. There are a few cases in which there are two pictures, are there not? A. That is true.

Q. What was the occasion of your taking two pictures? A. Well, it is the only way that I could get the normal stocking habits of Mr.—

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(6015) Q. Try to use some other word than "normal" to explain why you took two pictures. A. I took two pictures because Mr. McGahey handles two types of batteries

and they were both on display in his office and I took the two pictures and they were not close enough together that I could take in one to get the situation.

Q. Now, wherever you took pictures of a dealer who was in that same situation, namely, that he stocked more than one kind of battery and they were not close enough together to be taken in one picture, did you take two pictures? A. I took two pictures unless there was just an occasional battery around that may have been just picked up and was being installed.

Q. Otherwise you took two pictures? A. Took two pictures; yes, sir.

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(6018) Q. On Mr. McGahey you have two pictures, right? A. Correct.

Q. Now what sort of batteries are shown in that picture? A. In one picture there are about seven Firestone batteries. In the other picture there are six—I had better spell it—"X-S-E-L" batteries. Mr. McGahey in his testimony didn't know how to spell it.

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(6019) Q. Mr. Roberts, as you said, you live within six miles of Mr. McGahey's station? A. That is correct.

Q. In the last year, how often have you been in the station? A. I would say five or six times in Mr. McGahey's station in the last year.

Q. In the last year? A. Yes, sir.

(6020) Q. During that time, have you had occasion to observe the type of batteries that he has had in stock? A. I have.

Q. What kind has he had in stock? A. He has Firestone and X-Sel.

K. R. Roberts, for Respondents—Resumed, Direct

Q. He has had them throughout that period of time? A. He has.

Q. As far as the numbers are concerned, would you say the number is substantially the same proportion as shown on that picture that we are talking about on page three of that book? A. Yes, sir.

Q. Look at Mr. Burch's, B-u-r-c-h, picture on page four. A. All right, sir.

Q. At the time you were in that station, did he have any other batteries on display? A. No, sir.

Q. On page five, look at Mr. Howerton, H-o-w-e-r-t-o-n. A. Yes, sir.

Q. I notice that there is only one battery there, is that correct? A. No, sir, that is not correct.

Q. How many does he have? A. He has six.

Q. I guess I can't see. He has six batteries on display. (6021) Among them, is there an Allied battery? A. Yes, sir.

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Q. Looking at page eight, picture of Mr. Cunningham's station, how many Exide batteries does that show? A. One.

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(6022) Q. On page nine, Mr. McGlasson's picture, I notice that the notation under your picture has "Chiefton" battery, (6023) C-h-i-e-f-t-o-n. Do you notice that? A. Yes, sir.

Q. And on the picture, I think there are some Chiefton batteries and also a "Comet" battery, which is not included in your notation. A. Yes, sir.

Q. Can you tell us, is that an oversight or is there some other explanation for that? A. There is another explanation.

K. R. Roberts, for Respondents—Resumed, Direct

Q. What is that?

Mr. Dias: Before the witness answers, I want to know if this is going to be from knowledge.

Mr. Lorenzen: It has nothing to do with stocking habits at all.

Hearing Examiner Kolb: Let him proceed.

The Witness: I was informed—

Mr. Dias: (Interposing) I object, your Honor. He was informed.

Mr. Lorenzen: He is going to tell you a Comet is a Chiefton made by the same company—do you mind.

Mr. Dias: I don't see that it is relevant. It is not Firestone or Goodrich anyway.

By Mr. Lorenzen:

Q. Comet battery is not a Firestone or Goodrich and if it is not made by Chiefton, it should have been included as a (6024) separate notation under the picture? A. Yes, sir.

Q. Page 12, I think, Phil Adkins, A-d-k-i-n-s, I note there are only two batteries, I believe, on display there and I want to know if there were any others on display at the time you took the picture? A. No, sir.

Q. Page 13, Mr. J. C. Clinton, that is one of those two picture situations. A. No, sir, I believe you have your pages mixed up. On page 13 is D. M. Clinton.

Q. I got the wrong initials. Mr. D. M. Clinton, and what sort of batteries are shown on that picture? A. Parks, P-a-r-k-s.

K. R. Roberts, for Respondents—Resumed, Direct

Q. And you only have one picture for him. Look at the next page, page 14, you have Mr. J. C. Clinton and you have two pictures. A. Yes, sir.

Q. Did you take two pictures for the same reason that you (6025) took two pictures of Mr. McGahey's station? A. I did.

Q. On page 15, will you look at the picture of Mr. Harvey Bishop. How many batteries does that picture show? A. Two.

Q. What kind? A. Southland.

Q. Now in that picture, do you have any recollection whether there were additional Southland batteries in Mr. Bishop's stock at the time you were at the station? A. Yes.

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Q. There were additional Southland batteries in stock? A. Yes, sir.

Q. Page 15, Mr. Bachman, B-a-c-h-m-a-n, the picture shows how many, two batteries? A. Yes, sir.

Q. Were there any other batteries in stock at the time you were in his station? A. No, sir.

Q. Page 17, Mr. Cooper, will you tell us whether the picture which shows the batteries on it is a picture of a part of his (6026) station which is his office or his lube bay? A. It is the full portion of his lube bay. They are wet batteries which are frequently stored in the lube bay.

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Q. Now on the same page, will you look at the picture of Mr. Jim Fox's station. Is that on page 17? Do you have a Mr. Fox on either page 17 or 18? A. Are you sure it wasn't Mr. Wolf?

K. R. Roberts, for Respondents—Resumed, Direct

Q. Well, look at the picture of Mr. Terrell, T-e-r-r-e-l-l, page 17, and tell me, were those the only two batteries that he had in the station when you took that picture? A. They were the only two I saw, yes, sir.

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(6030) Q. On page 20, Mr. Maples, M-a-p-l-e-s, is that the fellow's name? A. He is on page 20.

Q. How many Delco batteries are there in that picture? A. One.

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(6031) Q. Page 23, Mr. Floyd, I see only one battery in that picture. What was that, a Vitalic? A. Yes, sir.

Q. And your description so indicates, is that right? A. Yes, sir.

Q. Did you observe any other battery in that station? A. Not new battery.

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(6033) Q. Mr. Roberts, Mr. Miller on page 23, did Mr. Miller have any other batteries on display in his station on the day when you took that picture? A. No, sir.

Q. On page 24, how about Mr. Homer Lamb, did he have any other batteries on display in his station other than the one you took? A. No, sir.

Q. Same page, Mr. Woodrow Walker, you have on your caption under his picture that all of the batteries shown in the picture are Allied, is that correct? A. Correct.

Q. He kept his Allied batteries, did he, on a B. F. Goodrich battery stand? A. That is correct.

Q. On page 25, Mr. C. H. Ward, W-a-r-d, is he on that page? A. Yes.

Q. Was that a picture of his office or of his storage facilities? A. That is his office.

K. R. Roberts, for Respondents—Resumed, Direct

Q. On page 30, Mr. Pope, P-o-p-e—no, look at Mr. McKinney (6034) on page 26. is that the only battery which he had on display, the one that you have pictured there? A. Yes, sir.

Q. All right, now let us go to page 30 and look at Mr. Pope. There is a battery by the name of M-o-t-r-e-x shown there? A. Yes.

Q. Is that either a Firestone or a Goodrich battery? A. No, sir.

Q. And that is not included in your caption which refers only to Exide? A. It is the second line of Exide batteries.

Q. Motrex is a second line Exide battery? A. Yes, sir.

Q. Page 32, Mr. S-t-a-t-h-a-m, is this a picture of his office? A. Yes, sir.

Q. That is his desk chair showing on the lefthand side? A. Yes, sir.

Q. The next page, 33, Mr. B-r-a-l-e-y, the picture is not too plain, can you tell us how many Delco batteries are shown in that picture? Can you count them? A. Four Delco batteries are easily visible there. I think it is pretty clear myself.

Q. Those boxes on the lower shelf at the lefthand side are (6035) Delco? A. Yes, sir.

Q. The same page, Mr. P-u-r-t-l-e? A. Yes, sir.

Q. Those batteries—I guess this light is better—how many Southland batteries show in that picture? A. There are three Southland with the "Southland" name and then there were two "Special" batteries and there were two Firestone batteries.

Q. What are those "Special" batteries? A. They are not Firestone or B. F. Goodrich.

Q. That does not show on the caption under the picture? A. No, sir.

K. R. Roberts, for Respondents—Resumed, Direct

Q. Page 35, Mr. Hobson, were those the only batteries that he had on display at the time you were in his station? A. Yes, sir.

Q. Page 35, Mr. Reynolds, do you know when you were in there, did you observe the size of the office that Mr. Reynolds had? A. Yes, sir.

Q. Was there space in that office to display any batteries? A. No, sir.

Q. Were any batteries displayed in his office? A. No, sir.

Q. The picture which you have taken is of the only batteries (6036) which were in that station, is that correct? A. That is correct.

Q. Page 36, Mr. Falph R-u-d-d—are those Winterking batteries Firestone or Goodrich? A. No, sir.

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(6037) Mr. Lorenzen: I would like to offer the proof by this witness that at the time he took the pictures, which appear in Exhibit 74, he endeavored to ascertain both by observation and by conversation either with the operator of the station or with the person in charge of the station whether or not the batteries pictured represented as of the time when the picture was taken the normal battery stocking habits of the operator of that station, and that he did not place pictures in that book of batteries other than Firestone or Goodrich unless he was assured as a result of such conversation or his own observations that the regular stocking habits with respect to batteries were represented by the pictures included therein.

Hearing Examiner Kolb: Well, now, on part of that I haven't foreclosed you. The only thing I have

foreclosed is the conversations with the station operators or the attendants stating that they did or did not stock certain batteries. (6038) What he observed at the time, you have put in. There has been no objection to that.

* * * *

(6039) Q. Just so that we won't have to count it up, do you know about how many different trade names of batteries are represented by those pictures in Exhibit 74? A. Yes, sir, there are about 40 different brand names.

Q. How many? A. Forty different brand names.

* * *

Cross-examination by Mr. Dias:

Q. Mr. Roberts, these pictures in Exhibit 74, were they or were they not made in the regular course of your business. By that, I mean, do you normally go around taking pictures of stations? A. No, sir.

Q. And do these pictures purport to show all of the batteries (6040) that you saw in this station at the time of the taking of the picture? A. I would say 98 percent of the instances which is covered in testimony prior, there would be an occasional battery that wouldn't represent stocking habits.

Q. But you talk about display, how do you interpret your term "on display," that is what I would like to know? A. Display would be anything that is evident that it is salable merchandise, that could be seen, and the sale of merchandise would be made partly from display. Of course, dealers display merchandise in a lot of different ways, so you woudln't have any set pattern. There is a fairly general pattern that batteries are displayed normally. Of course, it is not an impulse item. Batteries are displayed

normally in the office in the case of a dry battery, and where there is ample room. In the case of wet batteries, they are frequently put on the bay or work alcove area, so the acid activation of these acid type batteries would not damage the wood or other materials in the office building.

Q. Do you have that book, page three, in connection with Mr. Wells? I believe you testified that he was getting a shipment in or he got a shipment in? A. He had a recent shipment.

Q. Recent? A. Yes, sir.

(6041) Q. Did the shipment arrive while you were there? A. No, sir.

Q. And in connection with Mr. Watson, on page four, you testified that his stock was relatively low. A. Yes, sir.

Q. What did you base that observation on? A. It is very easy to go into a station. Of course, I was acquainted with the stock of the prior dealer.

Q. Sir? A. I was acquainted with the stock of a prior dealer in this station, and he kept more accessories and so forth than Mr. Watson had.

Q. Well, let's restrict it to Mr. Watson. You say his stock is relatively low. What is relatively low? A. Well, relatively low, according to that type of station.

Q. Let's restrict it to Mr. Watson. Do you know what Mr. Watson normally carried in his station? A. No, sir. Mr. Watson was a new dealer.

Q. How long had he been in there? A. Just a few weeks.

Q. In connection with Mr. Bishop, page 15, you stated that there were additional Southland batteries in stock. Where were they? A. There were some more right in the office. If my memory serves me correctly, there were two or three more that were (6042) scattered. His whole stock is in great disarrangement, as you can see, all of these various brands of oil he has there.

Q. Which one is that? A. Right here. He had back here, a battery, he had a battery over there, but he had a lot of things spread out around. It is a very—it is an unusually small office and it is jammed together, it is narrow and longer than the normal office, and he can't display merchandise exactly like others.

Q. Among the other batteries you saw scattered around, were there any Firestone or Goodrich? A. No.

Q. Page 33, Mr. Purtle, will you point out the two special batteries? I see one down in the right-hand corner, where is the other one? A. Special right here, and there is a Special right there.

Q. On the top. And you know they are not made by Goodrich or Firestone? A. Yes, sir.

Q. Is "Special" the trade name of that battery? A. Would you like an opinion?

Q. No. I want to know what you know. You don't know? A. I don't know, no. Not for sure.

Q. Now, if you will, start at page one, and may we go off the record a minute?

Hearing Examiner Kolb: Off the record.
(6043) (Discussion off the record.)
Hearing Examiner Kolb: On the record.

By Mr. Dias:

Q. During your earlier testimony, you told us that there are 190 Texaco stations in the Dallas County? A. Yes, sir.

Q. And that Dallas County would include some small towns that are not more than 15 miles from downtown Dallas? A. That is true.

Q. Now, with that in mind, will you tell us which communities are within that 15-mile radius, or if it is easier to go through the exhibit, I wish you would do that. A. It

would include Dallas, Garland, Irving, Grand Prairie, Arlington; I believe that would probably represent the area as covered in this book, but I would like to glance through it just a second to see.

Q. Please do.

Just to repeat: You have looked at the various pages of Respondents' Exhibit 74 and you have stated that in the Dallas area, as you have described it earlier in this case at transcript page 1765, included among the suburban areas were Garland, Irving, Grand Prairie and Arlington. Now, having looked through Respondents' Exhibit 74, are there any other suburban areas you care to name? A. I think that is all.

(6044) Q. I think that is all. All right.

Now, referring to Respondents' Exhibit 74, can you give us, as I understand it, this does not represent all the stations in those various areas, is that correct? A. That is correct.

Q. Can you tell us the total number of Texaco stations in the whole combined area shown in Respondents' Exhibit 74? A. All Texaco stations?

Q. Yes, sir. A. I think there is something like, I believe it is between 2,400 and 2,500.

Q. And that would take in to account all the Texaco stations in each and every area that you mentioned in Dallas— A. (Interposing) The Dallas division.

Q. Well, now, how about any stations that may be shown in Oklahoma, for example, or New Mexico, Arkansas, is that the Dallas division? A. Yes, sir. Since the previous hearing in Dallas, four counties—let's say roughly four or five counties of Arkansas have been added to the Dallas division, and they would include the areas of Rogers, Mena, Fort Smith, and Fayetteville.

Q. And the figure you gave, 2,500, that is your best estimate of the total number, is that correct? A. Yes, sir, of all stations.

Q. All Texaco stations? (6045) A. All Texaco service stations.

Mr. Dias: I have nothing further.

Redirect examination by Mr. Lorenzen:

Q. Mr. Roberts, in taking these pictures, the only types of stations that you would go to even looking at were the type that were leased by the Texas Company to lessees, isn't that correct? A. That is correct.

Q. And you were even told to exclude the type of stations where the operator owned the property and leased it to the Texas Company and then the Texas Company leased it back to him? A. That is correct.

Q. Aren't there an awful lot less than 2,500 stations of that kind? A. Quite a few less.

Q. In fact, what are there, around 700, something like that? A. Mr. Lorenzen, the last report that I have seen on the total number is in mind, was about 650, and we have added some; so, I would say about 700 is a—this was about roughly a year ago, I believe, that report for something that I chanced to see.

Q. And in connection with this picture taking, you didn't get around to even all of the 700 stations, did you? (6046) A. Probably about 500 stations.

Q. Among those 500, were there a good many that didn't handle any batteries at all? A. Quite a few.

Mr. Lorenzen: That is all.

Mr. Dias: I have nothing further.

(Witness excused.)

Colloquy

Mr. Lorenzen: Your Honor, there were some witnesses that were sick or for business reasons or on vacation, couldn't attend these hearings. I understand we have another session scheduled in December, and it may be, unless you think it is too cumulative, that we may want to produce a few of those whose names have heretofore been noticed to counsel at that time.

Now, I understand—do you want this on the record? We can do something about those pictures.

Mr. Dias: Yes, sir. I don't mind stating for the record that in connection with pages 39, 40, 41, and 42 of Respondents' Exhibit 74, which, as I understand, were taken by Mr. Cain, it will not be necessary to have Mr. Cain come in and identify these things provided it is also understood that they are in for the same limited purpose as all the other documents in that particular exhibit.

Hearing Examiner Kolb: In other words, you are willing to stipulate that if Mr. Cain was called in to testify, that he took those pictures, and that those pictures represent (6047) the conditions of the stations at the time he took them.

Mr. Dias: That is correct.

Hearing Examiner Kolb: And the name and address of the station appearing—

Mr. Dias (Interposing): I think that is so.

Hearing Examiner Kolb: With that stipulation, we will receive in evidence pages 39 through 42.

(Whereupon, the documents, heretofore marked pages 39 through 42 of Respondents' Exhibit 74 for identification, were received in evidence.)

Hearing Examiner Kolb: So, now, the entire Exhibit 74 is in evidence.

Mr. Lorenzen: That is all we have at this time.

Hearing Examiner Kolb: The hearing is adjourned to reconvene on Wednesday, December 3, Room 332, Federal Trade Commission Building, Washington, D. C., to be continued for eight days as previously set out in the notice.

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(6052) JOHN T. BOLGER was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Mr. Bolger, will you give your name and address to the reporter, please? A. My name is John T. Bolger. I live at 18 Florence Street, Dobbs Ferry, New York.

Q. Are you employed by the Texas Company? A. Yes, sir.

Q. What is your position at this time? A. I am assistant division sales manager of the New York division.

Q. Do you want to go back a little before that time and tell us what some of your other positions have been? A. Shall I start at the first or just go back?

Q. Why don't you go backwards? When you have gone far enough we will stop. A. I came to the New York division July 1st of this year, (6053) on this particular job. Previous to that, beginning January 1, 1958, I had exactly the same job in the Boston division.

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(6054) Q. All right. Now will you tell us what position you held before January 1, 1958? A. Well, the period September 1, 1954, until January 1, 1958, I was assistant division manager, sales promotion in the Boston division.

Q. Then from April 1952 to September 1, 1954, what was your job? A. I was state manager of Oklahoma.

Q. And from 1949, sometime in that year, until April of 1952, what was your position? A. The entire year of 1949, 1950, and 1951, and until the first of April 1952 I was zone manager in Dallas.

Q. During the time you held these positions, tell me whether you became acquainted with these documents which have been marked Respondent's Exhibits 26, 27, 28, and 29, I believe. (Showing documents to the witness.) A. Yes, sir, I am familiar with those.

Q. And you have looked at those this morning before you took the stand, did you? A. Yes, I did.

Q. And you know that those are the policy statements of the Texas Company relating to TBA? A. Yes, sir.

(6055) Q. Now, you didn't see all of these identical letters because some of them came to you while you were in the Boston division, is that correct? A. That is right.

Q. And what I have shown you here are the policy letters that went to the Dallas division? A. Yes, sir, those were there you showed me. Then we had a similar letter later on in Boston.

Q. From the time you went on to Boston you had the same type of letters in the Boston division? A. Yes, sir.

Q. Now, during the time when you held these positions which you have described, have you followed the Texas Company's policy as set out in the Exhibits 26, 27, 28, and 29, which I have shown to you? A. Yes, sir.

Q. While you were zone manager in Dallas, did you know a dealer by the name of C. M. Williams? A. Yes, sir.

Q. Where was his station located? A. It was located at Fourth and Forest Avenues in Dallas.

Q. I want to call attention to the testimony of a witness in this case, Mr. Kelly McCann of the Continental

Battery Company, who testified at Pages 1574 and 1575, referring to Mr. Williams: "We sold him years and years ago when he had (6056) his old building. When a new building was put up, we lost out."

Now, were you zone manager at the time when a new building was put up? A. Yes, sir, I was.

Q. Will you tell me who owns the property on which Mr. Williams' station was located? A. Mr. Williams.

Q. Now, he did put up a new station, did he? A. Yes, sir.

Q. About when? A. Well, it was in 1951. The station was completed, I am positive, late in 1951 because I left there soon afterwards, in the early spring of 1952. It was completed in the latter part of 1951.

Q. Were you the employee of the Texas Company who talked to Mr. Williams about this new station? A. Yes, sir, I was.

Q. And did you talk to him about it? A. Yes, sir.

Q. Did Mr. Williams put up that station or did the Texas Company? A. Mr. Williams put the station up.

Q. And did the Texas Company put up the money for that station or did Mr. Williams put it up? (6057) A. Mr. Williams furnished the money.

Q. Did you at any time tell Mr. Williams that he would have to handle only Goodrich or Firestone TBA? Did you at any time tell him anything like that? A. Did I tell him that?

Q. Yes. A. No, sir.

Q. Did you have quite a few conversations with him? A. Quite a few, I would judge, during the building of that station, yes. I had quite a few conversations with him.

Q. In connection with those conversations, did you ever tell him anything like that? A. No, sir.

Q. Did you ever tell him he had to stop selling Mr. Kelly McCann's Continental batteries? A. No, sir, I didn't.

Q. Now, did you ever see Mr. Williams' old station and his new station? A. I saw both of them, yes, sir, the old station and the new.

Q. What about the TBA which was being handled both at his old station and at his new station? Was it exclusively Firestone and Goodrich TBA? A. No, sir. He handled everything.

Q. He bought from a good many sources, did he? (6058) A. A good many sources, yes, sir, he did.

Q. Do you remember anything particular about Mr. Williams' buying habits in connection with TBA? A. Well, I knew Mr. Williams quite well. He was a pretty good friend of mine and he had been in our station for a long, long time there. He was a good customer, his station was, and he had lots of friends throughout that part of Dallas that were peddlers and they came by. He would buy from everybody. He couldn't turn anybody down, hardly.

Q. And did his station look like that? A. It did. It was a hodge-podge of everything.

Q. That was so both before and after? A. Yes, sir. He didn't change his friends after he built the new station. He kept the same friends and purchased from them.

Q. During these conversations which you had with Mr. Williams, did he ever tell you that anyone connected with anybody in the Texas Company or connected with anybody else had told him that in order to handle your gasoline he had to buy from Firestone or Goodrich exclusively? A. No, sir. He didn't tell me that.

Q. He never complained to you that anybody had told him that at all? A. No, sir.

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(6059) *Cross-examination by Mr. Dias:*

Q. What was your position, again, and the dates of the position in Dallas at that time, Mr. Bolger? A. I was zone manager during the years 1949, 1950, 1951, and until April the First, 1952.

Q. What were your duties as a zone manager? A. Well, a zone manager actually was the complete sales manager of that particular zone. I mean, you handled virtually all the problems that might arise from a sales standpoint in that particular zone.

Q. How large a zone was that? A. It was a big zone, the largest we had in the Dallas division.

Q. Can you tell us roughly how many stations, Texaco stations, there were in that area? A. No, sir, I couldn't. That has been a long time ago. I wouldn't hazard a guess, actually.

Q. But, nevertheless, you specifically recall this particular Mr. Williams? A. Sure, I do.

Q. How often did you call on the stations? A. Well, that is hard to say. In the course of the three or four years, three years I was there, I am positive I must (6060) have been in Mr. Williams' station—and you must take this as an estimate—twelve to fifteen times.

Q. In a three-year period or two-and-a-half year period? A. At least that many, I would say, yes, sir.

Q. What degree of regularity did you use in calling on stations? A. There was no degree of regularity. I mean, you would call on him when the occasion would arise, where it was necessary to go out and see him. We had salesmen that called on him regularly and I, no doubt, went out there quite a few times when he was in the process of rebuilding.

Q. You say "no doubt"? A. I did go out there.

Q. Do you recall what he carried after he built the new station? A. Carried in what respect, sir?

Q. Batteries, tires. A. He continued to carry various lines. He had all types of merchandise.

Q. Now, was there more than one seller for these various lines of TBA products in Dallas, or was there at that time? A. Oh, sure. There is various suppliers of accessories items and TBA items, yes.

Q. Selling the same brand name products; is that so? A. That is entirely possible. It could have been.

(6061) Q. Now, in your twelve to fifteen visits to Mr. Williams' station, how do you know that he was buying from a multitude of sellers? A. Because he had a multitude of products.

Q. You mean every product in his place of business was different? A. I don't know exactly what you mean.

Q. Well, did he have any lines at all? Didn't he carry the Firestone or Goodrich line? A. I am not sure. He could have carried some of those.

Q. What other products did he have in there? A. I don't know. I couldn't tell you exactly. It has been a long time ago. I know that he bought from numerous people and he had various types of merchandise.

Q. Without being able to recall the products that he carried, you know that he got them from many different people? A. Yes.

Q. You stated that you are familiar with these policy letters that Mr. Lorenzen showed you? A. Yes, sir, the essence of the letters, I am familiar with them.

Q. No need of my showing them to you again. You probably carry them around in your briefcase all the time, too, don't you? (6062) A. I don't know that I always carry them around.

Q. You showed them to Mr. Williams and other dealers to emphasize the fact that it was company policy? A. I don't recall ever showing any letters to the dealers. Our dealers knew of their independence insofar as TBA merchandise is concerned.

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(6063) A. G. RUSSELL was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Mr. Russell, will you give your name and address to the reporter, please? A. A. G. Russell is my name; I live at 712 Elm, Northwest, Ardmore, Oklahoma.

Q. What is your position with the Texas Company? A. I am District Sales Representative, Ardmore, Oklahoma.

Q. For how long have you had that position? A. January 1, 1957, I was appointed District Sales Representative.

Q. And before that time, what was your position with the Texas Company? A. Before that time I was Zone Manager for the Texas Company.

Q. How much territory did that cover? A. That covered South Central Oklahoma, approximately 10 counties.

Q. For how long have you been employed by the Texas Company? A. I have been employed by the Texas Company 27 years.

(6064) Q. How much of that time has been in the sales department? A. 27 years in the sales department.

Q. During the course of your employment did you receive copies of these letters which went out from the Dallas Division which have been marked Exhibits 26, 27, 28, and 29?

(Showing documents to the witness.)

A. I sure did.

Q. Did you have a chance to look at them this morning before you testified? A. Yes, sir; I did.

Q. And these are copies of the letters which you received? A. Same letters.

Q. During your employment by the Texas Company have you followed the Texas Company's policy as set out in those letters? A. I absolutely have.

Q. Is Duncan, Oklahoma in the zone of which you were zone manager back there between 1955 and 1957? A. Yes, sir.

Q. Now, at pages 1640 and 1641, a witness by the name of D. A. Zimmerman, a salesman for the Continental Battery Company testified in January of 1957 with respect to a Texaco dealer by the name of Steve Rowland at Duncan, Oklahoma, that this Mr. Rowland was almost stock-buying from Mr. Zimmerman who was peddling Continental Batteries. That he had (6065) been buying about six batteries a month for three or four years prior to the date of his testimony, and that about six months before the date of his testimony the sales started tapering off.

Now, as I understand that testimony then, he had been selling for three or four years prior to January of 1957, which would be back to 1953 or 1954. Now, what I want to know is, was Mr. Steve Rowland a Texaco dealer in 1953 and 1954, and 1955? A. Mr. Rowland went into this new service station December 1, 1955.

Q. So that is just 13 months before January, 1957, when Mr. Zimmerman testified? A. Yes.

Q. You know that because this was a new station? A. It was a new station; yes, sir.

Q. It was a brand new operation and it didn't open until December 1, 1955; is that right? A. That is right.

Q. And Mr. Rowland was installed by you in that station? A. By me.

Q. And he was not a Texaco dealer before that time? A. No, sir.

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(6066) Q. Now, any sales by Mr. Zimmerman to Mr. Rowland more than six months before the date when he testified, then, were made to him within six months of the time when he opened the station? A. That is right.

Q. When you installed Mr. Rowland in this station, did you tell him anything about the Texas Company's TBA policy? A. Yes, sir. I told Steve that I recommended Firestone-Goodrich products to him because of their national public acceptance, but I also told Steve that he was in business for himself out there and he could handle whatever he wanted to handle, but Steve told me that he liked Goodrich, so I didn't try to sell him any further.

Q. Well, now, did you ever know whether he was handling these Continental batteries? A. No, I didn't.

Q. You didn't know one way or the other? A. No, sir.

Q. Did this Steve ever complain to you that anyone had told him that he had to buy only from Firestone or from Goodrich? A. He never did.

Q. Never said anybody told him anything like that? (6067) A. He never did.

Q. Were you the only salaried employee of the Texas Company that had anything to do with him? A. I was the only salaried employee of the Texas Company that had anything to do with that station.

Q. That is, out in the country there the zone manager himself does the contacting? A. That is right.

Q. And you had no salesmen under you whose job it was to contact Mr. Rowland? A. I had no salesman, therefore, I made the contact.

Q. You, yourself made the contacts and called on him? A. That is right.

Q. And were you in his station at all after you installed him in December, 1955? A. Yes.

Q. Did you ever tell him that he had to stop handling Continental batteries, that he had to cease stocking them? A. Absolutely not.

Q. Did you ever suggest to Mr. Rowland that he would be treated badly if he handled Continental batteries or any other TBA which was not in the Firestone and Goodrich line? A. I never did.

Q. Did you ever indicate to him that his lease might be cancelled if he didn't handle Firestone or Goodrich? (6068) A. I did not.

Q. Did Rowland ever tell you that anyone else connected with the Texas Company had told him any such thing? A. No, he did not.

Q. Now, can you tell me what was the dollar volume of Firestone and Goodrich batteries which Steve Rowland purchased during 1956? A. During 1956, Steve purchased $117 in batteries.

Q. Now, if we assume Mr. Zimmerman's testimony to be accurate, that he sold him six batteries a month or 72 batteries a year, how far would that $117 go?

* * *

Mr. Lorenzen: No, I am using your witness's estimate that this particular dealer required 72 batteries a year because he said he was selling him six a month, on the average, stocking, and I want to know how far $117 would go in buying 72 batteries a year.

Mr. Dias: Of what battery? Firestone or Goodrich?

Mr. Lorenzen: Firestone or Goodrich?

(6069) The Witness: Well, for $117 you could buy eight or nine batteries.

By Mr. Lorenzen:

Q. All told? A. All told, yes.

Q. So, even if it be assumed that for the first six months this gentleman stocked Continental batteries and then stopped, this $117 would only buy him eight or nine batteries the rest of the year; is that right? A. That is right.

Q. And that is all that the Texas Company ever had any record of his buying of Firestone or Goodrich batteries? A. That is right.

Q. So that if he didn't buy Continental he bought something else, not Firestone or Goodrich? A. I don't know what kind he bought.

Q. But it wasn't Firestone or Goodrich? A. It wasn't.

* * *

(6070) *Cross-examination by Mr. Dias:*

Q. Was Mr. Rowland in a station before he took over this new station, do you know? A. Yes, he was in a Sinclair service station.

Q. For how long a period, do you have any idea? A. I have no idea.

Q. Did you know him before he came in with Texaco? A. No, sir, I didn't know him personally.

Q. Where was your office at the time, Mr. Russell? A. My office was in Ardmore, Oklahoma.

Q. Ardmore? A. Yes, sir.

Q. And he was in Duncan? A. Yes, sir.

Q. How far is that from Ardmore? A. Sixty-eight miles.

Q. And how often did you get to call on Mr. Rowland? A. Well, not over once a month. Sometimes I might have skipped a month if I was real busy, but not over once a month did I ever call on him.

Q. And was he in that station one year while you were in that position in Oklahoma? A. I was in the same position the entire time he was in that station which was over a year, sir.

(6071) Q. About how long? A. Well, beginning December 1, 1955, that would be one month, and then all of 1956 would be twelve, that is thirteen; and then four months of 1957 would be seventeen months.

Q. And was he still in that station when you left? A. Was he in the station when I left?

Q. Didn't you leave the area? A. No, sir, I just had a change of title.

Q. I see, it is a change of title? A. Yes, sir, but the duties were the same.

Q. Did he leave the station? A. He sold out to another fellow.

Q. And that was when? A. He sold out—let's see—May 15, 1957.

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Redirect examination by Mr. Lorenzen:

Q. In connection with this sale that he made, were you notified that he was going to make a sale and asked to see if the Texas Company would assign the lease to this new fellow that he got? A. Yes, I was notified that he had found a buyer and I immediately went over there.

Q. Did his finding a buyer come about as a result of your (6072) suggestion that he do so? A. No, sir.

Q. The first you knew of it you were advised that he found a buyer, is that right? A. That is right, I was notified that he had found a buyer.

Q. And that was not at all as a result of your suggesting that he find one? A. That is right.

Q. This was something that he did on his own? A. Yes, sir.

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(6073) PAUL HICKS resumed the stand as a witness on behalf of the Respondent and, having been previously duly sworn, testified further as follows:

Direct examination (resumed):

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Mr. Royall: Paul Hicks is the name, and I believe you testified in Chicago?

The Witness: Yes, sir.

By Mr. Royall:

Q. Now, what position did you hold with the Texas Company in Chicago in the years 1955 to 1957? A. From 1955, 1956, and one month, January of 1957, I was a merchandising salesman in the Western Suburbs of Chicago.

Q. And thereafter? A. As of February 1, 1957, I was made district sales representative, South Chicago District.

Q. And what position do you hold now? A. I hold that same position now.

Q. Mr. Hicks, I think you have testified previously on this, (6074) but are you familiar with the TBA habits of the Texas dealers in the Chicago area? A. Yes, sir.

Mr. Dias: May that be restricted to his particular area, please, unless he knows the entire area?

Paul Hicks, for Respondents—Resumed, Direct

By Mr. Royall:

Q. I mean, in the two parts of Chicago in which you served, are you familiar with those? A. In my particular area?

Q. Is that part of your duties to be familiar? A. Yes, sir.

Q. From your knowledge, which you have previously testified about, and from your knowledge in general, is there a quantitative relation between the sales of gasoline and the sales of TBA? A. Yes, sir.

Q. Is there, for example, general quantitative relation between the sales of gasoline and the sales of batteries? A. Yes, sir.

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(6075) Q. Now, in your experience and confined, as counsel for the complaint has suggested, confined to those areas in Chicago which you served, what is the normal relation between gasoline mileage, we'll say, and sale of batteries?

(6076) Mr. Dias: Your Honor, I think if I understand the question, what is the normal relationship between gasoline mileage; is that correct?

Mr. Royall: Gallonage, I mean. Gallonage.

By Mr. Royall:

Q. What is it? A. I would say that it would be a figure between 1200 and 1800 gallons for the sale of one battery.

Q. Does that vary, of course, between those limits with individuals, does it, sir? A. Yes, sir; it does and it varies by station.

Q. Yes, sir.

Paul Hicks, for Respondents—Resumed, Direct

Now, do you know the stations in the areas which you covered run by Bernie Kolon, Lou Petting, Charles D. Curletti, Mr. McWhinny, and Russ Texaco Station; are you familiar with those? A. The stations?

Q. Yes. A. Yes, sir; I am with the stations.

Q. Does this relationship, which you have testified about, apply to those stations also? A. Yes, sir; that would apply to any stations in my area.

Q. Yes, sir.

(6077) Q. I refer to the testimony, your Honor, of Mr. Irving M. Channenson, who was connected with another distributor, on pages 832 and 833 of the transcript relating to Mr. Bernie Kolon in 1956.

The testimony of Mr. Channenson at pages 836 and 837 relate to Lou Petting; the testimony of Mr. Raymond P. Jennings, also connected with a competitive distributor, at pages 952 and 953 relating to Charles D. Curletti.

Do these three gentlemen whom I have named, Mr. Kolon, Mr. Petting, and Mr. Curletti carry non-sponsored TBA in their stations? A. Yes, sir.

Q. Was it visible to you? (6078) A. It was.

Q. Do you know how much gasoline gallonage Mr. Kolon had in the year 1956? A. Yes, sir; he did 122,900 gallons.

Q. Have you found how much Mr. Kolon spent on sponsored batteries in 1956? A. Yes, sir; in 1956, he bought $208 worth of batteries.

Q. And from whom did he buy it? A. B. F. Goodrich.

Q. Did he buy any from Firestone? A. No, sir; he did not. Not that I have any records of.

Q. That information comes from the Form, S.79, which you have personally inspected; is that correct? A. Yes, sir.

Q. How many batteries will $208 buy? A. Well, in Chicago using—

Q. In these stations, what would it buy? A. Yes, sir; in my stations in Chicago, using $15 as an average cost of a battery, it would buy approximately 13 batteries.

Q. And would that apply to these three stations I asked you about? A. Yes, sir.

Q. Now, have you figured out how many batteries under your previous testimony, have you computed at, say, 1500 gallons (6079) of gasoline, how many batteries would normally be bought by a station which had 123,900 gallons? A. Yes, sir; I have. The figure is 122,000 gallons and it would be approximately 80 batteries.

Q. Eighty batteries.

Now, you stated that Mr. Kolon had visible non-sponsored TBA. Do you recall in his specific case some of the items that were displayed that were not Firestone or Goodrich? A. Yes, sir. He had displayed Goodyear tires, tubes, Exide batteries, and Gates fan belts and hoses.

Q. Did you at any time tell Mr. Kolon he should those or conceal them? A. I did not.

Q. Did you tell him that he could not carry them? A. No, sir.

Q. Did you make any complaints or threats to him about them? A. No, sir.

Q. Did the fact that he carried these non-sponsored items in any way prejudice or work to his disadvantage in your relationship with him in the operation of his station? A. No, sir.

Q. Now, in the case of Mr. Petting, how much gasoline did he sell in 1956? A. He purchased—

Q. I mean, that he purchased. A. Yes, sir; he purchased 190,000 gallons, approximately (6080) 190,000 gallons.

Paul Hicks, for Respondents—Resumed, Direct

Q. And on the basis of the testimony you have given, what would the number of batteries which he would use, be? A. That would represent approximately 125 batteries.

Q. Now, in 1957, how many gallons of gasoline did he purchase? A. He purchased in 1957 approximately 228,000 gallons.

Q. And how many batteries would that represent? A. That would represent approximately 150 batteries.

Q. Now, do your records show how many Firestone or Goodrich batteries Mr.—not how many batteries, how much money Mr. Petting paid for sponsored batteries in the year 1956? A. Yes, sir; in 1956, he bought $567 worth of batteries.

Q. And how many batteries would that be? A. That would represent approximately 35 batteries.

Q. And how much did he spend for sponsored batteries in 1957? A. $649.

Q. That would represent about how many batteries? A. Approximately 40.

Q. Now, as to his entire TBA shown on the S.79s and bought from Firestone and Goodrich, have you computed that on the basis of the gallonage which you have given, and can you tell us how many dollars per thousand gallons the total TBA for (6081) Mr. Petting was in 1956? A. Yes, sir; that would be approximately $15 per thousand gallons.

Q. And how much for 1957? A. 1957, it would be approximately $13 per thousand gallons.

Q. Now, in connection with Mr. Curletti, what was his 19—and that testimony, incidentally, referred to 1955, that is the testimony relating to him. The testimony of Mr. Jennings.

In 1955, what was the gasoline gallonage? A. Mr. Curletti purchased 196,725 gallons.

Q. And how much did he spend for sponsored batteries during that year? A. He purchased $582 worth.

Q. And in 1956, what was his gallonage and how much did he spend for battery purchases? A. In 1956, his gallonage was 219,285 gallons, and he purchased $213 worth of batteries.

Q. I will not ask you to make those computations again because they are readily made, but I will ask you what type of battery did Mr. Curletti carry, principally; from your observation? A. Principally the Volta battery?

Q. That is not manufactured by either Firestone or Goodrich? A. No, sir.

(6082) Q. Were those batteries visible at all times? A. Yes, sir.

Q. Did you, in the case of Mr. Curletti, ever criticize, complain, or threaten him in connection with his purchase of those batteries? A. No, sir.

Q. And did you suggest to him at any time that they be not displayed? A. No, sir.

Q. Now, going rapidly to the others, give me the figures on Mr. McWhinny as to which the testimony related to 1955?

Mr. Royall: And that, your Honor, is at pages 956 and 957 of the transcript.

By Mr. Royall:

Q. (Continuing) What was his gallonage for the nine-month period in 1955? A. 91,825 gallons.

Q. And what was his purchase of sponsored batteries? A. In 1955, it was $364.

Q. Now, as to Mr. Carl Olsen of the Russ Texaco Station, what was the gallonage for him? A. For Russ's Texaco?

Q. Yes. A. For 1956, the year which the testimony related to, at pages 870 and 871. In 1956, he purchased 137,100 gallons.

(6083) Q. And what was his expenditure for sponsored batteries during that year; that is, Firestone or Goodrich batteries? A. $189.

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(6084) *Cross examination by Mr. Dias:*

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Q. On what do you base your estimate of 1200 to 1800 gallons per battery, Mr. Hicks? How do you arrive at that figure? A. I would say through experience, sir, in talking to service station operators and counseling with them on batteries that they sell.

Q. Do you mean they keep track of the number of gallons they pump and then finally sell a battery, or is it computed on a year's average, or how do you arrive at that? A. It could be computed on a monthly, a weekly, a yearly.

Q. In other words, at the end of the year you know how many gallons of gas they purchased from you and what do you do then? Do you go to the station and find out how many batteries they have sold during the year; is that the way you arrive at this? (6085) A. No, sir, it is not. In service station work, many times individual operators will ask our assistance. This matter of the battery ratio is just one of many things that we try to determine like that to help the operator.

Q. Well, that is the point. How do you determine what it is or what it should be? A. Well, he would tell us what batteries he sold so that we might help him to sell more in the future.

Q. Well, in other words, after he has told you the number of batteries sold, and knowing the number of gallons

of gasoline that he bought, then do you divide the number of batteries into the number of gallons or into the number of thousands of gallons and get out a figure and then suggest a higher figure for the following period? Is that what you do? A. I am not sure I quite understood that.

Q. All right. Well then, you tell me exactly how you decide that there should be one battery sold every 1200 to 1800 gallons. A. That is simply a rule of thumb figure that we use that we have gained from experience through many service station operators. The way it is determined, a service station operator would be talking to me about the sale of, we will say, batteries. And he would say, "I sold X number of dollars worth of batteries this month and I sold X number (6086) of thousand gallons of gasoline. Is my ratio of selling batteries as good as the average man in Chicago.

Q. And you do this with each service station in your area; is that correct? A. Do I do it with each one?

Q. Yes. A. No, sir, I don't do it with each one.

Q. Who compiles these figures? A. I compile some of them. My salesmen compile a lot of them.

Q. And they make these reports to you; is that it? A. No, sir, it is not a report. This is part of our sales presentation in our efforts to help our dealers. It is not a written form or—

Q. Well, if a dealer's sales of gasoline and batteries during a particular month equate to, we will say, one per 1200 or 1800 gallons, what is your advice to him? A. Well, if it was a good ratio we would tell him, "You are doing an excellent job on batteries." The average in Chicago is either higher or lower and his sales efforts should conceivably be placed along other lines.

Q. My point, though, is that there is never a fixed figure because as a salesman and promoting the sales of these products if a station reaches the normal we will say of

somewhere between 1200 to 1800 gallons per battery, am I not (6087) correct in assuming that your suggestion to him is that he attempt to sell one battery per every thousand gallons? A. For his benefit, yes, sir, absolutely.

Q. So that the figure, the basic figure of the thousand gallons of gasoline is ever adjusted downward in order to spur sales of the particular item that you are trying to relate to the sales per thousand; isn't that correct? A. It is possible, but it could also be revised upwards, also.

Q. In what way? A. Well, poorer dealers would have a much, much higher ratio per thousand.

Q. And you do say that this varies by individuals and by stations? A. Yes, sir.

Q. Now, what is the best ratio you can think of in your area during those periods? A. The best battery ratio?

Q. Yes. A. This is an estimate, but I would say that it would be one to possibly 900 gallons.

Q. And what was the poorest? A. Again an estimate, I would say one to possibly 3500.

(6088) Q. Now, do you run the same kind of study for tires? A. Yes, sir, we do.

Q. Will you tell me what brand of tires these various stations were handling, Kolon, Petting, Culetti, McWhinny, so on? A. Well, they handled a variety of them.

Q. Didn't they basically carry Goodrich or Firestone? A. They carried some Goodrich and Firestone, yes, sir.

Q. Well, can you tell me what their sales amounted to of the sponsored products? A. In tires?

Q. Of tires, yes? A. I don't have that right with me, I could get it for you, sir.

Q. How did you happen to hit on the ratio of battery sales to gasoline? A. I say, sir, we do this in all products, grease, oil, motor oil, tires, batteries.

* * * *

(6089) Q. Now, as to each of these stations concerning which you have testified, Petting, what was your estimate again on the number of sponsored batteries that he had sold? You may refer to your notes. A. Thank you. In what year, sir?

Q. Give me each year that you have them. A. In 1956 he purchased $567 worth of batteries from B. F. Goodrich.

Q. And in 1957? A. 1957 he purchased $649 worth.

Q. All right, now, in each instance, Petting, Curletti, Kolon, McWhinny, do your records show how many dollars worth of non-sponsored batteries those stations sold? A. No, sir.

Q. So that you don't know definitely that he sold any others? Not he, but each of them. You can't testify from records that they sold other batteries? A. In some cases I could. I have actually been in some of (6090) these stations and seen batteries other than Goodrich and Firestone having been sold. In every case I could not.

Q. Well, as to those instances where you can, will you name them, please? A. Yes, sir, I have been in Curletti's station.

Q. All right, how many times have you seen him selling batteries other than the sponsored brand? A. I believe just once that I was personally standing there.

Q. Anyone else? A. No, sir.

Q. All right, now, can you testify that Curletti ever sold any more than that one non-sponsored battery? A. No, sir, I can't.

Q. And the same is true for each of these others; is that a fact? A. Yes, sir.

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Paul Hicks, for Respondents—Redirect

H. L. Cain, for Respondents—Direct

Redirect examination by Mr. Royall:

Q. Mr. Dias brought out in his question that you visited these various station operators to be of assistance to them. Would that assistance include help in the sale of non- (6091) sponsored as well as sponsored merchandise? A. Absolutely.

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(6092) H. L. CAIN was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your name and address to the reporter, please? A. H. L. Cain, 1402 Bluebird Lane, Garland, Texas.

Q. What is your position with the Texas Company? A. I am a dealer training representative.

Q. You are stationed in Dallas? A. Yes, sir.

Q. I don't know if we have had any explanation of what kind of a job that is. What do you do? A. Well, I travel the Dallas division primarily, holding meetings in the consignee areas for dealers, to help dealers to make more money.

Q. You say you have had that position since April 1958? A. Yes, sir.

Q. Before that what position did you have? A. I was a salesman in Dallas.

Q. During what years? (6093) A. July of 1952 to the time that I took this job.

Q. April of 1958? A. April of 1958, yes, sir.

Q. And you have been in several of the zones in Dallas, or territories in Dallas? A. Two salesmen's territories.

Q. Two salesmen's territories during that time? A. Yes.

Q. You came with the Texas Company in 1952, did you? A. No, sir, I came with the Texas Company in November 1949.

Q. I see. What did you do between 1949 and 1952? A. I worked at the training station and in training with salesmen.

Q. Are you acquainted with the Texas Company's policy letters which have been marked Exhibits 27 and 28? A. Yes, sir?

Q. And 29? A. Yes, sir.

(Documents were shown to the witness.)

Q. And have you had a chance to look at these particular exhibits before you took the stand this morning? A. I have, sir.

Q. Have you followed the policy as set out in those exhibits during the time that you have been in the sales department of the Texas Company? (6094) A. I have.

Q. At any time while you were a salesman for the Texas Company did you suggest to any dealer that he would be prejudiced with the Texas Company in any way if he did not handle the Firestone or Goodrich TBA line? A. I have not.

Q. Have you ever recommended the cancellation of a dealer's lease or the non-renewal of a dealer's lease because he didn't buy the Firestone or Goodrich TBA line? A. No, sir.

Q. During the time when you have had contacts with the dealers, including now, has any dealer ever told you that he had been treated unfairly because of the way in which he was buying his TBA? A. They have not.

Q. Or complained to you that threats had been made to him to compel him to buy the Firestone or Goodrich lines? A. Never.

Q. Now, are you acquainted with Mr. Howard Rush? A. Yes, sir.

Q. Who was a Texas dealer? A. Yes, sir.

Q. And for how long do you know he was a dealer? A. Well, I don't know how long Mr. Rush has been a dealer, but I have worked with Mr. Rush. I worked with Mr. Rush (6095) starting July of 1952 through 1956.

Q. You were a salesman? A. Yes, sir.

Q. Did you have quite a few personal contacts with Mr. Rush? A. I did.

Q. Mr. W. E. Smith, who was a witness in this case and a salesman for the Beard and Stone Electric Company, testified about this dealer at Pages 1685 and 1693 to the effect that Mr. Rush is supposed to have told him that he was going to have to handle Goodrich products.

Now, at any time did you suggest directly or indirectly to Mr. Rush that he had to handle Goodrich TBA products? A. No, sir,

Q. That he couldn't handle Auto-Lite batteries if he wanted to? A. No, sir.

Q. Or that he couldn't handle the Gates line of fan belts if he wanted to? A. No, sir.

Q. Did Mr. Rush ever tell you that anyone from the Texas Company had made any such suggestions to him? A. He did not.

Q. Now, can you tell me from whom Mr. Rush bought his Goodrich TBA?, A. He bought them from the service station supply, which (6096) is M. O. Rush, who is his brother. And, too, Howard helped his brother in this business.

Q. That is, the dealer Howard helped his brother, M. O., in the Goodrich business? A. In the supply of

Goodrich merchandise. And he also operated a service station and the supply point was approximately 1½ blocks from Howard's service station, Howard Rush's service station.

Q. So it is not surprising that he did handle quite a bit of Goodrich TBA? A. Not at all.

Q. And he did, didn't he? A. He sure did.

Q. Now, Mr. Jack Wilkie at 9507 Garland Road, do you know him? A. I sure do.

Q. And was he one of the dealers with whom you were associated while you were in the sales department of the Texas Company? A. He was.

Q. Now, the same Mr. Smith testified at Page 1692 that he tried to sell Mr. Wilkie batteries and that Mr. Wilkie didn't buy from him and said that he had to handle Firestone.

Now, did you ever suggest to Mr. Wilkie directly or indirectly that he would have to handle only the Firestone (6097) battery? A. I did not.

Q. Did you make any suggestion like that? A. No, sir.

Q. Did Mr. Wilkie ever complain to you that anyone from the Texas Company had said any such thing to him? A. He did not.

Q. Do you know whether Mr. Wilkie handled and had on display in his station any batteries other than Firestone? A. Yes, sir, he did.

Q. At this time do you happen to recall any of the names? A. Yes, sir, two of them. Continental and Auto-Lite.

Q. Now, how about tires? Did you happen to recall whether he had on display any tires other than Firestone? A. Yes, he had on display U. S. Royal tires.

Q. Now, did you ever tell this dealer that he ought to hide batteries that were not Firestone or tires that were not Firestone? A. I never did.

Q. Did you tell him that he would treat him badly in some way or threaten to cancel his lease if he didn't stop handling these other batteries and U. S. tires? A. No, sir.

Q. I believe I asked you, you said the batteries and tires were on display, did you not? (6098) A. In the sales room, yes, sir.

Q. As far as you know, did Mr. Wilkie continue handling and displaying these U. S. tires as long as you covered his territory? A. Yes, sir, he did.

Q. Now, Mr. Smith also testified that he tried to sell some batteries to Mr. Tableman, Russell Tableman, and he also said that he told him that he had to handle Firestone. That testimony is also at Page 1693.

Do you know Mr. Tableman? A. Yes, sir.

Q. Did you ever tell Mr. Tableman that he would be treated badly in any way if he didn't confine his purchases of TBA to Firestone? A. I did not.

Q. Do you know what Mr. Tableman did prior to becoming a Texaco dealer? A. Yes, sir.

Q. What did he do? A. He was a Firestone salesman for the area of Dallas.

Q. And after he became a dealer, did he handle Firestone? A. Yes, sir.

Q. Did Mr. Tableman ever complain to you that he had been told by anyone that he had to handle the Firestone products? A. He never did.

(6099) Q. Are you acquainted with a dealer by the name of Tosch, Ray Tosch, whose station is now at Preston Road and Berkshire in Dallas, Texas? A. Yes, sir.

Q. Mr. Kelly McCann of the Continental Battery Company testified at Page 1559 that this Mr. Tosch had been one of his best accounts in Dallas, that he began losing out on the Tosch account and that Tosch was discontinuing the use of Continental batteries.

Now, did you ever suggest to Mr. Tosch either directly or indirectly that he would be treated badly in any way, if he continued to purchase Continental batteries? A. I never did.

Q. Have you had occasion to visit Mr. Tosch's station? A. Yes, while I was a salesman?

Q. While you were a salesman. A. Yes, sir.

Q. And on those visits, did you have occasion to note whether he was confining his display to Firestone or Goodrich TBA? A. He did not. He had several different kinds, all kinds of merchandise.

Q. Do you by any chance recall any of the brand names which Mr. Tosch had? A. Well, I recall Goodyear tires and I recall Continental (6100) batteries.

Q. By the way, these visits that you made to Mr. Tosch started in the very month that Mr. McCann was testifying, January 1957; is that right? A. That is right. I went into that territory January 1, 1957.

Q. And so it has been recently that you recall that he has been handling these other lines of batteries? A. Yes, sir.

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(6101) Q. Did you, when you gave me the names of other lines of batteries that he had, did you mention any batteries other than Continental? A. Well, I am not sure. I am sure of Continental, and there were other batteries—

Q. I see. A. —in his station.

Q. Other than Firestone or Goodrich, also? A. Yes, sir.

Q. Now, did you suggest to Mr. Tosch at the time that he ought to stop displaying Continental batteries and these other batteries? A. I did not.

Q. Did he continue to handle them as long as he was in your territory? A. He did, yes, sir.

Q. Do you know when Mr. Tosch became a Texaco dealer? A. I don't know the exact date. It was the spring of 1949.

Q. Are you acquainted with a publication known as "The Gasoline Retailer"? A. Yes, sir.

Q. Tell us what kind of a publication that is. A. Well, it is a publication more or less like a newspaper that is mailed to the dealer, all dealers all over the (6102) country, as I understand it. I have seen several copies in stations.

Q. It had a wide circulation in your neighborhood, did it, in 1952, in your industry? A. In Dallas, yes, sir.

Q. I show you a page from the January 2, 1952, edition of The Gasoline Retailer and ask you whether on that page you can identify the picture of Mr. Tosch? A. Yes, sir, I recognize Mr. Tosch.

Q. On the date of that publication, were Auto-Lite spark plugs in either the Firestone or Goodrich lines? A. No, sir. They came out at a later date.

Q. And Mr. Tosch was still a dealer when you went in there in 1957? A. Yes, sir. And still is.

Mr. Lorenzen: I would like to offer in evidence this page from The Gasoline Retailer of January 2, 1952.

(The document referred to was marked Respondent's Exhibit 75 for identification.)

Mr. Dias: Mr. Cain, when did you say you first moved into this territory in which Mr. Tosch is located?

The Witness: The First of January 1957. January 1, 1957.

Mr. Dias: And how do you know when he started in this station?

(6103) The Witness: Because I was an employee of the Texas Company on Preston Road near Mr. Tosch's station and, as I said, I went to work for them in November of 1949. He was a dealer when I went in there.

Mr. Dias: You say you worked for Tosch or Rush?

The Witness: No, I worked for the Texas Company. We had a training station on Preston Road near Mr. Tosch's station.

Mr. Dias: Near his station?

The Witness: Yes, sir.

Mr. Dias: And when was that; what year was that?

The Witness: I went to work at that station in November of 1949.

Mr. Dias: And Tosch was in that station at that time?

The Witness: At that time, yes, sir.

Mr. Dias: I have no objection.

* * *

(6104) *By Mr. Lorenzen:*

Q. Did Mr. Tosch at any time complain to you that anyone from the Texas Company had told him that he had to limit buying his TBA items to buying the Firestone or Goodrich line? A. No, sir; he never did.

Q. Are you acquainted with Mr. Billy Colgin? A. I am.

Q. Where is his station? A. It is in the Snyder Plaza Shopping area in Dallas.

Q. That is also in Dallas? A. Yes, sir.

Q. Mr. Kelly McCann of the Continental Battery Company testified at pages 1576 and 1577 with respect to this

dealer that he also had been one of Mr. McCann's finest accounts but he doesn't any longer stock the battery. Apparently he started this discontinuance in 1954, 1955, and 1956. That is, according to the testimony.

Now, tell me, did you ever suggest to Mr. Colgin that he would be treated badly in some way if he bought Continental batteries? A. I did not.

Q. To your knowledge, did any employee of the Texas Company ever make any such suggestion? A. No, sir.

Q. Did Mr. Colgin ever complain to you that anyone had (6105) made a suggestion of that type to him? A. No, sir.

Q. Now, do you know what the gallonage was at Mr. Colgin's station in 1955 and 1956? A. Yes, sir; in 1955, his gallonage was 235,618, and in 1956, it was 210,107.

* * *

Q. Mr. Cain, in your experience have you found that there is a sort of a rule-of-thumb ratio between certain sales at service stations and the gasoline gallonage? A. Yes, sir.

Q. Have you found that to be so with respect to batteries? A. Yes, sir.

Q. Of course, individual sales will differ within a range depending upon location and upon the dealer; will they not? A. Yes, sir.

Q. But, nevertheless, you feel there is a rule-of-thumb of some kind? A. Yes, sir.

* * *

(6106) Q. Let me ask you, while you were a salesman to what extent did you assist dealers who requested your help in connection with sales ratios? A. Well, oftentimes a dealer would say that he wasn't making enough money and would ask for our help, and that was (6107) our job to go in and assist him to sell more of all lines to make more money.

Q. And did you do that? A. Yes, sir.

Q. In that connection, will you state to what extent you acquainted yourself with ratios of sales which the dealer might make in order to achieve that greater success which he was looking for? A. Well, I would make an effort along with the dealer to see what particular department his sales were down in, and if it were down in batteries, why, we would—of course, he would make an effort to sell more batteries.

Q. And if it were down in lubricating jobs would you do the same thing? A. Yes, of course, it was more or less departmentalized and that is the way most of them had their profit and loss statements made out and they would go to each department and see how their sales were doing.

Q. Now, in connection with that phase of your job— A. Yes, sir.

Q. (Continuing)—did you acquaint yourself with ratios of sales which might be expected from a certain amount of gallonage? A. In the Dallas area, yes, sir. I was there, as I said, about five and a half years working with dealers.

(6108) Q. All right.

Now, how many dollars did Mr. Colgin spend on Firestone or Goodrich batteries in the year 1955? A. $370.

Q. And in the year 1956? A. $290.

Q. About how many Firestone or Goodrich batteries could Mr. Colgin buy in Dallas in 1955 for $370? A. Oh, estimating, about 27 batteries.

Q. And for the $290 in 1956, about how many could he buy? A. About 20 batteries.

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(6109) Q. You testified that in 1955 the gasoline gallonage was 235,618 gallons, did you not? A. Yes, sir.

Q. Now, for a station of that gallonage, approximately how many batteries would Mr. Colgin sell, applying to this

answer now your experience gained as you have testified to in connection with determining ratios? A. 27 or 28 batteries.

Q. That is what he did buy? Is that right? A. Yes.

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Q. Now, I want to know, that is what you said he bought from Firestone and Goodrich; is that right? (6110) A. Yes.

Q. Now, with a station of that gallonage, what would be the ratio of total battery sales?

Mr. Dias: I object unless we give some ground for making this computation, I haven't got that yet.

Hearing Examiner Kolb: We don't have any information as to how many batteries this man bought. I don't think this witness is qualified to go into the ratio proposition. As a matter of fact, Mr. Hicks testified he took his ratio on the basis of what the Company had worked out, not on his, after you got into further testimony after I allowed the testimony to go in.

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Q. Do you have a rule-of-thumb down there in Dallas as to the ratio of batteries to TBA? A. Well, we have an average that we go by.

Q. What is that? A. Oh, one battery to about every 1200 to 1800 gallons.

Q. Then, it is the same Company ratio that Mr. Hicks testified about? (6111) A. I don't recall what his testimony was.

Q. All right.

Now, based upon your experience in this particular neighborhood where this station is located, do you have an opinion as to the number of batteries which the average dealer would buy in terms of gallons of gasoline? A. Yes, sir.

Mr. Dias: That is enough. You have the opinion.

By Mr. Lorenzen:

Q. What is your opinion? A. I would say, as a figure, about one battery to every 1500 gallons of gasoline.

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(6114) Q. Did you look through in Colgin's books to see whether he bought batteries, and from what source he bought them? A. No, sir.

Q. Did you attempt to police him in any way as far as his TBA went? A. No, sir.

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(6116) Q. Now, did Mr. Colgin ever complain to you that anyone had told him that he had to buy more Firestone and Goodrich batteries? A. No, sir.

Q. That something—that he was threatened in any way if he didn't buy more of them? A. No, sir.

Q. Did he ever tell you that anyone from the Texas Company had told him that he couldn't handle the Continental batteries? A. No, sir.

Q. And you testified, I believe, that he did handle batteries other than Firestone and Goodrich? A. I did.

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H. L. Cain, for Respondents—Cross

Cross examination by Mr. Dias:

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(6118) Q. Now, tell us again how you knew Tosch prior to January 1 of 1957? A. Well, as a salesman we had meetings and Mr. Tosch is an outstanding dealer and he made all of our meetings and he's quite a conversationalist and he talked a lot and everyone knew him in town.

Q. Did you call on him at his station? A. Yes, sir.

Q. How often? A. Oh, about three times a month while I was his salesman.

Q. Starting in January of 1957? (6119) A. Yes, sir.

Q. I am talking about prior to that time now? A. Oh, no. I have been in his station just visited with Mr. Tosch, but not at a business level.

Q. And was it at that time that you saw these Goodyear tires and Continental batteries or was that after January 1 of 1957 that you saw them? A. After January 1, 1957.

Q. You stated that you never have recommended the cancellation or non-renewal of a station operator's lease because he was handling non-sponsored TBA? A. I did.

Q. Have you ever recommended the cancellation or non-renewal of a lease of any operator for any reason? A. Yes, sir.

Q. All right, when was that and what was the reason? A. Well, the reason for gasoline gallonage being off is the number one reason or any petroleum product is the number one reason.

Q. And who was it and when? A. Well, during my—there is three or four that I can think of.

Would you like for me to name them?

Q. Yes, if you would, please? A. Well, a gentleman by the name of Glen Heath and Acock. (6120) That was his

last name, James Acock and Glen Heath, and they were dealers, partners in a station in McKinney.

Q. McKinney, Texas? A. That is right.

Q. How far is that from Dallas? A. Oh, approximately thirty miles.

Q. All right. Do you recall any others? A. Offhand I would have to check my records for the name.

Q. Well, was the procedure in each instance the same? How does the salesman go about recommending the cancellation or non-renewal of a lease? A. Well, I would say 99 percent of the time it is—they were poor businessmen and the gallonage was going down—

Q. No, but how do you as a salesman initiate this cancellation of a lease? Do you report to a superior or do you have the authority to just cancel them out? A. No, we visit, I visit with my superiors on it. We decide that he is not protecting the Texas Company's interests and not doing a good job in promoting the sale of petroleum products in the station.

Q. And what do you do then in regard to the operator himself? Do you notify him about your thoughts in this matter? A. I am right in thinking he is mailed a letter from our division office.

Q. And what is he told in that, that it is going to be (6121) cancelled or that he is— A. That his lease will not be renewed.

Q. That is the normal procedure, is it? A. Yes, sir.

Q. Is he told why it is not going to be renewed? A. Well, if he asks he would be.

Q. In connection with Jack Wilkie, you mentioned that he displayed Continental and Auto-Lite batteries? A. Yes, sir.

Q. How many of those did he have around, do you recall? A. Well, I couldn't recall that number, no, sir.

Q. Did he also have Firestone or Goodrich batteries in that station? A. Yes, sir.

Q. In other words, he had three brands? A. Yes, sir.

Q. You mentioned that he had U. S. Royal tires, was that the only tire that he carried? A. No, he was a Firestone dealer.

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(6123) JOHN KILLIPS was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you state your name and tell us where you live? A. My name is John Killips, 8025 Ogden Avenue, Lyons, Illinois.

Q. Are you an employee of the Texas Company? A. Yes, sir.

Q. Since when have you been an employee? A. About twenty years.

Q. About since 1938? A. Yes, sir.

Q. And where has your employment been geographically? A. From 1938 to about 1942 or 1943 I was at that time they call them resale salesmen in the Metropolitan Chicago area. From that time until 1949 I was a dealer service representative in that area, in the Chicago area.

(6124) From 1949 to 1952 I was zone manager in the Rockford, Illinois, area.

From 1952 to 1956 I was a dealer service representative in the Chicago division, which comprised about three or four states at that time.

From January 1, 1957, until August 1, 1958, I was district representative, merchandising, in the north area of Chicago.

From August 1958 until this present November I was a dealer trainer in the Chicago area. And at the present time I am merchandising salesman.

Q. With the exception of that stay in Rockford, Illinois, all of your time has been spent in and about Chicago? A. That is true.

Q. And in the sales end of the business? A. Yes, sir.

Q. During the time that you have been employed by the Texas Company, have you from time to time received policy letters of the Texas Company dealing with TBA? A. Yes, sir.

Q. Are you acquainted with the letters which have been marked Exhibit 9? (Showing document to the witness.) A. Yes, I am.

Q. And Exhibit 10? A. Yes.

(6125) Q. You have had a chance to look at these before you took the stand today? A. Yes.

Q. Now, in addition, did you receive a letter such as Exhibit 6, I believe it is—Exhibit 6? (Showing document to the witness.) A. Yes.

Mr. Dias: Respondent's Exhibit 6?

Mr. Lorenzen: Yes. These are Respondent's exhibit numbers.

By Mr. Lorenzen:

Q. Such as Exhibit 6—you did receive a letter like that? A. I never received a copy of this letter but I have seen this letter.

Q. I see.

Now, during the time that you were in the sales department and in contact with Texaco dealers, have you followed the policy of the Texas Company as set out in the exhibits I have shown you? A. Yes, I have.

Q. Tell me what did you do as dealer service representative? What were your duties and just what did you do? A. As dealer service representative, it was—the dealer asked for the help of the dealer service representative in his overall merchandising picture to make sure that his (6126) ratios were good, to make sure that his profit picture looked good and that he was doing a balanced selling ratio job. By that I mean that he was selling—a balanced selling job.

Q. You mean it was your job to help a dealer when he asked for it? A. Yes, sir.

Q. They sent a man with your title, a dealer service representative, out to help the dealers? A. That is true. The dealer asked for our help.

Q. And when that was asked, then you were sent out by the zone manager? A. That is true.

Q. And you went and talked to the dealers and went over their merchandising problems? A. Right.

Q. That is the sort of thing you did? A. That is true.

Q. And you did that in Chicago? A. Yes, sir.

Q. For how many years did you say? A. Well, as I formerly stated, from about 1949 to 1952, and then I was back again as dealer service representative up until—from 1952 to 1957.

Q. And those are the sort of duties that you performed? (6127) A. Yes, sir.

Q. That is about what you did in the Chicago area? A. Yes, sir.

Q. In that connection, did the dealers ask advice on the basis of their own figures, their own books at times? A. Yes, sir.

Q. And did they ask you to analyze their books? A. That is right.

Q. Analyze their sales? A. Yes.

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Q. Tell us what sort of analyzing the dealers asked you to do. A. Well, the primary reason we were sent there, as I said, was to help the dealer make more money, make his profit picture a little better through a balanced selling job of petroleum products, TBA, sales and services.

Q. And you said they showed you figures at times. What did you do with the figures? (6128) A. Well, in order to analyze the man's business, in order to look at the profit picture, you had to work with the dealer. He worked with you to try to show him where he was low on lube jobs, maybe, or low in the lube bay, maybe, or the wash bay. He might be low on gasoline, oil sales, and we tried to round it out and do a balanced selling job for the dealer.

Q. Did your analysis have anything to do with the sale of TBA? A. It was a very big part of it.

Q. What was that? A. Well, to help them display merchandise, be sure that he had presented it right to the public, that he had the selling story to tell to the public in order to sell TBA, to display it and price it properly.

Q. If one of these dealers who asked for your services had on hand for display Dunlop tires or Auto-Lite batteries, would you help him just the same? A. We treated TBA as TBA. We treated it as a tire; we treated it as a battery. He had the merchandise on hand and, as I say, our job was to merchandise what he had and to make his profit picture look better.

Q. And did this balanced selling you are talking about have anything to do with the balance between TBA and gasoline? (6129) A. Yes, it did.

Q. Did you analyze that, too? A. Yes, on many occasions.

Q. On many occasions? A. Yes.

Q. In connection with the performance of this end of your job, did you have information as to the relation between TBA sales and gasoline sales? A. Yes.

Q. And TBA and gasoline sales and battery sales? A. Yes.

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Q. Did you acquaint yourself with the relationship between TBA sales and gasoline sales as part of performing your job? A. Yes.

Q. And did you know what that relationship was in the type (6130) of station you are dealing with? A. Yes.

Q. What was the relationship between gasoline sales and TBA sales?

Mr. Dias: I object.

Hearing Examiner Kolb: He hasn't yet told us how he knows.

By Mr. Lorenzen:

Q. Well, tell us how—I thought you had gone into it in some detail, but tell us how you know. A. Well, we had a mimeographed form we went by. We took a dealer's P&L statement and—

Q. That was in the case of the dealers who asked you to help them? A. That is right. And we would break down—well, there was only eight ways you could get money into a service station—gas, oil, lube, labor, tires, batteries, and accessories—and you broke those down and found out what the revenue in each department was and you had a pretty good idea what TBA should bring in.

Q. In these cases where the dealers asked you to analyze his figures, you had a mimeographed sheet along on which you could fill in those eight sources of income? A. That is true.

Q. Is that correct? (6131) A. Yes.

Q. And did you do that a substantial number of times or a few times? A. Many times in that capacity as a dealer service representative.

Q. And when you did that that would show sales of gasoline in one line? A. Yes.

Q. And sales of lube jobs on another line? A. Right.

Q. And sales of tires on another line? A. Right.

Q. And sales of batteries on another line? A. Right.

Q. And sales of accessories on another line? A. Right

Q. And you will have that just in dollar figures? A. That is right.

Q. So that comparing any one of those lines with the gasoline gallonage, you could find what the relationship was? A. That is true.

Q. And you did that, you say, on a great number of occasions? A. Yes. Also—

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(6134) Q. What relationship did you find existed between gasoline gallonage and TBA at these stations? A. Gasoline gallonage was good, TBA sales were usually good.

Q. And what did you find the relationship between dollars of TBA and gallons of gasoline to be? A. In the particular area that I was in at that time, I would say between, oh, 50 to 60 dollars per thousand.

Q. And did you find any similar relationship between battery sales and gasoline gallonage? A. Yes, I did.

Q. What was that? A. Where you had increased gallonage you had increased battery sales.

Q. And, again, did you find there was a dollar relationship between battery sales and gasoline gallons? A. Yes.

(6135) Q. What did you find that to be? A. Oh, I would say, about $25. It may be a little high—

Mr. Dias: Wait. You have answered that.

By Mr. Lorenzen:

Q. I am no expert in this field, could you translate that for us into number of batteries other than dollars? A. Breaking it down per thousand gallons of gasoline?

Q. Any way you want, so we know what it is. A. Well, your stations vary from good TBA merchants to fair TBA merchants to excellent TBA merchants, but I would say that a fair estimate of one battery, oh, in a range from 1250 gallons to 1800 gallons there should be one battery sold.

Q. During the time when you were in the Chicago area, were you acquainted with a dealer by the name of Robert W. Stern? A. Yes.

Q. There was testimony about this gentleman given by Mr. Dwyer on pages 923 to 925 of the record. Do you remember was there a time when this Mr. Stern was in the station without a lease? A. Yes, I do.

Q. Do you remember, was he sent a letter saying his lease would not be renewed? A. Yes.

Q. And then what happened? A. He stayed in the service station.

(6136) Q. Were you out looking for a dealer to replace him? A. We tried to find a dealer for it; yes, sir.

Q. Could you find one? A. No, sir.

Q. And, so, Mr. Stern stayed on? A. He has been there; yes, sir.

Q. And he has stayed ever since, has he? A. Yes, he has been.

Q. Now, do you remember about when that happened? About how long ago was that? A. I think it was, if my memory serves me right, right around the year of 1954.

Q. Now, before that time, had you been in Mr. Stern's service station? A. Yes, I have.

Q. On more than one occasion? A. Yes.

Q. It was in connection with your dealer service job? A. That is true.

Q. Did you help him with his TBA displays and what not? A. Yes, I did.

Q. What kind of TBA did he have in there, do you remember? A. If I recall, he had some Firestone and he had Dunlop tires and Exide batteries.

Q. And how about his accessories? (6137) A. He had various lines of accessories.

Q. Lines in addition to or other than Firestone or Goodrich? A. That is true.

Q. Now, did you see—were you in Mr. Stern's station after the time when you were looking for another dealer and couldn't find one for that station? A. Yes, I was.

Q. How about Mr. Stern's TBA displays at that time? A. I didn't notice any difference in them. I think they were the same as they were before.

Q. You mean, the same line of merchandise that he had in there before? A. That is true.

Q. Do you have the figures of gallonage at Mr. Stern's station in 1956? A. Mr. Stern's gallonage in 1956 was 134,725 gallons.

Q. Do you have it for 1955? A. I am sorry, I do not.

Q. You do not? A. No.

Q. How about purchases of Firestone or Goodrich batteries, do you have those for 1956? A. There were no B. F. Goodrich sales at all. Firestone batteries in 1956 were $318.

Q. Now, do you happen to have for the same year his total (6138) TBA purchases? A. His total purchases were $283.

Q. That is Firestone and there were no Goodrich; is that right? A. That is right.

Q. The conversation which the Government's witness, Mr. Dwyer, said somebody else told him Mr. Stern was

supposed to have had with somebody from the Texas Company, supposed to have been with a Mr. Suffert; now, that gentleman died, did he not, before January, 1957? A. If I recall, he died in November of 1956.

Q. And this testimony was in January, 1957, so you are quite sure he was deceased at that time? A. True.

Q. Were you in Mr. Stern's station ever in company with Mr. Suffert? A. On several occasions I was in the station with Mr. Suffert.

Q. Now, during those occasions, did you hear Mr. Suffert say anything to Mr. Stern about his having these Dunlop tires and other lines of TBA in the station? A. I did not.

Q. Did you hear any threat whatever being made by Mr. Suffert that he would cancel out Mr. Stern's lease if he didn't stop handling these Dunlop tires and Exide batteries? (6139) Did you ever make any threat like that to him? A. No.

Q. Did Mr. Stern, at the time you were helping him with his TBA after that date, ever complain to you that Mr. Suffert or anybody else had made a threat to him about his TBA? A. No.

Q. And you stated that the type and proportion of TBA that he handled both before and after the time when his lease was cancelled was about the same? A. Yes.

Q. As far as you could observe? A. Yes, true.

Q. By the way, did you ever hear of a Goodrich dealer by the name of Bablum? A. No, sir.

Q. Now, were you acquainted with a Mr. Andrew Gumbar? A. Yes, I am.

Q. And do you know about where was he a Texaco dealer? A. Yes, sir; at Bryn Mawr and Ashland.

Q. What was the name of the other street? A. Bryn Mawr and Ashland, it is 5556 North Ashland.

Q. I see, because the address we had in the record was 5550 North Ashland. That is about the same place? A. Yes, that is the same corner.

Q. What was your connection with Mr. Gumbar? Was he in the (6140) territory where you were functioning? A. Yes, when I was district representative for merchandising he was in that area.

Q. And at any time, did you ever tell Mr. Gumbar that he had to buy only Firestone or Goodrich batteries? A. No, sir.

Q. Did you ever tell him that he should stop buying Auto-Lite batteries from Mr. Francis Dwyer, a salesman of the Berry Tire Company? A. I did not.

Q. The testimony to which I have reference is found on page 925 of the record.

As far as you know, did anyone connected with the Texas Company ever tell Mr. Gumbar that he had to buy all of his TBA from the Biltmore Tire Company? A. No, sir.

Q. Did Mr. Gumbar, when you saw him, ever complain to you or tell you that anyone from the Texas Company had told him that he had to buy only from Biltmore, or that he couldn't buy from the Berry Tire Company? A. No, sir.

Q. Or that he would be treated badly in some other way if he didn't buy only Firestone and Goodrich TBA? A. No, sir.

Q. He never told you that? (6141) A. No.

Q. Did you ever tell him anything like that? A. No, sir.

Q. Did you ever suggest to him that his lease might be cancelled if he didn't buy only the Firestone or Goodrich TBA? A. No, sir.

Q. By the way, was the cancellation of that lease of Mr. Stern's, did that have anything to do with TBA at all? A. Are we going back to Mr. Stern?

Q. Yes, I think I might have forgot then to ask you. Did that have anything to do with it? A. No, sir; the only time when I mentioned before I was accompanying Mr. Suffert on this visit there several times, Mr. Suffert did council with him and speak with him about the unbusiness-like physical condition of the service station. It was not conducive to good business practices and we thought that the gallonage was going down and eventually it would go down so low that Mr. Stern would be unable to make a living there.

Q. Was that a nice neighborhood? A. It was an excellent neighborhood in Winnetka, if you know the neighborhood, good area, north shore.

Q. Residential suburbs of Chicago? A. Yes; but it was the housekeeping there that Mr. Suffert (6142) councilled him about.

Q. He kept a dirty operation? A. Yes.

Q. Now, let's get back to Mr. Gumbar a minute here. Do you recall on your visits to Mr. Gumbar's station whether you saw anything on display there other than Firestone or Goodrich? A. He had non-sponsored merchandise on the premises.

Q. Do you remember any particular brand at all? A. There were either Auto-Lite or Exide batteries, I can't recall vividly which one. They were either one or the other.

(6143) Q. Now, what about the tire situtaion here? What was his stock of tires, if any? A. Mr. Gumbar stocked very little tires there, he was more or less on a pickup basis on a tire program there. If he needed a tire why, he would pick it up at the supply point.

Q. Now, do you have the figures for Mr. Gumbar's gasoline gallonage for 1956? A. Yes, sir, he did 158,460 gallons in 1956.

Q. And what were his total TBA purchases of Firestone and Goodrich, if he bought both? A. Total figure was $1,569.

Q. That is all Firestone or Goodrich TBA? A. Yes, that is true.

Q. And how about batteries?

Can you tell us what his total battery purchases were for 1956 for Firestone or Goodrich? A. $338.

Q. Now, was a dealer by the name of Harry F. Peterson in your territory at any time? A. Yes, he was.

Q. And where was his station located? A. Irving and Hermitage, 1700 West Irving Park Boulevard.

Q. That would be 1723 Irving Park Road? A. Yes, we carried it on the records as Irving and Hermitage, I think because of the corner.

(6144) Q. He was in your district when you were district representative, right? A. Right.

Q. Now, did you ever tell this gentleman that he was not to buy anything from the Berry Tire Company except vulcanizing and recapping? A. I did not.

Q. To your knowledge did anybody from the Texas Company tell him that? A. Not to my knowledge.

Q. Did Mr. Peterson ever tell you that such a statement had been made to him by anyone? A. No, he did not.

Q. Did he ever complain to you that he had been told that he had to buy only Firestone and Goodrich? A. No, he didn't,

Q. Or that he was told that he couldn't buy things from the Berry Tire Company? A. No, sir.

Q. Now, the same Mr. Suffert who died in 1956 was also the manager in charge of the zone in which Mr. Peterson's station was located; is that so? A. That is right, prior to my time, yes, sir.

Q. Did you see this station? Did you observe it? A. Yes.

(6145) Q. How many times were you there do you think? A. In a given year or month or—I would say I was

there, oh, once every two months. I rode the territory with the sales personnel that were in that area and I would have to be there.

Q. Do you recall whether you saw any brands of TBA there other than in the Firestone and Goodrich line? A. Yes, he had a non-sponsored brand of batteries there and non-sponsored accessories.

Q. Tell me, do you have this gasoline gallonage there for any years, 1956, for example? Have you got it? A. I have his gallonage for 1956, it was 169,380.

Q. Now, have you got gasoline gallonage for any other years? A. I have 1954, 1955 and 1957. 1954's gallonage was 171,305; 1955's gallonage was 117,980; and 1957's gallonage was 164,365.

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Q. Now, in 1954 can you give me the total TBA purchases of Firestone and Goodrich made by this dealer? A. 1954 it was $499.

Q. And in 1955? A. $733.

(6146) Q. And in 1956? A. $680.

Q. And in 1957? A. $419.

Q. Out of that amount did he buy any batteries? A. There were no batteries in that figure.

Q. Did he buy any accessories? A. No, there were no accessories in that figure.

Q. So all this fellow bought was this few hundred dollars worth of tires? A. That is true.

Q. From Firestone or Goodrich? A. Right.

Q. Now, have you got the TBA ratios there to save us the arithmetic, that is $3.50 per thousand gallons, is it for 1954 and $4.30 for 1955? A. That is true.

Q. And $2.55 for 1957. Have you got the '56 computed, too? A. $4.01.

Q. $4.01? A. Yes, sir.

Q. That was the total TBA that this man bought? A. That is correct.

Q. From Firestone and Goodrich? A. That is right.

(6147) Q. Have you been to Mr. Peterson's station recently? A. Within the last month I have been there.

Q. What did you find on display there then as far as batteries went? A. There wasn't much change than it had been on my previous visits.

Q. As of that time do you remember the makes of the batteries he was carrying? A. I would say that, like before, either Exide or Auto-Lite batteries in there.

> Mr. Dias: Your honor, I object to the answer, the witness would say that. I would rather hear what was actually there, what he actually saw.
>
> The Witness: They were either Auto-Lite or Exide batteries.

By Mr. Lorenzen:

Q. Now, did you have a dealer by the name of Feller, did you know him? A. I sure did, yes, sir.

Q. What was his address? A. We carried it as Irving and Mozart. I think it was in the 2800 block on Irving Park Boulevard.

Q. That would be the same fellow as 2834? A. That is right.

Q. Now, there was some testimony about him by Mr. Theodore (6148) H. Shiff, a salesman of the Berry Tire Company on Page 931 and in this testimony he states that in the Fall of 1956 Mr. Feller had ordered some Prestone from him and when he came around to deliver it in November that Mr. Feller turned down this Prestone and wouldn't accept delivery.

He said that he wasn't permitted to handle it.

Now, what I want to know is did you tell him, Mr. Feller, that he couldn't handle Prestone? A. No, sir.

Q. Did you ever tell him that he couldn't handle any kind of TBA? A. No, sir.

Q. Did you ever tell him that he had to buy only from Firestone and Goodrich? A. No, sir.

Q. As far as you know did any employee of the Texas Company to your knowledge ever tell him anything like that? A. No, sir.

Q. Did Mr. Feller ever complain to you that anybody had told him he had to limit his purchases of TBA to any particular source? A. No, sir.

Q. Or that he couldn't buy anything he wanted to from the Berry Tire Company? A. No, sir.

(6149) Q. Now, as a matter of fact, this antifreeze isn't really in this TBA picture. The Texas Company has its own antifreeze, doesn't it? A. Yes, sir, we have an Ethylene Glycol permanent type antifreeze.

Q. Called PT? A. That is right.

Q. And that is what you as a salesman try to sell if you can succeed? A. That is right.

* * *

(6150) Q. Now, did you have occasion—now, this testimony states that this difficulty took place in November of 1956. Now, did you have occasion to visit Mr. Feller's station for any particular subject in the late winter of 1957? A. I had a very good reason. He had a tank that was leaking. I think it was in March, the early part of March, March 6 to be exact. I can remember it well because you don't drop a four-thousand gallon tank in without remembering the date. It is a pretty big undertaking and at that time I was there with the superintendent of

maintenance and myself and the construction man and I had been in the station at that time.

Q. And at that time, what if anything, did you observe about the display of antifreeze that Mr. Feller had? A. Well, at that time he had a nice mass display of a (6151) non-sponsored, Zerex was the product in his sales windows or his display windows.

Q. And Zerex, that is not your Texas antifreeze? A. No, it is not.

Q. Is it either Firestone or Goodrich antifreeze? A. No, it is not.

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(6154). *Cross-examination by Mr. Dias*:

Q. Is that the only time you visited the station, when they asked for your services? A. No, I might be riding with a salesman and there was a problem he might have in one particular station. We might have stopped off at a station and discussed maybe outside displays or lube or circle service.

Q. In other words, you would volunteer your services in some instances; is that it? A. If they were needed, yes.

Q. How often did you make the rounds of the various stations in the territory? A. Well, in that period, sir, when I was in the Chicago area, I would say, oh, three times a year I could make them. But when I was covering the larger area, maybe one or one and a half times per year.

Q. During what period was it that you got around to each of the stations three times a year and when was it that you got around one and one half times? A. That was that period from 1952 to 1956 that I got to them the lesser amount.

Q. Only once a year? A. Yes, sir. Now, you are speaking of all service stations, right?

Q. Yes, all Texaco stations. (6155) A. Right.

Q. When in 1956, incidentally? A. Well, I completed the whole year in 1956 as a dealer service representative and on January 1st, when we started a new plan, I was district representative, merchandising.

Q. Then, actually it was after you changed your position or the title. Which was it, a change of postion or title? A. Change of position and title.

Q. Change of position and title. From January of 1957 on how often do you get around to see the dealers? A. I would say, sir, at least once a month.

Q. So that during the course of a year you would get to see the dealer each and every dealer in your territory how often? A. Oh, ten or twelve times a year.

Q. Ten or twelve times a year.

In your current position are your services also requested or do you just go around in the regular course of your business? A. I don't follow you.

Q. Well, during the time that you were dealer service representative, as I understand it, you went to see the dealers only when they requested your services. A. That is true.

Q. What is your current title? (6156) A. I am merchandising salesman at the present time.

Q. As a merchandising salesman, you call on them regularly? A. Yes, sir.

Q. They don't ask for your services, you call on them regularly? A. Yes, sir, that is true.

Q. What was Mr. Suffert's position when you visited Stern? A. He was a zone manager in the north side of the city of Chicago at the time.

Q. And was Stern's station operated as Bob's Texaco? A. Yes, sir, Bob Stern. I think it is Robert W.

Q. What was Mr. Suffert's position in relationship to your position? A. Well, you could say that the dealer

service representative was in a sales promotion capacity where Mr. Suffert as the zone manager had the overall sales picture and I was working in that zone along merchandising lines.

Q. Were you under his supervision? A. No, I wasn't, sir.

Q. You were separate and distinct? A. Right, sir.

Q. What was the occasion then for the two of you to call on Stern? A. Well, in our business we ride together once in a while to take a general view of service stations to see how they (6157) look in comparison to our competition and a lot of times two heads are better than one to see what is wrong and that was the occasion and I was with Mr. Suffert at that time.

Q. And how many times did you call on Stern, you personally? A. Twice.

Q. Twice? A. That is during the dealer service period.

Q. Yes. A. That is true, sir.

Q. Did you call on him alone on each of those occasions? A. Yes, I did.

Q. And did he request your services? A. Yes, he did.

Q. What was his problem? A. Well, again it is the profit picture. I mean, the dealers are in there to make money and they were trying to make as much money as they could and our whole job as dealer service representative was to try to get that balanced selling ratio and get as much money as we could for the dealer.

Q. And he requested your services, is that correct, on each of the two occasions? A. Yes, sir.

Q. And was one of those occasions that you visited him the time that Mr. Suffert was along with you? (6158) A. No, that was a separate occasion.

Q. So then you actually visited Stern on three occasions; is that correct? A. By "visits" I thought you

meant—when I was a dealer service representative I usually spent the whole day there and called that a visit. When I was with Mr. Suffert that time I think we spent at the most a half hour there. It was just a—

Q. Can you recall what the occasion was or reason for calling with Mr. Suffert? A. I think in going by the service station, it was the unbusinesslike physical appearance of the service station that it was not inducive to good business and I think it was—it wouldn't be inducive to the type of people that live in that area to drive into that service station. If I recall there were a lot of older parked cars to the south of the station along the railroad tracks there and blocking the view of the station making visibility very bad and that was the reason for stopping.

Q. Was that the reason for two of you calling on him? A. Well, we just happened to be together at that time.

Q. You mean in the same car making the tour? A. Yes, sir.

Q. And how often were you with Mr. Suffert when calls were made on this station, Bob's? (6159) A. Well, my two regular visits that I made. And I worked with him the whole day, sir, I was there myself.

Q. And then there was this one occasion at least that you called with Mr. Suffert? A. That is true.

Q. Was there any other occasion that you called with Mr. Suffert? A. No, there wasn't.

Q. And you were with Mr. Suffert at that station for a half hour; is that right? A. I would say in the neighborhood of a half hour.

Q. You both talked to Bob at the same time, did you? A. At that time I didn't do much talking. I was listening to Mr. Suffert counsel with him.

Q. And you were there during the entire stay; is that correct? A. Yes, sir.

Q. Did you give us Stern's gallonage? A. Yes, sir.

Q. For 1956 you had it. Did you have it for other years? A. No, I don't have it for the other years. I only gave the gallonage for 1956 and that was 134,725.

Q. You also mentioned that in that year his total TBA amounted to $2,000; is that correct? A. That was his total Firestone purchases. It was $2,083.

(6160) Q. And your figures show, do they, that $318 of that was batteries? A. In 1956, yes, sir.

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(6165) D. B. UNDERHILL was called as a witness on behalf of the Respondent and, having been previously duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Mr. Underhill, you have testified before? A. Yes.

Q. Mr. Dias called you in Omaha? A. That is correct.

Q. I suppose maybe you better, however, give your full name and address again, just to be sure it is in the record. A. D. B. Underhill, 1407 South Fairfax, Denver, Colorado.

Q. Mr. Underhill, are you an employee of the Texas Company? A. Yes, sir.

Q. Did you receive copies of these documents, Exhibits 14, 15, 16, and 17? A. Let me take a little closer look, I didn't get a chance this morning.

(Documents were handed to the witness.)

A. (Continuing) Yes, I am familiar with these.

Q. During your time when you have been employed by the Company and since the date of these exhibits, have you followed the policy and program of the Texas Company as outlined in (6166) those exhibits? A. Indeed I have.

Q. Do you ever talk with the men about the policy of the Texas Company that its dealers are independent businessmen and entitled to buy their TBA wherever they want? A. I believe that every dealer I ever talked to, I brought that out very plainly.

Q. What was the occasion for doing it? A. Well, I find that to be one of my best selling tools.

Q. How do you figure that? A. In talking with a dealer whether it be installing a new dealer or just on a regular routine call on any dealer, I point out to him that it is his money, that he is going to spend it wherever he wishes, however he wishes, that is in line with our policy, that is the way the Company would want him to do.

And I find that that type of approach enables me then to get into a discussion of non-sponsored merchandise that he might have in stock, it enables me to get into a discussion concerning prices of merchandise that he is buying, it just paves the way for a good open discussion. It is a good selling tool.

Q. And you find you use that regularly? A. Invariably.

Q. Now, what is the extent to which you get contact with (6167) dealers? You have got a division job, haven't you? A. Yes.

Q. And do you get to see dealers quite a bit? A. Call on them all the time. No specific dealer and no specific route. Wherever I might happen to be going and in whatever area I am working. In order to learn of the problems you have to start with the dealer. So a call on any number of dealers in any given area is indicated.

Q. About how many actual calls on dealers do you say you make up there in that Denver division a year, let's say a year? A. Several hundred.

Q. And you have been doing that right along ever since you have had this position as TBA representative? A. That is correct.

Q. During those calls, have any dealers ever told you, especially when you have made this opening move that you have been telling us about, that they had been given to understand the Texas Company policy differently by the local people with whom they dealt? A. I have never had that happen.

Q. Has any dealer ever complained to you that his local salesmen or zone manager has told him that he had to buy either the Firestone or the Goodrich TBA? A. Oh, no, sir.

(6168) Q. Did the dealers to whom you talked about this Texas Company policy ever tell you this was the first time they had heard any such thing? A. No, that hasn't happened either.

Q. By the way, since this litigation was brought by the Federal Trade Commission in January of 1956 and the time of the testimony out there in Omaha, the Government asked for quite a bit of TBA information for the Omaha-Lincoln area, were you the one who was delegated to get that? A. Yes, I think I handled most all of that.

Q. Now, in that connection, did you call on the dealers in the Lincoln and Omaha area? A. I have seen all of them several times in this regard.

Q. And that was before there was any testimony in 1957 as to any complaints with respect to any particular dealers? A. That is true.

Q. Did you compile the figures that the Government wanted as to the TBA sales in the Lincoln and Omaha area? A. Reams of it.

Q. And in that connection you asked the dealers, did you, for the information which enabled you to give the statistics as to how many bought Firestone and how many bought Goodrich and that they bought from other sources? A. We went directly to the dealers and they gave us the figures, probably in most instances they just dragged out

(6169) their books and opened them up and we all went over them.

Q. And you found there, did you not, as the exhibits show, that substantially all of the dealers bought from sources outside of the Firestone and Goodrich, at least to some extent? A. Oh, all of them did.

Q. Now, did the dealers show any reluctance in showing you the books which showed their purchases from outside sources? A. None whatsoever.

Q. Did you threaten any of the dealers or did anyone with you threaten the dealer with respect to his TBA purchases when they found out that he bought a lot some other place? A. No, sir.

Q. As far as you know, the dealers still continued the same way? A. I am sure they did.

Q. You have seen a lot of them since in 1957, haven't you? A. Most of them.

Q. Do you know of any that made any drastic change in policy, by that I mean, stopped buying from outside sources and went to Firestone and Goodrich after your visit? A. No, sir.

Q. Now, was Mr. Victor Wager one of the dealers in Omaha upon whom you called? (6170) A. Yes, Victor Wager was one of them.

Q. Now, Mr. Olsen of the Sidles Company testified at pages 1323 and 1324 that he didn't sell any filters to Mr. Wager and that Mr. Wager told him he was under some kind of an obligation from or to his oil company in that connection.

Now, did you ever tell Mr. Wager that he had an obligation not to buy filters from the Sidles Company? A. Oh, certainly not, and I don't understand that because obviously that record that he was buying substantial quantities of all types of merchandise from the Sidles Company—

Q. And did Mr. Wager make any statement to this effect to you when you went to talk to him in 1956? A. Yes, indeed. In fact his records show that he—

Q. Was buying— A. (Continuing)—averages about $1200 a year from the Sidles people. He buys, as I recollect it, about $300 worth from the Anderson people, and about $1200 worth per year from other non-sponsored sources. A total of about $2700 worth of merchandise other than Goodrich which is his primary line.

Q. Now, did you ever talk to Mr. Wager about the Texas Company's TBA policy? A. Yes, indeed; I didn't make an exception of anyone and he certainly was told; however, it wasn't necessary, he was already well aware of our policy.

(6171) Q. Are you familiar with something known as a Basic Dealer Conference held by the Texas Company? A. Yes, our Five-Day Basic Conference, training conference.

Q. What is that about? A. It covers all phases of service station activity, it is designed to help the dealer set up his station properly, to get the most out of his station. It is to help him in all phases of sales, records, expenses, help, so on. It covers every phase of the service station business.

Q. Are all Texaco dealers invited to attend these conferences? A. Yes, indeed.

Q. Do some of them do it? A. A great many of them do.

Q. Have you, yourself, participated in these dealer training conferences? A. Yes, I have attended a number of them and I have handled the TBA portion of several of them.

Q. In connection with that attendance of the TBA portion, do you recall whether there is any reference to the

Texas Company's TBA policy? A. It is brought out quite forcefully that the dealer can buy from whomever he wishes.

It is recommended and suggested to him that he handle a well-known, nationally-known brand, and it is suggested (6172) that he do so, but it specifically states that he shall make his own decision as to what he handles.

Q. That is not kept a secret from the dealers at these conferences? A. Definitely not. Incidentally, in that particular conference there isn't any word, nothing is ever said of either Firestone or Goodrich in that entire conference.

Q. But do you know how the Firestone and Goodrich companies invite, if they want to put up a display of their merchandise at the time those conferences are held? A. That might or might not be the case. In some instances possibly they have. I have never sat in on one where that was done. I see no reason why that couldn't be done, and it may have, I couldn't say.

Q. Does the leader of these conferences have a booklet which tells him what to say? A. In this particular conference it is most specific that he follow a script, and there is an admonishment in it, "No ad-libbing".

Q. That has been going on for quite a while, has it? A. Oh, yes, sir.

Q. Before 1956? A. Oh, yes; many years.

Q. I happen to have the 1956 book here because we forgot to revise the one of the years before. Can you look at the (6173) TBA section of this book and tell me if so far as you can recollect that is substantially the sort of discussion set out in this book was delivered by the leader at the time when you attended these conferences? A. Yes, this is it. There is no question about it.

Q. And that has been going on for some years before 1956? A. Yes, many years.

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(6175) Q. In connection with this five-day dealer conference, how do the dealers know about these conferences? A. They are invited to them.

Q. And do all dealers attend them? A. Not all of them. I think probably most all of them, possibly all of them have attended at one time or another.

The principal purpose of this conference is to take the (6176) brand new dealer and acquaint him with the Texas Company and his new service station.

Q. And is it a five-day continuous thing from morning through afternoon? A. Yes.

Q. Who minds the store? A. He isn't in the station in most instances when this conference is held. Although he might be there he might wish to go back, some of them having gone through that two or three times.

Q. Well, in other words, then, he has to leave his business to attend these conferences? A. That is correct.

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Q. Did Mr. Wager ever attend one of these basic dealer conferences? A. Yes, he did. He attended the week of June 24 to 29, 1956.

Q. Now, during the time when you called on Mr. Wager what did you notice with respect to his display of TBA? Was it (6177) limited to the Firestone and Goodrich line? A. He handled the Goodrich line primarily, but as is the case with all our dealers he had a great many non-sponsored items of merchandise. He had Delco batteries prominently displayed there, he had the full line of Gates belts and the Gates hoses, the AC spark plugs, and any number of others.

Q. And did he ever tell you that anyone had told him he had to stop displaying those lines that were not in the Firestone-Goodrich line? A. No, no one ever told him that and he still handles them.

Q. Now, do you know a Mr. Stanley E. Coback? A. Yes, I am acquainted with Mr. Coback.

Q. And was he a dealer for a while in Omaha? A. Yes, he was.

Q. And did you call on him, too? A. Yes, I have called on him.

Q. Now, do you know whether Mr. Coback ever attended one of these dealer conferences? A. As a matter of fact, Mr. Coback attended the conference before ever becoming our dealer.

Q. When was that? A. He attended this five-day basic conference, it was the week of December 22 to 29 in 1955, and he didn't take over that station until February of 1956.

Q. Now, there is testimony from a Mr. Seidenglanz, a (6178) salesman for the Sidles Company on Page 1196, in which he claims that he had some difficulty about antifreeze with Mr. Stanley Coback and that has a relation to the Texas Company having an employee down there.

Now, how much of the Texas Company's PT antifreeze did Mr. Coback buy during the time that he was in this station as a dealer, do you know? A. Yes, he bought two cases. He was there slightly over a year, he was there part of two winters, and he bought two cases of our antifreeze.

Q. How much is two cases? A. Very little. It will take care of six customers. Less than six cutomers.

Q. It will take care of less than six customers? A. Right.

Q. And how much gasoline did he sell in the eleven months of 1956? A. During the year of 1956 he was there eleven months and he sold 54,000 gallons. In other words, he averaged about 5,000 gallons a month.

Q. I haven't gone into your job again very much, Mr. Underhill, because you gave sort of a full dissertation on it when you were here before, but let me just ask you

specifically, your job has to do with merchandising by Texas dealers, doesn't it? (6179) A. Total merchandising and specifically TBA of all types.

Q. In that connection when you see dealers do you go into the question of balanced selling? A. Oh, yes.

Q. As against what do you balance the TBA sales? A. Against the gasoline.

Q. To what extent are you actually acquainted with the sales of TBA in terms of gallons of gasoline? A. Oh, I think I could answer most questions on the subject.

Mr. Dias: There might be a difference of opinion.

By Mr. Lorenzen:

Q. Do you know the relation between TBA sales and gasoline gallonage for the average station, not taking the extremes that Mr. Dias keeps asking about? A. Yes.

Q. What is that relationship?

Mr. Dias: I object, your Honor. I don't think this witness has been qualified yet.

Hearing Examiner Kolb: Oh, I will overrule the objection.

A. Well, the average would be $60 to $65 per thousand total TBA.

By Mr. Lorenzen:

Q. That is up in your particular district? A. In our area.

(6180) As a matter of fact, that is the average, those are factual figures.

Q. What is the relationship between antifreeze and gallonage? A. Well, antifreeze would be based on the number of customers. Our division is a cold climate one in the winter, people have to protect their cars anywhere

from 25 below zero to 55 below zero in the different parts of our area, and this Omaha area it would range probably 20 to 30 below, the protection they would have to give their cars, which would mean two to two and a half gallons of permanent type antifreeze per customer. So in regard to your question this fellow has a 5,000 a month station, that would represent approximately one hundred customers. It would be expected that he would buy 200 to 250 gallons of antifreeze per year but to give the situation the benefit of the doubt, cut it straight in half and certainly he should buy at least 120, 130 gallons of antifreeze per year.

Q. How many gallons of antifreeze in the two cases of PT which Mr. Coback bought from the Texas Company? A. Twelve gallons.

Q. A total of twelve gallons? A. Twelve gallons.

Q. And do you have the figures of Mr. Coback's total Firestone or Goodrich TBA purchases during that year he was (6181) in the station? A. Yes, he bought Firestone, no Goodrich, he bought $314 worth, total.

Q. Total. All TBA? A. That is correct.

Q. All Firestone or Goodrich? A. All Firestone, yes.

Q. Just for the matter of arithmetic, what does that come to? A. $5.81. As a matter of fact, his total purchases of TBA from all sources was $2,084.

Q. You found that out in connection with this investigation you made for the government to get the figures of purchases? A. That is correct.

Q. Now, how about Mr. Wilmer Cressman, are you acquainted with him? A. Yes, I know Mr. Cressman.

Q. Was he a dealer in your division? A. Yes, he was a dealer out of Omaha in the Bellevue area.

Q. Now, there is some testimony by Mr. Taylor, Branch Manager of the Storz Supply Company who testified at Page 1413 that he tried to sell Mr. Cressman some TBA and Cressman is supposed to have told him that he had a

contract with Frost and was to buy everything there he could.

Now, Frost has been identified, I think, as a Firestone (6182) dealer? A. Goodrich.

Q. Goodrich dealer? A. Yes.

Q. Now, did you tell Mr. Cressman anything like that on the occasions when you saw him? A. Certainly not, I told him just the opposite.

Q. Did he ever tell you that the local people had told him he had to buy everything from Frost? A. He told me that I didn't need to tell him this story, that he had just heard it from our local people.

Q. And Mr. Scoville of the Sidles Company testified at Page 1359 that this same gentleman, Mr. Cressman handled Kendall oil and that he kept it in Texaco boxes. Did you notice anything about this fellow Cressman's display of oil by the way? A. Yes, I did. I don't know about where he might have stored his oil, but I do know that he had a nice display on a rack cut in front of his station that is very vivid in my memory because on that rack was some Royal Tryton oil which is almost unheard of in my present area. It is a union oil product from the west coast, you don't see much of it. So being familiar with it from my work out on the west coast naturally that was drawn to my attention. It caused me to look at it and I also remember that he had Kendall (6183) oil on this rack and I believe he had a third competitive oil, I believe it was Mobil.

Q. Now, are you acquainted with a Mr. Beavers, D. F. Beavers? A. Yes.

Q. How long was he a Texaco dealer? A. Three months.

Q. That is all? A. Yes. At the end of three months he walked out of the station. At that point he owed us $2,800. I remember that well.

* * *

D. B. Underhill, for Respondents—Cross

Cross-examination by Mr. Dias:

Q. Mr. Underhill, in connection with that last dealer you mentioned, Mr. Beaver, did you say that he left owing Texaco $2,800? A. That is right.

Q. And he had been with them three months? A. Three months.

Q. How did he run up a bill like that for three months? (6184) A. That was an initial loan to help him start into business.

Q. Of how much, $2,800? A. No, I think it was closer to $4,000. I can't quote the exact amount.

Q. Was that a new station that he took on? A. It was a relatively new station and I believe he was the initial dealer but I am not sure of that either.

Q. Were you there when he moved in? A. No, I was not.

Q. Do you recall his principal line of TBA? A. Yes, his principal line was Firestone. I believe that he gave me the figure of something like $1,400 worth of other merchandise he had bought elsewhere.

* * *

(6185) Q. Do you recall which dealers you called on? A. No, I wouldn't.

Q. For example, Victor Wager, how often had you called on (6186) him prior to October of 1956? A. Oh, I would guess two or three times. In the year.

Q. That is a guess. Can you recall a visit prior to October of 1956 on Mr. Wager? A. No specific calls. I can recall one call I would believe it to be during 1956 and at that time we were talking about selling truck tires and it was his contention that his buying price was not such that he was able to tap the truck tire market but we were able to work out a deal with the B. F. Goodrich Com-

pany through their supplier Frost, whereby he could handle the bigger truck tires.

Q. And can you place the time of that call? A. No, as I say I think it to be sometime during 1956. It could just as easily have been 1955.

Q. You mentioned that he averages $1,200 a year from Sidles, $300 from Anderson and $1,200 from others? A. Those were his figures, he gave them to me.

Q. Do you recall the products involved in those figures? A. Well, I recall that there were Delco batteries and Gates belts and Gates hoses, and AC spark plugs, and some DuPont chemicals that he purchased from Sidles. There were other items, I don't recall the others.

Q. You wouldn't recall that there were some items commonly referred to as hard parts or repair items such as ignition parts, mufflers, brakes? (6187) A. Yes, I excluded those items in the figures.

Q. In other words, those figures that you gave us related only to the commonly known TBA products, is that correct? A. That is correct.

Q. Did you give us the figures of his purchases from—who did he buy from Goodrich or Firestone or both? A. He bought from Goodrich.

Q. Did you give us his Goodrich figures? A. In 1955 as I recall they were roughly $4,000, in 1956 as I recall they were between $4,700 and $4,800.

Q. Now, I don't believe you specified the year that this $1,200 was spent at Sidles, $300 at Anderson and the other. A. He gave me that as an average of yearly purchase from those other firms.

Q. For what years? A. The past two years.

Q. 1955 and 1956? A. 1955 and 1956.

Q. Which of these dealer conferences did you attend in Omaha? A. I personally didn't attend any of them in Omaha.

W. B. West, for Respondents—Direct

Q. Returning to Mr. Beaver, is that a common practice to loan dealers money that are going into business? A. It is done—

Mr. Royall: Would you say that again?

(6188) Mr. Dias: I wondered if that was a common practice in the Texas Company to loan dealers money to go into the dealer business, gas station business.

A. It has been done a number of times.

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(6189) W. B. WEST was called as a witness on behalf of the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your name to the reporter and state where you live, Mr. West? A. My name is W. B. West; I live at 3239 Lexington Road, Montgomery, Alabama.

Q. Are you connected with the Texas Company? A. Yes, sir; I am.

Q. What is your position? A. I am District Sales Representative, headquarters in Montgomery, covering central Alabama.

Q. Geographically, about what does that take in? A. Well, roughly 120 miles in depth and the breadth of the State, I would say 200 by 120 miles.

Q. How long have you had this particular position? A. This particular position since July 1, 1957.

Q. What was your position before that time? A. I was Zone Manager before that time in Montgomery, Alabama, covering south southern Alabama.

There was considerable overlap, I still have a portion of the territory in my present area. I still have a portion (6190) of the same assignment.

Q. How long have you been connected with the Texas Company? A. Since April 24, 1919.

Q. Have you been continuously in the sales end of the business since that time? A. I have been in the sales department, I wasn't in the sales end of the business until about 1929.

Q. But since that time you have been continuously in the sales end of the business? A. Yes, sir.

Q. Did you receive copies of Respondent's Exhibits 30, 31, and 32?

(Showing documents to the witness.)

A. Yes, sir; I did.

Q. You are acquainted with these exhibits and have you had an opportunity to look at them? A. Yes, sir; I have looked at them since I have been here and I am thoroughly acquainted with them.

Q. Since the date of these exhibits—let me show you one more and ask you, although this is a Dallas exhibit, whether you received a similar copy in your division; this is Exhibit 26-D and -D.

(Showing document to the witness.)

A. Yes, sir; I have received that, I have a copy of that.

(6191) Q. Since the date of these exhibits have you followed the policy of the Texas Company as set out in these exhibits? A. Yes, sir; I have.

Q. During all these years you have been in the sales department of the Texas Company, has—I will withdraw that question.

Since the date of these exhibits have you ever been with an employee of the Texas Company calling on dealers

and found that employee to talk to those dealers in a way that was contrary to the policy of the Texas Company as set out on these exhibits which I have shown to you? A. No, sir; I have not.

Q. Has any dealer complained to you that anyone in the Texas Company has told him that he had to buy his TBA from Firestone or Goodrich and couldn't buy it from any place he wanted to? A. Absolutely not.

Q. Now, during the time when you were zone manager in Montgomery, did you know of a dealer by the name of Wayne Hickman? A. Yes, sir; we had a dealer in Enterprise, Alabama, by the name of Wayne Hickman.

Q. Do you know about the time when he was in that station at Enterprise, Alabama? A. Yes, sir; he went in the station on February 1, 1956, (6192) and left the station on December 1, 1956.

Q. Now, there is some testimony in this case by Mr. Claude Chambers who said he was a former manager of the Cooper Tire and Rubber Company at Atlanta, and his testimony is at pages 2042 to 2044, and he testified that about a month or so before Mr. Hickman left this station; that is, in October of 1956, he called on Hickman and signed him up for approximately $2800 worth of Cooper tires and tubes, and he testified that Mr. Hickman left the station and the new owner took over, and when the new owner took over he didn't take over this supply of tires.

Now, do you know anything about this Cooper tire purchase made by Mr. Hickman? A. Yes, sir; I do.

Q. Did you ever tell Mr. Hickman that he couldn't buy Cooper tires if he wanted to? A. No, sir.

Q. Did Mr. Hickman ever complain to you that anybody else had told him he couldn't buy Cooper tires if he wanted to? A. No, sir; as a matter of fact, I was the only employee that had any contact with Mr. Hickman.

Q. Oh, you had one of those situations where there was no salesman operating under you in this particular territory? A. In that particular territory; no, sir.

Q. So, you were the only employee of the Texas Company (6193) who was in touch with Mr. Hickman? A. That is correct.

Q. And you didn't tell him that he had to get rid of these Cooper tires and not handle them? A. Absolutely not.

Q. Now, tell me how you came to know about this purchase which Mr. Hickman had made? A. On one of my routine visits to Enterprise I naturally went by his station and usually he didn't stock any tires at all, but I saw this mass display of Cooper tires; they were all over the place, I guess there was 150 tires.

Q. Was the station big enough to hold them? A. No, sir; the station was just a small two-bay station and, I would say, 25 tires would be a big stock for him.

Q. What did he do with the other 125? A. They were in the lube bay, the wash bay, the sales room, anywhere he could store them and try to lock them up at night.

Q. And did you talk to him about this odd situation? A. No, sir; at that time I did not talk to him about it. I am not sure that it was on that trip that he told me he was getting out of the station, but it was about that time. That was the first time I talked to him about the tires.

Q. Well, now, at about the time that you saw all these tires, was Mr. Hickman having a little financial trouble (6194) paying for his gasoline? A. Yes, sir; that is one thing that made me wonder about the tires because he had already given our consignee a check for approximately $1500 that had bounced due to insufficient funds. The consignee finally paid off the check and collected from Hickman after Hickman sold his station out.

Q. And about how much was he letting himself in for in this order of tires, $2800, like Mr. Chambers testified? A. I beg your pardon. I didn't get your question.

Q. Was the amount that he was going to have to pay for these tires around $2800? A. Yes, sir.

Q. Had he paid for those tires at the time when you went to his station and saw them all over the place? A. No, sir.

Q. Did he have them on consignment? A. As I understand it from Mr. Hickman, Cooper sold him the tires with the understanding that no payment would be due for a period of 90 days.

Q. How many of those tires had he sold at the time you saw them there? A. That I do not know; not many, possibly two or three.

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(6195) Q. Now, you said at one of these visits he told you he had found someone to buy the station; is that correct? A. Yes, sir.

Q. Tell us what happened at that time? A. Well, he told me that he had found a dealer to buy the station, he was in financial straits, but that this new dealer was not in position financially to stock that large an inventory of tires.

Q. Hickman told you this? A. Hickman told me that; yes, sir.

Q. Let me ask you, before that did you tell Mr. Hickman he ought to get out of the station or find himself a buyer? A. No, sir; as a matter of fact I was very happy with Mr. Hickman because he was doing a good gallonage, above my estimates for the station, and that gallonage was what I was looking for and he was getting the gallonage and I was very happy.

The first intimation really that I had of any change being made in the station came from Hickman himself.

Q. And he told you he had found a buyer? A. That is correct.

(6196) Q. And who was that? A. Mr. Harvey Rimmer.

Q. Did you meet Mr. Rimmer at some time? A. Yes, sir; I met Mr. Rimmer with Mr. Hickman, went over the entire deal; I helped them to take inventory at the station.

Q. You helped Hickman and Rimmer take inventory? A. To arrive at a figure for Mr. Rimmer to pay for the merchandise that Mr. Hickman had; yes, sir.

Q. That is when this change-over is made the new dealer buys the inventory which the old, outgoing dealer has on the shelves? A. That is correct; yes, sir.

Q. Is that what happened in this case? A. That is correct.

Q. And you helped them make a list of that merchandise? A. That is correct.

Q. Now, was that merchandise Firestone and Goodrich merchandise with the exception of these Cooper tires? A. No, sir; there was no Firestone or Goodrich merchandise at all. He had Delco batteries, Champion batteries, Wicks oil filters, Gates fan belts and radiator hose, AC and Champion spark plugs, and a variety of other TBA which was none of the Goodrich or Firestone.

Q. Did Mr. Rimmer take over all of that merchandise with (6197) the exception of this large order of tires? A. He did, all except the Cooper tires.

Q. And you helped him take inventory, so you knew he was doing that, did you? A. That is correct.

Q. Did you tell him he couldn't take it over because it wasn't Firestone or Goodrich? A. No, sir. We discussed that in detail before they actually concluded their deal, and

Rimmer told me that he would prefer not to take the tires; in the first place he wasn't financially able to handle that many tires; and in the second place, there is an Army Post near by with a lot of movement back and forth of personnel, and that he would prefer to handle a tire with national distribution or a little better known in that area possibly than a Cooper tire. And that he had already contacted the local Firestone distributor who had agreed to let him have tires on a consignment basis. That is, he would not have to pay for the tire until he sold it.

Now, this Firestone distributor was located in Enterprise about two blocks from him, and I believe the Cooper tires came from Atlanta which is roughly 250 miles away.

Q. So Mr. Hickman told you, first, that Mr. Rimmer wouldn't take over his deal with the Cooper Tire Company, is that correct? (6198) A. That is correct.

Q. And then Mr. Rimmer confirmed that to you when you talked to him? A. That is correct.

Q. And the fact is that Mr. Rimmer didn't take over that deal? A. That is correct.

Q. But he did buy all of the other merchandise from Mr. Hickman? A. Yes, sir.

Q. And all of that was not Firestone and not Goodrich? A. That is correct.

Q. Now, do you know whether thereafter Mr. Rimmer continued to buy TBA other than Firestone and Goodrich? A. Yes, sir; he continued to buy, he did buy some Firestone merchandise, but continued to buy accessories and batteries from other suppliers.

Q. Do you know, have you got the figures there from the form of his total Firestone purchases? A. Yes, sir; in 1957, that is the only year I have the figures for, I believe, he purchased tires in the amount of $561, and accessories in the amount of $19 for a total of $580.

Q. And he bought no batteries at all from the Firestone? A. No batteries from Firestone and no TBA whatever from (6199) Goodrich.

Q. And his total Firestone or Goodrich TBA was $580, is that correct? A. That is correct.

Q. And do you have his gasoline gallonage for that year there? A. Yes, sir; Mr. Rimmer's gasoline gallonage for 1957 was 136,605 gallons.

Q. And what, just to save us the arithmetic, do you have that divided by the TBA purchases so that you have the— A. Yes, sir; I do. That gives him $4.25 per thousand gallons.

Q. Total of Firestone or Goodrich TBA? A. That is correct.

Q. What did Mr. Rimmer do with this merchandise that he bought from Mr. Hickman? Did he hide it or did he keep it on display? A. No, sir; it was all displayed.

Q. That includes, you said, Champion batteries— A. Delco batteries, Wicks filters, Gates fan belts, radiator hose, AC and Champion spark plugs. And various other items.

Q. And as far as you know, did he continue that type of a display until you lost contact with him? A. That is correct; yes, sir.

(6200) Q. That is, you moved to another—that territory did not stay in your new territory; is that correct? A. That is correct; that is not my territory at this time.

Q. So, when you changed jobs he was under somebody else? A. That is correct.

(6201) Q. Now, while you were zone manager down there, can you tell me about how many dealers were within your zone? A. Total resale outlets?

Q. Well, pump, the type outlets that had pumps and sold to motorists. A. Well, it was a large area, much

larger than the one I have now and this is an estimate, but it couldn't be too far wrong, I would say around 300 to 325 total resale outlets.

Q. And out of that total, how many were dealers that had leases from the Texas Company? A. About thirty.

Q. So then, that makes a balance of somewhere between 270 and 320 of non-lessee type of dealers? A. That is right. Either contract or no contract at all.

Q. And did these thirty lessee type dealers have facilities for handling TBA? A. Yes, sir, they had facilities for handling TBA.

Q. They had display facilities and storage facilities? A. Yes, sir.

Q. Now, of the balance of the dealers that were not lessee dealers, how many had the same type of facilities for handling TBA? A. Approximately eight.

Q. Will you tell me about how many of your thirty lessee dealers handled Firestone or Goodrich TBA? (6202) A. There were nine or ten of the thirty that handled Firestone or Goodrich.

Q. And of your eight stations that had the same type of facilities for handling TBA, about how many of those handled Firestone or Goodrich? A. Six of those handled Firestone or Goodrich.

Q. Now, in your present territory where you are now, about how many dealers do you have? A. A total of around two, that is lessee dealers and total dealers, it would be around 230 to 240.

Q. And of those, about how many are the leased type station, where the dealer has the lease from the Texas Company? A. I have 25 leased stations.

Q. Are the balance of stations which are either under contract or no-contract basis? A. Will you ask that again, please?

Q. The balance of your stations are the type that you have called in the other territory as ones that either had a contract or no contract? A. That is right, either contract or no contract for the remainder.

Q. They handle the Texaco gasoline? A. That is correct.

Q. But had no lease connection with the Texas Company? (6203) A. That is correct.

Q. Now, of your 25 leased stations, about how many had facilities for handling TBA? A. Of the 25 leased stations, all of them had facilities for handling TBA, but two of them could possibly be eliminated as not having equal facilities to the others. I would say 23 had complete facilities.

Q. Of those, how many handled Firestone or Goodrich TBA? A. Of those, about nine or ten of those handled Firestone or Goodrich.

Q. When you said they handled Firestone or Goodrich, that doesn't mean they didn't handle anything else, does it? A. No, sir, it does not.

Q. And the same is true with your answer in your old territory? A. That is correct.

Q. And of the remaining stations, about how many had the same kind of TBA facilities as these 23 leased stations which you said had adequate TBA facilities? A. Twelve of the remainder have equal facilities.

Q. And of those, how many handled Firestone TBA? A. Nine of that twelve handled either Firestone—eight of that twelve handled either Firestone or Goodrich.

Q. Again, that doesn't mean exclusively, it means to some extent? (6204) A. That is correct.

Q. Now, what sort of tires do the dealers who handle TBA in your territory handle?

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(6205) Mr. Lorenzen: Not handled, but other types he has seen there.

* * *

The Witness: U. S., Goodyear, Hood, Cooper, Kelly Springfield, and various tires, various other tires, recaps of all kinds.

By Mr. Lorenzen:

Q. That is in stations handling the Texaco gasoline? A. That is correct, yes, sir.

Q. And how about batteries? Do you see batteries of various makes in those stations? A. Yes, sir, they have a variety of batteries in the area. The leased and the non-leased stations have a variety of batteries.

Q. Do you recall any names of any specific batteries that you have seen on display at such stations? A. Yes, sir. The Southern battery, the Champion battery, (6206) the Exide, the Delco, those are the ones I remember best.

Mr. Lorenzen: That is all.

Hearing Examiner Kolb: Cross-examine.

Cross examination by Mr. Dias:

Q. Mr. West, I get the impression that with the small number of lessee stations and the large number of contract stations that your area must be in a rural area; is that correct? A. That is correct, yes, sir.

Q. What are some of the larger cities that are in your area? A. Montgomery, a portion of that is in my area; Selma; Troy; Talladega; Alexander City; Clanton.

* * *

(6207) Q. The 23 lessees that had TBA facilities, am I in the (6208) right area now, is this the area? A. Yes, sir. You are in the right area.

Q. Of these 23 lessees that had TBA facilities, where are they located? A. They are located all over, sir.

Q. Throughout your entire territory, is that correct? A. Yes, sir.

Q. And the nine or ten that handle Firestone or Goodrich, where are they located? A. They are located all over, too. They are scattered out in the entire area.

Q. Well, do I understand, then, that in all these cities that you have mentioned, most of them are so-called contract dealers, that is they own their own property or at least Texaco doesn't own it? A. Yes, sir, that is correct. Most of them are contract or no contract dealers.

Q. At any rate, Texaco does not own the property? A. That is correct.

Q. And in that first area that you mentioned, I think you said about thirty lessees had facilities for handling TBA? A. About thirty. I wouldn't be exact on that. About thirty leased stations in the whole area.

Q. In the whole area of your first area? A. That is right.

(6209) Q. Can you give us—as you did here—what are some of the metropolitan areas in your first area? A. Dothan, Ozark, Andalusia, Florala, Brewton, Evergreen, Enterprise.

Q. You have given me the larger ones now, haven't you? A. That is right.

Q. Can you give us some idea of the population of each of those? A. Dothan is around, roughly, 30,000.

Q. 30,000? A. Yes, sir.

Q. And Ozark? A. Ozark, 6,000.

Q. And Andalusia? A. Andalusia, 8,000.

Q. Florala? A. About 3,500.

Q. Brewton? A. Brewton, about 4,000.

Q. Evergreen? A. Oh, 3,000.

Q. Enterprise? A. Enterprise, about 5,000.

Q. How close is your area to Atlanta? Are you in the Atlanta division? (6210) A. Correct, sir.

Q. How close are you to Atlanta? A. 175 miles.

Q. The nearest town in your area is 175 miles to Atlanta; is that correct? A. No, sir. My headquarters are 175 miles.

Q. Oh, your headquarters. A. Montgomery, now, the nearest town would be about 100 miles from Atlanta.

Q. I see. That is, the nearest town in your area would be about 100 miles from Atlanta? A. That is correct.

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(6215) REAGAN FERGUSON, Jr., was called as a witness on behalf of the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your name to the reporter and tell where you live. A. Reagan Ferguson, Jr.; I live at Atlanta, Georgia, 436 Valley Brook Drive, Northeast.

Q. You testified before down in Atlanta, didn't you? A. That is right.

Q. When you were a Government witness? A. That is right.

Q. And do you still have a position with the Texas Company which deals with TBA in the Atlanta Division? A. That is right.

Q. Is that section of Alabama of which Mr. West is manager in your division? A. Yes, it is.

Q. He testified yesterday that he had some 200 non-lessee type stations in that division and that of those, I

believe, it was only about a dozen had facilities for merchandising TBA.

(6216) Now, is that typical also of the non-lessee type stations in your division located in the metropolitan area such as Atlanta? A. I think in a metropolitan area such as Atlanta you would find that the non-lessee type stations had better facilities than the type of stations in Mr. West's area, that more of them have facilities for handling TBA.

Q. And that is more percentagewise have them? A. That is right.

Q. But do they all have facilities for handling TBA? A. Oh, no.

Q. A good many still do not? A. That is right. A good percentage.

Q. Are there quite a few of these non-lessee type dealers in the area which has been defined as metropolitan Atlanta? A. Yes, there are; quite a few.

Q. And did you at our request within the last couple of months visit each one of these "D" stations; that is, what we have been calling them in this case, the non-lessee stations? A. That is right, I did, since November 1.

Q. How many were there, to begin with? A. There were 59 in the Atlanta metropolitan area described in this case.

Q. There has been testimony heretofore that these "D" stations differed from the lessee stations in that many of them (6217) only had gasoline pumps which were attached to some other type of business such as restaurants or grocery stores. Did you find that type of station among these 59 stations? A. Yes, I did, in a large number of them.

Q. In how many situations did you find that the "D" station was attached to some other type of business and had no TBA facilities? A. There were 29 of those.

Q. Do you have with you pictures which you have taken of those 29 stations? A. Yes, I do.

Q. And did you take them yourself? A. Yes, I took all of them personally.

Q. And are those accurate representation of the pumps and business to which they were attached in those 29 instances? A. I took them just as I found them at the station, if that is what you mean. I took the pictures just as I found them.

Q. You drove up outside the station and snapped the picture? A. That is right.

Q. And there it is? A. That is right.

Q. And you say you have 29 of them? A. That is right.

(Documents were handed to counsel.)

(6218) Mr. Lorenzen: Perhaps we could have the envelope marked as one exhibit with 29 pictures and then perhaps later we could have the reporter stamp each one.

Hearing Examiner Kolb: The reporter will have to stamp them "A", "B", "C", "D", and so forth.

Are these stations who do not handle TBA?

Mr. Lorenzen: Who do not handle and don't have the facilities to handle.

Hearing Examiner Kolb: Why bother with the pictures?

Mr. Lorenzen: Because we think it is very important to let your Honor see why the different figures that the Government has put in between "C" and "D" stations.

The Government's contention is that these stations have a much lower purchase of Firestone and Goodrich TBA because they don't have any leased connection with the Texas Company.

Our contention, on the other hand, is it is that way because they can't handle any TBA and we are not bothering with him, we are just taking one district simply as illustrative.

Your Honor might be interested in seeing the type of stations which count statistically but which obviously shouldn't be included in any over-all view of the situation.

Hearing Examiner Kolb: All right.

(6219) Mr. Dias: I would like to see the pictures first.

In the first place, it seems to me that more persuasive would be figures, in the record telling us exactly how many of this type stations we have. Now, we know now that there are 29 such stations in the Atlanta area, why can't we get the same type figure for each of the areas in which we have been? In other words, how many stations in each of the areas in which we have been are not fit to handle TBA.

Mr. Lorenzen: Perhaps if the Commission wants to give us somebody to make a nose-count of thousands of stations throughout the country we would be most happy to have it in here, but we thought we would have to do it on an illustrative basis because it is a pretty big physical job.

Hearing Examiner Kolb: These are typical of the "D" stations?

Mr. Lorenzen: In metropolitan areas which are obviously better because we have statistics of what the situation is in country areas yesterday through Mr. West's testimony.

Mr. Dias: I am still not clear on what this is supposed to show. Is it supposed to show what a "D" station that is not fit to handle TBA looks like; is that what these are?

(6220) Mr. Lorenzen: Yes, that is what it is for. I mean, I think one picture is worth a lot more than a lot of testimony that these stations are tied

up with grocery stores and beer parlors and restaurants and nut factories in this case.

Mr. Dias: I can visualize that very clearly but what I would like to know are how many such things are there, I think that would be more important; that would be more persuasive, in my opinion.

Mr. Lorenzen: W have given that to you in one particular area in which the Commission chose to have its testimony. It happens to be one in which there is a number of these stations.

Generally in metropolitan areas you don't get as many of this type station as you do in Atlanta, so, it seems to me, it is best to select that as typical.

Mr. Dias: My objection is that they are irrelevant. I think the testimony is clear enough that the reason these stations can't handle the TBA, they don't have enough room, that they are primarily designed to sell food, you name it, any other product, they happen to have a gas pump in front. That is the objection I have to it.

Hearing Examiner Kolb: The objection will be overruled, and the documents will be received in evidence as Respondent's Exhibits 77-A through -Z-4.

(6221) (The document referred to was marked Respondent's Exhibit 77-A through -Z-4, inclusive, for identification, and received in evidence.)

Mr. Dias: Before you go on, I just wanted to state for the record that in his argument for the admission of these documents 77-A through -Z-4, there was some sweeping statement made and they have been admitted over my objection, but I don't think these pictures that were made in one metropolitan area as being typical of all this type station throughout the country.

(6222) *By Mr. Lorenzen:*

Q. Let me ask you, Mr. Ferguson, some of these represent stations showing some fairly imposing buildings. If you will look at 77-A, for example, what is that Lloyd's, which is a pretty big building with two pumps in front of it? A. Well, this is one of a chain of B. Lloyd's Pecan Stations, as they actually call them. They specialize in selling pecans and pecan candies and actually there are two of this type station in the group, both of them B. Lloyd stations.

Q. Z-4 is another one, is that right? A. That is right. And they actually do, as a matter of fact, a very small volume of gasoline.

Q. There is a Texaco sign and a couple of pumps right in front of that candy store. A. That is right.

Q. Now, how about 77-B? What is the situation in that one? A. That is operated by Lymburner's Nursery, a large nursery in that area, and they are in the business of selling plants, shrubbery and flowers, and they have a couple of pumps out in front of their place.

Q. We have a couple of downtown ones here, 77-E and F; what is the situation in those cases? A. That is the Fox Theater parking lot and the Agsley parking lot. They have a couple of pumps out there with (6223) absolutely no facilities for handling TBA. They are strictly in the parking business.

Q. And this 77-G seems to portray something that looks like a service station in the city. A. This station is known as Crook's Corner, and it is primarily a beer place, a couple of pumps in front.

Q. Is his beer gallonage higher than his gasoline? A. I expect it would compare pretty favorably.

Q. How about 77-J; that is a brick building apparently in the city. What do they do there? A. That is the South

Bend Grocery there. They handle strictly groceries and meats there and they are strictly a grocery store with just a couple of pumps set in front. There are a number of the grocery store type accounts in that group.

Q. I believe there are some fisheries pictured in here. A. There is one known as Mickey's Bait and Tackle Shop. It is located on a road leading into an area where there is good fishing there. They deal principally in fishing tackle and fish baits and that sort of thing.

Another called A. J. White's, I believe, handles fishing supplies and fishing bait, principally.

Q. Is there one that has a sign on it, Kennesaw Fisheries? A. Yes, there is one called Kennesaw Fisheries.

Q. What is that about? (6224) A. They handle fish. They actually sell fish.

Q. And the other pictures in here are all of that category, unless we had one slipped in here by mistake which we will take out, which do not have TBA facilities and don't handle it? A. That is right. There are a few in there, two or three, who are not in any other type business but they are satisfied just to get a little income from the small volume of gasoline they sell. They don't sell anything else.

Q. They have no facilities to handle TBA? A. None whatsoever.

Q. And of the other stations now that you have left, which is thirty stations, what do you find with respect to their facilities? A. Well, there are four of those stations who have some facilities for handling TBA to a limited extent, but in actuality don't. There are 26 other stations who have some facilities and do handle some TBA.

Mr. Lorenzen: That is all.

Hearing Examiner Kolb: Cross-examine.

Cross examination by Mr. Dias:

Q. Is it your testimony then that the D type station is not a TBA factor in your area? A. Actually we have some very good TBA accounts that are (6225) D type stations, some D accounts who do a good volume of TBA business.

Q. Can you tell us how many there are of those? A. In my division?

Q. Whatever area you are in charge of, yes. A. No, sir, I couldn't.

Q. I think you mentioned that there are some lessees in your area that are not fit to carry TBA. Can you tell us how many there would be in that category?

Mr. Lorenzen: There wasn't any testimony like that.

By Mr. Dias:

Q. Didn't you tell us there were some lessees that were not fitted to carry TBA? A. I don't recall that testimony.

Q. All the lessees in your area, then, are fitted to carry TBA, is that correct? A. There would, I think, be some who would not.

Q. All right, then, how many would not? Do you have any idea? A. No, sir, I couldn't say.

Q. Incidentally, I think I understand why a D station con not handle TBA; what would make it undesirable or impossible for a lessee to handle TBA? I mean what is there about the station that would make it impossible? (6226) A. Well, the majority of the stations operated by lessee dealers are constructed to provide facilities for storing and displaying TBA and rendering TBA service. And the larger portion of the D type stations just don't have those facilities because they are constructed for other purposes.

Mr. Dias: I have nothing further.

Reagan Ferguson, Jr., for Respondents—Redirect

George H. Glenn, for Respondents—Direct

Redirect examination by Mr. Lorenzen:

Q. Those lessee stations which can't handle it are a few of the old ones left in your division that have not been rehabilitated; is that right? A. That is right. They are all quite old stations.

Q. When you say there are a few of them, you are talking now division-wise? A. That is right.

Q. Which covers a lot of territory? A. Yes, sir.

Q. Percentage-wise, those are a very few, are they? A. There is a very small percentage of the lessee type stations.

* * *

(6228) GEORGE H. GLENN was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. You better give your name and address to the reporter anyway. A. George H. Glenn, 28 West Devonia Avenue, Mount Vernon, New York.

Q. You have testified before here in Washington when the Commission called you, have you not? A. I did, sir.

Q. Is your position still about the same as it was when you testified before? A. It is.

Q. I think the last time you were on the stand they kind of cut you off before you had a chance to tell us what all of your experience has been in this oil industry, so would you tell us what kind of positions you have had with the Texas Company and just briefly what your duties have been in those positions? A. Yes.

As I recall in the previous testimony I described my work in the Texas Company by positions and by years in

date (6229) order from the then present time and going back. When I arrived at the year, I believe 1949, it apparently was felt that that was sufficient.

The record, however, beyond that is this: Between 1947 and 1949 I was Assistant Division Manager in the Boston Division, my title parenthetically had after it Sales Promotion. As assistant division manager in charge of sales promotion I handled all of the sales promotion activities of the division and including the administration and the direction of the TBA program.

Prior to 1947 and for a period of six years back to May 1942, I served in the Boston division as a state manager in several different sections which embraced all of the six New England states, if not in total then at least in part. As a state manager my job was to be responsible for the company's complete marketing operation in the area that I was covering and that concerned the sale of all of its products and the direction and administration of all of its programs including the TBA program.

Prior to that I was a zone manager at several locations in New England between the years 1937 and 1941, and have briefly the duties of a zone manager are comparable to those that I just described for the state manager except covering a smaller territory and a little lower level of administration and authority.

(6230) Prior to that I go back for thirteen years, 1937 to 1924 and during that period of time I held various positions all of which were directly connected with sales work in the sales department in New England.

Q. Now, Mr. Glenn, how old is this marketing research division which you now head up? A. It was established March 15, 1955—I beg your pardon, May 15, 1955.

Q. So, when you testified—when did you testify, in 1956? A. It seems to me it was in 1956, yes, sir.

Q. About the Fall of 1956? A. Yes, sir.

Q. This was a new department? A. Yes, sir.

Q. And at that time did you have a backlog of TBA statistics available to you? A. No, as a matter of fact I don't know how familiar people are with establishing departments and especially a marketing research division, but generally the pretty well accepted record on getting established is that you take anywhere from three to seven years before you start getting your feet on the ground with a well-established department and during which time you are involved in establishing bench marks and criteria and patterns and so forth for the (6231) various work in which you eventually will be interested. It so happened that TBA as such and strictly from a marketing research viewpoint was not on the high priority list so far as marketing research was concerned up to that time and for that reason I had not done any marketing research work on TBA.

Q. And that was the basis for your testimony before? A. That is right.

Q. That in this marketing research capacity your first contact with TBA was in preparing the exhibits— A. Came by way of this case.

Q. —which the Government had asked for and which the Government put in through you? A. That is correct.

Q. Now, since that time you have had quite a lot to do with TBA in connection with this case, if nothing else? A. Far more than the marketing research concept would ordinarily direct, but, nevertheless, it has helped to make me feel quite expert about the TBA business.

Q. Now, certain exhibits were put in evidence, I believe they were prepared through your department, Exhibits 114 and 115, do you recognize those by number? A. Yes, sir, I do.

Q. They are the annual record of TBA purchases of Goodrich and Firestone TBA by divisions? (6232) A. Yes, sir.

Q. Have you at our request translated the information on those exhibits, Commission's Exhibits 114 and 115, into a what do you call this, a graph, graphic form? A. That is a good name for it, yes, sir.

Q. Into a graph? A. Yes, sir.

Q. And does that graph accurately reflect and is it based entirely upon the information contained in Exhibits 114 and 115? A. Yes, sir.

Q. Tell us what this graph shows? A. Well, number one, the graph is taken from CX-114-A to D for Goodrich and CX-115-A to D covering Firestone. These two exhibits include material which was prepared in my office and made available to the Commission at their request and covers the total purchases of TBA materials separately for Firestone and Goodrich, separately for each of our divisions, and separately for the years 1952, 1953, 1954, 1955, and through June 30 of 1956.

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(6233) (The document referred to was marked Respondent's Exhibit 78-A through -D, for identification.)

By Mr. Lorenzen:

Q. I think you were telling us what exhibit for identification 78-A through -D shows A. Yes, sir.

Q. With reference to the source material, Commission's Exhibits 114 and 115? A. Yes, sir. It shows the raw material from which this chart was drawn, the raw material being, as I described the total TBA purchases by Texaco accounts from the Firestone or the Goodrich Companies.

This chart was drawn to display for each of the divisions and separately for Firestone and Goodrich the increase or decrease in volume that is reflected for a series of three periods, 1953 against 1952; 1954 against 1953; and 1955 against 1954.

The bars are made to correlate with the percentage numbers that are shown as to either an increase or a decrease.

Q. Now, just to demonstrate this, let's look at the (6234) Boston division which happens to be the first one on 78-A. A. Yes, sir.

Q. That shows that there was a, what looks like a pretty good sized increase, 1953 over 1952, and 1954 over 1953? A. Yes, sir.

Q. In sales of Goodrich TBA in that division; is that correct? A. That is correct.

Q. Now, then, if you look at the Denver division, for example, on 78-B. A. Yes, sir.

Q. During the same time you find that there was a decrease? A. A decrease.

Q. In Goodrich sales? A. That is correct.

And so on through the review of all of the divisions and the review of increases and decreases for both Firestone and Goodrich. The chart indicates a complete lack of uniformity pattern or any suggestion of the results being directed by a program that would bring about similar results through each of the divisions.

Mr. Dias: Your Honor, I object to the last part of that. I think that is a fact or an inference to be drawn by yourself or the Commission. If I understand the witness's testimony, he is saying that there is no pattern (6235) that we can follow which may or may not be so; but if I understand his testimony also, I gather that the inference is that no pat-

tern that can be attributed to this method of selling TBA. I am not clear on his testimony and I think either it ought to be amplified or else stricken.

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Q. Will you amplify that in line with Mr. Dias's suggestion? Do you remember it? A. Yes, sir.

Well, the reason for the differences among the divisions, as I have attempted to point out, in this previous statement are several. They are not necessarily directed to any one situation.

There are throughout this country various purchasing habits on the part of the public, various degrees of interest in salesmanship and merchandising on the part of dealers; there is a greater exposure from competition in some areas than there is in others, and to whatever degree we are (6236) involved in TBA we are confronted with these situations which results in a complete lack of uniform pattern of the results that are obtained through our divisions.

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(6240) Q. Mr. Glenn, about these percentage increases and decreases that we have talked about; they are in terms of actual dollars? A. Yes, sir; as reflected on the report.

Q. There has been no effort made here to take into account inflation or anything of that kind? A. No, sir; they are the raw figures as reported on the report.

Q. And to the extent that later on an exhibit may be put in which takes such factors among others into account. Of course, to that extent this graph— A. A chart would need to be prepared for that purpose.

Q. Yes, but this is just the actual figures as they are in evidence? A. The dollars; yes, sir.

Q. Mr. Glenn, have you been requested to have prepared under your supervision certain maps of the cities of Dallas, Chicago, and Omaha? A. Yes, sir; I was requested to prepare such maps.

Q. Are these maps which I show you the ones which you had (6241) prepared under your supervision?

(Handing documents to the witness.)

A. Yes, sir; this is the map on Dallas.

Mr. Lorenzen: I ask to have the Dallas map identified by the witness, given the next exhibit number, which is 79.

(The document referred to was marked Respondent's Exhibit 79-A through -E, for identification.)

The Witness: And this is the map on Omaha that we prepared.

Mr. Lorenzen: I ask to have the Omaha map marked as Respondent's Exhibit 80.

(The document referred to was marked Respondent's Exhibit 80-A through -E, for identification.)

By Mr. Lorenzen:

Q. And I hand you another map and ask you if that is the last of these maps which was prepared under your supervision? A. That is the map of Chicago; yes, sir.

Mr. Lorenzen: I ask to have the Chicago map marked Respondent's Exhibit 81.

(The document referred to was marked Respondent's Exhibit 81-A through -G, for identification.)

By Mr. Lorensen:

Q. Mr. Glenn, the basic map itself was one which your department obtained from some company which puts out maps of (6242) cities? You didn't make this? A. The map itself; yes, sir.

Q. You did not make up the map? A. No, sir; we spotted the map.

Q. Now, what you did was place on the map certain numbered yellow and red dots? A. That is correct.

Q. Is that correct? A. Yes, sir.

Q. And those dots are tabbed or indexed to the additional sheets which are attached to these maps by scotch tape and which have been given letters, "B", "C", "D", and "E" in the case of this Dallas map which is Respondent's Exhibit 79; and similar letters in the other maps? A. Yes, sir.

Q. And those indices have the same numbers as the dots? A. That is correct.

Q. So that if you find dots number 1, you can then look for number 1 on the index and find a name? A. That is right.

Q. Now, these names were given to you, were they not, as names of dealers mentioned in this record by Government witnesses? A. Yes, sir.

Q. And as far as you are concerned all you did was take the (6243) names and address furnished you out of this record and make yellow dots for them? A. And spot them on the map; yes, sir.

Q. And those, to the best of your belief, accurately are spotted on the map? A. Yes, sir.

Q. So, taking Dallas again as an example, on 79-C, we find two, this is a man that was mentioned yesterday, as B. S. Colgin, 6634 Snider Plaza, Dallas, Texas; dot No. 2 on the map would be placed as nearly as possible over 6634 Snider Plaza? A. Right.

Q. And that is the way in which all of these dots were positioned on the map? A. That is correct.

Q. Now, the yellow dots, then, apply to the names and addresses of witnesses mentioned in the Government's case to the extent that those names and addresses were given to you? A. That is right.

Q. Now, these red dots which are identified similarly, are they not, to the yellow dots? A. They are spotted on the map in the same manner as the—the same procedure was used and they have numbers which are tired into the index that is attached on the individual (6244) sheets.

Q. All right.

Now, those red dot indexes, in addition to having the name of a dealer have his address? A. Yes, sir.

Q. And, now, they have two additional columns? A. Yes, sir. Well, that represents dealers concerning whom there is testimony in the case relative to their selling other than sponsored TBA products understanding the policy of the Texas Company and with reference to photographs either one or more photographs that may be in evidence concerning their individual locations and the display of TBA material.

Q. So, under this column in each of the legends headed "transcript", where there is a page number it means that page there is evidence relating to this particular dealer? A. That is correct.

Q. And then in the last column you have a letter, taking, for example, the letter "S", it shows that the testimony at the place cited is the testimony of a witness whom the Government put on the stand and he said that he sold TBA to the particular dealer; is that correct? A. Yes, sir.

Q. And the letter "D" means that at the place cited, there is testimony that the particular dealer displayed TBA other than (6245) Firestone or Goodrich? A. That is correct.

Q. And the letter "M" means there is testimony that that particular dealer attended one of these Texaco dealer meetings? A. Training-course meeting, however you want to name it.

Q. And the letter "F" means that there is testimony by the dealer that he understood the Texas Company's TBA policy? A. Letter "P" is that, sir?

Q. "P", is that it? A. Yes sir.

Q. It looks like an "F" here.

It should be "P".

Now, in addition to testimony references in some of these cases instead of a "TR" citation there is an "RX" citation, and that is with reference to an exhibit number is it? A. That is correct.

Q. A picture of this particular dealer's establishment? A. One or more pictures of the different establishments that are shown there.

Q. That is all that shows on this Exhibit 79-D and -E, but I believe in the Chicago exhibit, which your Honor has, there are two additional types of letters that are used. There is a "TR" reference as well as an exhibit reference (6246) and those transcript references are followed by the letters "I," in one case, and "A" in another case.

And what do those mean? A. "I" and "A".

I think I have that on the legend.

Q. Well, the legend means that the photograph was identified on one page and— A. Identified, yes, and admitted.

Q. And admitted in evidence on the other? A. Yes.

Q. So, this map, of course, was prepared before yesterday's testimony? A. Oh, yes; it was.

Q. So that insofar as these dealers have been discussed in the testimony yesterday there is no record reference to that on these maps? A. Not to my knowledge; no, sir.

Q. So, all that you did in your department was mechanically see that the names of the dealers who have been mentioned in the record, as indicated, were properly inserted— A. Spotted on the map and an index prepared to agree with the spotting on the map.

(6247) Mr. Lorenzen: I would now like to offer in evidence Exhibits 79, 80, and 81.

Mr. Dias: I would like to know what the purpose is.

Mr. Lorenzen: Well, the purpose of these maps seems to be pretty plain on the face. There is some hearsay testimony which was put into this record, sometimes double or triple hearsay, that some of these dealers are supposed to have said to somebody else that they didn't want to buy TBA from the witness because apparently they thought that they mustn't do it because either the Texas Company or somebody wouldn't like them to do it. It is very plain why in most cases.

We believe that this map which shows the surrounding dealers spotted all over the map indicates rather plainly either that the government witnesses' hearsay, if we had been able to cross-examine somebody about it, wouldn't have accorded with the facts because it just couldn't have. You can't have a station in these surroundings and have any opinion of that type.

Second, at most an excuse was given to a persistent salesman to brush him off without any evidence at all, in fact, that the policy of the Texas Company was not plainly understood in this particular neighborhood.

Mr. Dias: May I be heard?

(6248) Mr. Lorenzen: Your Honor will note that in most of these cases all of the cases of the pictures, of course, and in all of the cases where the legend "D" appears, the competing merchandise is actually displayed in these other Texas stations, so that it is not just a question of being informed of what the policy is through meetings and things of that kind, but anybody who wasn't blind could see openly displayed competing merchandise in any number of these stations.

As I said, the dealers either were in the neighborhood or else they couldn't conceivably get into town without going by a half dozen of these stations.

Mr. Dias: Would this Number 1 in the Omaha map be a good example of that?

Mr. Lorenzen: Omaha is the smallest city and naturally you have the smallest amount of dealers. Certainly it is a good example even in Omaha. How could Number 1 get into the center of Omaha without going by a half dozen stations?

Mr. Dias: Your Honor, I object to it on the grounds that it is unduly repetitious. The dealers have testified; they have given their names and addresses and places of business. We know what area they are in. I can't see any possible relevancy to the fact that there may be a dealer on Tenth Street, or take any street you want, and (6249) post other dealers around them. How does that prove whether or not X dealer feels that he has been oppressed?

That doesn't have anything to do with it, nor does it have anything to do with the fact that he may have told a salesman that he was told by a Texaco salesman that he couldn't handle anything but sponsored TBA. This doesn't prove a thing, and I think it is irrelevant and I think it should be rejected.

Mr. Lorenzen: May I say just one thing?

While it is perfectly true that the geographical locations are shown, the relationship between the geographical locations are not shown unless your Honor is going to take judicial notice of a few hundred locations and try to fit them into a map himself. That is, the basic purpose of this map is to translate the testimony into usable form, so it is not repetitious at all.

Hearing Examiner Kolb: All these dots indicate reference as they were stations which were referred to in some way in the record as appears on the explanatory sheets and the numbers?

Mr. Lorenzen: That is so.

Mr. Dias: I don't see how that is relevant, your Honor. How does that prove whether or not a dealer X told an independent supplier that he felt he couldn't buy? It just doesn't have any bearing on that at all.

(6250) Hearing Examiner Kolb: It is simply a matter of bringing this stuff together with reference to the record.

I think that might be helpful in considering this case, as a matter of fact, to get the information in a place where you can find it.

Mr. Dias: I don't think so. Seriously, it doesn't prove one iota or one part—

Hearing Examiner Kolb: It doesn't prove anything because it simply brings this information together in one document as I understand it, which is scattered throughout the record.

Mr. Dias: Doesn't that more properly belong in the brief, rather than as more papers in the record?

Hearing Examiner Kolb: One way or the other, I don't think it makes a great deal of difference.

I will overrule the objection and admit the documents into evidence as Respondent's Exhibits 79-A through E, 80-A through E, and 81-A through G.

(Whereupon, the documents referred to, heretofore marked Respondent's Exhibits 79-A through E, 80-A through E, and 81-A through G for identification, were received in evidence.)

By Mr. Lorenzen:

Q. Mr. Glenn, when you testified before at Page 383 of this record, you testified that of the total commissions (6251) paid to the Texas Company under the sales commission contracts, 70 percent were direct expenses attributable in your accounting to these commissions and, therefore, earnings were only 30 percent. Do you recall that testimony? A. Yes, sir, I do.

Q. Now, let me ask you: Did you include as an expense factor the additional cost of building your stations in such a way that they could handle and merchandise TBA? A. No, sir. That is not one of the factors included because our system does not provide for segregating the various sections of a service station as between TBA and lubrication and gasoline and repair work and what have you. So that is not included.

Q. However, there is that additional expense, of course? A. Of course there is.

Q. That exists— A. The expense is there but it is not included in our calculation of expenses in connection with the TBA program.

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(6252) Q. Did you include as an expense the cost incidental to the use of your credit cards for charging Firestone and Goodrich merchandise? (6253) A. No, sir, we did not, because again our system does not provide for segregating, as I believe I have previously stated, on our credit card sales the various types of merchandise that is sold. The credit card business is treated as money rather than items and brands of merchandise. So it is not possible to isolate it and charge it. But there is an expense, of course, in connection with the processing and handling of all the invoices to the extent that they do exist on TBA purchases.

Q. You carried that lack of breakdown over even to your deferred credit card sales? A. That is correct.

Q. And there you have a substantial number of millions of dollars invested in credit principally for TBA, do you not? A. That is right.

Q. You didn't charge the interest— A. That is not charged directly to the TBA program, no, sir.

Q. Either the expense or the interest on that money? A. Neither.

Q. But that is something you have to actually pay for? A. That is over and above the item of 70 percent that I have mentioned as the cost of the program and it is an expense that we assume and it is our money which is tied up. Capital is tied up on which we do not get a return.

* * *

(6265) Q. Now, Mr. Glenn, do you have the cost changing a lessee dealer—that is, when one dealer goes out and another one comes in—is there a cost factor that can be applied to that situation?

* * *

A. Yes, sir, there is a cost in connection with the change over of dealers at service stations. Our records are not regularly maintained to display the specific cost attached to each change that is made.

However, we periodically do analyze our records and determine information from our various divisions as to the number of changes and the costs of those changes. We have done that most recently and have arrived at the figure applicable to changes that were made within a year, including (6266) parts of 1957 and 1958.

By Mr. Lorenzen:

Q. What are those figures? A. Well, I think that I should explain first, before giving you the figures, that in case it isn't fully understood that there are really two distinct kinds of dealer changes.

There is a change where a dealer either without notice, which happens, or with notice, and when we did not have a sufficient opportunity to find a replacement, leaves a service station and it is unoccupied for a period of time. That is a relatively expensive change-over.

Then there is the second type of change-over, which is those cases where a dealer has indicated a desire to give up his lease on the service station, go into some other business, take another service station with a competitor or whatever the case might be, and we have readily available a suitable replacement for that dealer and in that case the expenses are less because we don't have the period of lack of occupancy in the station for which we have carrying charges and expenses.

Based on the survey which we made, we attempted to define the kinds of expenses that we felt would be logical to a change-over in dealers. Those having to do with rental or carrying charges versus rental collections, mer-

chandise (6267) and rental charge office, which are quite a common occurrence in dealer changes, the cost of preparing a service station for the new dealer, the time consumed in actually seeking out a new dealer, which in many, many cases can be quite time consuming and costly, the cost of training a new dealer, and whatever cost is involved in assisting the new dealer in the opening of the service station.

So, as a result, anyway, of including those things and determining the information from our divisions, determining further that our changes are made up generally about one-third of them representing dealers who have left the location and that it is unoccupied for a period of time and two-thirds where we have an immediate replacement, the figure varies from a low of $600 for the immediate replacement to as high as $1700 to $1800 for those where you have an unoccupied service station or an overall average of something less than a thousand dollars, $900 to $995.

Q. Now, in those figures have you included the loss of revenue to the Texas Company due to the inability to sell products during a dealer change? A. No, the detail that I provided as to what we did include was to the exclusion of everything else. We do not take into consideration the loss on earnings or profit or whatever you may want to call it from our own merchandise or from any sponsored TBA merchandise that might have been (6268) sold through the location.

Q. And that loss could be many times the figure that you have given us? A. In different parts of the country and under different conditions it can be varied amounts and considerable.

Q. And depending upon how long the station has to be closed as a result of the change-over? A. That is right, how long it is unoccupied, yes, sir.

Q. Have you taken into account the fact that customers are lost when there is a change-over from one dealer to another? A. Not in this computation.

Q. Nothing has been given for that at all? A. We have not.

Q. This is just what you have calculated to be the out-of-pocket expense of the change-over? A. That is right.

Q. Without any respect being paid to the loss of revenue? A. That is correct.

Q. Whether from loss of customers or actual loss of sales while the station is closed? A. That is right.

Q. Mr. Glenn, have you analyzed the Commission's Exhibits 119 and 211 and 213? A. Yes, sir.

Q. And prepared a study showing that analysis? (6269) A. I have, sir.

Mr. Lorenzen: I ask to have this study marked as Exhibit 82.

(The document referred to was marked Respondent's Exhibit 82 for identification.)

By Mr. Lorenzen:

Q. Is this document, marked RX-82 for identification, that study? A. Yes, sir, it is.

Q. Will you tell us what that document shows? A. Well, first the information that is displayed on this document is translated from the raw material on CX-119, 211, and 213. Its intent is to display the comparative data on C and D TBA accounts for the year 1956 versus 1952 wherein, for example, we see that the number of C accounts in the year 1956 had increased percentagewise by 10.04 percent over 1952. I may inject here, too, that that figure is a very conservative one to the extent that we actually opened more stations than the difference between the

11,855 and the 14,116. On the other hand, we abandoned some locations, or lost some locations. But by and large, our new ones were of a better quality type. So that, if we had all of the stations without losing any, we would have had an increase of about 30 percent rather than the 19.

Again, in the group of C stations, their number to the
(6270) total C and D stations in 1956 had increased over 1952 by 6.54 percent. Their gasoline volume had increased by 31.82 percent, and their share of the gasoline volume to the total as between the C's and D's increased by 6.58.

Now, on the other hand, so far as the D's are concerned, we see practically a complete contrast, wherein the number of accounts had declined by 8.85 percent, the share of those accounts to the total as between the two has decreased 6.54. The gasoline volume through those accounts as contrasted to the 31.82 percent increase for the C's, for the D's, is a loss of 2.34, and as to the share of the gasoline volume in total between the two classes of accounts, of course, dropped 6.58.

The purpose of this display of information is to reflect that it is as a result of the growth and development of the C type of account and the lessening in numbers of the D's, that it follows naturally that C's have picked up a substantially greater part of the gasoline volume and it follows that they, too, have picked up TBA volume. It is interesting to note here that the percentage of the TBA volume to the total they picked up is not very different than the percentage of the gasoline that they picked up for the total, the difference between approximately 2 percent.

One thing that is troubling you, I know this, Mr. Lorenzen, if we might make a correction, I would like to
(6271) have a correction made that the parenthetical figures on here represent decreases, which isn't entirely clear.

Q. That the figures in parenthesis shows decreases? A. Yes, sir.

Q. In percentage? A. Yes, sir.

Q. And the ones without the parentheses are plusses? A. That is right.

Q. So you show in all categories, gain in C accounts, and in all categories a lessening in the D account figure? A. Not necessarily a correction. It is an addition to what I said.

Q. Now, you said that if the number of accounts—I will withdraw that.

The number of accounts shown on these government's exhibits, C accounts, shows only a net increase; is that correct? A. That is correct.

Q. So that while this might indicate that only some 3,200 new stations were opened during this time, — in fact, the figure should be what, pretty close to twice that? A. Well, did you say 3,200?

Q. Yes. A. You apparently did that hurriedly. I don't think that is the right number. My number is a little different.

(6272) Q. What is your number? A. Well, this number on here is nearer 2,300.

Q. I see. And what should it be?

Mr. Dias: Excuse me. When you say this number here, will you refer to the line?

A. Line 1 under the caption C accounts, the two columns, 1956, 14,116, and the caption 1952, 11,858, and the difference between the two I hurriedly deduct as being 2,300. It is probably 2200-something.

Mr. Dias: I see.

A. And the figure that I would offer in answer to the question you asked is approximately 3,100 stations.

George H. Glenn, for Respondents—Voir Dire

By Mr. Lorenzen:

Q. So that actually old type stations have been replaced by 3,100 new type stations? A. That is right.

Q. Rather than the 2,300? A. Rather than the net 2,300.

Q. But the exhibits in evidence don't provide for that? A. No, sir.

Q. And you made your computations on that basis? A. On the basis of what is shown in the exhibits, yes, sir.

Q. Rather than on the actual situation which would increase the percentage of C stations above this 19 percent figure shown on the exhibits? (6273) A. It would bring it to about—

Q. If you took the actual situation, it would be thirty percent of the new stations? A. That is right.

Q. As against that the gain in TBA was 8.85 percent? A. That is correct.

Mr. Lorenzen: I offer this document in evidence.

(6274) *Voir Dire examination by Mr. Dias:*

Q. If I understand the document, these figures here were obtained from the designated Commission exhibits? A. Yes, sir. Let me perhaps qualify that for a little bit.

Q. Except for the percentages you have worked out? A. We had to work some of them out from the raw material in the basic Commission documents; yes, sir.

Q. Then all the conversation of what might be the situation has no bearing on this, actually? You have used the actual figures that show on these Commission's exhibits, isn't that correct? Insofar as the number of accounts, the basic figures— A. I think you have asked two questions, but I am trying to answer both of them.

Q. All right. A. No. 1, I have used all the material taken directly from the basic CX documents. However, the answer that I gave to the question as to whether or not the number of stations was net or gross I felt had a bearing on the results that are shown here.

Q. Well now, that is what I was trying to determine.

How do you arrive at your percentages? Do you arrive at the percentages on the basis of figures that are shown (6275) in those Commission exhibits? A. That is correct.

Q. The other part of your answer had to do with a question posed by Mr. Lorenzen which doesn't relate to these exhibits, is that correct? A. It relates to the fact that the exhibits do not include the additional stations which we opened and some of which were offset by locations that we abandoned or in some other way lost.

Q. I don't think I follow that because these basic figures came from Texaco's files, isn't that correct? A. That is correct.

Q. CX 119, 211, and 213. When were these additions and abandonments, when did they take place? A. They were during the period 1952 to 1956.

Q. Well, then, don't the changes in numbers show on these exhibits? A. I think probably the thing that is bothering you, if I may try to answer it this way, is this: There is a difference between quantity and quality in these numbers. We are looking here on the report as quantity. There are 11,858 stations in 1952 and 14,116 stations in 1956. But behind this increase of 2300 locations there have actually been over 3,000 acquired, and those 3,000 quality-wise represent the addition of the 2300 and the offsetting of (6276) some 700 or 800 lower quality outlets that were abandoned as service station outlets.

Q. What is this change, 19.4 percent, based on? That is based on the difference between— A. The figures you see there.

Q. Then, regardless of this quantitative or qualitative change, or any changes of that sort that may have occurred, it has no bearing whatsoever on these figures that you have here; isn't that correct? A. It is not included in these figures.

Q. Now, take the second line, percent accounts to total? A. Yes, sir.

Q. 40.11 percent? A. Yes, sir.

Q. How do you arrive at that figure? A. Well, you have got in 1952, you had 11,858 C accounts and 17,708 D accounts, both of them added together, 29,566, and 29,566 divided into 11,858 is 40.11.

Q. All right.

Then similarly for the 56.65, you take the number of C accounts and add to the number of D accounts? A. That is right.

Q. Now, on the total gasoline volume you have a hundred percent figure on the '52? A. Yes, sir.

(6277) Q. Is that—in other words, you are using that '52 as the base? A. As the base.

Q. That is right. And in '56, then, the increase in gasoline volume in the C accounts went up 31.82? A. That is right.

Q. And the base figure is shown again in one of these three exhibits, CX 211 possibly? A. The gallonage figure?

Q. The gallonage, yes. A. CX 211, yes, sir.

Q. And as I recall, the gasoline gallonage the last time you were here was given in barrels and you have translated it now into what, have you translated it into gallons or does it make any difference? A. For the purpose of this report it doesn't make any difference.

Q. All right, so that we can compare— A. You can compare these numbers; yes, sir.

Q. All right.

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(6279) *Cross-examination by Mr. Dias:*

Q. This line of questioning will deal with your testimony in connection with the cost to Texaco in the change-over of dealers. A. Yes, sir.

Q. As I understand it, in arriving at these figures, that it costs Texaco between $600 to $1700 or $1800 or an average of a thousand dollars whenever there is a dealer change. You mentioned that you computed in those figures two kinds (6280) of changes, where a dealer left you with or without notice in one instance, and in the second instance where the dealer gives up a lease.

Now, how do you distinguish between those two types? I can understand— A. No, go ahead, I am sorry. Go ahead.

Q. All right. Just to distinguish between those two types now. A. I think I did distinguish them. I will try to repeat what I said.

Q. Will you do that, please? A. I described that No. 1, in the case of a dealer who chose to give you the location and without notice left us and we had an unoccupied station, or with notice but not of sufficient time to permit us to find someone to put in by the time he wanted to get out.

Q. All right, what was the second one? A. The second one is where the dealer voluntarily wants to make a change, does so in a very orderly way by advising us either directed to the anniversary of his lease or very often to some period in between the anniversary when he says "I would like to get out," and he is there long enough or stays there long enough, or we are successful enough to find a replacement, by the time he wants to get out.

Q. All right, now, in arriving at this average cost in (6281) a dealer turnover or change, those are the only two type situations you consider, is that correct? A. Yes, sir.

Q. Well, you don't imply, do you, that Texaco never cancelled or failed to renew a lease? In other words, put the shoe on the other foot, in those instances where Texaco cancels or fails to renew a lease, is there no charge in connection with that? A. Yes, it is dealer turnover.

Q. Yes, but you didn't consider that in arriving at this average thousand dollars? A. You mean from the standpoint—no, my dealer turnover includes all dealer changes.

Q. In other words, whether initiated by the dealer or Texaco? A. That is right.

Q. So that figure would not be changed then, it would still be this $1,000 average that you have? A. That is right.

Q. And does Texaco always repair stations when the dealers change or turn-over? A. Mr. Dias, it is a very strange thing, I suppose it takes place in all sorts of establishments, but you can have a man in a service station very happy and pleased with his operation for many years with no complaints, nothing is (6282) wrong, and he vacates that location. And you then go about trying to find a replacement dealer, and that replacement dealer competitively this is—the same situation exists with all people—that new dealer wants things different than they were there before. He wants this painted and he wants this repaired; he wants a little better lighting than was there before, and we find it necessary to attract proper dealers to operate service stations, to spend money at the time of change-overs, yes, sir.

Q. For example, yesterday one of your witnesses testified that an operator left after being in a station for three months. In a situation like that would you go in and make some sort of repairs? A. Well, I don't like to belabor this particular point by a lot of explanation, but I would like to offer this. The things that can happen to a service

station in three months can cost a lot of money. For example, if a dealer is in a service station and has neglected the premises, if it is at a time of the year and in the part of the country where such things as weather affect the location, pipes freeze, rest rooms are out of order, the dealer has used some manner or means of his own to improvise electrical arrangements in the service station; any one of those things can happen and just the cleanup, many times, for a dealer that is an unsatisfactory one can be quite expensive.

(6283) Q. How many situations of this sort have you studied in order to arrive at the average that you gave us? A. How many turnovers?

Q. Yes. A. I'd rather get the number accurately out of my records, but I will give you a rough number at the moment if you want it.

Q. All right. A. It is somewhere in the vicinity of five, six, or seven-hundred stations.

Q. Five-, six- or seven-hundred stations over what period of time? A. Over the period of a year overlapping '57 and '58.

Q. You have that many changeovers in a year's period? A. Yes, sir.

Q. You also mentioned that there is something about loss of productivity during that period. Wouldn't that be as a result only of the loss of the rental for the station as long as it has been vacated or lies empty? Isn't Texaco profit computed in its rental? A. That is just one of the items. We considered rental in the cost factors because it is a specific, tangible figure that we are responsible for and must assume and pay whether the station is open or not.

Now, if that station was open and the dealer was (6284) buying product I hope we would make some profit on the product that he bought from us, and if he happened

to be a dealer that brought sponsored TBA I would hope that we would get some return on that.

But we have not accounted for either of those items because they are not sufficiently tangible to write up. We don't know what they cost.

* * *

(6308) ELIHU MADISON was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you state your full name, Dr. Madison, and tell us where you live? A. My name is Elihu Madison, 10 Fordal Road, Bronxville, New York.

Q. In spite of that name Elihu I notice you didn't go to Yale? A. No, I did not, I am expressing no regrets for not having gone.

Q. I didn't go either so there is no hard feelings.

You received a Bachelor of Business Administration Degree, did you, at Texas University? A. University of Texas, yes.

Q. What was that in, a major or in what? A. Accounting.

Q. And then you have a Master of Business Administration Degree and that was with a major in finance? A. At New York University.

(6309) Q. And a Doctor of Philosophy in Economics, and that was also at New York University? A. Major field economics, yes, sir, at New York University.

Q. Are you now connected with the Texas Company? A. Yes, I am manager of the Economics Department of the Texas Company.

Q. And what are the functions of this economics department in your company? A. I would summarize them

to say that we keep management informed on the current and prospective economic, financial, and political conditions, both domestic and foreign, as they apply to the oil industry and to Texaco with particular emphasis on financial planning.

We also do special projects for various executives in the company on request.

Q. And are those special projects which have to do with finance and financial trends, matters of that kind? A. Yes, that is right.

Q. Then are you called upon to analyze a variety of problems and find solutions to them? A. An extreme variety.

Q. Some of your projects are handled easily and some take a long time? A. Yes, some we may do with dispatch, others it may take several months.

(6310) Q. You were connected with the Texas Company before the time when you became manager of this economic department, were you not? A. Yes, I started with the Texas Company in the accounting division in Houston in 1933, that is the accounting division of the refining department.

Q. And how long did you stay in that department? A. Well, I stayed in the refining department for a number of years.

In 1931, I believe it was, I was shifted over to Port Arthur, our large refinery on a training course; then in 1933 I was moved to New York to the managerial division of the refining department, and I stayed in the refining department and I became a supervisor there, and in 1946 I was transferred to the executive department as economist.

Q. Then for a while you were in the foreign operations department? A. Yes, in 1947 I was shifted to foreign operations, I was assistant to management in that department.

Q. Then in 1949 you became manager of this economics department? A. Yes, that job I still hold.

Q. Since that time have you been with the company continuously? A. Yes.

Q. At one time— (6311) A. I was on a so-called leave for about eight months in 1953 and 1954. At that time I was assigned to the Department of Interior and I was director of the program division of the petroleum administration for defense. While I was in that job I served as a representative for the State Department for, well, on several occasions as a representative to the petroleum committee of the NATO organizations, that is the North Atlantic Treaty Organization that is in Paris.

Q. Now, as one of these special projects which you had to undertake every once in a while were you asked to make a study of exhibits in this case showing the purchases of Firestone and Goodrich TBA under the sales commission plan from 1948 through 1955 and reduce those purchases to, I believe what you call, constant dollars? A. Yes. Sometimes referred to as a process of deflation.

Q. You started with the dollar at a level which for this process let's say you called a hundred? A. That is right.

Q. And then applied any variation in the value of that dollar to the actual sales figures, is that what you did? A. That is right, yes. We used 1948 as equal to a hundred.

Q. Well now, to make it simple, can you give us a small example, we are not dealing with these figures in here, can you just give us a small example to show just what you did? A. This will be purely a hypothetical figure.

(6312) Q. Yes.

Mr. Dias: Excuse me, would it help to use the blackboard and chalk.

Mr. Lorenzen: I don't think we need it, I think this will be simple.

A. Take a case, say in 1948, a first quality battery was selling at $5. Total sales we'll say were $75, you had fifteen battery sales. By 1955 your battery sales were $125, but the price of that first quality battery had gone up to $25. So that actually you had sold the same number of batteries in 1955 as you sold in 1948 and we would reduce those to 1948 dollars and come out with the conclusion that although there had been a substantial increase in the dollar sales there was zero increase in the deflated dollar sales.

Q. So that the sales manager who looks at the figure 75 and then looks at the figure 125 some years later is kidding himself if he thinks he is succeeding in increasing his sales by that amount? A. He is dealing with misinformation if he does not deflate it.

Q. In fact, he sold five batteries in 1948 and he has only sold five batteries in 1955? A. Right.

Q. And any apparent increase on the face of the figures results simply from the fact that the value of a dollar in (6313) the term of batteries has gone down. A. That is right.

Q. Now, the process which you have applied to deflating these TBA figures from 1948 to 1955 is exactly what you have described in this entirely hypothetical case that you have taken with respect to five batteries? A. That is the same general procedure.

Q. And we have had marked here as exhibits for identification RX-84-A, 84-B, 84-C, and 84-D, some tables, and I ask you whether that is the finished process which you have utilized in connection with these tables? A. That is the general procedure that we have followed in these tables, or that I followed, in establishing the constant dollar series shown as column 2 on table 1.

Q. Now, what sources did you consult in connection with deciding whether or not the value of the dollar in terms of TBA has gone up or has gone down? A. Since

we were dealing here with wholesale prices we used the wholesale price index.

Q. Published by whom? A. By the Bureau of Labor Statistics.

Q. That is a government publication? A. That is right, yes, sir.

Q. And is that one which is regularly relied on in your industry in makng economic analyses? (6314) A. Yes, that is used extensively in economic analysis.

Q. Were you able to find in that index one price which covered all TBA, or one index figure which covered all TBA? A. No, there is no series that covers TBA as such.

Q. Did you find some figures which covered the constituent parts of TBA? A. We found a series that covers specifically tires and tubes and we found a series that covers batteries.

Q. So what you had to do is separate out from total sales tires and tubes on the one hand and batteries on the other and then accessories as a third item, is that right? A. That is right.

(6315) Q. We will come to accessories in a minute because that, I think, is a little special problem and let's just see what we have done on tires and batteries.

Now, look at Exhibit 84-A. I am going to take you to 1952 because those figures are on one exhibit; it is easier than to go to several of them.

In 1952 your total Goodrich sales under the sales commission plan are numbered 12,746; is that correct? A. Right.

Q. Rounded off? A. That is right.

Q. It says it is in thousands of dollars? A. Yes.

Q. The legend at the top of the column—I have to add three more ciphers. All right, 12,746,000. You have left out the last three digits in each case and rounded them off to the nearest thousand? A. Right.

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(6316) Q. So, the total figure which appears in column 1 is the figure which appears on one of these exhibits in the record? A. Right.

Q. Now, Column 2 is the result of your having applied the deflators to the figures in Column 1? A. Not precisely, because the figures in Column 1 were broken down as—

Q. Yes, I am coming to that. But whatever you found the deflators to be was applied and the result appears in Column 2 opposite the same year? A. That is correct.

Q. In other words, Column 2 you can not find in an exhibit? Column 2 is not in an exhibit? A. That is right. It is not in any other exhibit.

Q. That is the end product of this particular computation? A. Right.

Q. All right. Now, let's look at Exhibit 84-B, which is Table 2. 84-B shows the technique which you applied in getting at or computing the net result which appears in Column 2 of Table 1, or Exhibit 84-A? A. That is correct.

Q. You testified now that you found Bureau of Labor wholesale price index statistics for tires and tubes, so what you (6317) had to do first is out of the total of 12,746,000 for 1952, as an example, you had to find out how much of that was tires and tubes? A. Right.

Q. And on Exhibit 213-A, under 1952, you find a column headed, "tires and tubes." A. That is right, yes, sir.

Q. And so that was perfectly simple. All you had to do is take out the figure appearing on Exhibit 213-A in the case of Goodrich and 213-B in the case of Firestone, and then get the Bureau of Labor price index for tires and tubes and apply it? A. Not directly. The reason for that is that the Bureau of Labor Statistics index is based on a 1947-49 equal of 100, so, since we were beginning with the year 1948 we converted that to show 1948 as 100.

Q. I see. The Bureau of Labor Statistics used what, 1947-48-49? A. 1947-48-49.

* * *

Q. As a hundred? A. As a hundred, yes.

Q. But the figures in evidence in this case started with 1948? A. Right.

Q. And not with 1947? (6318) A. That is correct.

Q. So you didn't want to use 1947 as a hundred, but 1948 as a hundred? A. 1948 is the base year. 100, yes.

Q. You have made no change in the Bureau of Labor Statistics other than for the purpose of this study, calling the 1948 figure 100? A. That is all.

Q. So applying the percentages you have done it from the actual 1948 base as shown by those statistics? A. Yes, sir.

Q. And that index indicates that there is a slight decrease in value in 1949? A. Right.

Q. So, what would you say, that is 2.9 percent? A. 2.9 percent decline in 1949.

Q. Then, in order to get the tire and tube figure on a corrected basis, you would apply that 2.9 figure to the tire and tube figure shown on Exhibit 213 in this case? A. Right.

Q. From then on the Bureau of Labor Statistics price increase has gone up and in each case you would apply the increased percentage to the tire and tube sales shown on the exhibit for that particular year? A. Yes, you would divide it into the figure shown.

(6319) Q. And that was one of the components, then, of the deflated figure shown in Column 2 on Exhibit 84-A? A. That is right, yes, sir.

Q. We have taken care of one of the components now? A. One of the components.

Q. Let's see the difficulty with batteries. Why couldn't you apply exactly the same technique in connection with batteries? What was the trouble there? A. We had no record showing batteries individually for any year in this series, other than 1955.

Q. Then the Texas Company's records, as the evidence in this case shows, and as Exhibit 213 shows, did not have a separate breakdown of batteries as distinguished from batteries and accessories until the year 1955? A. Yes, sir.

Q. So, in order to apply this deflating factor, which you found in the Bureau of Labor Statistics for batteries, you had to find some way to determine how much of the battery and accessory sales consisted of batteries? A. That is correct.

Q. And how did you do that? A. I looked at the figures for 1955 and 1956 as well as—I looked at them for 1957, and there was a high degree in consistency in the percentage, that is, the ratio of batteries to total TBA.

(6320) Q. Do you recall what percent you found to be that ratio? A. In the case of Goodrich, that ratio was 9.5 percent as I recall it. And in case of Firestone the average for 1955 and 1956 was 6.3 percent.

Q. So that you assumed that for the years 1948 to 1955 that ratio would hold constant because it appeared to be quite constant for the two years for which you had the figures? A. We used that assumption, yes.

Q. Now, there is some evidence in this case that the battery sales increased quite materially, at least in some sections of the country, with the advent of the dry-charge battery commencing in 1952, which would mean that your 1955 and 1956 statistical percentage might be on the high side.

Now, if you assumed that and if you had taken batteries as being a smaller amount before 1952, what would have been the end result? Would the deflation have been more or less? A. Well, since the inflation of batteries over the period 1948 to 1954 was only about one percent and all other components increased considerably more than one percent in price, to have used a lower percentage component on batteries would have resulted in a higher real increase in the overall TBA.

Q. I guess that is right. I think you left me at that point.

(6321) Anyway, if the more batteries that you put in here the more effect you would give to this very low increase? A. The more we put in the more effect. May I correct that? I believe I said that incorrectly in reply to your question a moment ago.

The more of the batteries that go—the greater proportion of batteries that go into the index—the index increased only one percent for batteries.

Q. So that the more batteries you weighted this thing with, the less inflation there would be?

Mr. Dias: No.

Mr. Lorenzen: Sure, that is right.

By Mr. Lorenzen:

Q. The more batteries you throw into this computation, the less— A. Less inflation there would be. That is correct.

Mr. Dias: May I suggest that the expert testify?

The Witness: I will correct that. The larger the number for the batteries or the larger the proportion of batteries, the lower would be the degree of inflation.

By Mr. Lorenzen:

Q. If you had, let's say you used this 9.5 percent just to make it concrete, and you carried it all the way back to 1948. There would be very little inflation of any kind shown at all, because you only had one percent. (6322) A. That is correct, with respect only to batteries.

Q. With respect only to batteries; that is the point. A. That is right.

Q. So, if you give credence to the testimony here that the years 1952 to 1955 show a higher percentage of battery sales than before that time, and you had used a smaller amount of batteries back there in 1948, 1949, 1950, and 1951, then you would have given less relative effect to the one item on this list which shows a very small inflation? A. That is correct.

Hearing Examiner Kolb: Doesn't price have anything to do with it?

Mr. Lorenzen: Not other than the index. The Bureau of Labor Statistics index was cited here and which, of course, is available to Mr. Dias, in fact, which his department is checking, has it. I mean, there has been—oh, we have had some evidence as to average costs—

Hearing Examiner Kolb: Are you using the deflation of the dollar generally, even though the price of batteries has remained constant all this time?

Mr. Lorenzen: No. The Doctor said that the price of batteries has inflated least. That is why we broke them out separately to be fair about it, because batteries are the one thing which has in terms of dollars become cheaper.

(6323) I don't know, I suppose more competition or something in the battery line than other places. Maybe the materials are cheaper. But anyway, it is an outstanding item of inflation affecting the situation much less than either tires or tubes or accessories or goods in general. That is why we wanted to take it out separately, to be fair about it.

By Mr. Lorenzen:

Q. Now, having broken batteries out of Exhibit 213, you came at a dollar figure for batteries, did you? A. Yes, I had a dollar figure for batteries.

Q. And you applied to that the price index variation shown in Table 2, Column 2, of Exhibit 84-B? A. Yes.

Mr. Lorenzen: I think this answers your Honor's question. If you look at the percentages in Table 2, in Column 2 as distinguished from the percentages in Column 1, your Honor can see the difference which inflation has had in terms of tires and tubes and which it has been in terms of batteries. You see, the index is quite different in the two.

By Mr. Lorenzen:

Q. Now, we will come to accessories. Having the tire and tube figure and having taken out the battery figure, all the balance of course became accessories; is that correct? A. Other accessories we called it.

(6324) Q. Other accessories? A. Right.

Q. Now, what did you find with respect to the existence of a Bureau of Labor Statistics wholesale price index covering accessories? A. There is no specific Bureau of Labor Statistics series or index on other TBA and this presented somewhat of a problem.

Q. How did you solve it? A. Since there are more than 500 items in this other TBA series of a very diverse nature, it was concluded that the best deflator for this series was the Bureau of Labor Statistics wholesale commodity price other than farm products and foods.

Q. And that is the inflator which you have set out in the last column of Exhibit 84-B, Table 2? A. Yes. Well, that is not directly the last column is not the Bureau of Labor Statistics series. It is the 1947-49 series which is shown in the next to the last column converted to a 1948 base.

Q. Well, as you explained before in connection with the other tables? A. Yes, the same procedure.

Q. The same procedure but those are the figures which appeared in the Bureau of Labor Statistics wholesale price (6325) index for commodities other than farm products and—what is the other one? A. Other than farm products and foods.

Q. Farm products and foods.

Now, did you check the conservatism of accepting that price index as against any price index covering some items in the accessory line? A. There were some items that we found in the series that were directly applicable. For example, fan belts. But I might point out here that when we are talking about over 500 series, when we talk about an individual item, it is not really too significant here, but we did pick out several items and on averaging them up we found that they showed an arithmetical average over the period of something like 30 to 35 percent.

Q. So that if you had used the few comparable items for which the Bureau prepares statistics, your percent of inflation here, instead of being 13.2 percent, would have been somewhere in the 30 percent range? A. Well, if we had used it on those few items. But I might say that we did not—that is, I did not check the entire five to eight hundred items against all of the individual items in the index. But had we used those that we found matching, we would have used some higher number rather than the eleven percent increase as shown for the period 1948 (6326) to 1954 in this series.

Q. Well, you did check it against the principal items such as fan belts? A. Fan belts.

Q. What else? Do you remember what the others were? A. Oh, there were battery cables, some battery wires, there were no index for items such as spark plugs or some of the other more important items.

Q. And you did look for the more important TBA items? A. We looked for the more important, yes, sir.

Q. And those few that you did find averaged substantially more inflation than the index figures which you have actually used? A. Those particular ones that we found, yes.

Q. And so, do you believe that this figure which you have taken is a conservative figure which, in your work, you would estimate as an expert could be properly applied to the accessory items? A. I would say it is a conservative figure, the 11 percent is.

Q. Then you applied this figure in the last column on Exhibit 84-B to the accessories and you determined them by the process which you have described and then added together the deflated tires and tubes, the deflated batteries and the deflated accessories to come up in each year with the figure (6327), appearing in Column 2 of Table 1, Exhibit 84-A? A. That is correct, yes.

Q. That is the way in which each of the figures appearing under B. F. Goodrich and Firestone in Column 2 was arrived at? A. Yes, they were computed separately.

Q. And what is the combined, is that just an addition? A. It is the total of the two, yes.

Q. Now let's look at Exhibit 84-D.

Hearing Examiner Kolb: Exhibit 84-D?

Mr. Lorenzen: Yes. C is a little different. We want to look at 84-D now.

By Mr. Lorenzen:

Q. Tell us whether or not you applied the same techniques in connection with Columns 1 and 2 of Exhibit 84-D? A. Yes, the same techniques and procedures were followed in deflating these figures.

Q. Now, the only difference between Columns 1 and 2 on Exhibit 84-D and the combined figure in Columns 1 and 2 on Table 1, Exhibit 84-A, is that in 84-D you limited

yourself to dealing with sales to the so-called C stations? A. Yes, that is correct.

Q. Otherwise, everything you have done and testified to here applies equally to 1 and 2? A. The same procedures and techniques apply, yes, sir.

(6328) Q. And the sales volumes for C stations only, you took from these Exhibits 120 and 121 except for the years indicated when you took them from your own company records, Form S-1213? A. The gasoline sales volume—

Q. Wait a minute. We are talking only about Columns 1 and 2. A. I am sorry. I thought you had gotten over.

Q. No. A. Columns 1 and 2 were taken from those indicated exhibits.

Q. Column 1 was taken from the indicated exhibits and then Column 2 is the deflated value of Column 1? A. Yes, that is right.

Q. All right. Now, let's look at Column 3. Those are gasoline figures and will you tell us what the source of those is? A. Well, those are C account gasoline sales and for 1952 to 1955. They were taken from Exhibit CX-211. Exhibit CX-211 shows gasoline sales in barrels and we converted those to gallons. For the years 1948 to 1951, they were taken from the annual reports of the Texaco sales department.

Q. All right. Now, let's look at Column 4. In order to arrive at this TBA sales per thousand gallons, to get Column 4 you simply divided Column 1 by three; is that right? A. Column 1 divided by Column 3 equals Column 4.

(6329) Q. And in order to get at Column 5, you divided Column 2 by Column 3? A. By Column 3, get Column 5, yes.

Q. So that the Column 5 shows in terms of TBA a thousand gallons of gasoline that there has, in fact, been

a decrease in terms of deflated dollars in the sale of TBA for a thousand gallons of gasoline? A. Yes.

Q. That would mean that the sale of gasoline in quantities to the Texaco C stations was more than the increase to those same stations of TBA in terms of goods rather than in terms of dollars? A. In terms of estimated real goods, yes.

Q. So, if you discount the effect of the inflation of the dollar, the ratio of Firestone and Goodrich TBA sales to C stations was less in 1955 than in 1948? A. That is right, yes, sir.

(6330) Q. Now, let's look at Table 84-C.

In Exhibit 84-C, which is Table 3, as I understand it your Column 1 states the total TBA which you have shown as Column 2 combined of 84-A, only you state it now in terms of the price index rather than in terms of dollars? A. With 1948 as 100, yes.

Mr. Dias: Excuse me; will you read the question again, please?

(Question read.)

By Mr. Lorenzen:

Q. The answer was Yes; let me explain it a minute. A. Yes.

Q. The figure 34,187,000 which is the 1948 figure you have stated to be 100 in Table 84-C? That is the basis; is that right? A. That is correct; that is 100.

Q. 100. Now, in 1949 your figure on 84-A is down, it is 28,819, and you applied the percentage of decrease and therefore come up with the figure 84.3 on Table 84-C? A. That is right.

Q. And that is all you have done in each one of the figures on 84-C as you go down this column states in terms of percentage the increase or decrease of the figures shown

in column 2 on Exhibit 84-A? A. It is not the increase or decrease, of course, the (6331) increase and decreases are reflected there, but they are all subsequent figures, are expressed as a percentage of the 1948 figure.

Q. That is right. So that your total sales increase for 1948 to 1955 in terms of these deflated 1948 dollars is 16.6 percent? A. Yes, that is correct.

Q. And that has been the total real increase, the increase in terms of goods, in TBA sales under this sales commission plan as between 1948 and 1955? A. That is the estimated real increase; yes, sir.

Q. Now, let's have a look at the next column. In Column 2 you have taken the same years and you have made a similar computation in terms of percentages based on 1948 of automotive gasoline sales by the Texaco Company; is that correct? A. That is by the 15 divisions of the Texas Company. That is not the total Texas Company gasoline sales but it is the sales of automotive gasolines by the 15 divisions that cover the entire country.

Q. And you have taken out of any gasoline figures aviation gasoline sales, Naptha gasoline sales and sales were credited to the New York Executive Office? A. Yes. That is Naptha, not Naptha gasolines.

Q. Yes, Naptha. You believe that judged by the standards of the work that you do it is fair to compare the deflated (6332) total TBA shown in Column 1 with the division automotive gasoline sales shown in Column 2? A. Yes, the automotive gasoline sales being physical quantities do not need deflation and they are appropriately comparable with the deflated TBA.

Q. So that in quantity your automotive gasoline sales have increased from 1948 to 1955, 37.5 percent? A. That is right, compared with the 16.6 for TBA.

Q. Now, how about Column 3, what do you compare there with the increase in TBA sales under the sales com-

mission plan? A. In Column 3 we followed the same technique in comparing passenger car registrations, those figures are published by the Bureau of Public Roads. We again used 1948 as a hundred and convert the subsequent figures to percentages in terms of 1948.

Q. Now, those figures, too, are immune from inflation in the sense that they represent units and not dollars? A. Physical units, yes.

Q. Physical automobile units? A. Right.

Q. And Column 4, tell us the source of that column and what you did there? A. Column 4 is also based on estimates of car miles travelled by passenger cars as published by the Bureau of Public Roads, and again we use the same technique of expressing each (6333) year as a percentage of the 1948 figure.

Q. Based upon your experience, will you state whether you believe it fair and reasonable to compare the increases shown in Columns 3 and 4 in the neighborhood of 50 percent with the increase in TBA shown as 16 percent? A. Yes, those are physical measurements and both the passenger car registrations, the miles they travel, and the gasoline sales, they are all basic elements in—that is, the demand for TBA is derived from those basic factors.

Q. That is the demand for TBA you believe can be judged in terms of automotive gasoline sales, in terms of passenger car registrations and in terms of passenger car miles travelled? A. Yes. Not in absolute amounts but in the general direction.

Q. Now, in making these studies, Exhibits 84-A, -B, -C, and -D, will you tell me whether you have applied the same standards of accuracy and trustworthiness which you apply in making your reports to Management in the course of your business? A. My answer is definitely Yes.

Q. Will you tell me whether or not you have applied to Exhibits 84-A, -B, and -C, the same types of methods

and procedure which you use in preparing studies for the Management of your Company? (6334) A. Yes. We would not ordinarily have a problem, that they call for these specific series of applications, but the techniques and the procedures are the same.

Q. And is this deflated technique which you have used here, one which is unique or unusual, or is it regularly applied in your industry? A. It is used extensively in economic analysis.

Q. Have you made three charts which reflect in graphic form the computations set out on Exhibits 84-A, -B, and -C? A. Yes.

Q. Are these papers which have been marked Exhibits 85-A, -B, and -C, such graphic illustrations? A. Yes, they are graphic illustrations of the data applying on the other exhibit, that is shown as Table 1, Tables 3.

Q. That is, if you took the dollar sales and didn't measure it in terms of merchandise you would come out on Exhibit 85-A with that solid black line? A. Yes, that is the one shown in terms of current dollars. It would show—

Q. And it would show an increase above your base line in 1948 of 39.9 percent plus 16.6 percent, or somewhere in the neighborhood of— A. 56.5 or 56.6.

Q. 56 percent.

Now, in terms of real goods, after you have deflated (6335) that figure how much is the actual increase in TBA sales from 1948 to 1955? A. The estimated real increase is 16.6 percent.

Q. And that is exactly the figure which you used in Column 1 of Exhibit 84-C? A. That is right, also in Column 2 of 84-A.

Q. Yes, that is if you translated that into a percent as you did into a percentage at the foot of that column that is what it is? A. Yes.

Q. So this simply graphically illustrates the fact that a good part of the dollar increase is in terms of inflation and not in terms of goods? A. That is correct.

Q. Now, look at 85-B, is that a graphic illustration of the exact figures which you set out in Exhibit 84-C? A. Yes; that is correct.

Q. So the percentage of 16 shows there under deflated total TBA, and your second column shows increase in gasoline of 37 percent; your fourth column increase in passenger car registrations of 56-some percent; and increase in passenger miles in the last column of 52½ percent? A. That is correct. The same as the percentages on Exhibit 84-C.

Q. In 85-C, Column 4, is in that case reflected by the (6336) dotted line; is it not? A. I beg your pardon; repeat the question, please.

Q. Column 4 of Exhibit 84-D is reflected by the dotted line in the chart, Exhibit 85-C? A. In current dollars, yes, that shows the current dollar series from Column 4.

Q. And the lower black line which shows a decrease in TBA sales in terms of goods per thousand gallons is your Column 5 in Exhibit 84-D? A. That is right.

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(6340) *Voir Dire examination by Mr. Dias:*

Q. Do you have anything to do with publishing the annual report for the Texas Company? A. From time to time I am requested to do some checking of figures on it.

Q. Do you deflate the current dollars for the benefit of your stockholders in the same way that you have done it here? A. You mean, in our earnings figures we are deflating?

Q. Yes; you know as you go across and you show progress from year to year, do you also include one of these

tabulations deflating the dollars? A. You are thinking in terms of the 10-year summary?

Q. Yes. A. No, we do not do that.

Q. Do you know whether or not Texaco receives its TBA commissions on the basis of a deflated dollar or on the basis of current market values? A. It is my understanding it is on a percentage basis.

Q. Of the current market value? A. Yes, current dollars.

(6341) Q. Now, I think it is on table 848, can you tell us again how you arrived at the—strike that, let me ask you this:

In order to arrive at these battery sales figures during the years 1948 through 1954 you had to have some sales figures, is that correct? A. In the case of batteries we had the break-down only for the year 1955 of the years shown here. We did not have battery sales as such for the preceding years.

Q. I understand that. Go ahead. A. Then we took—there was a considerable degree of stability in the percentage that batteries bore to the total TBA sales in the years 1955 and 1956 which we had.

Q. Now, during the two-year period, namely 1955 and 1956, there was stability in the prices of batteries, is that correct, or in sales of batteries? A. No, it is in the—I was referring here in the ratio of battery sales to total TBA.

All right. Actually you are correct that there was considerable stability in 1954 and 1955 in the price of batteries. 1956, I don't have the index right at hand.

Q. Well, how did you determine that there was stability in the price of batteries in 1954 and 1955? A. Well, you have the price indexes here that are shown, you see in terms of 1947 and 1949 and 1954 it was 104.2, that is in the third column there.

(6342) Q. That is the third column? A. And 104.6 on a 1948 basis it was 101.3 and 101.7.

Q. Now, that 101.3 and 101.7, that is after this adjustment you have made; is that right? A. It is the same figure expressed on a different base.

Q. But my question was how did you arrive at the dollar value of battery sales during the years 1948, 1949, 1950, 1951, 1952, 1953, and 1954? What was the ratio you took? Did you use a ratio? A. Yes, we used a ratio in the case of Goodrich that ratio was 9.5 percent of total TBA and in the case of Firestone it was 6.3 percent. I am sure that is approximately correct. It could vary one tenth of a point one way or the other, but that is my recollection of those particular figures.

Q. Then what did you do, take a common average of the 9.5, 6.3? A. No, we handled them separately, we did the job for Goodrich and Firestone separately and then we added them together to come to the total.

Q. Do you recall what the ratio was that you hit upon. The ratio of battery sales to battery and accessory sales, the combination, what were the sale of batteries in relation to that? A. In the one case I mentioned it was 9.5 and in the other 6.3. The average as I recall it was between 7 and 8 percent.

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(6345) *By Mr. Dias:*

Q. I was just trying to figure out how you arrived at those early-year figures where you had nothing to go on other than a comparison of the sales during the years 1955 and 1956. It was strictly an estimate, isn't that correct? A. Let's talk in terms, if we may, of, say, Goodrich alone. How we deflated Goodrich. See, we deflated them separately and then added them together and we had the

figure for 1955 and 1956 where we had that 9.5 percent of total TBA was indicated to be batteries. And we applied that 9.5 percent to the total TBA all the way back through 1948 and arrived at a figure for 1948 which then became the base.

Q. If you applied the percent difference that you arrived at for the years 1948 through 1954 you had to first estimate the annual sales so that you had a figure to apply the percentage against, isn't that correct? A. That is correct, yes, sir.

Q. So, for those years, 1948 through 1954 the annual sales was a figure that you have just estimated? There is no source material for that? A. That is correct, yes, sir. We had no source. It had to (6346) be on an estimated basis.

Q. Then, in other words, the figures for the years 1948 through 1954, the dollar figures that you worked on as an estimate, it had to be assumed that there was the same degree of consistency in the ratio of sales of batteries to tire TBA as there were during the years 1955 and 1956? A. Yes, and we were reasonably certain that those numbers, percentages were not higher and were in all probability lower percentages of total TBA in the early years but we used the higher percentages that obtained in 1955-1956.

(6347) Q. In Exhibit 84-C, your Table 3, column 4, your source material is the Bureau of Public Roads data on total passenger car miles traveled, is that correct? A. Yes, it is their estimate; they are not actual figures.

Q. That is the point I wanted to bring out. You didn't mention that these were estimated figures? A. Well, if you will notice in the footnote down there you will notice the last sentence says while these are the actual figures released by the Bureau of Public Roads, they represent to be precise the Bureau's estimates.

Q. I understand you have a footnote, but I wanted to bring out that fact that they are estimates. Do you have any idea what those estimates are based upon? A. I have a fairly precise statement by the Bureau of Public Roads. If you would like I would be glad to—

Q. Statement by them to you? A. No, it is a publication that they put out indicating that they have used a sampling method in determining these mileages. They have checked it in the last couple of years, they have run a check on it and have found that I think the percentage of error was less than four-tenths of one percent.

Q. Now, would it necessarily follow that passenger car registration would or should be related to TBA sales? And we are talking about the replacement market now. (6348) A. That is really the underlying source of all TBA business. That is passenger cars and trucks and buses. And that, as I say, is the basic source of demand for TBA and we might have used the—included also trucks and buses there, but we would have come out with essentially the same percentage increase.

Q. Well, the fact that you have an increase in passenger car registration of 56.3 percent does not necessarily mean that your TBA sales ought to increase 56.3 percent; isn't that so? A. Yes, I agree with that.

Q. You think that— A. There is no precise—that is, there is certainly not a percentage for percentage relationship.

Q. That is right; then what is the relevancy of considering the passenger car registrations in computing TBA sales inflated or otherwise? A. It is this count of cars from which the basic demand for TBA emanates.

Q. But you take, isn't the biggest part of your TBA sales found in the tire and tube end of the business or the tire and tubes represent the larger portion of TBA sales? A. Yes, that is certainly true.

Q. All right, isn't it a fact that there are many two

and three-car owners now that didn't exist back in '48 and aren't (6349) there statistics along that line and if there are more than one car in a family, isn't each car driven less and the ultimate mileage driven per family would be about the same? A. Completely adequate statistics are not available as far as I know, and I have made some pretty thorough investigations as to the actual numbers of two and three-car families. But I think if you will look at column 4 you will find that the mileage has moved up not quite as much as the number of registrations but almost; 52.5 percent versus 56.3.

Now, that is indicative, I think, of the fact that while a family has two cars or three cars they may not drive them exactly three times as much, or two times as much, but they drive them more, they get more miles on them than they would have gotten had they had only one car to the family.

Q. Well, over the years '48 to date, hasn't the trend been to travel more by cars anyway? A. Oh, definitely.

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(6356) Whereupon, ELIHU MADISON was recalled as a witness for the Respondent, and having been previously duly sworn, testified further as follows:

Voir dire examination by Mr. Dias:

Q. Do you have a copy of 84-A through D before you, Dr. Madison? A. Yes.

Q. If you will, turn to 84-B and refer to the last main column on the right, "All commodities except farm and food." Now, it was from that category that you computed the increase in accessory sales; is that correct? A. It was from the last column. I used that in expressing other accessories in terms of constant 1948 dollars.

Q. Yes? A. Yes.

Elihu Madison, Recalled, for Respondents—Voir Dire

Q. Now, what do the indices show as to commodities in this particular category that you chose? I believe you stated yesterday that there are about 500 different products in that category. A. There are upwards of 500 products in the category of other accessories.

Q. And the only items in that group that faintly relate to automotive accessories were those battery cables, battery (6357) wires, and I think there are two other items there in the footnote here somewhere. But at any rate, there are only four of the rather minor items in the accessory field in those categories; isn't that correct? A. No. I believe we are talking about two different things.

All commodities except farm products and foods consist of probably upwards of a thousand items—I don't know how many are in there; I haven't counted them. I do know that the wholesale price index of all commodities contains about somewhere on the order of 2,000 commodities. I did not count the specific number of items in—

Q. No, that isn't necessary.

The point I am trying to make is that out of all those items the only ones that related to automotive accessories, as we are discussing them here, were these battery cables, battery wires, ignition wires, and there is a fourth one that you have in a footnote. Isn't that correct? A. I went through that list and I was able to find only a few items that related directly to the major TBA items, and those were the ones I mentioned.

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(6358) Q. Well, if it is in the footnote, it is on the exhibit. We will find it by and by. The fact is that in that category you found nothing dealing with spark plugs, as I recall your testimony? A. No series on spark plugs.

Q. Nor filters? A. No.

Q. Nor windshield wipers? A. No, I did not find one on windshield wipers.

Q. But on the other hand, there were such unrelated items as drugs, fertilizer materials, alcoholic beverages, toys, sporting goods, and so on; isn't that correct? A. Yes, among those commodities.

Q. Among those items mentioned in this category that you have used to determine the percent increase for automotive accessories? A. Right.

Q. Now, I think you testified or Mr. Lorenzen may have that you might have used a 30 percent increase, but in fairness you hit on a 13 percent increase in setting up your tables here, is that correct, for accessories? Thirteen percent increase from the year 1948 to 1955. A. Some of these items that we found and just took an (6359) arithmetic average of their increases would have indicated the higher number.

Q. And included in the average were these totally unrelated items that I have mentioned; isn't that the case? Sporting goods, fertilizer products, building materials, and so on?

Mr. Lorenzen: No. Now, wait a minute. You are confusing him as to what average you are talking about.

Mr. Dias: We are still talking about the table on 84-B.

Mr. Lorenzen: Yes, but your first question, Mr. Dias, related to this average that he computed on the basis of related items which he didn't take because he thought it was too high.

By Mr. Dias:

Q. Well then, I wish the witness would clear that up. A. I didn't take it because those few items did not seem to be representative of all TBA and it would have been substantially higher.

Q. So that when you computed this 13 percent, you took it on the basis of these four items that you mentioned yesterday, is that correct? The four more or less related— A. No. The 13 percent is related to the "All commodities except farm products and foods."

Q. All commodities in that particular category which includes these thousand or two thousand items; is that correct? (6360) A. It is the index on all commodities except farm products and foods issued by the Bureau of Labor Statistics.

Q. Yes. Now this 13 percent, is that an average of all those items in that category? A. It is that particular series which is published in the next-to-the-last column. That is a series exactly as published by the Bureau of Labor Statistics. And then I merely converted it to a 1948 base to arrive at the last column.

Q. Yes, I understand that. But what I am still puzzled about is how you arrived at that figure shown for 1955 as 13.2. Do you see that figure? A. Yes.

Q. Now, that indicates to me that from the year 1948 to 1955, or comparing 1955 with 1948, there is a 13.2 increase; is that what that is intended to show? A. There is a 13.2 percent increase, 1955 over 1948.

Q. Over 1948? A. Right.

Q. And that is on automotive accessory items; is that correct? A. That index was applied in order to deflate the other accessories group.

Q. Now, what other accessory group are you referring to? A. You will recall in our tables and exhibits we had the tires and tubes and then we had for 1955 this group of (6361) batteries.

Q. Yes. A. Then we estimated the batteries from 1948 through 1954 and the other accessories were then the residue after deducting the batteries and tires and tubes from the total TBA that became the other accessory group.

Elihu Madison, Recalled, for Respondents—Voir Dire

Q. Yes, I understand that. I know what the accessory group is, but my question is how do you arrive at the thirteen percent? A. By dividing the 117 by 103.4, which is the base year of 1948.

Q. And that 103.4 appears in the next-to-last column on the right on 84-B; is that correct? A. That is correct.

Q. And the 117 is the last item in that same column? A. Right. That is just the arithmetic conversion as we call it statistically, to a 1948 base of a series that is presently on a 1947-49 base.

Q. But again that is an estimate, isn't it? There were no indices for those items; that is strictly an estimate? A. You mean as determined by the Bureau of Labor Statistics, that their figures are?

Q. No, I say your arriving at that 113 figure is estimated on some unknown factor here because the Labor Statistics, as I understand it, do not have a statistical (6362) study of those other accessories other than those four items we have mentioned? A. No, they do not have a series on other accessories and we used this series of theirs converted to a 1948 base as the deflator for the other accessories. Since there is a large number of items in the TBA series and they are of very diverse characteristics, it seemed that this was the most appropriate deflator that was available, and it is eminently satisfactory for this particular purpose.

Q. Satisfactory to whom? A. Well, to us, certainly. And I think most any economist would accept that as a satisfactory deflator.

Q. Have you made this type of table before for the Texas Company, this type of study? A. We very frequently do make studies that involve use of constant dollar series. For example, in a productivity study versus wages we find it is necessary to deflate wages in order to make it comparable with productivity series.

Elihu Madison, Recalled, for Respondents—Voir Dire

Q. How about regular sales—I mean, everyday sales, do you make this type of chart for everyday sales, too? A. No, we do not make this—I do not make a daily chart.

Q. Perhaps my question was misleading. I don't mean a daily chart, I mean do you annually make up this type of a chart for a dissemination among your employees or among your officers? (6363) A. Well, we have occasions—I might say in economic analyses we use many dollar series and we find that it is necessary to express them in terms of constant dollars. As a matter of fact, the Department of Commerce, in issuing its Gross National Product series and its Disposable Personal Income series, they have recognized this need for expression in terms of constant dollars and they currently, for instance Disposable Personal Income, they express it in terms of current dollars all the way back. They make a conversion themselves. They do that on the national figures on Gross National Product because they recognize that you can not compare 1958 figures with, we will say, 1948 dollars unadjusted.

Q. Annually do you study all sales of the company? Do you make an annual study of the sales of the Texas Company? A. No.

Q. In promoting the sale of their various products, are you aware of the salesmanship involved in such things as exhorting salesmen to increase your sales and so on? Have you seen that type of material? A. I am not in the sales department. That would come mostly under the area of market research.

(6364) Q. Have you ever prepared a chart similar to this for dissemination among those salesmen to point out that although the gross sales have gone up you are not coming close to your '48 sales and so on? A. In discussing gasoline volume and forecasting demand we express that in terms of physical units—

Q. Yes. A. (Continuing) —rather than dollars.

Q. But your company also promotes the sale of TBA products and on occasion they send letters to the field telling various divisions what their sales were during a year, what they were last year, and showing an increase in sale or decrease and urging them to improve if they have lost business.

Now, it is my recollection that all those are based on current dollar figures. A. I haven't seen one of those letters.

Q. Do you recall making up a chart similar to this to point out to any specific division or group that their figures, although their gross sales were high, that they are nowhere close to meeting quota because when you deflate the dollar you boys in the field don't look so good? Have you ever found anything like that or done anything like that for the company? A. On TBA?

(6365) Q. Yes. A. Not—

Q. And isn't there a reason for that? Isn't there a reason for not doing that? Aren't we operating on a current annual basis at all times? Isn't your company? A. Well, when we as I say make our forecasts of petroleum products we are talking physical units.

Q. Yes, but I am talking about TBA now, that is also a product that Texaco promotes, and I would assume that they make studies of their progress in the sales of these commodities that they are promoting, but you have not made any studies similar to this for that product or those products, have you? A. No, I have not.

Q. I asked you yesterday, Dr. Madison, whether or not you were familiar with the annual reports of the Texaco Company? A. Yes, I am generally familiar with them.

Q. And do you prepare those? A. No.

Q. Or do you assist in the preparation of those documents? A. I render some assistance.

Q. You are familiar with the general makeup of them, are you? A. Yes, I am generally familiar.

(6366) Q. And you recall that progress chart that is usually in the annual report? Maybe I can refresh your recollection. A. I don't know a specific one to which you refer.

Q. I am talking about the type of chart that you normally find in these annual reports.

For example, I show you a picture of a chart showing gross income and its disposition, there is one form, and here is another one (showing documents to the witness). A. That is 1952.

Q. Yes. But the only thing I wanted to point out to you is the type of graph chart that is used and the showing of the increase dollarwise over the years. A. I believe if you will look in each one of those annual reports you will also find charts on physical units.

Q. Well, no, this deals—I will agree this deals with petroleum products, it deals with all sales if I recall the makeup of this? A. Yes, that is expressed in terms of dollars.

Q. Yes. A. Yes.

Q. And this is another type chart that is expressed in terms of dollars, is it not, earnings and cash dividends per share, in dollars? (Showing document to the witness.) A. Yes, that is expressed in dollars.

Q. So that you would say it is a fair statement that in (6367) publishing your annual report showing the progress of the company the comparison is always made on current volume and shown over the preceding year, isn't that so? Comparing this year's sales to last year's sales? A. We use both the quantitative charts in physical units as well as in dollars, because our annual report, our accounting is in dollars and we report it for stockholder purposes in that manner.

Elihu Madison, Recalled, for Respondents—Voir Dire

Q. And quantitative charts would be for these units of gallons of gasoline or quarts of oil or however you use those figures, isn't that the case? A. Well, I believe you will find that we have charts in there usually on crude production, domestic and foreign, in barrels.

Q. I don't doubt that you have other type charts, but the point that I am making is that in showing sales to your stockholders, in your published reports, you base your figures and your rise or fall on the current dollar volume of the Texaco Company? A. Yes, our financial statements are in current dollars. May I add—

Q. No, I think you have added enough.

Mr. Dias: Your Honor, I would like to object to the admission of 84A through D and it would necessarily follow 85-A through C, on the grounds that in computing (6368) the percent increase for batteries, just pure estimates were used, there are no basic figures for it and the same is true for the column dealing with all commodities or that is the column related to accessories; I refer to Respondent's Exhibit 84-B, the last two columns.

Further, it has been fairly well established, I believe, that this is not a normal procedure of the Texas Company. They operate as does everybody else on a current year basis in computing their sales and comparing them against prior year sales. Their payments for TBA sales or their commissions on the TBA sales are certainly in current dollar figures and I think the entire document, both documents, are argumentative and immaterial and irrelevant.

Mr. Lorenzen: Your Honor, before I answer that may I just ask Dr. Madison a couple of other questions because there has been some confusion here which doesn't reflect the facts at all and I just would like to get that clear on this estimate business.

Elihu Madison, Recalled, for Respondents—Direct

Further direct examination by Mr. Lorenzen:

* * *

(6374) Let me ask you, are you involved in making studies for the company for example, as to their cash requirements, and if so tell me whether you apply this constant dollar technique there? A. Yes, we recently made quite an extensive study of cash requirements, and, of course, that involved investment figures and we had to make our estimates based upon historical data which we had to convert to constant dollars in order to get comparability.

Q. And did you find that the government itself had recognized the need for this type of study by publishing figures on a constant dollar basis? A. Yes, they do that regularly as I had previously pointed out the gross that the products is expressed in terms of constant dollars, so the disposable personal income, they issue both series.

Q. Are you called in by the management of the company in connection with making estimates as to gasoline sales? A. We do not estimate gasoline sales, we estimate the market demand. A company of our size covering the territory that we do, the entire 48 states, is vitally interested in what the demand for products is going to be in the future.

Q. In making calculations along that line do you use current (6375) dollars or do you use constant dollars? A. Well, we make our estimates in volumes but we use series such as I mentioned, the gross national product and the disposable personal income. We find that there is a relationship between the demand for gasoline, for example, and the movements in disposable personal income.

Q. Is that disposable income in current dollars or in terms of constant dollars? A. We must use it in terms

of constant dollars. We cannot use it in terms of current dollars.

Q. That is, if there is a general inflation of 5 percent in the personal national income goes up 5 percent, that isn't going to help you any in making your forecast? A. It does not help our gasoline business.

Q. So that you have to translate that into terms of constant dollars? A. Yes.

Q. And you do do that and the management has called on you to make computations which call that technique into play? A. Definitely, and we do it regularly.

Q. And the government, again, has published those figures both of national gross product and national disposable personal income in terms of constant dollars? A. Yes, that is right.

(6376) Q. Thereby applying the very technique to dollars which you have applied here in making this computation? A. The same technique, yes.

Q. Are there any other examples you can think of where you use this constant dollar technique? A. Yes. For example, we were called upon to assist—that is, to furnish data in connection with the renegotiation of a tank car rental contract. We find that the rentals are related to the costs of operating and maintaining tank cars, so in order to put ourselves in a position to negotiate that contract or put our other departments into position to negotiate it, they must know how much the cost of maintaining and operating tank cars has increased over the period since they last negotiated a contract.

So, we determine the changes in cost of material and changes in cost of the labor, and make the adjustments for inflation and express it in current constant dollars so that they can determine whether or not the rental charge or proposed rental charge is in line with the real cost increases.

Elihu Madison, Recalled, for Respondents—Direct

Q. Would you say that you use this constant current dollar technique almost continually in the business which you do for the Texas Company? A. In our economic analysis we are forced to use constant dollar comparisons almost daily.

* * *

(6377) Hearing Examiner Kolb: When you get hold of a document which I don't know anything about I think it would be advisable for me to ask a few questions before we go into it. Ordinarily I don't like to inject myself into a hearing, but I have here a document which I would like some elucidation on if it can be made.

* * *

(6380) Hearing Examiner Kolb: Why was it necssary to use the constant dollar instead of the current dollar in arriving at your results in this exhibit?

The Witness: Exhibit 84-C?

Hearing Examiner Kolb: Yes.

The Witness: Because we are dealing in the other cases with physical units so in order to get a series comparable with physical units we had to put them on a constant dollar basis.

Hearing Examiner Kolb: Well, your commission plan (6381) provides for payment on the basis of the current dollar figure of sales and not on units, does it not?

The Witness: That is my understanding; it does, yes, sir.

Hearing Examiner Kolb: That is the reason it is hard for me to understand why you shifted into

units on this particular document when everything else is based upon the current dollar figure, your commisison, taxes, labor, everything else.

* * *

The Witness: We were endeavoring to show here the real increase in TBA sales. If, as in the illustration I mentioned yesterday, if tires—that would be the illustration with batteries, if batteries were selling at $15 and total sales of $75 in 1948, if your battery sales increased to $125 in 1955 but your price per battery had gone up to (6382) $25, if we used the current sales showing an increase from $75 to $125 it would be misleading when comparing with physical units because when we adjust that we find that we have sold five batteries in either year and we are endeavoring to compare that with other physical units here.

Hearing Examiner Kolb: Doesn't that presuppose that your battery will remain the same during that period?

The Witness: Qualitywise.

Hearing Examiner Kolb: In other words, if I believed the advertising which I see we have tires which are different from what we used to have, we have the tubeless tire, we have claims that the tires have longer mileage than they used to have. We have batteries which are dry cell which are supposed to last longer than the other batteries. That is not taken into consideration in this at all, is it?

The Witness: The index does not take into consideration quality. That is true in the case of automotive gasoline, there have been tremendous improvements in the quality of gasoline, and likewise in the quality of passenger cars.

The indexes are covering the physical units and as far as I know no one has been able to devise an index, a quantitative index that would take into consideration quality changes.

Hearing Examiner Kolb: Don't you think that is (6383) important when you are attempting to put in a factual document such as this?

The Witness: We have that quality improvement and quality changes in both of these series, both in automotive gasoline and in the—there are changes in the TBA. But it seemed essential to get a real or an estimated real increase in TBA to compare with these other physical series.

Hearing Examiner Kolb: Well, isn't your real figure for comparison your actual current dollars rather than your constant dollar where you have all these different matters which cannot be ascertained and which have a bearing upon the matter to a great extent?

The Witness: A comparison here had we used current dollars and put gasoline in current dollars, I don't believe it would have been of any significance at all, but when we get it to a real unit basis I believe we have a significant comparison. Gasoline price, for example, is I don't know offhand just what it is for these particular years, but it is lower than it was thirty years ago, but the quality is materially higher.

Hearing Examiner Kolb: Your quality has materially increased, the life of your tire has increased, has it not, if we accept the tire company's statements?

The Witness: The advertisements would certainly indicate that.

(6384) Hearing Examiner Kolb: Now, then, translating this information into Exhibit 85. Of course you have on 85-A, increase due to inflation, 39.9 perent. Real increase of 16.6 percent. In doing that aren't you disregarding the perhaps higher price that is being charged for the better quality merchandise that is being sold?

The Witness: There are some quality factors undoubtedly that cannot be taken care of in the index.

* * *

(6400) Hearing Examiner Kolb: I think that the next question would be directed to Mr. Lorenzen. I want to know what you expect me to find in connection with this exhibit, the purpose of it and what I am supposed to find if it goes in?

Mr. Lorenzen: Well, your Honor, the purpose of this document is this, the government in its case has put in some large numbers, total sales of TBA. Now, if we knew exactly what the issues were we might know what those numbers are in there for, but we don't know and we suppose that some argument may be made at some time in the future that those figures, dollar figures, represent an increased participation or percentage in the market to the extent of the dollars shown therein. And we think that if such a contention is to be made and your Honor is going to be called upon to resolve an issue based on that contention, you are not interested in what inflation has done here, what your Honor wants to know is under the sales commission plan how many more tires and tubes, how many more batteries, how many more spark plugs, how many more

fanbelts are you selling under the commission plan now in 1955, some seven years later after 1948?

Now, unfortunately there isn't any nose count. I mean it just physically isn't available, and in order to let your Honor see whether all that has happened here is (6401) that the price has gone up or whether what has happened here is that this market has been taken over to any extent by these companies, it is certainly essential for your Honor to know how much of the increase in dollar figures which the government has assigned here results from inflation which you would expect in any event, and how much does it represent an actual increase in goods, in commodities sold under this sales commission plan.

Now, we don't say, and we are not contending that your Honor is to find that exactly the increase has been 16.6 percent, but we are asking your Honor to compare these figures as against figures where a nose count has fortunately been possible, and those are comparable figures, gasoline gallonage, that is not subject to inflation; we know that the gasoline gallonage in these particular stations is up 37 percent. We know that the potential demand for TBA is up somewhere in the neighborhood of 50 percent; we have 56 percent more automobile registrations, 52 percent more miles which an automobile goes.

And while your Honor is perfectly correct that within limits perhaps the products are some better and perhaps they may not be any direct and exact relationship between those numbers, still I think your Honor can almost take judicial notice that a tire that you buy now, driving at the high speeds which they are on these highways, doesn't (6402) last you a good deal longer than what you had in 1948 in spite of all the advertising in the world, at

least that has been my experience and I have had to pay for them.

So that while we don't say that we want any exact finding this computation does show in general terms that comparing these TBA sales there has been nothing extraordinary, nothing out of line here; certainly there has been an increase. The Texas Company wouldn't be worth its commissions if it couldn't accomplish something in the way of sales, but the increase in terms of demand, in terms of the market has not been anywhere near the conclusion which the government would like your Honor to draw simply from the bare and naked figures themselves.

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(6427) Hearing Examiner Kolb: The hearing will be in order.

Mr. Royall: Dr. Beckman.

Whereupon, THEODORE N. BECKMAN was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Royall:

Q. Will you state your name? A. My name is Theodore N. Beckman.

Q. Dr. Beckman, what is your occupation? A. I am a professor of business organization at the Ohio State University, and a consulting economist.

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(6428) Q. What are some of the principal professional organizations that you belong to? A. I am a member of the American Economic Association, of the American Sta-

tistical Association where I was also vice president in 1940; of the American Marketing Association where I was vice president in 1939; and a director of the Board for a number of years, including the present time, as well as several others.

Q. Have you written or joined others in writing any text books in the marketing field? A. Yes, sir, I have.

Q. Will you give the name of one or two of those? A. One of them is entitled "Wholesaling." It is published by the Ronald Press Company, New York, first in 1926, and a third edition, the latest one, is now in press. It is used in all colleges and universities that give a course in wholesaling.

Another book is "Principles of Marketing," published also by the Ronald Press Company. It has gone through six editions between 1927 and 1957. It is also used in more than 130 colleges and universities as a text book at the present time.

Q. Have any of your books been used by the United States (6429) Armed Forces Institute? A. The "Wholesaling" book has been used for a number of years by the United States Armed Forces Institute.

Q. Have you written also other books that you might mention? Have you written one on credits and collections? A. Yes, sir. I have written ten other books besides the two mentioned, including the one on "Credits and Collections" published by the McGraw-Hill Book Company, "The Chain Store Problem" and others, not counting revisions.

Q. In addition to the books which you have written, have you issued any monographs or written any articles in your field? A. To the best of my estimate, I have written between fifteen and twenty monographs, special studies, over two hundred articles, and have contributed to encyclopedias on the subject of wholesaling, prices, and credit.

Theodore N. Beckman, for Respondent—Direct

Q. Have any of your monographs been written for the government? A. Yes, sir. I have written a number of monographs for the United States government, including the Bureau of the Census, published by the U. S. Government Printing Office.

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(6430) Q. Have you had an experience as a consulting economist for the United States government or state governments? A. Yes, sir.

Q. Will you give us an illustration or two? A. I was in charge of the first census of wholesale distribution for the U. S. Bureau of the Census. I was in charge of the second census of wholesale trade, and helped to prepare for the third.

I was chief consultant of the Office of Civilian Supply, the War Production Board. And a consultant and expert witness for the attorney general of the State of Florida.

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(6431) In how many proceedings have you testified for the government? A. In five proceedings for the federal and state (6432) governments.

Q. Have you testified before the FTC? A. Yes, sir, I have.

Q. Have you done any other work with the FTC? A. I have worked with some of the branches or divisions and officials, staff members of the FTC on the development of trade practice rules for two industries at different times—the wholesale optical industry and the wholesale plumbing and heating industry.

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(6434) Were you asked, in connection with the testimony you are going to give in this case, to prepare a study? A. I was.

Q. And what was that study to show? A. In this study I was attempting to determine the TBA sales in dollars per thousand gallons of gasoline sold by gasoline service stations, and I determined what I consider an irreducible minimum of such a figure.

Q. You did make such a study? A. Yes, sir, I did.

* * *

(6435) Q. In making your determination did you use governmental sources for your computations? A. I used all relevant governmental sources that were available to me, or anywhere, as a matter of fact. All sources that are relevant are available, and I used them.

Q. To what extent did you use other sources? A. Wherever governmental data were not available I had to resort to other sources, but I used the most authoritative sources of private character that are recognized by the trade and elsewhere.

Q. What general approach did you make to obtaining the information necessary for the conclusions which you finally reached? A. The approach was to develop the figures in question by using all available census material either as given or for purposes of bench marks, and any other material that was deemed authoritative, and I employed in every case what I consider well-accepted statistical techniques to compute the figures for 1954, 1955, and 1956.

Q. And that is the approach you had in this particular matter is it? A. Yes, sir.

(6436) Is that the course and the method by which you arrived at the TBA figures for 1954, 1955, and 1956 in relation to a thousand gallons of gasoline at gasoline service stations; is that the one you followed? A. It is.

Q. That is confined to the United States? A. Yes, sir.

Q. Will you state whether in your opinion as an expert the results which you arrived at for the purpose which you stated are in your opinion sound and trustworthy? A. I definitely would say so. In fact the figures I arrived at I consider most conservative calculations. I feel if it were possible to conduct a complete station by station nose count of TBA sales at the 181,747 gasoline service stations included in the 1954 census, I am certain that a substantially higher figure for TBA sales per thousand gallons of gasoline would result.

I believe that these figures are very conservative, upon which it would be safe to act. I believe the methods are such as to lead to conservative figures on which management and business could base decisions. And I also feel that the results are such that government could rely upon.

Q. Do you base that opinion upon your knowledge of the field you cover and upon the experience which you have had (6437) in other consultations and other investigations? A. Yes, sir, upon the whole range of study, research, and experience, in addition to the work on this particular situation.

Mr. Royall: Your Honor, I would like to have identified this document, a copy of which has been furnished counsel for complainant, tables numbered 1 to 9, and supplementary or alternative tables numbered 2-A, 3-A, 4-A, 5-A, and 9-A.

Hearing Examiner Kolb: That will be Respondent's Exhibit 86-A through N.

(The document referred to was marked Respondent's Exhibit 86-A through 86-N for identification.)

Theodore N. Beckman, for Respondent—Direct

By Mr. Royall:

Q. Dr. Beckman, will you at the outset tell us what these tables represent? A. The nine tables and five subsidiary or alternative tables represent the data that were used in the computations, their sources, the computations themselves, and the explanation of those computations which I utilized in arriving at the conservative figures of TBA sales per thousand gallons of gasoline for the years 1954, 1955, and 1956 as shown finally in the last column of table 9.

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(6459) Q. Dr. Beckman, we now come to Table 6. Will you please explain that table? A. Table 6 is basic in developing the total TBA sales per thousand gallons of gasoline for it is the purpose of this table to present a computation of all TBA sales by gasoline service stations which are shown for each of the three years in Column 5, or the last column of this table.

In order to develop that figure we had to start with total wholesale value of domestic replacement passenger car new tires and tubes, the figure shown in Column 1, and they are exactly the same as shown in Column 7 of Table 5.

They are merely transferred from that Table 5, after it has served its purpose, and they are the starting point for the computation in Table 6.

In Column 1 we have the dollar value of domestic replacement passenger car new tires and tubes. In order to make my computations I wanted to establish a relationship of the sales of tires and tubes by gasoline service stations to these figures shown in Column 1.

To develop that relationship I had to go back to the census for 1948 in which we had complete information on this, and there it is reported that sales of tires and tubes

amounted to $275,820,512. This figure had to be reduced to a (6460) cost basis because the figures in Column 1 of Table 6 are on a cost basis to stations or dealers.

They had to be reduced to a cost basis by taking a gross margin on tires and tubes of 26 percent so that the cost would be 74 percent of the selling price and thereby give a figure for sales by gasoline service stations in 1948 of tires and tubes amounting to $204,107,179.

That figure is expressed as a percentage of the sales for 1948 comparable to those shown in Column 1 of Table 6 for the years 1954, 1955, and 1956. A ratio is arrived at which is 42.83 percent.

This means that the relationship of tires and tubes sales by gasoline service stations at cost in 1948 to total sales of passenger car new tires and tubes was 42.83 percent.

I then assumed that that same ratio would apply to the years 1954, 1955, and 1956, which is not to my liking because this assumes that the gasoline service stations did not improve their competitive position in the sale of tires and tubes since 1948, which everybody in the industry knows that that is not so.

I simply assumed that for the sake of this calculation, which makes it ultra-conservative.

Then, in applying that ratio shown in Column 2 to the data in Column 1, we arrived at what the sales in tires and tubes would be for gasoline service stations in 1954, 1955, (6461) and 1956.

In order to determine total TBA sales I developed a relationship between tires and tubes sales and total TBA sales as given by the 1948 census. And that ratio was, on a cost basis, 46.69 percent. And in arriving at that ratio I took into account the fact that there is a different gross margin on batteries and accessories than on tires and tubes, the gross margin being higher on the items on batteries and

still higher on accessories. That has been taken into account in making the calculation.

And in that manner we arrived at the figure in the last column of Table 6 showing total TBA sales by gasoline service stations.

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(6462) Q. In other words, if you had given effect to the improved competitive position of service stations, which you say is generally understood to be true, if you had given effect to that would your ultimate figure of TBA per thousand gallons have been higher? A. Much higher.

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Q. Dr. Beckman, will you now discuss Table 7? A. Inasmuch as not all service stations handle TBA it is necessary to know how many do so. And that is the purpose of the data in Table 7.

Here, again, we start with the 1948 census, which had a breakdown of sales by commodity lines. In that census it was found that 62.7 percent of all gasoline service stations covered by that census handled tires and tubes, and 70.1 percent of them handled batteries and accessories.

We do have data on the number of new stations authorized. They are shown in Column 2 of Table 7.

(6463) We also have data on the total number of service stations which we had in 1954, 1955, and 1956, and they are shown in Column 1.

From those data it was possible to determine how many stations were discontinued during the year. Then I made two assumptions, or presumptions. One of them was that the stations discontinued were of the average type, the average mix, and therefore 62.7 percent of them were handling tires and tubes, and 70.1 percent of them were handling batteries and accessories.

The reason for doing that, it seemed to me that any other premise would seem unsound because we know that many stations are discontinued for various reasons, like sickness, death of operator or owner, encroachment of turnpikes, changes in real estate patterns where you have to abandon a corner, and many other reasons. So the soundest presumption was that they were of the average mix.

The second assumption or presumption that I made was that practically all of the new stations—in this case I used 97 percent to allow a little leeway—that 97 percent of all the new stations would be handling TBA.

Then I made the computation to determine how many stations in 1954, 1955, and 1956 would be handling tires and tubes, and how many of them would be handling batteries and accessories. And those data are shown in Columns 4 and 6, (6464) respectively.

Mr. Royall: Are there any questions on Table 7?

Mr. Dias: Just one question.

On that 97 percent of the newly constructed stations, that would be handling TBA products, were all those newly-authorized stations built by oil companies, or would that include all?

The Witness: No. All of them. They are taken, as you see, from the source from the Petroleum Facts and Figures for two years, and for one year from the National Petroleum News Fact Book, and they are the kinds of data that you will find in all publications which give this kind of information.

This is for all new stations. And I assumed that there may be a few stations that would be in high traffic areas, confining themselves almost altogether to gasoline and petroleum products, although that number would be very, very small. If all of them were handling TBA it wouldn't affect our result be-

cause the difference between 97 percent and a hundred of 9,000 stations is not significant.

And if the ratio were less than 97 it would show a higher TBA because we would have fewer stations by which to divide the total TBA business.

* * *

(6465) Q. Do Tables 8 and 9 require any explanation? A. A very brief one, because all of the data in Table 8 and in Table 9 are derived as indicated in the footnotes the sources from data already computed. So there is nothing new in either Table 8 or in Table 9, unless it is desired for me to explain the thing. I believe that they are self-explanatory.

And they result in the final figures in Table 9 in Column 5 of $36.26 for 1954, TBA sales per thousand gallons of gasoline; $38.10 for 1955; and $38.37 for 1956.

* * *

(6473) Hearing Examiner Kolb: The hearing will come to order.

Whereupon, THEODORE N. BECKMAN was called as a witness on behalf of the Respondent and, having been previously duly sworn was further examined and testified as follows:

Direct examination (resumed) by Mr. Royall:

Q. Dr. Beckman, you testified yesterday about some difference in scope between the census figures of 1948 and 1954. Will you explain this and its effect, if any, upon your computations? A. The change in the scope was with regard to all retail trade. It was not made specifically for gasoline service stations or any other kind of retail business.

And as I quoted yesterday, it said that "the 1954 Business Census," and that relates to retail trade, all retail trade, "excludes those establishments with no paid employment in 1954 which had a sales volume of less than $2,500 in that year."

In examining the data I find that with regard to gasoline service stations that $2,500 figure limitation is of no relevance or application for this reason: As a result (6474) of the change in scope, the number of stations was reduced by 8,593, and the total volume of business was reduced by $286,894,000, which averages per station that was left out because of the change in scope, $33,387, as against an average sale, 1948, for all stations covered by the census, of $35,896, which means that the thing that affected the stations that were left out was the "no paid employment" rather than the size, because in size the stations that were left out were pretty nearly pretty close to that of the average.

Q. Would that change in any way affect the accuracies of your computation? A. Not at all.

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(6476) Hearing Examiner Kolb: Where do you get those figures?

The Witness: I get them by taking the census figures, including all stations for 19—may I use the blackboard, your Honor?

Hearing Examiner Kolb: Yes.

The Witness: If you take all stations included (6477) in 1948—188,640, which are given here in this Volume 2, United States Census of Business, 1948, Retail Trade, General Statistics, page 21, .02—if you take the 188,640 stations, the total volume of business done by those stations was $6,757,047,000.

When the census changed the scope for 1954, they adjusted these by applying the same scope to the 1948 data for which they had all the records, and they ran those records through the IBM equipment. And so they came out on a basis that is comparable with 1954—they wanted comparability—they had then—they cut it down by 8,193, I can compute the number—and the volume of business done was $6,470,153,000. Which means that 8,593 stations that were taken out of the 188,640 in order to get data comparable with 1954, resulted in a reduction of $286,894,000.

If you divide 286 million by the 8,593 stations you will find that the average is 33,387—it is a pencil mark and I can't make out the figure—dollars per station of those that are eliminated.

If you divide $6,757,047,000 by the total they had to start with, 188,640, according to the 1948 census, then the average per station was $35,896.

So, what I am saying is that the stations that were eliminated were eliminated not because of their small size—their size was nearly the average—but because (6478) they had no paid employment. They were operated by the owner or his family.

* * *

(6481) *Cross examination by Mr. Dias:*

Q. Have you made any studies to find out how many Texaco stations fell within that 8,593 range? A. I have not made a specific study, but I do know—

Q. Stop right there. If you have not made a specific study, you do not know from a specific study. A. I do know enough that all C stations would be included in that, and some of the D stations. If over fifty percent of their business—and that is true of all C stations—is of gasoline

and other automotive petroleum products, they would be included of necessity.

Q. They would be included in the 8,593? A. They would be included in the figures which we are using for 1954, 1955, and 1956. And they would also be included in the 8,593 if in 1948 they had no paid employment, just like any other station.

Q. Getting back to my question, did you make a study of that, and can you tell us how many Texaco stations fell into that category? A. In the 8,593?

Q. Yes. A. I would say from—

Q. Did you make a study? First, did you make a study? A. Not a specific study; but I examined the data.

(6482) Q. Which data? A. And I have a basis.

Q. Which data? A. For the different stations, the volume of business they were doing, approximately.

Q. You studied the data for the different company stations; is that correct? A. For all the stations in classes, like C stations and D stations. All C stations, in my opinion, would qualify as gasoline service stations.

Mr. Royall: He asked about Texas stations?

Mr. Dias: That was the question.

By Mr. Dias:

Q. Do you know this about Texaco C stations? A. I am certain.

Q. No. I say have you studied company records concerning Texaco C or D stations? A. I know their character.

Q. I don't want to know about their character. I want to know whether or not, in making these studies, you referred to Texaco records. Did you use Texaco records? A. Not for these particular computations.

Q. You don't know, then— A. They were—

Theodore N. Beckman, Recalled, for Respondents—Cross

Q. You don't know how many, if any, Texaco stations fell (6483) in one category or the other? A. Yes, I do.

Q. What is the basis of your knowledge? A. The basis of my knowledge is the nature of the C station category, which I am sure one hundred percent of them would be included in the census canvass. And a number, some of the D stations, if their business was over fifty percent in gasoline and other automotive petroleum products.

Q. Is that knowledge based upon your examination of Texaco records? Answer just Yes or No to that question. A. It is based on more than that. An examination of some of the records, an examination of many of their stations that I have been observing for some time, especially the last couple of years, and especially observant of that, and every one would fall in that category.

Q. How long have you been engaged in this particular study, 86-A through N? A. This particular one has extended for a considerable period of time; probably over a year.

Q. You undertook this study a year ago? A. More or less, with an attempt to find all the information that could possibly be found on the subject that would enable me to make a scientific and objective determination. It was done among many other things.

Q. Let's return to these stations here. (6484) You say by observation and some study of company records you know this to be true. How many of the Texaco stations then fall within that 8,593 category? A. I doubt whether many stations would fall in that category, whether any substantial number would be in it.

Q. Do you know how many would fall within it? A. No, I did not make a special study of that. I did not deem it relevant.

Q. The upshot of this diagram on the blackboard is that there are some stations that aren't computed in that tabu-

lation that you made; is that correct? A. According to the 1954 scope.

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(6517) Q. Referring to Table 3, Respondent's Exhibit 86-D, have your or has the Texas Company given you for study any information that would indicate that the ratio was similar to that shown in your Column 2? In other words, that their ratio of sales— A. No, sir. This was in an entirely independent study, based on outside sources without reference to any particular company, because I was trying to get an average for the whole United States.

Q. Referring to Column 2 again, in your study have you noted that gas prices have increased over the years? A. Yes, sir. So have other prices.

Q. And does not your source, the Ethyl Corporation publication, again at page 4? A. No, sir. Page 4 merely included—

Q. I haven't asked my question. A. Pardon me.

Q. Does not that page indicate that since 1954 the refiners' sales of premium automotive gasoline has shown a greater percentage increase over previous years than has regular grade? A. In the year 1955, did you say?

Q. Each succeeding year after 1950. These tables show that refiners' sales of premium automotive gasoline have (6518) shown a greater percentage increase over the previous year than has the regular grade? A. In some years it was slight. Like in 1951 there was an 8½ percent increase in premium grade and an 8 percent increase in non-premium. I don't consider that substantial or significant statistically.

Q. How about 1952? A. 1952, yes; that is a significant increase, 12.9 percent over the preceding year as against the 3.6 percent for the other gasoline. But I see no significance with respect to the use that I made of the data.

In the first place, I did not use any data except for 1954, 1955, and 1956.

Q. And in 1954, premium increased 4.9 percent over the previous year, and non-premium increased 1.9; is that correct? A. Yes, sir.

Q. And in 1955, premium increased 8 percent? A. And the other 6.8 percent, which is insignificant.

Q. And in 1956, premium increased 5.9 as against the 3.6 for non-premium? A. Yes, sir; that is correct. But I see no relevance to any of those differences.

Q. Now, if you will, refer to Table 4, and I direct your attention to Column 3. Before I get to my question, I will (6519) ask you to note that in your footnote 2 you have referred to the National Petroleum News Factbook of 1957 and 1958.

My question is in connection with Column 3, where you show average gallonage per station. If you will turn to page 182 of the National Petroleum News Factbook for 1958 and 1959 you will note that the average gasoline per station for the years 1954, 1955, and 1956 are stated to be 176,558, 188,079, and 193,448, respectively? A. Yes, sir; but that is due to the fact that while they have used the same number of stations which I have used, they have used a different figure for total gallonage of gasoline that I don't know anything about, that I do not know where they got, what it includes and how accurate the thing is.

If you assume that their total gallonage figure is correct, which I do not for a moment, because I have never been able to find any such figure and the one which I computed is a calculated figure in terms of knowns rather than estimates, then I will not accept at all the figure of average gasoline gallons per station per year. It is a grossly exaggerated figure and I do not know where they got it.

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Theodore N. Beckman, Recalled, for Respondents—Cross

(6526) Q. Referring to columns 2 and 5 in Table 5, does your study show what the average price per tire and tube was that was sold by Goodrich and Firestone? A. No, sir. This is a study for the whole United States.

* * *

(6529) Q. How do Goodrich and Firestone gross margins and selling price for sales to Texaco outlets compare with the average gross margins as explained in footnote 2 in Table 6? A. I am sure that they average about the same.

(6530) Q. Did you study their records? A. I talked with enough people and economists and research men and others, not only of the respondent's but of other companies—

Q. Did you study Goodrich and Firestone records? A. No, sir, not in detail.

* * *

(6533) Q. Here is another one that you may have explained. How do you arrive at the figure 62.7? I am referring to footnote 4 on 86-K. Would you explain how you arrived at the figures of 62.7, 70.1, and 97? (6534) A. I will be glad to.

If you will go to the Census of Business 1948, Volume 2, Retail Trade, Page 21.02, and take the number of stations handling tires and express them as a percent of the total number of stations and analyzing their sales, you will get 62.7 percent.

Then do the same thing for batteries and accessories. Take the number of stations reported as handling batteries and accessories—and they also give the amount of business they did in those products—and express that number of stations as a percentage of the total, you will get 70.1 percent.

Q. And that 97 figure? A. The 97 figure is, you might call it, an assumption. I assumed that practically all of the service stations which had been built in recent years are of a type in size, in space, and in facilities, that would normally be handling TBA products.

If that number were smaller, it would show a much higher TBA per thousand gallons of gasoline, again because we would have fewer stations by which to divide the total sales of TBA. And it certainly couldn't be higher than a hundred percent. I simply allowed for a station here and there that may be built only for the gasoline business.

(6535) Mr. Dias: Your Honor, that concludes the cross examination. I would like to object to the document on the grounds that it is hearsay in that some of the source material relied upon is by the Bureau of the Census. And while the witness may have been familiar with and worked with the Census Department in the earlier years he himself has nothing to do with it in 1948.

He I believe stated to you yesterday that some of the documentary data that he used was used only because there was nothing better available, and I contend that the best evidence here would be a study showing the TBA sales per thousand gallons of the Texaco Company.

We have general overall figures, industry-wide figures, but what is the situation in connection with the Texaco stations, and for that matter Conoco and others, but primarily Texaco. Trying to assign an average by saying that all Texaco stations meet the average that has been attempted to be set up in this tabulation is without basis. I think therefore the tabulation is immaterial because we don't know

what the situation is in connection with the Texaco Company stations.

There are computed in the witness's figures certain stations which were excluded in his blackboard example. Finally, apparently, on occasion the item disagrees with some of his own source material.

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(6540)

THEODORE N. BECKMAN was called as witness on behalf of the respondent and, having been previously duly sworn, testified further as follows:

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Hearing Examiner Kolb: I have decided to rule on this document now rather than wait until tomorrow morning. I believe that the objections to it being hearsay are not sufficient because it is based on the Census reports, and so forth. While I have serious reservations as to the probative value of the document itself, I believe that will go to the weight rather than to the admissibility.

I will receive the document in evidence as Respondent's Exhibit 86-A, -B, -C, -D, -F, -H, -I, -J, -K, -L, and -M.

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(6541) *Redirect examination by Mr. Royall:*

Q. Dr. Beckman, in connection with the document which you were questioned about, and gave some testimony about before adjournment, and as to which there was some discussion as to the possible incorrectness, have you any explanation to make of that? A. Yes, sir; I have.

Your Honor, I am not infallible. No human being is. But I try to do my work in the most accurate and scientific

manner possible. Naturally when Mr. Dias called my attention to some data on page 182 of the National Petroleum News, Mid-May, 1958-1959 Edition, which I have not seen before and to which I have naturally not given any attention, during the lunch-hour I examined those data and I found (6542) what may be the reason for the discrepancy.

It is obvious that in the dollar volume data, for example, they give the same figure which I have from the Census of Business for 1954, $10,744,000,000. But for the years 1955 and 1956 they give the data from the U. S. Department of Commerce, Office of Business Economics, without adjusting them to the Census bench mark.

So they are using really two different sets of data.

These data for 1955 and 1956, as given in this source, are the same which I have in my Table No. 1 before the adjustment factor was applied.

Q. And if a proper adjustment had been made in 1955 and 1956 as was made in 1954, you would have been in exact accord? A. Would have been pretty much in accord.

Furthermore, for your interest, you will note that the U. S. Department of Commerce itself decided to make that adjustment beginning with March, 1957. The reason they couldn't do it earlier is because the latest figures on the Census taken for 1954 do not generally become available until two, two and a half, or three years later.

So that there is no discrepancy. It is just a mise-use of figures.

Q. By the publication? A. By the publication.

Q. And as to the change, the adjustment which was made in (6543) 1957, by the Commerce Department? A. Those figures from March, 1957, and the Department of Commerce estimates will be adjusted down by 6.544 percent, the same as I have done in my Table 1.

Q. In other words, the system they followed, as soon as they got the 1954 census, is exactly the same that you had previously followed without knowledge of it? A. Absolutely. That is why I was misled.

Mr. Royall: All right, sir.

Recross examination by Mr. Dias:

Q. Does that reflect itself in the average gasoline per station per year? A. It would reflect itself in large measure. They may have made another little estimation which I know nothing about, but that would be the biggest factor in the situation.

Q. How would that affect the average gasoline per station? A. If it were reduced proportionately, then it should be reduced by 6.544 percent. So that when they have 176,000 gallons per station, if that were a correct figure, it should be reduced at least by 6.544 percent, simply on account of misusing the figures, the dollar values.

Q. Would you mind reducing it by that amount and see where you come out? A. There may be some other factors. That is the biggest (6544) factor.

Q. Would you like to do it on the blackboard or on a tablet? A. I don't know what that will amount to.

Mr. Royall: Can you do it cumulatively?

Mr. Dias: I don't know.

The Witness: It would be roughly 160,000 gallons instead of 176,000. But there is no doubt some other factors are involved.

Mr. Barton: Not only that, but is that one adjustment for one year?

The Witness: That is for one year.

Mr. Barton: Then there are two adjustments here between 1954 and 1956, aren't there?

The Witness: Each set of data would have to be adjusted by—

Mr. Barton: Six percent down?

The Witness: Six percent down.

Mr. Royall: Then a multiple adjustment would bring it close to your figure, would it not?

The Witness: I do not think that would be a multiple adjustment.

Mr. Royall: You do not?

The Witness: No, sir.

By Mr. Dias:

Q. You are saying, then, that there would be a difference (6545) between the figures shown in this 1958-1959 column for average gasoline per station and the figures that you arrived at? A. The only thing that I wanted to point out to your Honor is this: That I am certain that the dollar volume figures were wrong. They used the correct ones for 1954 but the incorrect ones without the adjustment for 1955 and 1956.

What else is involved in the other part of the table I haven't had a chance to examine. But this accounts for a substantial difference.

Q. Does it affect the average gasoline gallonage as compared with your figures? A. Oh, yes; it does.

Q. As shown on your Table 4? A. It does affect it because I do not know what other computations they have made in the total gallonage of gasoline besides the erroneous dollar values. If they made a mistake in that they may have made a mistake in some other things.

* * *

T. N. Beckman, Recalled, for Respondents—Redirect

(6546) *Redirect examination by Mr. Barton:*

Q. Dr. Beckman, I show you Respondent's Exhibit 87 for identification, and ask you what the sources of the information contained thereon are, and what it indicates. How do you read it? A. There is only one source for the basic data; namely, the number of establishments and total sales for 1948 and 1954, and that source is the United States Census of Business, Volume 3 for 1954, as shown in the footnote to that table.

(6547) The only things that I computed from those data were the sales per establishment in each of those years, and the percentage change from 1948 to 1954 as shown in the last column.

Q. What is the basis upon which the Census classifies a tire and tube wholesaler as a tire and tube wholesaler? A. A tire and tube wholesaler is one, the majority of whose total volume of business is in tires and tubes.

In other words, to be classified as a tire and tube wholesale establishment that establishment must do the majority of its business in tires and tubes.

Q. Do you mean over 50 percent? A. Over 50 percent.

Q. And in connection with the total sales figure in the second line of Respondent's Exhibit 87 for identification, what products are included in that total sales figure for both years? A. In those sales are included not only tires and tubes but all other products handled by tire and tube wholesalers.

Q. As classified by the Census? A. As classified by the Census.

Q. Doctor, what is the fact with respect to what the Census shows as to whether there are other wholesale establishments other than those classified as "tire and tube wholesalers", who handle tires, batteries and accessories, (6548) and if so, how many does the Census indicate were

engaged in that in 1954? A. To the best of my knowledge, following an examination of the Census data, I would say that over 15,000 establishments are included in the Census which handle automotive accessories, batteries, tires and tubes, as well as other products but the majority of whose business is not in tires and tubes necessarily.

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Voir dire examination by Mr. Dias:

Q. Will you tell us again what is included in all kinds of wholesalers? A. All kinds of wholesalers? Wholesalers in all kinds of business.

(6549) Q. Automotive or otherwise? A. Yes, sir.

Q. I thought I understood you to say that that was restricted somehow or other to automotive accessories? A. No, sir. You see, in 1954 we had 165,153 establishments operated by wholesalers of various kinds. Of that number over 15,000 are known to have handled some TBA products. But we do not know the exact amount.

Q. 15,000 of that 165,000-plus? A. Of that 165-plus, yes.

Because we have grocery wholesalers, hardware wholesalers. Some hardware wholesalers handle tires and tubes and batteries and automotive accessories.

Q. Among the tire and tube wholesalers, would there be some that also handled accessories? A. Yes, sir; because in order to be included in this classification all that is needed is that over 50 percent of the business be in tires and tubes.

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(6552) Mr. Barton: Isn't one of the tests going to be whether or not the testimony elicited by the Government constituted a fair sample of all of

the wholesalers engaged in business in the country? And isn't any kind of information that can be brought to bear of an authentic and authoritative nature germane to the decision on that subject?

Hearing Examiner Kolb: If you were showing the increase in the sale of tires, for example, or the sale of batteries or the sale of accessories as such, I might see something to your contention. But you have rain coats, rubber boots, shoes and everything else.

* * *

Redirect examination by Mr. Barton:

(6553) Q. Dr. Beckman, I show you Respondent's Exhibit 88 for identification, and ask you what it is, what the source of the information is? A. It shows net sales of specified tires and rubber manufacturers, 1955 compared with 1948; the amounts are given in thousands of dollars, and the percent change has been computed for 1955 as compared with 1948.

Q. What was the basis for the selection of the companies who were reported on? A. I took all tire and rubber companies for which there was published information, and that included 13 companies. The information was available from Standard and Poors' Corporation Manuals for each year.

(6554) Q. And are there any tire and rubber companies not included here, and if so who are they and what was the basis for not including them? A. To the best of my knowledge there are two other tire and rubber manufacturing companies. One of them is Dunlop. But the bulk of their business is in foreign countries, and their data are consolidated. A very small part is done in the United States.

The other company is Gates Rubber Company, but that is a privately owned corporation for which no information is ever divulged, and is not certainly in any published form.

T. N. Beckman, Recalled, for Respondents—Redirect

Q. I show you Respondent's Exhibit 89 for identification, and ask you what it is, and what is the basis on which it was prepared? A. It is a chart prepared from the data in Respondent's Exhibit 88, for the purpose of simplifying the presentation and showing the relative position of the B. F. Goodrich Company and Firestone Company in relation to the other eleven companies for which we have the net sales for those two years.

Of course as shown quickly by this chart, there were five companies which enjoyed a much larger increase in net sales in 1955 as compared with 1948—a much bigger increase than Goodrich and Firestone—and there were three others below but not far below.

(6555) It was a means of measuring the business health of the tire and rubber manufacturers, all for which I could get information, as reflected in net sales.

Q. I show you Respondent's Exhibit 90 for identification and ask you what it is? A. Respondent's Exhibit 90 is entitled "Total assets of specified tire and rubber manufacturers, 1955 compared with 1948". Again the data are taken from the same source, Standard and Poors' Corporation; Standard Corporation Descriptions, 1956. And the percent changing for each of the companies was computed from those data by me and are shown in the last column.

Q. I show you Respondent's Exhibit 91 and ask you what it is? A. It is a graphic presentation of the results shown in the last column of the preceding exhibit, in order to see at a glance how the various companies fared in their business health as reflected by total assets. There it shows that eight companies enjoyed bigger increases—some very substantially larger increases—than did Firestone and Goodrich; two others enjoyed increases almost like Firestone and Goodrich, somewhat below; and every one of the companies enjoyed an increase of not less than 40 percent during that period, and it went up as high as 162.2 percent.

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T. N. Beckman, Recalled, for Respondents—Voir Dire

(6556) *Voir-Dire examination by Mr. Dias:*

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Q. Let's start all over again. In 1948 give me the first four in the industry, in net sales, in the order of (6557) importance. A. Goodyear Tire and Rubber Company.

Q. That was first. A. First. Firestone Tire and Rubber Company, second. United States Rubber Company was third. B. F. Goodrich Company fourth. General Tire, fifth.

Q. In the year 1955? A. In 1955, Goodyear Tire and Rubber Company was first; Firestone was second; United States Rubber Company was third; Goodrich Rubber Company was fourth, and General Tire and Rubber Company was fifth.

Q. Do you have any figures to show the years—I mean the position of the companies between the years 1948 and 1955? Did the relative posifions of those companies change any during those intervening years? A. I have some data but I haven't checked them for that particular purpose. They are all available from Standard and Poor. In making my study I was not concerned with who is first and who is second, but what has happened to them during the period in order to see whether the little fellow did any better or worse, or any of the companies regardless of size. I did not deem size important from that point of view.

Q. Do you have anything to show the comparative positions of these companies in terms of total assets for the year (6558) 1948? A. Yes, sir.

In terms of total assets, 1948 Goodyear was first; United States Rubber was second; Firestone was third, but that was close, very little difference there; Goodrich was fourth; and General Tire and Rubber Company was fifth.

* * *

T. N. Beckman, Recalled, for Respondents—Voir Dire

Q. What about 1955? A. In 1955 Goodyear was first; Firestone second; United States Rubber third; Goodrich fourth; and General Tire fifth.

Q. How do total assets feature in this picture at all? A. Total assets, when you are trying to determine the business health of a company, there are several ways in which it can be done. Usually we use more than one measure. One of them of course is their sales; what is their sales volume. In other words how much business do they do.

Whenever Fortune magazine publishes the 500 biggest corporations in the United States each year, that is the first thing they do. They range them according to the total volume of business. So General Motors the largest would come first, and so on.

Another thing which is commonly accepted is the total assets. After all, in order to operate the business you have to have facilities, plant, equipment, and I am talking about tangible assets. We did not include anything of an intangible character in these figures. No good will or (6559) anything of that sort.

That shows the substantiality of the business. And it is considered a universally accepted index of a business strength or weakness.

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(6570) Hearing Examiner Kolb: I will sustain the objection.

Mr. Royall: Your Honor, may I say a word before you make that absolutely final. It is not much of my business, but it is a little.

As I understand one of the charges in this case, this commission plan will hurt the tire and tube wholesalers. It appears that tire and tube wholesalers, taken across the board, are growing both in sales and in number of establishments, greatly or more rapidly than have any other kind of whole-

salers, or all of them put together, rather. It seems to me it is a very cogent argument against that contention. That is the way I feel about it.

Mr. Dias: If it is shown first that the sales had been made to the stations involved, namely the Texaco market. That is item number one.

(6571) Second, if it is also shown that their sales have increased due to the sales of tires and tubes. We don't know what their gross sales have increased from. It may be rubber shoes, it may be door hinges, it might be anything. We don't know that.

* * *

(6575) *Redirect examination by Mr. Royall:*

Q. Dr. Beckman, state whether or not the figures appearing on Exhibit 86-M as to the TBA sales per one thousand gallons, such figures being stated on the exhibit, whether they in your opinion as an expert represent the irreducible minimum of the average TBA sales at station cost per thousand gallons of gasoline by service stations in the United States for the years 1954, 1955, and 1956.

Mr. Dias: I object to the question. If there should be some other figures shown here I would assume that the witness would have put them in. If these are not his opinions, and if the opinions are not based on this work that he has gone through to arrive at them, then I don't understand the purpose of the exhibit.

Mr. Royall: He stated once before, your Honor, in one instance—

Hearing Examiner Kolb: Let's not argue. I will overrule the objection. Answer the question.

T. N. Beckman, Recalled, for Respondents—Redirect

A. In my opinion the figures shown in Exhibit 86-M, the last column of TBA sales per thousand gallons of gasoline, represent a irreducible minimum.

* * *

(6576) The Witness: Your Honor, I was simply going to point as an illustration to a couple of things which are in the record in my calculations. But I deem them to be unusually conservative and not reflecting what I would do if I were to make an objective study for any other purpose. And because of that the amount which we show in Exhibit 86-M, in the last column, are understanding what I think would be the correct calculations, the correct results, if we used those at least two adjustments which I made in a most conservative fashion.

* * *

(6577) Q. Do you consider the figures stated in the last column of Table 9 a maximum figure for TBA in relation to a thousand gallons? A. On the contrary, I consider them a irreducible minimum.

* * *

(6580) Q. I note in a table which you testified about this morning, and which you testified orally about, that it is stated that in 1948 the percentage of TBA to the total gasoline service station sales was 9.1 percent. If this 9.1 percent were applied, what would be the dollar figure of TBA in relation to a thousand gallons of gasoline?

Mr. Dias: Before you answer, may I know what it is you are referring to? Are you referring to this table?

Mr. Royall: Yes.

Mr. Dias: That table has been stricken.

* * *

T. N. Beckman, Recalled, for Respondents—Redirect

Hearing Examiner Kolb: The objection will be (6581) sustained.

Mr. Royall: Your Honor, may I tender the answer? If permitted to answer, he would testify $56.64.

By Mr. Royall:

Q. Dr. Beckman, have you during the course of your studies of the TBA problem made investigations independent of your computations, and have you made inquiries of dealers, of rubber companies, of oil companies, and have you studied the market? A. Yes, I have.

Q. Has this study included C stations and their TBA facilities? A. Yes, sir.

Q. Has it particularly included Texas C stations? A. Yes, it has.

Q. State whether or not C stations with exceptionally good facilities for the TBA would reasonably have a higher dollar figure than the average.

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(6582) Q. What is the answer? A. Very definitely so. The very fact that the stations have more space and more facilities for service and the sale of products, they would have a higher ratio of TBA sales to total sales.

Q. Doctor, in your investigation and from your experience and knowledge of the Texas service stations, does the Texas Company have better-equipped C stations than the average service station?

Mr. Dias: I object, your Honor. What is the "average service station"? These generalities, I don't see how anybody can make a comparison or give an answer to that question.

Hearing Examiner Kolb: Has the Doctor (6583) investigated all these service stations to be able to answer that?

The Witness: Yes, sir, it is possible because in the average of 182,000 some service stations are included, all kinds of stations, good ones and poor ones.

Hearing Examiner Kolb: He has asked you about the ones that you know about.

The Witness: And the ones that I know are definitely above the average, because they all have facilities.

Hearing Examiner Kolb: Texas stations are above the average?

The Witness: The C station type. I am not talking about the D stations. Some of the D stations have, most of them do not. But we are concerned here with the C stations because they are the ones that are included in the Census figures with more than fifty percent in gasoline and other automotive petroleum products.

Mr. Dias: Who determines what is an average station? Is the doctor here the one who determines what an average station is? What does he consider an average station? It seems to me we need some ground work in here before we can draw some comparisons.

Hearing Examiner Kolb: I will overrule the objection. I think the Doctor has answered the question.

(6584) *By Mr. Royall:*

Q. Doctor, there has been testimony in this case which we contend shows that in Texas stations, certain divisions

in which testimony was taken, the TBA sales range from fifty dollars to sixty dollars per thousand gallons of gasoline. Is that figure, in your opinion, at all improbable in Texas stations? A. Not at all.

(6585) *Voir-Dire examination by Mr. Dias:*

Q. Doctor, referring to Exhibit 88, do your figures show the products involved in the increase of net sales of these respective rubber companies? A. They show only total net sales.

Q. Total net sales. A. That's right.

Q. And referring to Respondent's Exhibit 90, are the assets shown to which this growth is attributed? A. Total net, total assets, excluding goodwill, copyrights, patents, and trade marks, are shown in that exhibit.

Q. But referring again to 88, you don't know, you couldn't state where their sales increased, which particular product they produced; is that so? A. No, that is impossible.

Q. In connection with Respondent's Exhibit 90, can you tell us what assets have increased? A. There is some fragmentary information.

Q. From this source material that you used? A. Yes, sir.

Q. What is it attributed to? A. General growth of all those companies and diversification.

Q. Diversification of what? Other lines? A. Diversification not only of that, but going into (6586) synthetic tires and tubes, development of other rubber products and allied things. But all companies have done that.

It is a comparison that I have made of any number of cases, of relative positions of companies, and it is the growth that is important, like a company like Cooper, with sales less than $8,000,000 going up to almost $24,000,000.

That is a tremendous thing. $24,000,000 is a lot of business for a company of that size.

Q. What is your understanding of a "C" station and a "D" station among the Texaco stations? A. A "C" station is a lessee station, owned or leased by the Texas Company to the dealer. Those are the stations in which I was primarily interested because they are the kind of stations that are included, all of them, in the Bureau of the Census figures.

Q. What about "D" stations? A. Some may be included, depending on the proportion of sales of gasoline and other automotive petroleum products.

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(6595) Hearing Examiner Kolb: The hearing will come to order.

You may proceed.

Mr. Royall: Mr. Halsell. Your Honor, Mr. Halsell testified before in this case.

Whereupon, BEN HALSELL was called as a witness for the Respondent and, having been previously duly sworn, testified as follows:

Direct examination

The Witness: I am Ben Halsell, 135 East 42nd Street, New York City, The Texas Company.

Mr. Royall: Your Honor, just to bring it up to date, Mr. Halsell testified previously in this case he was first employed by the Texas Company in 1926, became zone manager in 1931 or 1932. Since that time he has been state manager, assistant division manager, division manager, and manager of merchandising at the home office.

Ben Halsell, Recalled, for Respondents—Direct

By Mr. Royall:

Q. Mr. Halsell, did the positions you held previous to January 1, 1958, have any relation to the retail sales of The Texas Company, and particularly to sales made by service stations handling the Texas Company products? A. Yes, sir.

(6596) Q. What is your present position with The Texas Company? A. Presently I am the director of advertising and sales promotion.

Q. Does that date from January of this year? A. Yes, sir.

Q. Have you, over the years, been and are you now familiar with the TBA sales which are the subject of this action? A. I consider that I am, yes.

Q. What opportunity have you had to know about them? A. My long-time experience in the business, and from an observation of trade publications and various information of that kind.

Q. Have you been closely—up to January 1, 1958—in touch in your previous positions with the TBA activities? A. Yes, sir.

Q. Since January 1st do you have any responsibility as to TBA sales? A. Perhaps not a direct responsibility except insofar as the sales promotion end of the business is concerned. In that field of endeavor there is a connection with TBA sales.

Q. Even since January 1, 1958, have you kept in touch with and been familiar with the TBA situation? A. I have, yes.

Q. As a result of your duties with The Texas Company, have you familiarized yourself with the history of TBA and its (6597) continued development? A. Yes, sir, I have.

Q. And since 1931 you have been fully acquainted with those developments, have you? A. Yes.

Ben Halsell, Recalled, for Respondents—Direct

Q. There is in evidence, Mr. Halsell, Plaintiff's Exhibits 104, 3, and 13, which are TBA contracts by The Texas Company with Goodrich and with Firestone, respectively.

Prior to 1940, through what types of outlets was the gasoline of Texas Company sold? A. In the old days, I should say a considerable time prior to 1940, TBA products, gasoline and petroleum products were sold principally through general stores, by cycle shops, car dealerships, some restaurants had a pump or two out in front, the kind of merchant whose principal revenue came from some other activity than the sale of petroleum.

Q. And as automobiles increased and became more common, were so-called filling stations developed? A. At that time it became economically advisable for merchants to give their entire time to the sale of petroleum. There was a sufficient revenue from that source to permit the so-called filling station which provided the principal source of revenue to the dealer.

Q. Did these filling stations have, for example, lubricating facilities at the outset? (6598) A. They were pretty well restricted to the sale of just the bare essentials, the gasoline and the motor oil and the grease, so to speak.

Q. And during that period, did the Texas Company have a company symbol for the so-called filling stations? A. In the correspondence which related to the sale at retail of gasoline, motor oil and grease, there was a symbol "FS" which meant "filling stations."

Q. Then what were the later developments from then on as to the filling station situation? A. As time went on certain marketers realized that there was a need to provide a little bit more substantial type of building, one that would add to the office and maybe the rest room or two that existed in the beginning. At that time enclosed facilities were originated. I believe it was the Sinclair Company that did that in the beginning. There was quite an

industry reaction to the thing they did in the mid-20s. They built some stations with enclosed bays and they called them "greasing palaces."

Q. Greasing palaces? A. Yes, sir.

Q. Somewhere in the '20s, later in the '20s, did you change the symbol? A. As we came into this newer concept, the "FS" symbol which referred to filling stations was changed to "SS"—service stations.

(6599) Q. Mr. Halsell, was Texas one of the first to make these developments that you speak of, that is, adding those facilities? A. No, sir. I don't think we were one of the first. We made an observation of the competitive trend and followed along with it. I wouldn't say we were one of the first.

Q. I believe you mentioned Sinclair as being one of the first, or the first? A. Yes, sir.

Q. About when was that? A. I would say, in the mid-20s, about '25 or '26.

Q. With this new development did the costs of the stations increase? A. Yes, sir; there was an increase in the costs. First, you were increasing the volume of the station, which of course added to the cost. And then there was naturally an increase in the cost of labor and materials.

Q. And did the cost of operation also increase? A. Yes, sir; the cost of the operation of the station increased accordingly.

Q. Why was this expense incurred? A. We thought it necessary to provide for Texaco dealers the same kind of an opportunity to sell companion items to petroleum products that other companies were giving their dealers.

(6600) Q. I believe you mentioned some of the facilities that were added during this period. Did they have storage facilities also? A. Yes, sir; there were facilities there for the display and for the storage of TBA materials, both in the so-called salesroom or office and also in the enclosed bays that were constructed.

Ben Halsell, Recalled, for Respondents—Direct

Q. Was there any economic reason why the dealers took these other products on? A. They found it necessary to diversify their operations much the same as other merchants in entirely different fields had done.

Mr. Dias: Your Honor, I think I will move to strike the last answer. This witness is testifying as to the thoughts of some dealers. I don't believe he is qualified to so testify.

Mr. Royall: Maybe I didn't qualify him.

By Mr. Royall:

Q. Do you know from your experience with the dealers, why they added these other products during that period? A. I know that there was an economic necessity for Texaco dealers to diversify their sales activities so that they could compete successfully with the dealers of other suppliers.

Q. During that period, say, the later period, maybe (6601) into the '30s, was there any other development which affected—any particular development which affected the ability of the dealer to pay his expenses? Anything in connection with the number of automobiles, and so forth? A. Well, at that time of course there was a great increase in the number of registered automotive vehicles, but there was a greater relative increase in the numbers of service stations. So that in 1939 there were only 108 registered cars per service station, whereas ten years previous to 1939 there were 43 percent more cars per service station.

Q. Did any of your competitors at that time take any steps to cope with this dealer need for diversification? A. One of the first companies to recognize that need was the Standard group of stations. There were five or six of those Standard companies which together formed the Atlas Supply Company.

The Atlas Supply Company was formed to acquire and market and merchandise a rather full line, finally, of TBA materials to the dealers of these Standard companies. It was a sort of an evolutionary growth.

In the beginning Atlas dealt almost exclusively in tires and tubes. Later, a line of batteries was added. After that they got into the smaller accessories items, such as fan belts and filters and spark plugs and wind shield wipers, and the like.

(6602) Q. Did that occur in the early '30s or the latter '20s? A. That came in the early '30s.

Q. What effect did this new development of Standard stations through the Atlas Supply Company have upon the ultimate consumer, the motorist?

Mr. Dias: Your Honor, before we go on, it strikes me that this whole line of questioning, certainly the last three or four questions and the present one, appear to be an attempt to lay a groundwork for the defense of meeting competition. I don't know that that is relevant at all to this matter. I move that it be stricken.

Hearing Examiner Kolb: I will overrule the objection.

Mr. Royall: Will you read the question?

(Question read.)

A. It provided the motorist with a kind of service not only as it applied to the acquisition of petroleum products necessary to the operation of a motor car, but also with reference to the companion items, the tires, the batteries, the tubes, the accessories, and these smaller accessories items that I mentioned.

So that the motorist would be inclined, for that reason, to prefer to patronize the competitive dealer who could offer all those services and products.

Q. Do you know when the expression "one-stop service (6603) station" originated? About when? A. I should say about 1935.

Q. After this period you referred to? A. Yes, sir. Substantially at that time.

Q. What is meant by the common term "one-stop service station"? A. "One-stop service station" is a place where a motorist can go for all of his product and service needs. He can make one stop, instead of making more than one stop, to acquire those products and services.

Q. What effect did this development by the Standard companies have on your dealers? A. Obviously—

Mr. Dias: Your Honor, I want to object. I don't see what difference it makes what effect it has on his dealers. If this is not a foundation for meeting competition I don't recognize it when I hear it. I don't see that the effect of that type of operation has anything to do with this case.

Mr. Royall: Your Honor, we are trying to show that there is a valid and demonstrated reason for this system of TBA. This is the last question along that line.

Hearing Examiner Kolb: The objection will be overruled.

The Witness: May I have the question?

(6604) (Question read.)

A. Obviously, it put our dealers in a position of disadvantage competitively. The motorist who could go to a competitive station and acquire all the products and services that were necessary to the operation of his car, as I said before, preferred that kind of a service. So that Texaco dealers in competition with that were placed at a distinct disadvantage.

Ben Halsell, Recalled, for Respondents—Direct

By Mr. Royall:

Q. Mr. Halsell, what did the Texaco Company do to meet this situation, this practical situation?

Mr. Dias: Your Honor, I object again. I think it has become obvious that it is an attempt to show a meeting of competition. I don't see the relevancy.

Mr. Royall: We don't plead it and we don't claim it.

Mr. Dias: Then why do you develop it?

Hearing Examiner Kolb: Objection overruled.

By Mr. Royall:

Q. What did you do to meet this competitive situation; what did you do to meet the Atlas situation? And when did you do it? A. We developed what is known as the "sales commission plan".

Q. Prior to the time of the sales commission plan, did you (6605) have an experimental or preliminary period? A. Yes, sir. There was a period of several years before 1940 when we were experimenting with different ways of meeting this competition.

Q. Is that the period you went to this one-stop idea? A. It was beginning to develop at that time; yes, sir.

Q. With this development did you observe whether the one-stop service attracted customers? A. We observed that it did attract customers.

Q. What effect did it have on your dealers? A. It had the desired effect to put them in a position to render this one-stop service which had become important to the motorist, a service that the motorist desired and demanded.

Q. Was there any benefit to the Texas Company in connection with the attraction and holding of dealers? A. We found, as time went on, that we could not attract and hold

the best and the most aggressive dealers unless we provided the kind of physical facility that would permit them to render this so-called one-stop service.

Q. And that eventuated in your making the existing TBA contracts in 1940; is that correct? A. It is.

Q. In connection with your TBA system, what facilities must your service stations have? That is, those that sell (6606) TBA? A. Our service stations must have facilities for the display, for the storage of TBA materials, and there must be facilities also for the rendering of services that are associated with the sale of those products. And those facilities take the form of enclosures of service stations. We refer to them as bays.

Q. What is the present approximate cost of a modern leased Texas service station?

Mr. Dias: I object, your Honor. I think it is irrelevant.

Hearing Examiner Kolb: I will overrule it.

A. Our figures show that the cost of a modern service station averages $60,000.

Q. Does the dealer contribute anything to this capital investment to any appreciable extent? A. Very little.

Q. With the TBA system established and operating, does the Texas Company have any interest in the quality of the products that are sold through its stations? A. We do have an interest in the quality of TBA material sold through service stations.

Q. Is that quality important as to customers and dealers? A. Yes, sir.

We take great pains to manufacture and so distribute (6607) petroleum products that they reach the motorist in a state of high quality, and it is only natural and normal that we would want a line of TBA materials of the same kind.

Ben Halsell, Recalled, for Respondents—Direct

Q. Do you find in the operation of your TBA program that the motorist tends to hold you accountable for the quality of products other than Texas products sold in those stations? A. It is unfair and it is unjust but it is true that motorists, even though they are completely satisfied with Texaco gasolines or motor oils or greases or the services of certain Texaco dealers, if they find dissatisfaction with a tire or battery or another accessory, they associate that dissatisfaction with Texaco.

Q. And that applies to those which are not covered by the sales commission plan itself; does it not? A. It applies to all kinds of TBA materials.

* * *

Q. Have you received written complaints along the line I was asking you? A. On numerous occasions we have.

(6608) Q. And have you a considerable number of those letters from your files? A. Yes, sir.

Mr. Royall: Please mark these exhibits.

(The documents referred to were marked Respondent's Exhibit 93-A through 93-Z-83, for identification.)

By Mr. Royall:

Q. I hand you papers which have been marked for identification as Respondent's Exhibits 93-A, -C, and -H.

Are these letters which I hand you representative of complaints which your Company receives? A. Yes, sir.

* * *

(6610) Q. Is 93-G, Mr. Halsell, in connection with the complaint made to you by Mr. Odoms? A. Yes, sir.

Ben Halsell, Recalled, for Respondents—Direct

Q. Is that also representative of the type of complaints you received? (6611) A. Generally, yes.

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Q. I hand you Exhibit 93-G, and ask you, did that cover any TBA sponsored by the Texas Company?

Hearing Examiner Kolb: Does it appear on the face of it?

Mr. Royall: Yes, sir.

The Witness: The material specified in this letter is not a sponsored product.

Mr. Royall: It says a U. S. Royal Tire.

Mr. Dias: That is the reason there was no objection because we know in some areas U. S. Royals are sponsored.

(6612) *By Mr. Royall:*

Q. U. S. tires are not sponsored by Texas in that area, are they? A. No, sir.

Mr. Royall: Your Honor, in connection with 93-H, I would like to call to the attention of the Court that it appears on the face thereof that that was a recap tire.

By Mr. Royall:

Q. Mr. Halsell, you spoke of the cost of providing and maintaining facilities for these one-stop stations which handle TBA. Does the company incur other expense in connection with the sale of TBA by the dealers?

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A. There are other costs.

Ben Halsell, Recalled, for Respondents—Direct

By Mr. Royall:

Q. Will you give some of them in general, not completely? A. The costs of promotional pieces—in that connection, we provide from time to time postcards which dealers can (6613) use to mail directly to their customers. We provide newspaper mats, mats for the dealer's use in creating handbills and throw-aways, as they are called now. There are costs of educational campaigns having to do with the merchandising of TBA materials. There are dealer meetings; there are dealer sales and service conferences; the cost of the personnel involved in aiding the dealer organizations to do this job. There are other costs, yes.

Q. Mr. Halsel, will you tell us what are some of the factors or reasons that led the Texas Company to select the TBA sales commission arrangement rather than some other arrangement?

Mr. Dias: Your Honor, I object. I believe that is completely irrelevant why they chose any particular method. They have the method. We know that. What difference does it make what the reason for doing it is? That has no bearing on whether or not they forced, urged, or persuaded the dealers to buy specific products.

Mr. Royall: Your Honor, I think if the purpose is stated, and the reasons for having this system and maintaining it recounted, that it will serve to demonstrate first that coercion or thought of coercion never entered their minds.

Secondly, it will affirmatively tend to negate the existence of coercion. I am just trying to get him to (6614) describe a consideration which led them to have and to continue this system. And I think it is material.

Mr. Dias: I don't want the record to be silent on this particular point. I certainly don't agree that there was ever any contention that there is coercion in this case.

Hearing Examiner Kolb: The objection will be overruled. The witness may answer.

The Witness: Let me have the question.

(Question read.)

A. There were several arrangements available. We selected the commission plan for several reasons. First, there was the national acceptance, the national distribution of the two lines that we finally decided on. There was a demand and acceptance for those brands which are so important in the sale of tires and tubes which would have taken years to create had we taken perhaps our own brand of tire. There was the—

By Mr. Royall:

Q. How about the distribution? A. There was the point of a ready-made, an already-created warehousing arrangement. These great companies, these great tire companies have already established their warehousing points, they have already established their sales distribution points, in addition to the warehouses, and those (6615) facilities were readily available to the commission plan operator and readily available to the commission plan operator and readily available to the Texaco dealers who took those lines.

Q. Did it save you the necessity of having those warehouses? A. Yes, it did. And then there was the fact that we had available the know-how and the trained organization of Firestone and Goodrich. On another plan we perhaps might have thought it necessary to establish a whole new organization which would devote its entire time and

attention to the sale and the merchandising of TBA materials, whereas on a commission plan basis, while there are certain costs, to be sure, those costs are considerably less than at another plant decided on.

Q. Wouldn't that also apply to the matter of inventory? A. The inventory situation that the tire companies faced is bad and getting worse. Now you have different colors of tires; you have black tires and you have white tires; you have different fabrics in tires. For a long time there was cotton, then there was rayon, and now nylon, and you read in the papers about other kinds of fabrics, and they all have different qualities and different prices.

Then there is the matter of sizes of tires. A sixteen-inch tire was the thing several years ago, then the diameter (6616) of the wheel got smaller—fifteen inches, now fourteen inches. And then, as if that problem weren't enough, here come the foreign cars on the market. Those tires go in all sizes.

So the stocking and the inventory and the capital investment necessary to carry on a tire business on one's own account would have been considerably complicated, more so than by the choice of the commission plan.

Q. Mr. Halsell, in operating the present TBA plan, has any situation arisen about rebuilding Texas stations, and if so explain it. A. Every year we appropriate sizable sums for the rebuilding of stations that have become more or less obsolete, and in the rebuilding of those stations there is always the consideration of providing facilities for the dealer's sale and servicing of TBA materials.

Q. Do you know how many new and radically rehabilitated stations have been built, say, in the period from 1952 to 1956?

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Q. Do you know, Mr. Halsell, and if so, how do you know? A. Our records show that the new stations built

in the (6617) period you mentioned number 3,316. And the rehabilitated stations, those stations that have been rebuilt, 475. And those stations—that rebuilt figure—applies only to stations that we own in fee, which are vastly fewer in number than the leased stations.

When we arrange for the rehabilitation of a leased station we do it through the lessor, and that figure would not be included in the figure that I have just recited of 475.

Q. A few minutes ago, in describing the services that you had to perform under the existing TBA service, you referred to assistance to the dealers. I will ask you, does The Texas Company furnish to the dealers advertising literature usable for the promotion of TBA? A. We do.

Q. Is this advertising material limited to Firestone and Goodrich TBA? A. Some of it mentions Firestone and Goodrich TBA materials, and some of it refers generally to TBA without mention of brand.

Q. Do you have many types of this advertising and promotion material? A. A number of different types. Maybe fifteen or twenty types.

Q. Is one of those types direct mail cards? (6618) A. Yes, sir.

Q. To whom do you mail these cards? A. We hand them, we pass them to the dealers for their use in the mails.

Q. Do some of them refer to—do they refer to TBA? A. Some of the cards refer to TBA.

Q. Who makes the selection of the particular card to be mailed out to the customer? A. The dealer makes that selection.

Q. And do you offer him an alternative of various cards? A. There are a number of different types of cards and he uses the card that seems appropriate to his need.

Q. How many of these cards are sent to the dealers each year? A. I don't know how many are sent, sir, but

in inventory we had, by recent count, 23,000,000 of them. So it is safe to say that the inventory is no more than a two-year supply. That would place millions of these cards in the hands of dealers every year.

Q. You stated that you furnish the dealers a number of other types. Do you furnish newspaper formats? A. Yes, sir. We furnish the dealers newspaper formats which they can use in promotion of their TBA materials.

Q. How about handbills? A. There are mats for the preparation of handbills, also.

(6619) Q. Do you have any publication that refers to TBA? A. There is a monthly publication called "The Texaco Dealer," and that publication is devoted to helping the dealer with his merchandising problems in all its aspects. Very frequently, I should say in about half the issues, there is some article or some story or some presentation dealing with the dealer's merchandising problem.

Q. Do you have special publications or pamphlets dealing with TBA? A. There are special pamphlets dealing with TBA.

Q. Do you know whether or not there is any publication which shows the description and types of the popular TBA items of all kinds? A. Having to do with displays?

Q. No, showing a description and size and so forth. A. Yes, there is. There is what we call a lubrication guide. That guide gives the dealer certain guidance in all the problems of lubrication and car servicing, and a portion of that lubrication guide is devoted to TBA materials.

Q. Do some of these articles in the magazines and the pamphlets you send out refer specifically to Firestone and Goodrich, and are there others that do not? A. Some refer specifically to Firestone and Goodrich; others refer to TBA in general without reference to any brand; and others will give illustrations or photographs (6620) of displays. Those photographs will show the Firestone or

Goodrich brand, whereas the text of the article will be general in nature. There will be no reference to any brand.

Q Mr. Halsell, I desire to show you, after they are identified, certain pamphlets or documents to find out if they are typical and representative of the items I asked you about.

Mr. Royall: May these be marked for identification?

(The documents referred to were marked Respondent's Exhibits 94, 95, and 96 for identification.)

By Mr. Royall:

Q. Are these representative of the documents about which I asked you? A. Yes, sir, they are.

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(6621) *Voir Dire examination by Mr. Dias:*

Q. Who gets these? All the dealers? A. All dealers.

Q. How often do they get that? A. That particular piece was a single publication. That, as I remember it, was handed out to dealers as a hand-out at the conclusion of one of our dealer sales and service conferences.

Q. There is a notation on the back cover "Printed in U. S. A., 10-54." I assume that is 1954. Is that about the time it was handed out, in late 1954 or early 1955? A. Yes, sir.

Q. That is a one time affair? A. We maintain stocks of that item and provide it when it is needed.

Q. Do you mean that every dealer just gets it once in his career? Once he gets it he doesn't get it again? A. That is correct.

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Ben Halsell, Recalled, for Respondents—Direct (resumed)

(6622) Mr. Royall: Your Honor, I would like to call (6623) attention, if I may, rather than elicit it from the witness, that 94 contains a number of items on TBA sales and promotion, and that at Pages 13 and 21 there is no reference to any specific brand. And even the illustrations there do not disclose brand names.

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(6624) I would like to call attention, in connection with 95, that the illustrations with displays do include Goodrich and Firestone TBA, but that the text of the publication is general.

I want to call attention as to 96 that the TBA items and information contained about them refer not only to Firestone and Goodrich TBA, but to other popular brands of TBA which are specifically itemized by name, including Gates, various products, Belden, and Purolator oil filters and various other products.

Direct examination (resumed) by Mr. Royall:

Q. Mr. Halsell, you were asked on voir dire about whether one of these particular items were sent more than once to a dealer. I will ask you whether or not you have a series of these things on slightly different subjects, all dealing with TBA, which are distributed from time to time? A. The answer is yes.

Q. Have the various documents about which I have inquired, including those which have been put in as representative examples, have they been distributed to Texas dealers for several years prior to 1956? A. For a number of years prior to 1956.

Q. In addition to the assistance given the dealers by advertising in documents you have already discussed, does

the (6625) Texas Company provide any group educational programs for dealers, and if so, describe it? A. There is a group educational program that the Texas Company offers its dealers. There is a dealer conference, as we call the dealers' sales and service conference, and by that process we invite dealers to come in and accept the educational and the promotional materials that we are willing to present to them.

Q. At those meetings are there programs devoted to TBA as a whole and to the various elements of it? A. Yes, sir.

Q. Do you provide a guide or suggest as to how those meetings are conducted by your employees? A. There is a so-called leader's guide, which is a script to be used by the person who is conducting the meeting, and that is not an outline, it is a verbatim guide that he uses. In that way we hope to present to all our dealer organization that is willing to accept it the same kind of instruction, uniform instruction.

Q. Does that apply to TBA also? A. Yes, sir.

Q. At those meetings are documents of the type which we have had identified as Exhibits 94 to 96 inclusive, and are copies of the dealers' magazines which relate to TBA available to those who attend? (6626) A. They are.

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(6627) Q. Mr. Halsell, does the Texas Company from time to time, continually, we will say, assist the Goodrich and Firestone Companies with the merchandising of their products? A. It is a continuing operation, yes.

Q. And is that done at times by direct communications to the dealers? A. Yes, sir.

Q. Is it at other times done by letters to Texas personnel who in turn transmit it to the dealers? A. At times it is done in that way.

Ben Halsell, Recalled, for Respondents—Direct (resumed)

Q. Is that extended over a considerable period of time, and is that system still in existence? A. It is a continuing practice, yes.

Q. I ask you to look at Respondent's Exhibit 97-A to C, and ask you if that is an example of that type of assistance? A. Yes, sir, it is.

Q. That relates, I believe, to the dry-charge battery, does it not? A. Yes, sir, that announces a new product. It deals with other TBA issues.

Q. But among other things, it refers to that? A. Yes, sir.

(6628) Mr. Royall: Your Honor, I offer that in evidence.

Mr. Dias: No objection.

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Q. I hand you Respondent's Exhibit 98 for identification. Is that for the similar purpose of cooperating in merchandising? A. Yes. This is a letter from Mr. Wolfe, who at this time was the tire representative. The letter is addressed to the four assistant territorial managers and deals with a merchandising problem having to do with TBA.

Q. Does that relate to Firestone? A. Firestone and Goodrich, both.

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(6630) Q. I hand you Respondent's Exhibit 99 for identification. Was that sent to the same gentlemen for the same general purpose and does that relate to Goodrich TBA? A. This is a letter from Mr. Fronson to the four assistant territorial managers, and the letter has to do with a seasonal promotion in connection with Goodrich products.

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Ben Halsell, Recalled, for Respondents—Direct (resumed)

(6631) Q. I hand you Respondent's Exhibit 100 for identification and ask you to tell us what that is. A. This is the same general kind of a letter, but it is at a somewhat lower level in the organization. It is a letter from one of our assistant division managers to the zone managers, merchandising salesmen, and general salesmen within one division of the company.

Q. And that relates to display material of the Goodrich Company? A. It does.

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Q. Mr. Halsell, what percentage of your total—of Texas Company's total gross revenues is derived under these commission contracts?

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(6632) Q. Do you know approximately the percentage? A. Yes, sir, I do know.

Q. What is it?

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A. The answer to your question is one-half of—less than one-half of one percent.

By Mr. Royall:

Q. Mr. Halsell, Mr. Glenn testified, on Page 385 of the transcript, that seventy percent of the money received from commissions is needed to cover direct TBA expense. Are there (6633) other expenses resulting from TBA? A. Probably one of the larger expense items there has to do with this thing we have been discussing, the cost of providing physical buildings and facilities for the handling of TBA materials. And when you consider the cost of that, and also that these expenses are not included in that total of Mr. Glenn's, the costs there go much higher, to

the point that the cost of doing this work, I should say, more than offsets the commissions that we get from them.

Q. That would embrace depreciation and amortization and repairs and so forth of those parts of the buildings devoted to TBA? A. None of those expenses are included in Mr. Glenn's computations.

Q. Based on your own experience with the TBA and commission plan, does the Texas Company compel or force or require or insist that the Texas dealers handle only Firestone and Goodrich TBA? A. The answer is No, definitely No.

Q. If they desired to do so, would it be possible, as a practical matter? A. Even if we were the kind of concern that had some inclination to do business in that way, we couldn't do it for economic reasons.

Q. Why? (6634) A. For the simple reason that there are more service stations today than capable dealers. And there is a continuing competitive activity among the supplying companies for good dealers. The dealer who might feel the least bit annoyed at our sales policy would only find it necessary to go to some nearby competitive station and there take his business with him.

In that business there are many, many closed stations, stations that don't have good dealers, don't have weak dealers, don't have any dealers. And the situation is entirely in favor of the dealer. The company is competing for the dealer and the dealer is not competing for a supplier.

Q. Mr. Halsell, I am not going to ask you about the dollars and cents involved in dealer turn-over because Mr. Glenn has testified about that. But I will ask you this: Are the dealer changes of concern to the Texas Company? A. Of great concern. If there is a big dealer turn-over, it is a costly thing for us and it increases and complicates our marketing problem enormously.

Ben Halsell, Recalled, for Respondents—Direct (resumed)

Q. Is there a normal and voluntary turn-over of dealers to a considerable extent, despite all you can do? A. There is. The dealers, in spite of the offer we make of education and accounting help and general merchandising (6635) aid, in spite of that, the dealer is sometimes disinclined to accept it, or perhaps he does attend some of the classes that we offer to him, and for one reason or another he is not inclined to use that information.

So for that reason and for others—under-financing, a man's wife gets unhappy with the service station business which requires so many hours a day of his time—so that there is a large turn-over for those reasons.

Q. What does Texas Company do in an effort to avoid that, or to reduce it as much as possible, with the dealers? A. As I said, we just do everything in our power to give to dealers the kind of education and training and general business experience they need to succeed.

Q. In addition to any legalistic feature of it, are there practical business considerations against attempting to interfere with the freedom of dealers? A. As I said before, it is an economic suicide from our standpoint. To try to force a dealer to do anything he doesn't want to do sooner or later means a dissatisfaction on his part with us, and the dealer finds no difficulty whatever in implementing that dissatisfaction by leaving our station and going to some competitive outlet that is in perhaps the same marketing community.

Q. During your experience with the company, has the company adhered to the policy which has been introduced in evidence (6636) of treating the dealer as an independent businessman and not to use any pressure on him? A. That is the policy and that is the practice.

Q. And so far as you know in your long experience with the company, has it been the continuous policy and followed by the company? A. It has been a continuous and con-

tinuing policy. We observe that policy in our day-to-day operations.

Q. Incidentally, do you know whether or not that policy is brought up at the dealers' meetings we referred to? A. It is, yes, sir.

Q. Have you any information that would lead you to believe that this policy of independence is not only known to the dealers but generally known? A. I think it is known to everybody for the simple reason that in my various observations you see all these competitive products in the stations. So it is obvious that the dealer understands that he is an independent businessman and can buy whatever he chooses to buy.

Mr. Royall: I would like to have identified as Respondent's Exhibit 101-A and B, a letter from the Purolator Products Company to Mr. Wolfe.

(The document referred to was marked Respondent's Exhibit 101-A and B for identification.)

(6637) *By Mr. Royall:*

Q. Have you recently seen a communication to The Texas Company that illustrates the general knowledge of this matter? A. Yes, sir.

Q. I hand you Respondent's Exhibit 101-A and B. Will you tell us what it is? A. This is a two-piece communication, a letter from Mr. Lightburn, who is the general sales manager of the Purolator Products, Inc., the people who make the filters. The letter is addressed to Mr. Wolfe, who is our TBA man. Mr. Lightburn says to Mr. Wolfe—

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Ben Halsell, Recalled, for Respondents—Direct (resumed)

By Mr. Royall:

Q. Is the policy of the independence of your dealers, which is in effect now, the same policy which was in effect during the period from 1952 to 1956? That is, as to the independence of the dealers. A. Yes, sir.

(6638) Q. There has been no change? A. No change whatsoever.

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(6639) Do you know, Mr. Halsell, whether these persons named on 101-B are Texas dealers and what portion of them are "C" dealers? A. These are the names and addresses of Texaco dealers. I believe there are 44 in all. Twenty-seven of them are lessee dealers.

Mr. Royall: Your Honor, I want to refer to Respondent's Exhibit 6, the Hochule letter, as it has been designated in considerable conversation, and have that in mind when this is offered.

By Mr. Royall:

Q. Mr. Halsell, has there been an occasion for the Texas Company to tell or remind the Association of Service Station Dealers of your Company's TBA policy? A. That occasion has arisen, yes.

Mr. Royall: I would like to have this marked for identification.

(6640) (The document referred to was marked Respondent's Exhibit 102-A and -B, for identification.)

Hearing Examiner Kolb: Is this the same as 6-A and -B?

Mr. Royall: No, sir. It happens to be signed by the same man.

Ben Halsell, Recalled, for Respondents—Direct (resumed)

By Mr. Royall:

Q. Is Respondent's Exhibit 102-A and -B for identification, a letter sent to the Texas Company by Mr. Louis M. Faber, the Retail Gasoline Dealers Association? A. Yes, sir.

Q. It refers to a conversation, does it not, and discussions, the matter of the conversation? A. Yes, sir.

Q. I note this is dated August 20, 1948; is that correct? A. Yes, sir.

Mr. Royall: Your Honor, I call attention to the fact that Respondent's Exhibit 6, the original Hochule letter, was written June 6, 1948.

I offer this is evidence.

Hearing Examiner Kolb: Is there objection?

Mr. Dias: I have no objection.

Hearing Examiner Kolb: It will be received in evidence as Respondent's Exhibit 102-A and -B.

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(6641) Mr. Royall: I call attention to the fact that it is based on a conversation relating to a single complaint.

By Mr. Royall:

Q. Mr. Halsell, have you from time to time noted advertisements by Texas station dealers in national publications, indicating that they are handling non-sponsored TBA? A. Advertising of that kind does appear from time to time.

Mr. Royall: I would like to have these marked for identification.

(The documents referred to were marked Respondent's Exhibits 103, 104, and 105, for identification.)

Ben Halsell, Recalled, for Respondents—Direct (resumed)

By Mr. Royall:

Q. Mr. Halsell, Respondent's Exhibits 103, 104, and 105, are they examples of such advertising in the case of Gates? A. Yes, they all three apply to Gates' products.

Q. I believe they all appear in the Gasoline Retailer, do they not? A. Yes.

Q. Is the Gasoline Retailer a well-known publication used by service station dealers? A. It has a wide circulation and the circulation is principally to the retailer level.

(6642) Mr. Royall: We offer the documents in evidence.

Hearing Examiner Kolb: Is there objection?

Mr. Dias: I object only to the characterization of the documents, that they are typical of advertisements appearing; until we hear a little more about it.

Mr. Royall: I don't believe I used the word "typical".

Hearing Examiner Kolb: They are advertisements. They are offered and will be received as Respondent's Exhibits 103, 104, and 105.

(The documents referred to, heretofore marked for identification Respondent's Exhibits 103, 104, and 105, were received in evidence.)

By Mr. Royall:

Q. Mr. Halsell, do your duties, prior to 1958, particularly, give you an opportunity to observe the operation of the TBA situation throughout the United States? A. It does. I am in the field a great deal, in various parts of the country. And in my work before January 1, and after, I made calls on dealers. And I find in most dealer accounts you find a variety of TBA products, both sponsored and unsponsored.

Ben Halsell, Recalled, for Respondents—Direct (resumed)

Q. Do you find in your experience that the personnel of Texas Company and the dealers whom you have seen know of this independence policy of the Texas Company? (6643) A. They are bound to know it because the dealers operate on the policy.

Q. Is it your observation and experience that they do? A. They do.

Q. Will you tell me whether or not the Texas Company's policy of loans to stations, repairs or painting of stations, or that type of activity, whether or not it has any relation to TBA purchases? A. We would make a loan to a dealer, we would make repairs to the dealers building or driveway, we would loan him equipment if necessary, just as readily if he handled TBA products that were unsponsored as if he handled sponsored lines. There would be no consideration there whatever.

Q. There has been some intimation—I don't think it is above that—in this case about possible cancelling of leases. Will you give me the regular procedure for cancellation of a lease either by actual cancellation or by refusal to renew? A. That recommendation originates with the salesman. The recommendation goes to his superior who is the zone manager for approval, and in turn to the State manager for approval, and finally to the division manager.

So that in order for a lease to be cancelled or for the renewal to be declined, there must be those four people in the organization who agree that it is the proper thing to do.

(6644) Q. Mr. Halsell, Complainant's Exhibits 114, 115, and 213 indicate an increased dollar volume of sponsored TBA sales to service stations—Texas service stations—from 1948 to 1955. Do you know what factors are involved in this increase?

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Ben Halsell, Recalled, for Respondents—Direct (resumed)

Q. In answering this question Mr. Halsell, it is not necessary for you to discuss the question of inflation or automobile registration or gasoline gallonage which has been discussed by previous witnesses. What I am asking you is, are there other factors besides those which produce the increase in dollar volume?

* * *

(6645) Q. What are the factors in addition to those already testified to? A. The great numbers of new stations that we have created in the last few years. I testified before that there were 3,316, I believe, new stations. And every one of those stations has been constructed and designed with the idea that the design would lend itself to the merchandising by the dealer of TBA materials.

So that is bound to have a beneficial effect on TBA volume.

And then there is the matter of up-grading of stations. In certain marketing areas we will have a somewhat obsolete station, and in our inability to rebuild that station for one reason or another—maybe the size of the lot is too small or a permit is impossible to obtain—we will create an off-set location. Invariably when that offsetting comes there is an up-grading of the design, and always that new design is arrived at with the thought of TBA merchandising in mind.

Then there is the number of so-called rehabilitated (6646) stations, stations that we have improved on the same properties as the older station was.

Q. Is the matter affected in any way, plus or minus, in the trend of motorists to buy at one-stop stations? A. I commented on that before. Of course, this one-stop idea has caught on and it has made a great appeal to the motoring public. The public is now inclined to go to a service station such as we have for his tires, batteries, and acces-

sories instead of going to the old-style tire store which had nothing more than just curb front.

Q. Testimony I think has indicated—Complainant's testimony—that more sponsored TBA is sold to the "C" stations than to the "D" stations? A. Yes, sir.

Q. What is the reason for that? A. The reason is that the "C" station, so-called, is just better established from a physical standpoint to do this TBA sales job.

We pointed out before, that the "D" station is the nondescript type of place where the principal income is usually from some source other than petroleum or allied products.

Q. There are, of course, some "D" stations? A. Some "D" stations do a very substantial TBA business, and some of the "D" stations do a fine job for Firestone and Goodrich, in sponsored lines.

(6647) Q. Is there a distinction between the two overall? A. Yes, sir, there is.

Q. Do you know whether the trend of increased gallonage has been greater in "C" stations than in "D" stations? A. That has gone in the same direction.

Q. Has that continued since 1952? A. Yes, sir.

Q. Do you know from your experience in TBA, whether local or medium-sized wholesalers sell a larger proportion of accessories to Texas service stations than they sell tires? A. They do sell a larger—

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(6648) Q. Do you know the reasons for that? A. The reasons are obvious, yes, I know them.

Q. What are they?

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Q. Go ahead, sir. A. There is greater competition, or greater volume of business done by the smaller independent wholesalers in the accessories line than in the tire line for

the reason that the people who buy tires want tires that have a national reputation, that are known nationally, and advertised nationally, such as the sponsored tires are.

And then there is the complication that I mentioned before of the enormous investment that is necessary now to do a tire business.

(6649) The different styles, the different kinds, and the cord fabric versus nylon, versus rayon, and blacks and whites, and the fact that the motor manufacturers are inclined to change wheel sizes so frequently, makes the inventory and the stocking and the warehousing and supply point problem one that is quite difficult for the smaller man to cope with.

On the other hand, the public has no brand consciousness of a coil or a set of points for a car. We don't much care whether we get one kind of spark plug or another as long as it works properly.

It is in that field that the smaller wholesaler is able to do his best sales job, and it is the one that Firestone and Goodrich have their most difficulty in competition.

Q. Do batteries come in a sort of intermediate position? A. The battery is not in exactly the same category as the tire and tube, but the public, I think, realizes more of the brand element of the battery than the other smaller accessories items.

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(6650) *Cross-examination by Mr. Dias*:

Q. I call your attention, Mr. Halsell, to Respondent's Exhibit 93-G. I believe you stated that the U. S. Royal was not a sponsored product in that area? A. Yes.

Q. Can you tell us what areas they are sponsored in? A. In the Texas Company, Atlanta Division, which comprises the states of Tennessee, Georgia, South Carolina, Alabama, and Florida.

Ben Halsell, Recalled, for Respondents—Cross

Q. Now among the methods or rather among the reasons for choosing this particular method of having stations carry TBA products, you mentioned the varying tire sizes. Now during the time or at the time that you went into this particular system, what bearing did tire sizes have on the choice of methods? A. There were several different tire sizes at that time. I recall that the cars of the 1920's, and prior to that time, had wheels of varying sizes, much the same as cars today have.

Q. But there it was, they were all the same circumference (6651) were they not, whereas now you have different circumference tires? A. No, the tires at no time have they all been the same circumference.

Q. Then perhaps I am choosing the wrong term. When you speak of a tire, 6.00 by 15, what does the 15 indicate? A. The diameter.

Q. All right. Hasn't the diameter been the same, except for recently? A. No, there has been a variation in the diameters of wheels consistently through the years.

Q. Does that apply to passenger cars? A. Yes.

Q. In the performance of your duties, Mr. Halsell, has it been incumbent upon you to keep or observe the competitive situation in the TBA field? A. Along general lines, yes.

Q. Well specifically in connection with tires and tubes, have you had anything to do with that? A. My knowledge of competitive developments is not as complete as it was prior to January 1st. However, along general lines—

Q. I was referring to years prior to January 1st. A. Yes.

Q. I refer you to Respondent's Exhibit 98. Was the price (6652) protection feature of the Firestone and Goodrich tires, was that a unique thing to Firestone and Goodrich? A. I should say that the price protection that is referred to here was either at this time or shortly after-

ward, an industry practice and that this is a very competitive business and one company doesn't very often get very much of an advantage over another.

Q. You mentioned the scarcity of good dealers. You limit that to good dealers only? A. Well, the fact we have closed stations is evidence of the fact that there is a shortage of dealers, period.

Q. Has that always been the situation? A. Not always, no. That probably has been with us for, well during the war of course, but in the normal market, for the last 15 years, or 14 years.

Q. Are Purolator products sold by either Firestone or Goodrich? A. No.

* * *

Redirect examination by Mr. Lorenzen:

Q. Mr. Halsell, that U. S. Tire situation in Atlanta, do (6653) you know about when the Texas Company made this arrangement with U. S.? A. I don't know the exact date. I should guess it to be two years ago, maybe two and a half years.

Q. What—it is conceivable that one of the states in that Atlanta division even now is not included in that setup? A. It is, yes.

Mr. Lorenzen: That is all.

Hearing Examiner Kolb: You are excused.

(Witness excused.)

Hearing Examiner Kolb: Anything further?

Mr. Royall: No, sir, not from us. We conclude our evidence.

* * *

(6677) Mr. Lorenzen: In view of that recital, I am sure you know that we are not here on any voluntary basis. We are here because there seems to be no way out. So, with the opening of this session, I would like to restate our position, which was the position taken in the court proceedings, that the order of March 9, 1961, is invalid and void. It is made in contravention of Section 5 of the Federal Trade Commission Act. It not (6678) only violates the Commission's own rules of procedure; it compels the respondents here to resort to a procedure which has not been published.

The Commission, upon finding that the evidence was insufficient here to sustain an order under Section 5 had only the ministerial duty of dismissing this complaint and the remand to enable its counsel to hunt for and if possible to discover and adduce some entirely unspecified general type of evidence, is improper and is not sanctioned by the statute or by the rules.

The Commission's action furthermore displays that type of partiality which the Administrative Procedures Act and the Constitution and the common law say a judge of the facts, whether in a Commission proceeding or otherwise, should not have.

We call attention particularly to the statement made by the present Chairman of the Commission within a few months after this order of remand was handed down finding the evidence insufficient here.

The Chairman made the statement that we at the Commission know that the sales commission contract between Texas Company and Goodrich and Firestone violates Section 5 of the Federal Trade Commission Act. We believe that this indicates that the Commission no longer has preserved that type of impartiality which it must have in order to have any further jurisdiction over this matter.

So for these reasons and the more detailed ones which we (6679) have set out in our complaint in the District Court, we take the position that this re-hearing here is improper, is invalid, is made without any power or jurisdiction on the part of the Commission, that it violates the Administrative Procedures Act and deprives these respondents of their property without due process of law.

Now, on the basis of these statements, we now, therefore, ask your Honor to dismiss forthwith this proceeding against these respondents and to terminate this hearing at this time.

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(6717) Mr. Lorenzen: Now, your Honor, I would like to object to your taking official notice either of the exhibits or the testimony or the matter stated in the notice. As we see it, I think the law is perfectly clear that this doctrine of official notice does not apply to litigation facts.

In other words, if the Commission conducts an investigation of an industry and in a nonpartisan way comes up there with some very general industry findings, there is some basis, possibly, in the doctrine of official notice for saying that this matter which the Commission has compiled in this nonpartisan manner, the Commission itself may take official notice of. But the cases and the statements in the text and the statements in the report of the Attorney General's committee dealing with the section in the Administrative Procedures Act as to initial notice specifically excluded from consideration matters known as litigation facts; that is, matters which are established in the course of a single litigation.

If I may just call your Honor's attention specifically to this report of the Attorney General's committee, it says "On the other hand, there may be put aside as not permissible or susceptible of official notice facts which may be called litigation facts. If information has come to an

agency's attention in the course of investigation of a pending case, it should be adduced only by the ordinary process. It should be considered only if it is in the record."

(6718) Then it says, of course, it has to be offered on the basis of competent evidence.

U. S. against Shaughessy, a District Court decision, goes the same way. There is a Law Review article by Gelhorn on official notice. There he says also:

> "Yet facts which are peculiar to a particular case, that is, the litigation facts, are not appropriately to be noticed. Official notice should be reserved, as is judicial notice, for somewhat more generalized propositions."

The Interstate Commerce Commission has had this very question up before it and it has come up with a suggestion that all that it can take judicial notice of is that other applications are pending, but can not incorporate in the record facts adduced therein. The decision there was:

> "We will take cognizance of the fact that the aforementioned applications are pending and of the authority therein sought, but obviously, we may not give consideration to any evidence not incorporated in this record which may have been adduced in proceedings on those applications."

It seems to me that is just about as far as you can come here. Your Honor is being asked to incorporate bodily in this case evidence which was adduced in another proceeding to which Texas Company is a complete stranger. It is hearsay evidence. (6719) It was even hearsay evidence in that case, particularly in connection with two or three of these exhibits; I may call your Honor's attention to the fact that Commission counsel objected to that evidence, not only as hearsay but as meaningless. He said the ex-

hibits are meaningless. And here we are to be bound, subject to some indefinite right to rebut, by a meaningless exhibit adduced in another case.

These exhibits do not speak for themselves by any manner of means. This notice of motion indicates, for example, that the following oil companies market private brand tires under the purchase and resale plan. What are private brand tires? What is the purchase and resale plan? There are probably two dozen types of purchase and resale plans, some of which come very close to the sales commission plan and there is no explanation of any kind here.

If Your Honor takes the next one, some companies sell batteries and accessories. What accessories do they sell? Do they sell a complete line of accessories and if so, what is included in it?

Your Honor recalls that in this very case, we had a continual hassle as to what constitutes accessories. Mr. Dias was continually cross-examining our witnesses because he didn't think the term "accessories" was plain at all and he used to go into a great list, "Do you call this an accessory" or "Don't you"? Is this a hard part or is this an accessory?"

(6720) These exhibits do not speak for themselves, so that there is no conclusion which can be drawn from those exhibits as they stand.

Addressing myself to this Crowell-Collier report here, the evidence shows that the statistics and figures there were obtained by some sort of sampling technique of interviewers who went out and asked people, what kind of a tire do you have on your car; is it a replacement tire or a new tire? On the basis of those answers, they got up this exhibit. It is not an industry-wide statistic; it is nothing that they got from the Department of Commerce or the Bureau of the Census. It is just here some people went out and asked some questions and they came up with some

samples and somebody projected those samples into statistics and they have a table.

Now, if we are going to rebut that in any sensible way, I suppose it would mean we would have to hire somebody like Crowell-Collier to go out and see that as of the type of material in this case, we could establish that those are or are not the facts. Otherwise we are helpless. We have to, on the basis of any time limitation which your Honor has set here, accept those facts and go to bat on it.

Hearing Examiner Kolb: Doesn't the record show that the industry accepted those surveys and used them in connection with their business?

Mr. Lorenzen: We have the testimony of one man in the (6721) Firestone case who said that in connection with the exhibit, he looked at those and those formed a part of the basis upon which he drew conclusions. That is all.

Even that man is not here for us to cross-examine. This, it seems to me, is hearsay evidence compounded to such an extent that the requirement of putting reliable evidence on the case which our client is entitled to cross examine and test goes out of the window completely.

Because this would mean that in any case in this Commission, going back any number of years, if at any time there has been offered in evidence an exhibit or any testimony, then Commission counsel can come in here and offer that in evidence.

Now, no representation of that kind was made to the Court of Appeals when it stated in its order that it was denying our injunction because it did not foresee that there could be any expensive or lengthy trial here because the Commission—because your Honor had made an order limiting the government's case to three days.

Well, this would be very simple, to come in and shovel all of this material in here, and it might take us years of expensive investigation to check on any of it.

I think that if official notice is taken on this basis, these evidences which are not self-explanatory at all, without any right on our part to cross examine, that it compounds hearsay (6722) evidence to such an extent that it is a violation of the procedural due process and also the Administrative Procedure Act, which specifically permits us to test and check and cross-examine witnesses.

Aside from that point, I have one other suggestion to make on this evidence, and that is this: Your Honor will recall that in the past, many motions have been made here directed to the fact that it was not proper for the same personnel to sit in all three of these associated cases because it was impossible to keep the facts separate and apart.

Hearing Examiner Kolb: Haven't you dragged that out long enough? Can't you let it rest?

Mr. Lorenzen: Your Honor, we have.

Hearing Examiner Kolb: There is nothing that can be brought before me on that. That has been settled before the Commission. If you want to raise that fact, raise it before the Commission, before the courts, but don't raise it before me, because I have nothing to do with it.

Mr. Lorenzen: Of course, you don't, your Honor. My point is the Commission denied it because it said?

Hearing Examiner Kolb: Why argue it before me? If you want to make a motion, make a motion, but not that one.

Mr. Lorenzen: The denial of the Commission was on the basis that it could be kept apart and now the counsel for the Commission is asking you to change the case. That is what we (6723) are attacking. The rest of it is water over the dam, but the position has been changed. That is the point I wanted to indicate to your Honor. So we do have an objection which I made to taking official notice of any of this material for the present state.

Mr. Barton: Your Honor, I join in that objection, and particularly the Crowell-Collier survey. I submit that if the shoe were on the other foot and we were offering that cold here without evidentiary testimony or evidence, it would never go in.

Hearing Examiner Kolb: It went in before.

Mr. Barton: But there there was somebody on the stand who was being interrogated and who could be cross examined on the basis of it. Here there is none such.

Mr. Dias: In connection with Mr. Lorenzen's last remark, you may remember that among their final exhibits they put in in this case was one they took from another case —one of three cases, and I can't remember the number now, but I can find it readily. It just depends upon who wants to do it.

Now, in the second case, the witnesses, and it is one of the reasons why I furnished the transcript with this thing, I think you will find that in most instances, if not all the instances, the respondents or the witnesses in the other case testified that they made the compilation from various statistical data or publications that are recognized by the industry, so that they are recognized in the industry and not by any one (6724) particular company.

As a matter of fact, when respondents here had Dr. Beckman on the stand, he in turn referred to a flock of publications such as NPN and others from which he compiled statistics.

Now, in connection with whether or not this is possible, I call your Honor's attention to the most recent order I know of, dealing with Dayton Rubber Company, Docket Number 7604, and in that case the examiner received or took official notice on a much wider plane than anything that is being sought here.

Hearing Examiner Kolb: That has not been decided even by the Commission, has it?

Mr. Dias: Not that I know of, no. As I say, that is the most recent thing I know of. In addition to that, there is ample case law to substantiate the position we have taken here.

Hearing Examiner Kolb: I personally feel, as I expressed in the recent conference we had in this case, that whether or not companies have sales contracts or purchase contracts, and practically all information which is being offered here could have been stipulated, and I believe Mr. Lorenzen was at one time favorable to stipulate that information.

But I think if they want to be technical about it, they would have a right to insist upon not stipulating any of this, going the hard way and going the long way around on the thing. But you are not going too long on it.

(6725) I refuse to take official notice of Documents 292 (a) through 297. However, I think it is proper for the Hearing Examiner to take official notice of the Commission's decisions, and I can take official notice of the Commission's decision in the Firestone Tire and Rubber case, Docket 6407, which I will proceed to do.

In that connection, in taking official notice of that decision, I will also specifically take official notice of the table set out on page 7 of that decision, which is a tabulation of oil companies marketing private brand tires under the purchase and resale plan.

I will also take official notice of the tabulation in that decision on page 33, which sets out the ones that are selling batteries and are going to sell only tires. That is on page 33, listing ten who sell the TBA and eight who sell only tires.

I will also take official notice of table 3 on page 34 and page 35 of this decision, which sets out the replacement tire purchases by automobile owners in 1954. I think that is proper for the Hearing Examiner to take official notice of, for these are Commission decisions in this case.

Mr. Dias: I believe I have one part left in the official notice document—

Mr. Lorenzen: Just a moment, if I may.

Two things. One is under the court rule 4.6(c) if the (6726) new rules apply, or 3.8(c) if the old ones apply, we have to file some sort of an answer to this motion for official notice, and I assume we can agree that the statement I have made can stand as the answer, so there is no question that we are objecting.

Hearing Examiner Kolb: We discussed that the other day, about no necessity for your filing an answer.

Mr. Lorenzen: My statement stands as the answer on it?

Hearing Examiner Kolb: That is right.

Mr. Lorenzen: The other thing, of course, if your Honor does take judicial notice, we have to have whatever opportunity your Honor will accord us to bring in any witnesses that we want to rebut.

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(6740) Mr. Dias: In connection with that same document, I would like to note the correction to the record at page 4470.

Line 7 should read:

> "As Mr. Campbell states, Goodrich has been hurt somehow or other"

and in line 8:

> "by this lawsuit,", etc.

Now, on the record yesterday, respondents' counsel made the following statement, and I would like permission to read the full statement in order that we may have it in the proper context.

It deals with an alleged statement by the Chairman of this Commission and it has been said here that it indicates prejudgment of this case. Appearing at page 4438 of the record is the following statement:

> "The Commission's action, furthermore, displays that type of partiality which the Administrative Procedures Act and the Constitution and the common law say a judge of the facts, whether in a Commission proceeding or otherwise, should not have.
>
> "We call attention particularly to the statement made by the present Chairman of the Commission within a few months after this order of remand was handed down finding the (6741) evidence insufficient here."

It is this next passage I would like you to note.

> "The Chairman made the statement that we at the Commission know that the sales commission contract between Texas Company and Goodrich and Firestone violates Section 5 of the Federal Trade Commission Act. We believe that that indicates that the Commission no longer has preserved that type of impartiality which it must have in order to have further jurisdiction over this matter."

At this point, I would like to read into the record the actual statement of the Chairman of the Commission made July 25, 1961, before the National Congress of Petroleum Retailers. The pertinent part is as follows:

> "We at the Commission are well aware of the practices which plague you and we have challenged"—

I would like to underscore "challenged"—

> "—challenged their legality in many cases. You know the practices—price-fixing, price discriminations and overriding commissions on TBA. You know the companies—Atlantic, Texas, Pure, Shell, Sun, Standard of Indiana, American, Goodyear, Goodrich, and Firestone."

I can't let the record stand as it is at page 4438, because a fair and non-inflammatory repetition of the language of the Chairman definitely indicates that there has been no (6742) prejudgment. It strikes me that any clear understanding of the language indicates that any time this Commission issues a complaint, certainly that is a challenge to legality. There is no indication there that they have determined what the outcome of that complaint might be.

I have nothing further, your Honor.

Hearing Examiner Kolb: You are now closing your case?

Mr. Dias: I close, yes, sir.

Mr. Lorenzen: If I may have just a moment, because Mr. Dias did not read the whole statement.

Hearing Examiner Kolb: What is the difference? It is nothing for me to pass on anyway. If the Chairman makes rash remarks or not—I am not going to pass on that.

Mr. Lorenzen: But the statement that I did not quote this accurately I don't think is quite fair, because on the page preceding the one from which Mr. Dias read, this is what the Chairman said:

> "Your problems are many and many of them are the problems of the Federal Trade Commission, too. More particularly, many of your problems are ours because they arise from practices prohibited by two of the most important statutes administered by the Commission. Discriminatory pricing prohibited by the Robinson-Patman Act and other unfair acts and

practices and methods of (6743) of competition prohibited by the Federal Trade Commission Act."

Then, after interspersing a couple of remarks which were not in direct line, he says: "You know the practices."

Those are the practices which he says are prohibited by the Federal Trade Commission Act, and then he makes the statement which Mr. Dias quotes.

I think from that that it was certainly a fair inference that the Chairman of the Commission was saying that we at the Commission have prejudged this matter and decided that a sales commission contract between Firestone and Texaco and Goodrich violates the law.

If I may, in view of the fact that counsel has closed, I would like first of all to renew my motion made at the commencement of the proceeding yesterday that in this proceeding be dismissed for the reasons stated at that time.

Hearing Examiner Kolb: That motion will be denied for the reasons stated yesterday.

Mr. Lorenzen: Now I would like to move on the basis of the additional matter which has come before your Honor at this hearing, to dismiss because no additional competent evidence of any kind has been adduced here which can conceivably change the result reached by your Honor as to the fact that the sales commission contracts here between these two parties as practiced, on the basis of the evidence in this record, does (6744) not violate Section 5 of the Federal Trade Commission Act, and nothing herein can change the similar decision by the Federal Trade Commission which, itself, took the same view and held that the evidence was insufficient to show that there was any violation of the law.

In that connection, without reiterating the objection which I made to the evidence yesterday. I would like to say we strongly adhere to the position that no official notice can be taken of these matters which the Federal Trade Commis-

sion found—I am referring now to the three tables as to which, on page 4485 of the record, your Honor stated that you would take official notice specifically of three items in the opinion of the Federal Trade Commission.

In view of the fact that those particular tables, as shown by the citations supporting the motion filed for taking official notice, were pure hearsay, were characterized as meaningless and hearsay by counsel for the Commission, it seems to me that official notice is not proper here for that reason, as well as for many others which I stated yesterday, and I don't think that we ought to be called upon to assume the burden of checking out these statistics and trying to decide whether to answer them, when the competency of the evidence is greatly in question.

Now, I have one other point on that which I did not emphasize yesterday, because the documents not having been (6745) admitted when I made the objection, I would not be called upon to make it. That is this, that there is no other evidence, no residual evidence in this case now, offered on this hearing, which is not hearsay. In the Shaughnessy case which I called to your Honor's attention, it was held that the court could take official notice in that case of a particular bit of hearsay evidence, but the ultimate decision was that, there being no other evidence in the record to support the point made by the hearsay documents of which official notice was taken, there should have been a decision against the contention sought to be supported by that evidence.

So on that additional ground, there is no doubt in my mind that there is no competent evidence here of any kind which could form the basis of a changed decision upon this re-trial. So for that reason, too, I make this motion to dismiss at this time.

Hearing Examiner Kolb: The motion will be denied.

Mr. Lorenzen: I suppose the next move is up to us.

Well, we feel unquestionably that these documents, even if your Honor does consider them entirely immaterial and

irrelevant, they have nothing to do with the issues presented here, they can't prove anything.

On the other hand, we are in the position where we think we ought to be accorded the right and privilege in the Administrative Procedures Act and the rules of this Commission, (6746) to at least have a little time to turn around and decide what we are going to do here.

Now, the problem—yesterday, I think your Honor may have gotten the impression that this request was not made in good faith and we were delaying it, which isn't the fact at all, because the real answer to the problem is this: No matter how much your Honor may feel we should have anticipated what counsel was going to do, the fact is we did not anticipate this official notice business.

This we didn't. The first notice we had of this was last week, July 11. We may have been stupid to do it, but we just felt that facts in another case, where the case had been carefully separated from ours in the past, the doctrine just would never apply. So we thought that if government's counsel was going to call witnesses, he would give us reasonable notice as to what witnesses were going to be called, and on cross examination, we would have then had an opportunity to formulate some sort of an answer here. If there was a witness who was competent to testify to these facts, he was obviously competent to be cross examined and to bring out our side of it.

If I may just give you an example, there is a table of which your Honor has taken official notice which is supposed to show the percentage in a replacement tire market of some of the companies. Now, the actual figures, whatever they may be, are such closely guarded secrets that we can't even get them out (6747) of Firestone, with whom we have some sort of a contractual relationship. Now, this presents a problem to us. We think that if you are going to accord any weight to that table, and I don't think any ought

to be accorded to that, but if you are, we should certainly be given a reasonable time to find out what the facts are to see whether that table for one year is sufficiently accurate, for one thing, and to see whether it would not be desirable to adduce whatever the accurate figures are for some other years.

That is one problem on that particular table.

Now, we have other tables in here which purport to state that between certain oil companies and certain tire companies, there are certain types of contractual relationships. We know from looking at the tables, and I guess we could have shown if somebody had come to testify as to how those tables were made up, that they do not include all of the tire companies, they do not include all of the oil companies, and they certainly do not include all of the relationships between those companies.

In other words, that table standing by itself, we think, is entirely worthless on this record, but I don't know whether the Commission, in view of its attitude toward this case which we have discussed earlier today is going to take what we concede to be the only reasonable and proper attitude.

Under those circumstances, we ought at least to have (6748) a reasonable amount of time to turn around and see if we can't obtain any competent evidence to counteract anything which we may determine ought to be changed, ought to be counteracted in order to give an accurate and true impression of what things are like in this particular field.

So our plea to you this morning is that we obtain a reasonable amount of time in which to exercise our right under the rules of the Commission and the Administrative Procedures Act to rebut, if we deem it necessary, these matters of which your Honor has taken official notice here.

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Hearing Pursuant to Remand Order

(6753) Mr. Lorenzen: When your Honor recessed this morning until 2:00 o'clock this afternoon, you were advised that we would, on our return here at 2:00 o'clock, advise you as to Texaco's position.

In essence, and I hope without being too repetitious, this is it:

I may say this is it without limiting the more complete statement which I think I made this morning.

Number 1: No evidence whatever has been adduced against Texaco in this remand because the tables from the Firestone case, of which your Honor was asked to, and did take what has been described as official notice are hearsay, as to which we have no right of cross examination, some of which Commission Counsel characterized in the Firestone case as meaningless, and therefore taking official notice thereof violates elementary concepts of due process, the Administrative Procedures Act, and the Commission's own rules.

Two: Be that as it may, if, arguendo, it be assumed that the doctrine of official notice does apply to the tables of which official notice was taken, the same due process requirements and, indeed, the literal language of the (6754) Administrative Procedures Act and the Commission's parallel rule, which follows the statute, says that Texaco is entitled to an opportunity to rebut such documents if it wishes to do so.

Three: Our client does not know at this juncture whether or not rebuttal is needed, because, among other things, we are disposed to agree with Commission counsel's characterization that the only evidence supporting the tables in the Firestone case is meaningless. But in any event, our client is entitled to a reasonable opportunity in which to determine whether it wishes to rebut any of the matter noticed, while at the same time maintaining the basis position that such matters are inadmissible and that they are meaningless.

Four: It is no answer that we may have received an intimation last Thursday that official notice might be taken of some of the tables in the Firestone case, because at that time, we had not yet submitted to your Honor our legal argument to the effect that the doctrine of official notice should not be applicable to the documents tendered.

In fact, we had only received the government's motion to apply this doctrine of official notice to the documents a few hours before our conference in Washington. Our client certainly had reasonably hoped and expected that our arguments would be sufficiently persuasive so that the tables in question would not have been officially noticed. For that reason, they did not anticipate that they could have been expected to have (6755) witnesses here today ready to rebut something which they had believed would not be a part of the record.

Likewise, it is no answer to say that our client might have stipulated some of the facts, because our client had the undoubted right not to stipulate as to matters deemed to be incompetent, hearsay, and irrelevant and immaterial.

In the circumstances, we request that your Honor recess these hearings until ten a.m. next Monday.

At that time, Texaco will then be prepared, either to offer rebutting data or otherwise proceed as it may then be advised.

Mr. Dias: May I just be heard on one facet of this, your Honor? Very short.

I think most of this is addressed to your discretion. While I oppose any delay in these proceedings, I will leave that to your discretion.

But I would like to clarify something that I think is inadvertent, when counsel says that Commission counsel has characterized these tabulations as meaningless. I would like the record to show that Commission counsel in Docket 6487 characterized the documents as meaningless, and as

you are well aware and all of us who have had any experience in the law, we sometimes make mistakes and we are reversed by higher authority.

That obviously is what happened here. In any event, (6756) it was not this counsel, Dias, it was not his opinion that this material is meaningless. It was the counsel in Docket 6487. I would like the record to be clear as to that so there is no indication that there is an inconsistency in my position in this matter.

I am relying on the fact that the Commission overruled Commission counsel in the other matter.

Hearing Examiner Kolb: On June 27, I issued an order setting this case for hearing and providing for the proceeding by consecutive hearings until completion of the testimony. That was held up two or three times requesting a response at the request of the respondents because of pending court proceedings in that hearing.

However, we have had since June 27—now we intend to proceed with consecutive hearings. I see no reason why we can not do that now, and I will set this case over until tomorrow morning at 10:00 o'clock.

Mr. Lorenzen: May I have just a moment?

Mr. Royall: Will your Honor indulge us a moment to discuss this?

Hearing Examiner Kolb: Yes.

Mr. Dias: May we have a recess, sir?

Hearing Examiner Kolb: All right; we will take a recess.

(Short recess.)

(6757) Mr. Lorenzen: Your Honor, our client advises us that it is almost a useless gesture to come back tomorrow because they were on the telephone all last night endeavoring to see what could be done to meet this unexpected situation. However, as your Honor has ruled, we shall be back here tomorrow at 10:00 o'clock. If it is at all possible to get up any evidence overnight, we will have it.

We can't hold out much hope for it. If it is impossible, we will have to advise your Honor to that effect and protesting your Honor's determination, we know at this stage, of course, we are bound by that. So I think that is all we can do at this time.

Hearing Examiner Kolb: Well, I will relent by setting this over until the day after tomorrow. That is Thursday morning at 10:00 o'clock.

Mr. Dias: May I be heard, your Honor?

I want the record to be perfectly clear that this is not an overnight decision that respondents have to face here. They have had the information since July 11th. So when we talk about overnight, bear in mind that they have had five days, and I would assume that counsel would have to view the thing from its most pessimistic light as well as the most optimistic. So it is not an overnight proposition.

I have no objection to setting Thursday, understand, (6758) but I do want the record to be clear in that regard.

Hearing Examiner Kolb: Thursday morning at 10:00 o'clock, we shall proceed with the trial.

Mr. Lorenzen: I know by my silence, your Honor does not think that I am happy about it.

Hearing Examiner Kolb: I would not ask you to be happy, Mr. Lorenzen, about it.

Mr. Lorenzen: Our client still thinks that that is too short notice to enable them to make the decisions and get the evidence.

We want to note that on the record, but we will do what we can.

Hearing Examiner Kolb: I know, but this order has been out for some time. This matter has been pending in the court for a year now on the injunction. I think it is time to get the thing finished.

• • •

(6765) Hearing Examiner Kolb: The hearing will come to order.

Mr. Sullivan: If your Honor please, I am speaking this morning because I feel that I have been intimately thrown into the position of Texaco, and as counsel for Texaco I think I can fairly state to you, your Honor, exactly how we find ourselves today. I feel that there have been some remarks made during the course of this week, your Honor, that might imply that Respondents have been employing dilatory tactics in connection with these hearings.

Under the circumstances present here in this remand we firmly believe that such remarks are wholly unwarranted.

Consider for a minute the posture, if you will, that Texaco finds itself in. For reasons which have been expressed to your Honor we believe that the Commission's remand order in this proceeding is illegal, and we have fought desperately in several courts and indeed are still fighting in courts today to establish the point that our basic rights have been violated.

Having no alternative we have appeared at this hearing to defend against what we believe would be further evidence on the rather all-encompassing issue here of competitive affects.

Now, instead of a proffer of evidence through the (6766) mouths of witnesses which we are convinced we would have been able to meet through and destroy through cross examination we were met we feel with an unprecedented extension of the doctrine of official notice. This we believe has had the undoubted effect of shifting the entire burden of proof and the burden of going forward with these hearings to the Respondents.

Now, this we contend is completely foreign to the American system of jurisprudence.

On July 17, after the Commission counsel in support of this complaint rested his case, Texaco informed your Honor

that it would require at least until July 23 at 10 a.m. in which to make a determination as to whether or not it would rebut the three tables from the Firestone case.

Our position with respect to the three tables has been explained in detail to your Honor on July 16 and July 17. However, so there can be no mistake, Texaco believes that to admit compounded hearsay against a respondent without any foundation testimony whatsoever and without the right of cross examination and the consequent shifting of the entire burden of proof countervenes all applicable Constitutional and statutory requirements.

Now, the first table of which your Honor has taken official notice purports to show the arrangement between 18 oil companies and some 11 tire companies with respect to the (6767) marketing of "private brand tires" under the "purchase-resale plan."

Now, the second table purports to show the products offered for sale by 18 rubber companies, and the third table based upon a survey taken by individuals unknown who never appeared in Court purports to show replacement tire purchases by automobile owners in 1954.

This collection of hearsay material which was rightly described as being worthless and unreliable by the Commission counsel in the Firestone case has now been officially noticed pursuant to what we contend is an illegal remand which call for the taking of evidence on market data from which an assessment might be made as to the competitive affects of the sales commission plan.

Now, it is Texaco's position that the sum total of the three tables adds up to zero when measured against any probative evidence standard.

However, Texaco is entitled to a reasonable opportunity to make a determination as to whether it will exercise its undoubted right to introduce rebuttal evidence. We could go two ways on rebuttal evidence, as I see it, your Honor.

We could attempt to introduce or proffer to your Honor what we believe would be equally unreliable and meaningless, statistics culled from various sources, various periodicals and so forth, or, a rebuttal could consist of a (6768) frontal attack on the statistics and each of them which were officially noticed by your Honor.

Now, considering the fact that the motion asking your Honor to take official notice was not received until July 11 and was not granted in part at least until July 16, we believe that the essence of fair play and due process calls for reasonable opportunity to make a decision in this matter. It is not a decision that can be made in 48 hours. It is a decision we believe which requires mature reflection.

Now, if we decide to rebut it is our present judgment that an effective rebuttal would require the production of documents from and the taking of testimony from many, if not all, of the companies listed on the three tables.

Now, to illustrate, if we attempt to and decide to attack the accuracy of Table No. 3, the survey, which purports to reflect replacement tire purchases in the year 1954, we find this your Honor: We find that to our knowledge there is no other comparable survey in existence for the year 1954, and we also find, if your Honor please, through inquiries that the information, the exact figures or nearly exact figures which would be required in order to rebut this table, are considered by the tire companies, small and large, as trade secrets, which we are informed they will not voluntarily divulge.

Now, this means that if we determine on this course (6769) we are going to be forced to request the issuance of subpoenas duces tecum and subpoenas ad testificandum to individuals in and to all of the companies listed on the exhibits in an attempt to obtain accurate figures.

Now, this, of course, unfortunately would be an immense and a time-consuming undertaking, but it would be an un-

dertaking, your Honor, which is not of our making. In addition, if we determine to make a rebuttal as to the other charts we would give serious consideration to the presentation of testimony, documentary and otherwise, as to the sales commission plans which other companies, tire companies, that is, such as General, Seiberling, Dayton, Lee, Gates and Dunlop have with other oil companies.

To illustrate further, we must consider the possibility of attempting to show through statistics, the overall effect of the sales commission method of distribution, and the steady decline in the market shares during the period from 1946 through 1961 by those tire companies which utilize the sales commission plan.

Now, the foregoing illustrations are meant your Honor, to point up the enormous undertaking which we have been confronted with here and which has been thrust upon us by this shifting of the burden of the proof.

Now, the material of which I speak, your Honor, can not be obtained in some magic drawer or through the pushing of (6770) some automatic button. It is going to require a lengthy and costly production of material by process of this Court, and the further complication of making this decision is to whether or not we wish to undertake what would be a further expensive proceeding.

Now, I believe your Honor can see from the foregoing that it is an impossibility for Texaco to proceed with such an immense undertaking at the very minimum until Monday morning at 10 o'clock. And we respectfully urge your Honor to put this matter over until Monday morning at 10 o'clock to give us this opportunity to come to this decision as to whether or not we are going to call for the issuance of all these subpoenas which is the only course apparently open to us.

Hearing Examiner Kolb: Your motion is for an extension of time until Monday to proceed?

Mr. Sullivan: Yes, your Honor, during which time we will prepare as best we can, and then consider when we come in here Monday morning the request to your Honor for the issuance of subpoena duces tecum and subpoenas ad testificandum addressed to such witnesses and such companies as we are able to list between now and then.

Hearing Examiner Kolb: Your statement is demonstrated to me as a stalling tactic all the way through.

Mr. Sullivan: I take it—

Hearing Examiner Kolb (interposing): Instead of (6771) explaining it you have shown me you are still stalling and intend to stall.

I set this case down. We went over this stuff before. I set this case down this morning to proceed. Now you proceed this morning.

Motion denied.

Mr. Sullivan: Your Honor, in that event since we cannot have what we believe is adequate time we now request you to issue subpoenas ad testificandum, if you will, in blank, numbering approximately 25, and we request also that you issue in blank subpoenas duces tecum, the language for which we can give your Honor, and during the remainder of the day we will attempt as best we can to fill in both the names of the companies and the names of the individuals, and we will set them down at the earliest practicable return date.

Hearing Examiner Kolb: The request for issuance of subpoenas duces tecum in blank will be denied. You can take your appeal to the Commission and the Circuit Court of Appeals, and all the way through if you want to. Go ahead.

Mr. Sullivan: Your Honor, I take vigorous exception to the use of the word "stall" here. I think the record is quite—

Hearing Examiner Kolb (interposing): The first thing you have not done is evaluate the testimony that has been put in.

(6772) Mr. Sullivan (interposing): Evaluation of the testimony—

Hearing Examiner Kolb: If you are going to have to go down to the last nth degree on everything that has been put in to rebut it, you know as well as I do that that is just dragging the thing along. I am not going to permit it to be dragged along.

Mr. Sullivan: Am I to understand, your Honor, if I were to present a written motion right here and now for the production of these necessary documents and these necessary witnesses that your Honor has said it would be an idle gesture?

Hearing Examiner Kolb: I am not denying anything in advance. You proceed on whatever you want to do. I will take care of it when I receive it.

Mr. Sullivan: May we have approximately an hour in which to prepare such a motion, your Honor?

Hearing Examiner Kolb: This was set down to proceed right at 10 o'clock.

Mr. Sullivan: Will you consider, your Honor, that my oral request is such a motion, waiving the requirements of writing?

Hearing Examiner Kolb: You have not demonstrated to me in your motion the necessity for subpoena duces tecum.

Mr. Sullivan: Well, your Honor, would you prefer (6773) that my remarks and my request to you orally here have been in writing?

Hearing Examiner Kolb: If you want to appeal to the Commission and then to the Circuit Court of Appeals you better make your request in writing.

Go ahead.

Hearing Pursuant to Remand Order

I will give you one hour to prepare your documents, whatever you want to, and submit them to me.

Mr. Sullivan: Thank you, your Honor.

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Mr. Sullivan: I asked your Honor's indulgence for a short break during which we could prepare this written form of motion which I described and I tender my apologies for having gone over the time limits, your Honor, and with the rush of time we have had to make some interlineations here in pen, your Honor, to make clear that this is the motion of respondent Texaco only.

I might call your attention, your Honor, to the fact that the annexed statement in support of the motion is the transcription of the remarks that I made earlier this morning.

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(6775) Mr. Sullivan: I would just like to make a remark or two, your Honor.

First, with respect to counsel in support of the complaint's assertion that he questions the timing of this motion, (6776) I think it was made perfectly clear to me this morning, your Honor, the quandary in which we were placed by the decision which took official notice of this material. It was our entire point that we should have had the opportunity to make a studied decision and not have to be forced into an immediate on the spot decision.

Now, your Honor's ruling this morning, which in effect forces us to go forward, explains the timing on the motion.

Now, this, of course, is the motion and the burden and so forth is all caused by the ruling which shifted the burden of proof, and as to why we need the subpoenas addressed in blank, your Honor, I think that that is relatively self-explanatory.

We will, during the balance of the day and tomorrow ascertain the names and addresses of those people that we believe should give oral testimony here and, as indicated in the motion, we will have those filled in by the end of the day tomorrow. And I think that is expeditious action under any set of circumstances, especially those present here.

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(6777) Mr. Sullivan: I was there, your Honor.

Hearing Examiner Kolb: That is right. You were there.

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(6778) I hate to say it is purely a stalling tactic. Maybe you have some other reason for it. What it is, I don't know. But I told you this morning that the statement which you made was not sufficient to warrant me to issue a subpoena duces tecum; secondly, that I would not issue a subpoena duces tecum in blank. You have incorporated your statement which you made on the record which I had already said was not sufficient to warrant the issuance of the subpoena duces tecum. Consequently, I do not see what else I can do except to refuse to accept this request for subpoena.

(6779) Mr. Sullivan: Your Honor, in view of your Honor's ruling, we have as far as Texaco is concerned no choice at this point, we cannot proceed further, and we will have to take whatever action we deem necessary to attempt to support our position, that your Honor's ruling effectively blocks us from an opportunity fully and freely to rebut this officially noticed evidence.

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(6806) Mr. Lorenzen: I think undoubtedly it was sufficient. There was evidence in this case, reams of it, after fifteen years of implementation of the contract, that there had not been the slightest hazard to competition. Of all the Texaco dealers, less than thirty percent ever bought any of this sponsored TBA, after the contract had been going for fifteen years.

Now this—the order which was made, if I may point out, did have this virtue, that it was specific. It sent the case back only for taking further evidence concerning the competitive effect, specifically and in so many words; but it went further than that, it limited the power of the Examiner. It said, "It is further ordered that after receipt of such additional evidence, the Hearing Examiner may indicate any changes he may wish to make in his initial decision in the light thereof."

And one of our points is, and our main point is, that the Examiner did not even purport to follow this, but what he purported to do was change his mind, not on the basis of new evidence, but he went back and reviewed the record to reverse his own findings completely, and then came up with a conclusion diametrically opposite to what he had done when the case was before him the first time, and without reference to a single one of the three items which he had officially noted.

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(6813) Commissioner Elman: Nothing new, and then we are back to where we were in March of 1961?

Mr. Lorenzen: You are back, Mr. Commissioner, you are back to where you were. Because I suppose, under your order, he had to grant a motion to dismiss, and he should have, because he had only one power which the Commission gave him, and that was the power to change his opinion in the light of any new evidence as to competitive effect. His

power on remand was limited. The Examiner doesn't have any general power, he has the specific power which the Commission gives him. And if it is established that there is no new evidence, and I am sure that is right, then he had nothing to do except to say, "I have no changes in my initial decision, complaint counsel introduced nothing whatever."

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(6840) Mr. Lorenzen: If I may answer, to begin with, your question. Mr. Commissioner, about this old record, I think we have had enough lack of due process here in this proceeding to get into that. The order upon which Texaco acted and relied in good faith limited this remand specifically to any additional evidence as to competitive effect and instructed the Examiner to make changes only in the light thereof, in the light of such evidence.

Now that being the case, it seems to me you can't today on the 4th of April, 1963, come in and say what was really meant was that the Commission was going to reconsider this old record and decide whether the first time its decision was a poor one—

Commissioner Higginbotham: Let me—

Mr. Lorenzen: —that we should go some place else—

Commissioner Higginbotham: —where is the due process problem, arguendo, in this aspect, if on the remand you say to reconsider and evaluate the evidence which came up to the Commission the first time, that they did violate competitive injury, but is that a due process problem, or is that (6841) *stare decisis*?

Mr. Lorenzen: There is *stare decisis* also, but that is not, Mr. Commissioner, what I was talking about. What I am talking about is this: had this case been remanded with notice to Texaco that what was to be done in this case was to come back and re-examine the old record, we would have

to put on another hundred witnesses to show that there was absolutely nothing to this theory that there was any adverse competitive effect here.

We supposed that the Commission meant what it said, that this case was going back, not for re-examination of the old record, but to try to fill one specific gap as to which the Commission decided that the evidence was insufficient and we limited ourselves to that. There is not one word of argument in the brief here before the Examiner, or before you gentlemen here, which goes to the old record or discusses it in any way whatever. I did not go into it in my original argument; in view of the fact that there have been some statements made in respect to it, I might just want to call attention to a few specific things, just to ease the Commission's mind about a few things that have been said that I think are baseless, but we did not try this remand on the basis of going back and starting all over again, and I have not argued on that basis.

I may suggest one other thing, in addition to this (6842) lack of notice and lack of due process, what is going to happen, if that is going to take place, to this doctrine of the omniscient expertise of an administrative commission, if in 1961 you can decide this record does not state a claim on which you can grant relief and in 1963 you decide it does. It seems to me that if this Commission is an expert body, it ought to, on the same facts, come up with the same answer.

* * *

Petition to Review and Set Aside an Order of the Federal Trade Commission (Texaco Inc.)

(June 12, 1963)

IN THE

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,915

TEXACO INC.,

Petitioner,

against

FEDERAL TRADE COMMISSION,

Respondent.

To the Honorable, the Judges of the United States Court of Appeals for the District of Columbia Circuit:

Petitioner, Texaco Inc. (Texaco), a corporation, respectfully petitions this Honorable Court pursuant to Section 5(c) of the Federal Trade Commission Act (15 U. S. C. §45(c)) to review and set aside an Order and Decision of the Federal Trade Commission (the Commission), entered on April 15, 1963, and served upon Texaco on April 19, 1963, in a proceeding entitled "*In the Matter of The B. F. Goodrich Company and The Texas Company, corporations,* Docket No. 6485."

In support of this Petition, Texaco respectfully shows:

Texaco's Petition to Review and Set Aside Order

I. Jurisdiction and Venue

1. The jurisdiction of this Court is invoked pursuant to, and venue is based upon, Section 5(c) of the Federal Trade Commission Act, 15 U. S. C. §45(c), which provides that

> "(c) Any person, partnership, or corporation required by an order of the Commission to cease and desist from using any method of competition or act or practice may obtain a review of such order in the court of appeals of the United States within any circuit where the method of competition or the act or practice in question was used or where such person, partnership, or corporation resides or carries on business, by filing in the court, within sixty days from the date of the service of such order, a written petition praying that the order of the Commission be set aside."

2. Texaco, a Delaware corporation, is qualified to transact business in and carries on business within the District of Columbia. The order entered by the Commission, among other things, requires Texaco to cease and desist from acts, practices and methods of competition used within this Circuit. Tires, batteries and automotive accessories have been and are being purchased by outlets for Texaco petroleum products within the District of Columbia pursuant to arrangements of the character prohibited by the aforesaid order of the Commission.

II. Nature and History of the Proceedings

3. On January 11, 1956, the Federal Trade Commission, after an investigation which began in 1952 or even earlier, issued a complaint under Section 5 of the Federal Trade Commission Act (15 U. S. C. §45) against Texaco, petitioner herein, and The B. F. Goodrich Company.

4. In substance, the complaint challenged the legality of agreements under which Goodrich paid Texaco a commission for Texaco's services in promoting the sale of Goodrich's tires, batteries and accessories (TBA) to dealers and distributors selling Texaco gasoline. It was claimed that these agreements and similar agreements between Texaco and The Firestone Tire & Rubber Co. and between Goodrich and five other oil companies, and the acts and practices of Texaco and Goodrich thereunder, constituted unfair methods of competition and unfair acts and practices in commerce contrary to said Section 5.

5. Answering the complaint on April 16, 1956, Texaco denied that its sales commission agreements violated the law. It asserted that, on the contrary, its sales commission plan, as carried out by it, is an efficient method of stimulating the distribution of TBA products to consumers through many service stations in the United States; that it is a proper competitive method of marketing which benefits not only suppliers of TBA products and Texaco, but also dealers and distributors of petroleum products and consumers; and that it is part of intense and proper competition for good will and patronage. In addition to denying all the allegations of wrongdoing in the complaint asserted against its long-standing sales commission arrangements Texaco pleaded several affirmative defenses and challenged the sufficiency of the complaint.

6. An interlocutory appeal to the Commission prior to any hearings in this case resulted in a directive that evidence be received concerning the "competitive effects" of all the sales commission agreements challenged by the complaint, that is, the arrangements between Texaco and The Firestone Tire & Rubber Company and between Goodrich

and five oil companies other than Texaco, and not be limited to the relationship between Texaco and Goodrich (Order, November 28, 1956). During the extensive hearings (which began in 1956 and did not terminate until December, 1958) complaint counsel had full opportunity to adduce whatever evidence, if any, was available to him and the Commission to support the charges made in the complaint.

7. On the same day on which the Commission issued its complaint against Texaco and Goodrich it also issued almost verbatim complaints against The Goodyear Tire & Rubber Company and The Atlantic Refining Company (Docket 6486) and The Firestone Tire & Rubber Company and Shell Oil Company (Docket 6487). All three cases were assigned to and heard by the same Hearing Examiner, tried on parallel schedules and decided by the Hearing Examiner on the same day.

8. On October 23, 1959, the Hearing Examiner rendered his Initial Decision in this proceeding (as well as in Dockets 6486 and 6487, the two other TBA cases). As to the basic issue in the case, the validity of the sales commission agreements to which Texaco and Goodrich were parties, the Hearing Examiner concluded that these agreements did not violate Section 5 of the Federal Trade Commission Act. He found that neither the sales commission agreement between Texaco and Goodrich nor the agreements between Texaco and its dealers contained any provision requiring the dealers to purchase only Goodrich TBA; that the housekeeping provisions of the Texaco leases were neither unreasonable nor oppressive; that the renewal and cancellation provisions were in conformity with those ordinarily appearing in property leases; that the consideration for the commissions paid Texaco by Goodrich was based on

substantial services rendered by Texaco in promoting the sale of Goodrich TBA to Texaco dealers; and that no inference or implication could be drawn simply from the contractual relationship between Texaco and its dealers that the degree of control by Texaco over its dealers is sufficient to force dealers to purchase Goodrich TBA. Although the complaint had alleged that various anti-competitive effects followed from the adoption and use of the challenged agreements, the Examiner made no findings supporting such allegations even though requested to do so by complaint counsel. The complaint was dismissed as to Goodrich. As to Texaco, however, the Examiner, disregarding substantially the entire record, found what he considered to be coercive practices and, construing the complaint as sufficiently broad to entitle him to do so, entered an order directing Texaco to cease and desist from "overt acts of coercion". Ignored by the Examiner were the great body of undisputed statistical evidence demonstrating the freedom enjoyed by Texaco dealers and the uncontradicted testimony of eighty witnesses, including fifty-nine Texaco dealers, as well as Texaco's policy statements and its uniform written instructions forbidding coercion, all of which established overwhelmingly the complete absence of any coercive practices. With 38,000 Texaco dealers involved during the years covered by the proceeding, the Examiner purported to rely upon evidence totally without probative value consisting of the impeached or wholly irrelevant testimony of five former Texaco dealers whose credibility the Examiner's own findings indicate to be most dubious. A copy of the Initial Decision filed October 23, 1959 and of the order attached thereto is annexed hereto as Exhibit A.

9. Texaco appealed from the Hearing Examiner's order as totally without support in the facts and the record,

challenging, in particular, his findings and conclusions as to coercion. Complaint counsel also appealed. In Dockets 6486 and 6487, the two other TBA cases, appeals were likewise taken.

10. On March 9, 1961, the Commission decided the appeals in all three such TBA cases. Unlike its action in the other two TBA cases decided at the same time, the Commission in this proceeding did not endorse the Hearing Examiner's findings of coercion. Treating the issue of coercion as beside the point, the Commission avoided the necessity of specifically rejecting these findings as demanded by Texaco by holding "that Texaco has sufficient economic power over its wholesale and retail petroleum distributors to cause them to purchase substantial amounts of sponsored TBA even without the use of overt coercive tactics". In the context of the appeal and in the light of the opinions simultaneously handed down in the other two TBA cases, the inference is inescapable that the Commission did not regard the record as supporting the findings of overt coercion by Texaco or the order based upon them. In the view of the Commission, the legality of the particular method of distributing TBA employed by Texaco turned upon its competitive effects. Since almost a decade of investigation and trial had failed to develop any evidence of adverse competitive effects, the complaint should have been dismissed for failure of proof. Instead, the Commission, declaring that the record did not "contain sufficient market data to enable the Commission to assess the competitive effects of the sales commission method of distributing TBA employed by these respondents" issued an order remanding the proceeding for further evidence. The order of remand of March 9, 1961 directed the Hearing Examiner to receive "such further evidence concerning the competitive effects of the respondents' practices as may be offered in conform-

ity with the views expressed" in the Commission's opinion. The Hearing Examiner was authorized "after the receipt of such additional evidence" to indicate what changes, if any, he wished "to make in his initial decision in the light thereof." Such remand order was issued without the request of any party to the proceeding, without any claim by any party that there were changed conditions of fact or law or that there was any newly discovered evidence or, indeed, any additional evidence whatsoever to what the record already contained relative to competitive effects. Copies of the Order of Remand and of the Opinion of the Commission, dated March 9, 1961, are annexed hereto as Exhibit B and C.

11. The Commission made a totally different disposition of the parallel appeals taken in Dockets 6486 and 6487, the other two TBA cases, to which Texaco was not a party. In both, it viewed the record as supporting a cease and desist order enjoining further use by those companies of the sales commission method of distributing TBA; and it affirmed the Hearing Examiner's findings that agents of the oil companies involved—Shell and Atlantic—had coerced a substantial number of dealers to purchase substantial quantities of sponsored TBA, and that the oil companies had accepted the benefits of such coercion. The opinions also contained findings that each such oil company had used its power as a major wholesale and retail distributor of gasoline and as a lessor of numerous valuable retail gasoline distribution facilities to cause its dealers to purchase very substantial amounts of TBA. The opinions in those two cases concluded that the sales commission agreements between the oil company named in the proceeding and specific rubber companies had unlawfully injured competition in the distribution of TBA at the manufacturing, wholesale

and retail levels. Appeals are pending in both these proceedings. (The Goodyear Tire & Rubber Co. and The Atlantic Refining Company have asked the Court of Appeals for the Seventh Circuit to review the orders in Docket 6486. The Firestone Tire & Rubber Co. and Shell Oil Company have taken a similar appeal to the Court of Appeals for the Fifth Circuit from the orders entered in Docket 6487.)

12. In the instant proceeding, as soon as attempts were made to implement the remand order of March 9, 1961, Texaco and Goodrich brought an action against the Commission, its members and the Hearing Examiner in the District Court for the District of Columbia, entitled *Texaco Inc., et al.* v. *Federal Trade Commission, et al.*, Civil Action No. 2219-61. Texaco contended that, after at least nine years of investigation and trial, the Commission, having found the evidence insufficient to support its charges, was without authority or discretion to remand for the receipt of "further evidence" not shown to exist. As is more fully contained in the District Court and appellate records to which reference is made herein and of which this Court is respectfully asked to take judicial notice, Texaco and Goodrich sought a declaratory judgment that the remand was illegal and an injunction against further proceedings as being in excess of the Commission's authority, in derogation of the Commission's statutory duty to proceed with reasonable dispatch and in violation of the constitutional requirements of due process. In opposing this suit, counsel for the Commission advised the Court that the Commission "needed additional evidence in order to decide the issues presented".[1] They assured the Court that the remand was not to be a retrial of what had gone before:

1. Memorandum of Points and Authorities in Support of Defendants' Motion to Dismiss and in Opposition to Plaintiffs' Motion for Preliminary Injunction, p. 26, served August 28, 1961.

> "On its face, the Commission's opinion shows that its remand is not seeking a retrial of matters already tried but rather envisions supplementary evidence on what is considered to be significant facts in any assessment of the competitive effects of the sales commission agreements, namely, the effects upon competing TBA suppliers stemming solely from this method of distribution * * * Here, the remand involves developing additional evidence on the crucial issue, one that will be dispositive of the proceeding; * * * Here, the remand involves a highly complex and complicated question in which it is sought to determine the probable competitive effects of the sales commission method of distributing TBA; * * *"[2]

The complaint was sustained by the District Court. Thereafter, on June 19, 1962, on cross motions for summary judgment, the Court declared that Texaco and Goodrich would be entitled to relief for failure of the Commission to proceed with reasonable dispatch to conclude the proceeding unless all further evidence was heard and the decision of the Hearing Examiner contemplated by said remand was filed on or before October 2, 1962. However, the Court by order entered June 20, 1962, denied the immediate injunction requested by Texaco. In both rulings the Court relied upon the Commission's representations that it did not have sufficient evidence to establish a violation of law, expressly finding that "the Commission, having found the evidence before it inadequate to show a violation of Section 5 of the Federal Trade Commission Act, issued an order remanding the proceeding to the Hearing Examiner. * * *" Subse-

2. Memorandum of Points and Authorities in Support of Defendants' Motion for Summary Judgment, pp. 17, 21, filed April 30, 1962.

quent attempts to obtain immediate temporary injunctive relief from this Court and from the United States Supreme Court were unsuccessful. *Texaco Inc., et al.* v. *Federal Trade Comm'n, et al.* No. 17,111; *Texaco Inc., et al.* v. *Federal Trade Comm'n, et al.*, No. 17,131. In opposing these applications for relief, counsel for the Commission made essentially the same representations as were made to the District Court as to the essentiality of the remand in order to develop needed additional evidence. After the remand hearings had closed on July 19, 1962, Texaco and Goodrich agreed to the dismissal of all pending judicial proceedings without prejudice.

13. During the remand hearings, which commenced on July 16, 1962 and concluded on July 19, 1962, no admissible evidence was adduced; all that occurred was that the Hearing Examiner, over the objection of Texaco, took official notice of certain materials culled in the main from the Commission's opinion in Docket 6487, the TBA proceeding against The Firestone Tire & Rubber Company and The Shell Oil Company to which Texaco was not a party. He did this in the face of the fact that the Commission in its March 9, 1961 opinion in Docket 6487, as well as in Docket 6486, the other TBA case against The Goodyear Tire & Rubber Co. and The Atlantic Refining Co., had affirmed the obvious necessity of not commingling the records in the three TBA cases and of predicating findings of fact and conclusions of law in each of those cases solely upon the basis of the record in that case. The Hearing Examiner's official notice action was challenged by Texaco on the grounds that (a) the materials involved were not properly the subject of official notice; (b) the erroneous extension of the doctrine of official notice worked a denial of Texaco's right to cross-examine and improperly shifted the burden

of proof; (c) Texaco was denied the opportunity to rebut and disprove the materials officially noticed; and (d) in any event, these materials added nothing of substance to the record nor would they support findings contrary to those earlier reached by the Hearing Examiner regarding the legality of the sales commission agreements. On September 24, 1962, the Hearing Examiner filed a revised Initial Decision, a copy of which is attached hereto as Exhibit D. That decision repeated his earlier findings, added new findings and substituted new and contrary conclusions for those he had formerly reached. Squarely in the teeth of his own original findings reiterated in his second decision and his own original conclusions, the Examiner now concluded that the use of the sales commission method of distributing TBA violated Section 5 of the Federal Trade Commission Act. Neither this new conclusion nor the bulk of his new findings rested on the remand proceedings and they derived no support from anything that had occurred during the remand. He thus exceeded the limited authority conferred upon him by the remand order, which in no way empowered him to re-examine and make revised findings upon the pre-remand record except "in the light" of newly adduced evidence of competitive effects. Upon the basis of these wholly unauthorized new findings and conclusions the Hearing Examiner predicated a revised order which duplicated that entered by the Commission in the other two TBA cases.

14. The order is not limited to the sales commission arrangement between Texaco and Goodrich, but forecloses Texaco from participating in any sales commission plan in connection with TBA with any company. It prohibits Texaco from continuing its sales commission agreement with The B. F. Goodrich Company and from entering into or continuing similar agreements with any other supplier of tires, batteries or accessories.

The order, in addition, contains provisions directed against coercion and against interference with the freedom of any Texaco outlet to handle TBA of its independent choice.

15. On the appeal to the Commission taken by Goodrich and Texaco, the Commission, apparently recognizing the incompetency of all the materials "officially noticed" by the Examiner, excluded from consideration everything added to the record by the remand proceedings and struck whatever findings and conclusions in the revised Initial Decision were predicated thereon. This meant that the record was in exactly the condition in which it had been when the Commission had earlier declared it to be insufficient to justify an order against Texaco. Nevertheless, without a single new fact and without any intervening change in legal doctrine, the Commission on April 15, 1963 in a 3-1 decision held the opposite of what it had previously decided on March 9, 1961, before the remand. It sustained the Hearing Examiner's new conclusion based entirely on the old or pre-remand record that a violation of Section 5 of the Federal Trade Commission Act had been demonstrated. The "other evidence of record" the Commission said, referring solely to the old record, "amply supports the conclusions and order of the Hearing Examiner." No basis for its reversal of position was set forth. As legal authority, the Commission merely cited its two other TBA decisions which it handed down on the very day when it had earlier found the instant record insufficient and had directed a remand. Abjuring explanation, the Commission said only: "The legal principles relevant to this decision need not be reexamined here because they are set forth at length in the opinions of the Commission in *Goodyear Tire & Rubber Co., et al.*, Docket 6487, March 9, 1961, and *Firestone Tire & Rubber*

Co., et al., Docket 6487, March 9, 1961." A copy of the decision and order of the Commission, dated April 15, 1963, is annexed hereto as Exhibit E.

Commissioner MacIntyre did not participate. Commissioner Anderson, who was the only member of the Commission who had participated in the earlier decision herein, did not concur "for the reason that the command of the remand order of March 9, 1961 had not been met and complied with."

The participation of Chairman Dixon, one of the members of the majority, had been unsuccessfully challenged by Texaco. Among other things urged by Texaco was the fact that before any evidence had been taken on the remand Chairman Dixon, in a speech made on July 26, 1961, had publicly denounced the practices attacked by the complaint as illegal and had specifically named Texaco and Goodrich in this connection thus reflecting such bias, prejudice and prejudgment as to disqualify him from further participation.

III. Grounds for Relief

16. The grounds on which relief is asked are:

(a) The Order, and the opinions, findings and conclusions upon which it is based, are arbitrary, capricious, not in accordance with law, without statutory authority, unsupported by reliable, competent, probative or substantial evidence, unwarranted by the facts and founded upon erroneous inferences, incompatible with the record as a whole, and were entered in violation of the requirements of due process of law and are in disregard of the provisions of the Federal Trade Commission Act and the Administrative Procedure Act;

(b) The Commission has wholly failed to make any findings of fact to support certain of its conclusions and has failed to inform the reviewing courts and the parties by an adequate and proper statement of its findings and conclusions as to the legal and factual basis for its order, all as required by statute and necessary to due process.

(c) Since the Commission expressly excluded from its consideration the matters officially noticed during the remand and since this left nothing before it but the pre-remand record which it had held to be insufficient to support the complaint, the Commission exceeded its jurisdiction and authority in not dismissing the complaint.

(d) The decision of the Commission, issued April 15, 1963, approving the conclusion that Section 5 had been violated, is in irreconcilable conflict with the Commission's opinion of March 9, 1961 upon the identical record. The legal principles which the Commission states it is applying in issuing the order challenged here are the same legal principles it applied when it held it could not issue an order. By reaching diametrically opposed results upon the identical record, without explanation and only by virtue of having unreasonably prolonged the trial of this matter to the injury of Texaco, the Commission has acted in disregard of the requirements of the Administrative Procedure Act, has abrogated its functions under the Federal Trade Commission Act, and has denied Texaco due process.

(e) The evidence in the record will not support the conclusion that any sales commission agreement between Texaco and Goodrich or between Texaco and any other company or any practices of Texaco pursuant to such agreements constitute an unfair method of competition or an unfair or deceptive act or practice in violation of Section 5 of

the Federal Trade Commission Act. In particular there is no substantial, probative, competent or reliable evidence of (a) coercion; (b) the existence of and/or the employment of economic power by Texaco to cause Texaco dealers involuntarily to purchase substantial amounts of TBA; and (c) adverse competitive effects or any injury to competition.

(f) The record affirmatively establishes that the sales commission plan of distributing TBA as used by Texaco is a lawful selling method and is not in restraint of trade, is not an attempt to monopolize or a conspiracy to monopolize trade in TBA, does not involve a tie-in or exclusive dealing, is not an unfair method of competition or an unfair or deceptive act or practice in commerce in violation of Section 5 of the Federal Trade Commission Act and is not in violation of any law.

(g) Texaco has been denied procedural due process and subjected to violations of the Administrative Procedure Act and the Commission's own rules in the following respects among others:

(i) The decision and order appealed from were not rendered by an impartial and disinterested tribunal acting without prejudgment.

(ii) The Commission acted unlawfully and arbitrarily in failing to proceed with reasonable dispatch to conclude its proceedings and in unreasonably prolonging such proceedings to the injury of Texaco when, after a full trial and a finding by it that the evidence did not show a violation of law, it *sua sponte* reopened and remanded the case for the taking of further evidence. The Commission breached due process in issuing such order on its own motion without request by any party, without notice of the

contemplated action and without any showing of good cause for making the remand. In thus arbitrarily and capriciously protracting the trial of this matter without any claim or showing that there was any evidence whatever, newly discovered, inadvertently omitted or any other, bearing on the charges made in the complaint, the Commission exceeded its jurisdiction and authority and violated its own rules; it lacked the power it purported to exercise to extend indefinitely the proceeding pending before it. Furthermore, the prejudgment reflected by the order of remand violated the requirement of impartiality in administrative adjudicatory proceedings. The Commission compounded its fault and aggravated the injury done Texaco when, in order to defeat judicial action ending its improper protraction of the proceedings herein, the Commission misrepresented to the Federal Courts its need for what it claimed to be crucial, decisive, additional evidence which, however, was never forthcoming and without which the Commission nevertheless proceeded two years later to a determination directly contrary to the one it had reached earlier.

(iii) The proceedings which purported to implement the order of remand did not meet or comply with that order, were unauthorized by it and violated due process. In view of the fact that nothing was added to the record by the remand, the Hearing Examiner had no authority to make any changes in his Initial Decision or in the order based thereon. Likewise, in approving and adopting these unauthorized changes in disregard of the fact that the order of remand had not been met or complied with, that Texaco had been given no notice that the Commission viewed itself as free to reappraise the prior record despite its representations to the Courts and respondents that the remand was not to be a retrial and that Texaco, therefore, had no opportunity to adduce evidence or present argu-

ment directed to such reappraisal, the Commission deprived Texaco of due process.

(iv) The same Hearing Examiner, while trying this proceeding, simultaneously tried other proceedings involving substantially identical issues concerning sales commission plans to which Texaco was not a party and commingled these records in his decision in this proceeding contrary to the Commission's own recognition of the necessity for treating each record separately and contrary to the requirements of due process.

(v) Evidence has been improperly admitted against Texaco; evidence admitted for limited purposes, or, as against only one party has been considered as though available for all purposes; the record as a whole has been ignored and all of the substantial, probative, competent and reliable evidence supporting the lawfulness of the challenged agreements and of the sales commission method of TBA distribution has been disregarded.

(h) The Commission's order is additionally unlawful in that it is unjustifiably broad and prohibits acts and practices unrelated to those stated in the factual findings and legal conclusions of the Commission adverse to Texaco; it is vague, inconsistent and ambiguous; and it arbitrarily denies Texaco equal opportunity to engage in the same methods of TBA distribution left open to others competing with it.

(i) The Commission's interpretation and application of Section 5 of the Federal Trade Commission Act in this proceeding violate the Fifth Amendment to the Constitution and render that statute an improper delegation of legislative authority, without any adequate standards, and

are, further, contrary to every existing expression by Congress, the courts and the Commission itself as to the meaning and applicability of the statute.

IV. Relief Prayed

WHEREFORE, petitioner respectfully prays that this Court

(a) review the aforesaid proceedings and the order to cease and desist entered therein and set aside said order;

(b) issue its order directing dismissal of the Commission's complaint; and

(c) award such further, or alternative, relief as may seem just and proper to the Court.

Respectfully submitted,

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Attorneys for Petitioner
Texaco Inc.

Dated: June 12, 1963

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Petition to Review and Set Aside an Order of the Federal Trade Commission (The B. F. Goodrich Company)

(June 17, 1963)

IN THE

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA

No. 17,923

THE B. F. GOODRICH COMPANY,

Petitioner,

against

FEDERAL TRADE COMMISSION,

Respondent.

To The Honorable Judges of the Court of Appeals For the District of Columbia:

Petitioner, The B. F. Goodrich Company, pursuant to Section 5(c) of the Federal Trade Commission Act (15 U. S. C. §45(c)) respectfully requests this Court to review and set aside an Order and Decision of the Federal Trade Commission, respondent herein, entered on April 15, 1963 and served upon petitioner on April 22, 1963, in a proceeding entitled *In the Matter of The B. F. Goodrich Company and The Texas Company,* Docket No. 6485, and respectfully shows:

B. F. Goodrich's Petition to Review and Set Aside Order

I. Jurisdiction and Venue

Petitioner is a corporation organized and existing under the laws of the State of New York, with its principal place of business in the City of Akron, Ohio. This petition is brought under Section 5(c) of the Federal Trade Commission Act (15 U. S. C. §45(c)). Venue is based upon the provision of that section permitting any corporation, required by an order of the Commission to cease and desist, to obtain judicial review by filing a petition with the Court of Appeals of the United States within any circuit where the method of competition or the act or practice in question was used or where such corporation resides or carries on business. Petitioner carries on business in the District of Columbia. The acts, practices and methods of competition which were the subject of the proceeding before the Federal Trade Commission took place within this Circuit where petitioner sells and distributes tires, batteries and automotive accessories (hereinafter "TBA") purchased by customers within the District of Columbia pursuant to arrangements prohibited by the Commission's Order.

II. The Nature of the Dispute and a Concise History of the Prior Proceedings

On January 11, 1956, after investigation commenced in 1952 or earlier, the Commission issued its complaint against petitioner and The Texas Company (hereinafter "Texaco"), asserting a violation of Section 5 of the Federal Trade Commission Act. The complaint attacked long-standing sales commission arrangements with Texaco whereby petitioner has agreed, in return for valuable sales and promotional assistance, to pay to Texaco commissions on the purchase of petitioner's TBA by service stations

and other outlets handling Texaco petroleum products.* In addition, the complaint challenged similar arrangements between petitioner and other oil companies not parties to the proceeding and between Texaco and The Firestone Tire & Rubber Company, which was not a party to the proceeding.

Although no conspiracy was alleged, the complaint charged that all such agreements, and the acts and practices of Texaco and petitioner thereunder, constituted unfair methods of competition and unfair acts and practices within the intent and meaning of the Act. After an interlocutory appeal taken prior to any hearings in this case, the Commission directed that evidence be received concerning the "details, operation and competitive effect" of all the challenged sales commission arrangements. At the hearings, however, substantially all of the extensive evidence taken pertained to the agreement between petitioner and Texaco.

In his Initial Decision of October 23, 1959, the Hearing Examiner concluded that Texaco's contractual relationships with its dealers do not give it control over them and that petitioner had not participated in any acts or practices designed to force Texaco outlets to buy petitioner's TBA products. He held that the sales commission agreement between petitioner and Texaco was not illegal and ordered dismissal of the complaint as to petitioner. Based upon the testimony of five former dealers (Texaco has approximately 38,000 dealers across the nation, none of whom was called in support of the complaint), the Examiner found that Texaco had supposedly coerced dealers to buy "substantial quantities" of sponsored TBA and ordered Texaco to cease and desist from "overt acts of coercion."

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* An alternative method of marketing TBA used by other oil companies is the purchase-resale plan, under which the oil company purchases TBA products directly from the manufacturers and then offers them for sale to its wholesale and retail outlets.

B. F. Goodrich's Petition to Review and Set Aside Order

Both counsel supporting the complaint and Texaco appealed from the Hearing Examiner's Initial Decision and Order. By its Opinion and Order, dated March 9, 1961, the four members of the Federal Trade Commission who heard the appeals remanded the case to the Hearing Examiner for the taking of additional evidence. The Commission's opinion stated:

> "* * * [W]e find that Texaco has sufficient economic power over its wholesale and retail petroleum distributors to cause them to purchase substantial amounts of sponsored TBA even without the use of overt coercive tactics. The determination of whether Texaco's exercise of such economic power in favor of Firestone and Goodyear [*sic*] under the oil company's sales commission contracts with these rubber companies constitutes an unfair method of competition depends, therefore, upon *the competitive effects* of these sales commission contracts; not upon whether Texaco has exercised its power to implement such contracts through the use of overt coercive tactics, or by more subtle, but equally effective, means.
>
> "At issue in this litigation, then, is the legality of a particular method of distributing TBA used by respondents. A key fact in evaluating the competitive effects of respondents' use of the sales commission method of distributing TBA is the fact that Texaco has sufficient economic power with respect to its retail and wholesale petroleum distributors to cause them to purchase substantial quantities of the brand of TBA sponsored or sold by Texaco. But such economic power is a fact existing independently of any particular method of distributing TBA which Texaco may use. Whether the sales commission agreements between Firestone and Texaco and Goodrich and Texaco are unlawful must depend, therefore, upon the characteristics and

> the competitive effects of these sales commission agreements. For reasons set forth hereinafter, we conclude that this case must be remanded in order that market data may be introduced to show the competitive effects of Texaco's sales commission agreements with Goodrich and Firestone upon competing suppliers of tires, batteries and accessories at the manufacturing, wholesale and retail levels. * * * [T]he record in this case does not contain sufficient market data to enable the Commission to assess the competitive effects of the sales commission method of distributing TBA employed by these respondents. The case will be remanded to the hearing examiner for the taking of evidence indicating the competitive effects of the sales commission contracts at the manufacturing, wholesale and retail levels of TBA distribution."

The Commission further directed that, after the receipt of such evidence, the Examiner was to "indicate any changes he may wish to make in his initial decision in the light thereof." Implicit in this decision were two determinations: (1) that whatever its supposed "economic power over its wholesale and retail petroleum distributors" and whatever the means by which it supposedly "has exercised its power," an oil company's sale of TBA or its promotion of the sale of sponsored brands of TBA to its petroleum outlets is not, without more, unlawful; and (2) that the evidence then before the Commission would not support a finding that petitioner's sales commission arrangements violate Section 5, because substantial evidence of adverse "competitive effects," based upon "market data," would have to be brought forward before a violation could be found.*

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* On March 9, 1961, the Commission also rendered its decisions in two companion TBA sales commission plan cases which had been

Pursuant to the aforesaid Order of Remand, the Hearing Examiner set hearings to begin on July 17, 1961. These hearings were cancelled, however, until after the disposition of an action, filed by petitioner and Texaco on July 7, 1961 in the District Court for the District of Columbia, for an injunction to restrain the Hearing Examiner from proceeding with further hearings in this case. (Civ. Action No. 2219-61). In this injunction action, counsel for the Commission warranted that it "needed additional evidence in order to decide the issues presented."** They promised the Court that the remand was to supply evidence dispositive of the proceeding and would not involve a retrial of what had gone before:

> "On its face, the Commission's opinion shows that its remand is not seeking a retrial of matters already tried but rather envisions supplementary evidence on

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heard by the same Hearing Examiner and in which he had filed Initial Decisions essentially identical to that in the proceeding against petitioner and Texaco. In both of the companion cases, the Commission stated the same analysis of the issues quoted above. In those cases, however, the Commission dealt at length with evidence from which it found that "both the purchase-resale plan and the sales commission plan make use of the marketing facilities of marketing oil companies, but in different ways and with differing competitive effects." Characterizing evidence introduced in the other two cases but wholly lacking in the case against petitioner and Texaco, the Commission concluded, "The record * * * conclusively establishes, in our minds, that the sales commission contracts between [the parties there] have unlawfully injured competition in the distribution of TBA at the manufacturing, wholesale and retail levels." The Commission entered cease and desist orders against the parties to those cases. *In the Matter of The Firestone Tire & Rubber and Shell Oil Company,* Docket No. 6487; *In the Matter of The Goodyear Tire & Rubber Company* and *The Atlantic Refining Company,* Docket No. 6486. Appeals by the parties to those cases are now pending before the Courts of Appeals for the Fifth and Seventh Circuits, respectively.

** Memorandum of Points and Authorities in Support of Defendants' Motion to Dismiss and in Opposition to Plaintiffs' Motion for Preliminary Injunction, p. 26, served August 28, 1961.

> what it considered to be significant facts in any assessment of the competitive effects of the sales commission agreements, namely, the effects upon competing TBA suppliers stemming solely from this method of distribution. * * * Here, the remand involves developing additional evidence on the crucial issue, one that will be dispositive of the proceedings; * * * Here, the remand involves a highly complex and complicated question in which it is sought to determine the probable competitive effects of the sales commission method of distributing TBA; * * *"*

On June 19, 1962, the District Court, while denying an injunction, ruled that petitioner and Texaco would be entitled to relief unless the remand were completed by October 2, 1962. In so holding, the District Court relied upon the Commission's representations that it did not have sufficient evidence to establish a violation, expressly finding that "the Commission, having found the evidence before it inadequate to show a violation of Section 5 of the Federal Trade Commission Act, issued an order remanding the Proceeding to the Hearing Examiner, * * *" Petitioner and Texaco immediately filed with this Court a petition for a preliminary injunction, which was denied on June 22, 1962, after counsel for the Commission had made essentially the same representations as to the necessity of adducing additional evidence.

Upon disposition of the various motions before the District Court and this Court, the Hearing Examiner set hearings to commence July 16, 1962. At those hearings no evidence or testimony was received, but the Examiner improperly took "official notice" of certain materials which the Commission had noted in its opinion in a companion

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* Memorandum of Points and Authorities in Support of Defendants' Motion for Summary Judgment, pp. 17, 21 filed April 30, 1962.

case, *In the Matter of The Firestone Tire & Rubber Company and Shell Oil Company,* Docket No. 6487. After petitioner and Texaco had been effectively deprived by the Examiner's rulings of an opportunity to rebut the matters noticed, the case was closed on July 19, 1962.

In his second Initial Decision, filed September 24, 1962, the Examiner—noting that "The decision of the Commission and the matters contained in its opinion remanding this case are binding upon this hearing examiner"—completely reversed his prior position. Recognizing that as to his first Initial Decision "the Commission did not * * * take issue with the factual findings made, but disagreed with certain conclusions reached," the Examiner reiterated verbatim each and every one of his earlier findings. In addition, he made nine "supplemental findings" based solely upon the pre-remand record, none of which had even remote bearing upon any supposed adverse competitive effects attributable to the sales commission arrangements. But in radically altering his conclusions based upon the same findings, the Examiner turned a veritable airborne somersault, substituting new conclusions representing a view of the sales commission plan diametrically opposed to his former conclusions:

First Initial Decision	*Second Initial Decision*
"3. Neither the sales commission contract between Texas and Goodrich, nor the contracts between Texas and its dealers and distributors, contain any clause or provision requiring such dealers or distributors to purchase only Goodrich TBA.	"1. Texaco has sufficient economic power over its wholesale and retail petroleum distributors to cause them to purchase substantial amounts of sponsored TBA, even without the use of coercive tactics. Such economic power exists independent of any particular method of distributing TBA which Texaco might use. * * *
"4. In making a determination as to whether the leases made by Texas with its dealers are used	

First Initial Decision

to suppress competition, the extent to which they are in conformity with reasonable requirements in the field of commerce in which they are used will have a direct bearing on their legality. The housekeeping provisions of the leases are not unreasonable or oppressive. The renewal and cancellation provisions of the leases are in conformity with those which ordinarily appear in many leases of property.

"5. The consideration for the payment of a commission to Texas under the sales commission contract is based upon substantial services rendered by Texas in promoting the sale of Goodrich TBA to Texaco dealers and distributors.

"6. No inference or implication can be drawn simply from the contractual relationship between Texas and its dealers, that the degree of control by Texas over its dealers is sufficient by force its dealers to purchase only sponsored TBA."

Second Initial Decision

"4. The use of the sales commission method of distribution by Goodrich was designed to take advantage of the economic control which Texaco had over its dealers, and by such use, Goodrich was able to obtain an unfair advantage over its competitors in selling to Texaco stations and in addition, aided and abetted Texaco in removing from the open market a substantial number of new and established Texaco dealers by causing them to purchase Goodrich TBA exclusively or in substantial quantities, and thereby excluding competitors of Goodrich who might otherwise have been able to sell their TBA to a substantial number of such Texaco dealers."

None of the Examiner's new conclusions was based upon his "supplemental findings." Moreover, the new conclusions were not supported by, but were flatly contrary to, the findings reiterated from the first Initial Decision, which

the Commission had held insufficient to establish that the sales commission arrangements are unlawful. Yet the Examiner adopted an Order which outlawed not merely petitioner's sales commission agreement with Texaco but any such arrangement, present or future, with any other marketing oil company, although he made no finding of "economic power" or other relationship of influence between any oil company and its outlets other than Texaco.

On April 4, 1963, appeals taken from the second Initial Decision by both petitioner and Texaco were heard by four members of the Commission, only one of whom had participated in the original decision. Notwithstanding the fact that the record herein consists of more than 4500 pages of testimony and thousands of pages of exhibits, just seven working days later, on April 15, 1963, the three new members of the Commission issued their decision and order.* Apparently recognizing the incompetency of all the materials "officially noticed" by the Examiner on the remand, the Commission struck from the second Initial Decision all findings and conclusions based thereon. In then adopting the second Initial Decision as thus modified, the majority explained its decision solely with this cryptic pronouncement:

> "[The Commission] finds that the other [pre-remand] evidence of record amply supports the conclusions and the order of the hearing examiner. The legal principles relevant to this decision need not be reexamined here because they are set forth at length in the opinions of the Commission in *Goodyear Tire & Rubber*

* One of those three new members, the Chairman, had earlier, on July 26, 1961, delivered an extra-judicial public address in which he denounced various oil industry practices as unlawful. He expressly included the sales commission plan and specifically referred to Texaco and petitioner in a manner reflecting bias, prejudice and prejudgment.

Co., et al., Docket 6486, March 9, 1961, and *Firestone Tire & Rubber Co., et al.*, Docket 6487, March 9, 1961."

Commissioner Anderson, the sole member who had participated in the original decision, did not concur "for the reason that the command of the remand order of March 9, 1961, has not been met and complied with."

III. Grounds For Relief

The grounds on which relief is sought include the following:

1. The Commission's findings and conclusions adverse to petitioner are not based upon substantial, probative, competent and reliable evidence, are not based upon consideration of the record as a whole, and embody erroneous and unreasonable inferences contrary to the facts of record, in that, *inter alia*:

(a) The record fails to establish that petitioner's sales commission arrangements with Texaco or any other oil company have adverse competitive effects at the manufacturing, wholesale or retail levels of TBA distribution;

(b) The record fails to establish that Texaco or any other oil company with which petitioner has sales commission arrangements either has or exercises "economic power" so as to inhibit the freedom of choice in purchasing TBA of the retail dealers and wholesale distributors of such oil companies, thereby causing those dealers and distributors to purchase substantial amounts of petitioner's or other TBA sponsored by such oil companies;

(c) The record fails to establish that use of the sales commission method of TBA distribution by peti-

tioner was designed to take advantage of the purported "economic control" which Texaco or any other oil company supposedly has over its dealers and distributors or that petitioner has thereby obtained any unfair advantage over its competitors;

(d) The record fails to establish that Texaco or any other oil company having sales commission arrangements with petitioner removed from the open market new or established dealers and distributors of such oil companies, causing such dealers and distributors to purchase petitioner's or other TBA sponsored by such oil companies and thereby excluding competitors of petitioner who might otherwise have been able to sell their TBA to such dealers and distributors; and

(e) The record fails to establish that dealers and distributors of Texaco or any other oil company with which petitioner has sales commission arrangements failed to purchase competing TBA, not sponsored by such oil companies, because of their feeling or understanding that they were required to purchase petitioner's or other TBA sponsored by such oil companies.

2. The Commission has wholly failed to make any findings of fact to support certain of its conclusions and has failed to state adequately, with the simplicity and clarity necessary for a reviewing court to determine whether its decision is right or wrong, certain of its factual findings and legal conclusions, all as required by the Federal Trade Commission Act, by the Administrative Procedure Act, and by the requirements of due process.

3. The Commission, in completely disregarding all of the substantial, probative, competent and reliable evidence supporting the lawfulness of the sales commission method

of TBA distribution, denied petitioner due process of law and violated the requirements of the Administrative Procedure Act.

4. The Commission's conduct of this proceeding has been arbitrary and capricious and has denied petitioner due process in that, *inter alia*, the Commission has failed to adjudicate this matter objectively, impartially and without prejudgment, at different times and with changes in its membership it has taken wholly contradictory and irreconcilable positions on exactly the same evidence of record, and it has unreasonably prolonged trial of this matter to the injury of petitioner, particularly in misrepresenting to the Courts, in order to defeat an injunction against remand hearings, the necessity to the Commission's determination of additional evidence never thereafter introduced or considered by the Commission.

5. The record affirmatively establishes that the sales commission method of distributing TBA as employed by Texaco and other oil companies with which petitioner has such arrangements is a lawful method of distribution, is not in restraint of trade, does not involve any attempt to monopolize or any conspiracy to monopolize trade in TBA, does not involve tie-in or exclusive or preferential dealing requirements, and is not an unfair method of competition or an unfair or deceptive act or practice in commerce in violation of Section 5 of the Federal Trade Commission Act.

6. The Commission's Order is unjustifiably broad and unrelated to the acts and practices stated in the factual findings and legal conclusions of the Commission adverse to petitioner and arbitrarily denies petitioner equal opportunity to engage in the same methods of TBA distribution left open to others competing with it.

7. The Commission's interpretation and application of Section 5 of the Federal Trade Commission Act in this proceeding violate the Fifth Amendment to the Constitution and render that statute an improper delegation of legislative authority, without any adequate standards, and are, further, contrary to every existing expression by Congress, the courts and the Commission itself as to the meaning and applicability of the statute.

IV. Relief Prayed

WHEREFORE petitioner respectfully prays that this Court review the aforesaid proceedings and the order to cease and desist entered thereon, and set aside such findings conclusions and order, as well as direct the Commission to dismiss its complaint against petitioner and to award such further or alternative relief as may seem just and proper.

The undersigned counsel of record hereby verify that the statements of fact set forth above are true.

Dated: June 14, 1963

Respectfully submitted,

WHITE & CASE

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A. G. Russell:
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Commission's Exhibit 1A

1-A

THE TEXAS COMPANY
LEGAL DEPARTMENT
135 EAST 42nd STREET
NEW YORK 17, N. Y.

MARION J. BRLEY, JR.
ATTORNEY

August 20, 1952

FEDERAL TRADE COMMISSION
DOCKET 6435 EXHIBIT NO. 1-A
IN THE MATTER OF B. F. GOODRICH COMPANY
DATE OCT 15 1956 WITNESS
ACE REPORTING CO., Official Reporter
By MONICK

BY HAND

Mr. William W. Rogal
Federal Trade Commission
New York, N. Y.

Your File: 1-21689
1-22441

Dear Mr. Rogal:

Supplementing my letter of this date furnishing you information formally requested, I now submit additional information and data in compliance with your further request.

You have been given access to the files relating to The Texas Company TBA Program and the handling of that Program by the Company. While these files are designated "Sales of Tires", they actually pertain to the entire TBA line of both Goodrich and Firestone.

In the file entitled "Sale of Tires - General", you will find a letter dated January 25, 1952, from Mr. Norton Bronson to Mr. R. L. Saunders, together with prior correspondence in the file, describing generally services rendered by The Texas Company in sale of TBA.

I have been furnished and show below the total number of Texas Company outlets in the United States, broken down by Divisions, and indicated under the classification of Dealers, Consignees, and Distributors. This is computed as of December 31, 1951, which is the latest date for which the Company has such figures. It is my understanding that The Texas Company does not have any "Jobbers".

These figures are:

Faithfully yours for Fifty Years 1902 1952

CX 1(c)

6850

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 1-P

Division	Number of Dealers	Number of Consignees	*Number of Distributors
Boston	2,349	12	31
Buffalo	2,221	10	24
New York	4,121	17	36
Norfolk	5,392	95	36
Chicago	3,233	36	128
Denver	1,628	113	61
Minneapolis	2,768	81	198
Indianapolis	3,108	78	43
Atlanta	3,632	140	17
Dallas	2,270	191	12
Houston	2,360	159	10
New Orleans	2,583	114	24
Butte	966	63	55
Los Angeles	2,520	74	9
Seattle	1,076	42	3
Total	40,227	1,225	687

(1) 40,128

*Number of Distributor Bulk Plants. Some Distributors have more than one such plant.

I have been informed that the total number of Texas Company outlets to whom The Firestone Tire & Rubber Company sells its line of TBA products with respect to which it pays The Texas Company a commission on sales is 6,769. The number sold by The B. F. Goodrich Company is 2,596. 2,596 5,128 (1)

You will find in the same file designated "Sale of Tires - General" a letter dated May 8, 1951, addressed by Mr. Bronson to the four Texas Company Territorial Managers under the subject "The Texas Company TBA Program". This letter indicates generally the procedure followed by The Texas Company in its TBA sales efforts with respect to new Goodrich and Firestone accounts.

I believe this is all of the additional information and data you have requested up to this time.

Very truly yours,

William Rogal

WWRjr/MRA

(1) Emp. St. TR 78-1

C.X. 8852

JAX 3

Commission's Exhibit 2A

THE TEXAS COMPANY
LEGAL DEPARTMENT
135 EAST 42nd STREET
NEW YORK 17, N. Y.

HARRON J. EPLEY, JR.
ATTORNEY

August 20, 1952

FEDERAL TRADE COMMISSION
DOCKET NO. 6415. ITS EXHIBIT NO. 2A
IN THE MATTER OF B.F. Goodrich Tire Co
DATE SEP 16 1952 WITNESS
REPORTING CO., Official Reporter
By MONICK

BY HAND

Mr. William W. Rogal
Federal Trade Commission
New York, N. Y.

P-690

Your File: 1-21869
1-22441

Dear Mr. Rogal:

In compliance with your formal request of July 16, 1952, attached is original of letter transmitted to me by Mr. Norton Bronson under date of August 14, 1952, and all enclosures sent to me with Mr. Bronson's letter.

The 1943 contracts attached to Mr. Bronson's letter have been informally amended from time to time by letters, to such an extent that it may be somewhat difficult for one unfamiliar with them to now determine the existing terms and provisions. We shall be glad to clarify any confusion you may encounter along those lines.

The statistical data submitted in Mr. Bronson's letter is confidential, and we understand you will utilize it on this basis.

If there is additional information which you desire, I shall be pleased to give prompt consideration to your further requests.

Very truly yours,

Harron J. Epley, Jr.

MJE:jr/MRA
Enclosure

Faithfully yours for Fifty Years
1902 1952

CX 2(R) 6854

JAX 4

Commission's Exhibit 2B

THE TEXAS COMPANY

New York, N. Y., August 14, 1952

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 2-B
IN THE MATTER OF B. F. GOODRICH COMPANY
DATE OCT 15 1956 WITNESS
ACE REPORTING CO., Official Reporter
By MONICK

Mr. M. J. Epley, Jr.

Building

Dear Sir:

You have asked me to assemble the information and data requested in letter dated July 16, 1952, addressed by the Federal Trade Commission to The Texas Company concerning our TBA arrangements. The response to this request is assembled below.

The Texas Company's marketing organization in the U.S. is shown on the attached map, from which it will be seen that there are four geographical territorial supervisory organizations as follows:

(1) Northern Territory with headquarters at New York and Division Offices in Boston, Mass.; Buffalo, N. Y.; New York, N. Y.; and Norfolk, Va.

(2) Central Territory with headquarters at Chicago and Division Offices in Minneapolis, Minn.; Denver, Colo.; Chicago, Ill.; and Indianapolis, Ind.

(3) Southern Territory with headquarters office at Houston, Texas, and Division Offices in Dallas, Texas; Houston, Texas; New Orleans, La.; and Atlanta, Ga.

(4) Pacific Coast Territory with headquarters at Los Angeles, Cal. and Division Offices in Seattle, Wash.; Butte, Mont.; and Los Angeles, Cal.

The states included in each Division are shown by the Division and Territorial lines indicated on the map attached as Exhibit "A".

Exhibit "B" indicates the usual line of authority, down to the field selling organization, with particular reference to TBA.

The Texas Company does not have any subsidiary or controlled interests servicing the domestic market in the U.S.

The Texas Company has agreements for commissions on the sale of TBA to its dealers and consignees and distributors only for the products marketed by The B. F. Goodrich Company, Akron, Ohio, and The Firestone Tire and Rubber Company, Akron, Ohio.

The contracts entered into with these companies in 1943 have been modified or amended by letter on various occasions. Two folders are attached properly designated containing photostats of the basic contracts, and we believe all letters changing the terms and provisions of such contracts.

CX 2-B
6856

JAX 5

Commission's Exhibit 2C

FEDERAL TRADE COMMISSION

DKT NO. 6485 EXHIBIT NO.

All statistics and information in this memorandum unless specified otherwise, as requested by the Commission are only for the period January 1, 1951, to July 1, 1952.

The total dollar volume of sales of TBA to The Texas Company for its own consumption by The B. F. Goodrich Company was $269,405, and by The Firestone Tire and Rubber Company was $639,406. Sales to The Texas Company for resale are made at only two of our more than 40,000 service stations. Sales to the first of these stations by The B. F. Goodrich Company for $2,177.86 (for 27 months through May 31, 1952) and sales to the other station were by The Firestone Tire and Rubber Company amounting to $762.16. No commission of any kind was received by The Texas Company on any sales described in this paragraph.

The total dollar volume of sales for the above period to Texas Company dealers, consignees and distributors on which a sales commission, allowance, or other compensation was paid totaled $16,789,735 by The B. F. Goodrich Company and $39,288,708 by The Firestone Tire and Rubber Company.

The total amount paid to The Texas Company by The B. F. Goodrich Company as commissions, allowances, or compensation on volume of sales in the preceding paragraph was $1,399,289.16 and by The Firestone Tire and Rubber Company was $3,330,713.77.

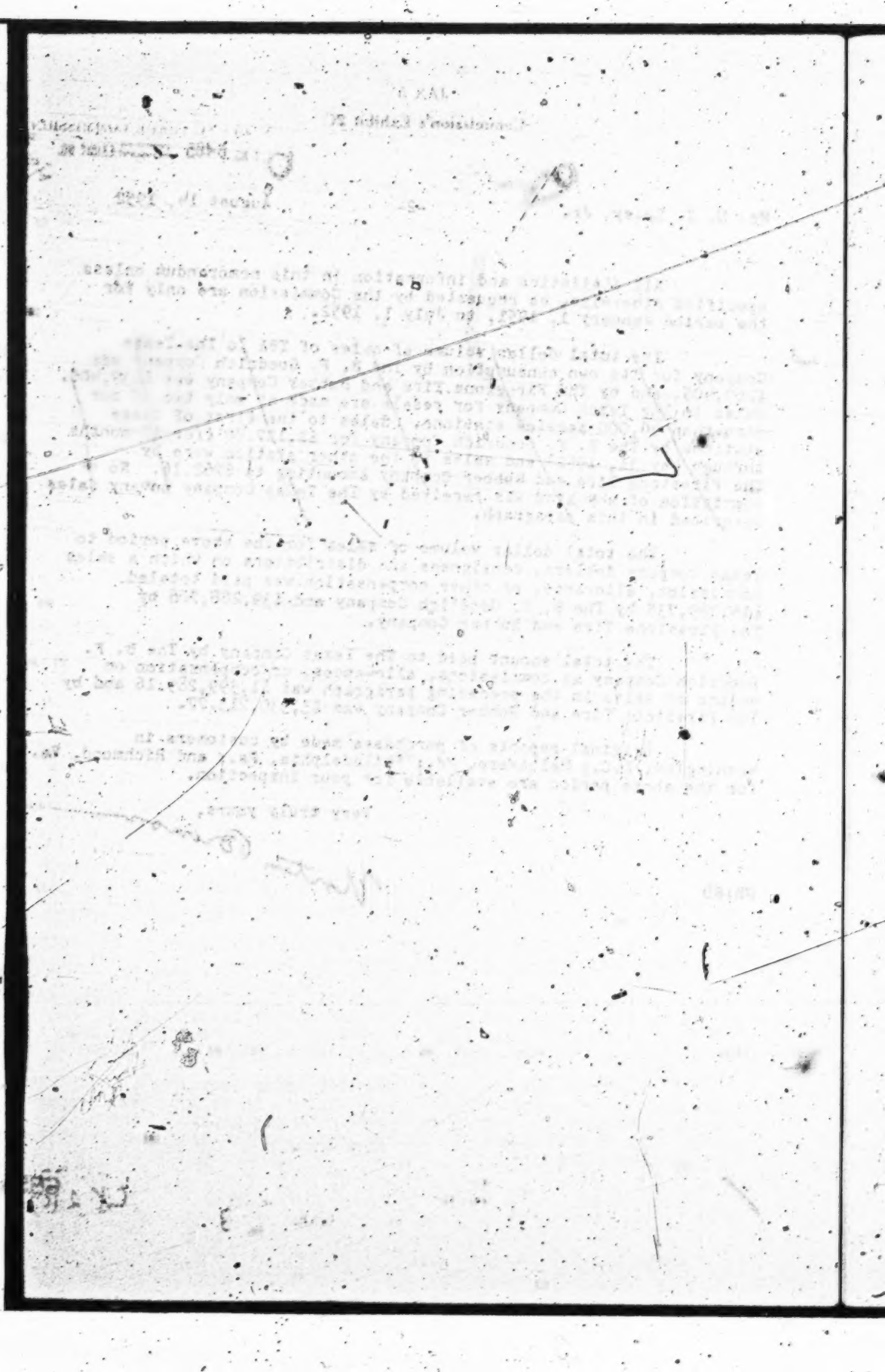
Original reports of purchases made by customers in Washington, D.C.; Baltimore, Md.; Philadelphia, Pa.; and Richmond, Va. for the above period are available for your inspection.

Very truly yours,

Victor Emerson

HB:SD

CX 2(5) 6858



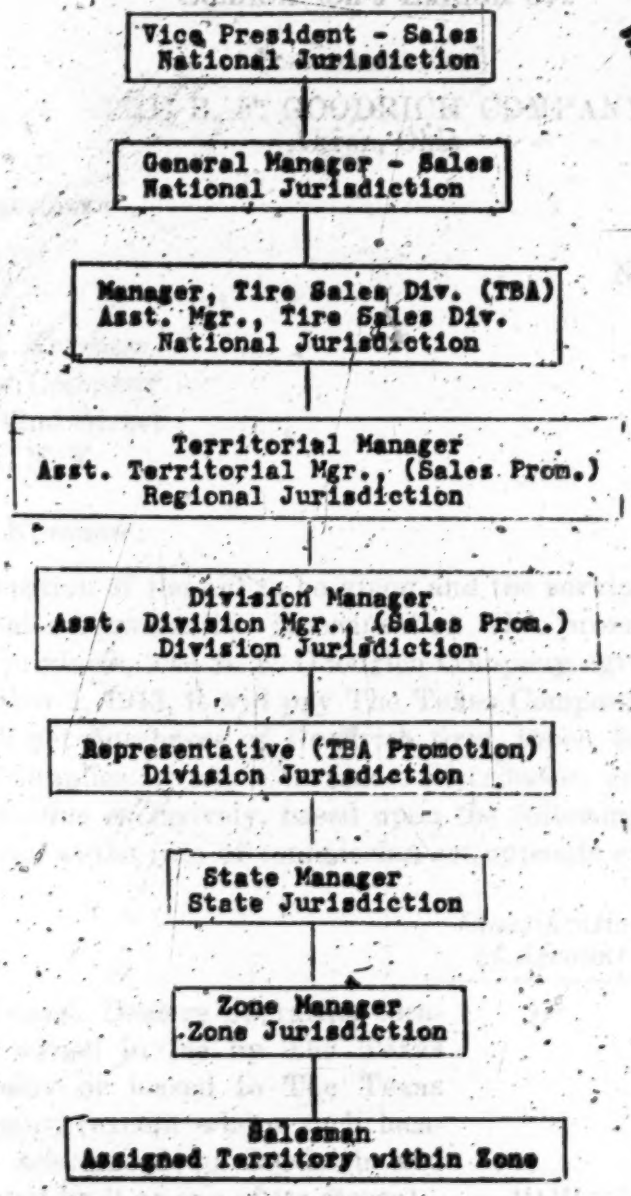
DOMINION OF CANADA
McCOLL FRONTENAC OIL COMPANY, LIMITED
SEATTLE
BUTTE
MINNEAPOLIS
BOSTON
PACIFIC COAST TERRITORY
DENVER
CENTRAL TERRITORY
CHICAGO
INDIANAPOLIS
NORTHERN TERRITORY
NEW YORK
LOS ANGELES
NORFOLK
NEW ORLEANS
DALLAS
SOUTHERN TERRITORY
ATLANTA
HOUSTON
DOMESTIC TERRITORY
THE TEXAS COMPANY
TEXACO
MEXICO
GULF OF MEXICO
ATLANTIC OCEAN
PACIFIC OCEAN
Commission's Exhibit 2D
6860

JAX 7

Commission's Exhibit 2E

B

FLOW OF AUTHORITY CHART - TBA



FEDERAL TRADE COMMISSION
DOCKET No. 6485
COMMISSION'S EXHIBIT No. 2E

Commission's Exhibit 3A

(6865)

[LETTERHEAD OF]

THE B. F. GOODRICH COMPANY
Akron, Ohio

Office of
VICE PRESIDENT

November 23, 1943

Mr. W. H. Kershaw
The Texas Company
135 East 42nd Street
New York, N. Y.

Dear Mr. Kershaw:

In consideration of the aid to be given and the services to be rendered by your sales organization in connection with promoting the sale of Goodrich products, The B. F. Goodrich Company agrees that, effective as of October 1, 1943, it will pay The Texas Company a sales commission on all net purchases of Goodrich tires, tubes, batteries and auto and home supplies by any Consignee, Distributor, or Dealer handling Texaco gasoline exclusively, based upon the following classification of accounts and at the rate of commission set opposite each classification:

	Classification of Account	*Rate of Commission*
(1) All Texaco Dealers operating locations owned in fee by The Texas Company or leased to The Texas Company (except where such locations are leased to Goodrich and operated by it as one of its stores).	"C"	10%
(2) All other Texaco Sales Contract Dealers	"D"	10%

(JAX 8 *continued on next page*)

Commission's Exhibit 3A

(3) All Texaco Consignees and Distributors, (including Consignee-operated and/or Distributor-operated "Store Front" locations handling the complete B. F. Goodrich line).	"B" (Cons.) "E" (Distr.)	7½% 7½%
Except Consignees and Distributors functioning under Goodrich-Agency Program, on which the sales commission for auto and home supplies, including batteries, shall be as in the preceding paragraph but on which the sales commission on tires and tubes will be	"BW" (Cons.) "EW" (Distr.)	5% 5%

We also agree to pay you a sales commission on

Commission's Exhibit 3B

(6867)

Mr. W. H. Kershaw

Page 2.

	Classification of Account	*Rate of Commission*
all sales we make of tires, tubes, batteries and auto supplies to your Transport Haulers with whom you have contracts for the transportation of your products from one point to another on the basis of an agreed haulage rate.	"T"	7½%

Said commission will be paid upon all net purchases made by all of the above mentioned classifications of Texaco accounts, excepting, however, such "D" accounts as are not approved by The B. F. Goodrich Company, and such "C" accounts where their location would cause a conflict with our already established distribution.

The term "net purchases" is defined as total billings at net invoiced price, less all returned goods, and other allowances, discounts and credits, except volume bonus and cash discount.

This agreement supersedes all previous agreements of similar character and will continue in force until terminated by either party on one hundred and twenty (120) days' written notice to the other.

Yours very truly,

THE B. F. GOODRICH COMPANY

By: JAMES J. NEWMAN
James J. Newman
Vice President

ACCEPTED:

THE TEXAS COMPANY

By: W. H. KERSHAW

JAX 10

Commission's Exhibit 5

The B. F. Goodrich Company

FIFTY-SEVEN YEARS IN RUBBER SINCE 1870 — OVER 30,000 RUBBER PRODUCTS

AKRON OHIO

August 7, 1944

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 COMMISSION'S EXHIBIT NO. 5
IN THE MATTER OF B.F. Goodrich + Texas Co
DATE SEP 10 1945 WITNESS
[illegible] REPORTING CO., Official Reporter
By MONICK

Mr. H. A. Wright
The Texas Company
135 East 42nd St.
New York 17, N. Y.

Dear Harry:

I phoned your office last Friday and had a little talk with Lou, but was sorry to find that you were not expected back until today.

You wrote me under date of July 17, asking what items are not included for payment of sales commission that might be sold to some of your dealers. For your information the following is a complete list although some of these items, of course, are not available at this time:

Adjustments Tires + Tubes	Battery Service Kits
Seconds Tires & Tubes	Equipment
Wheels and Parts	Budget Dealer Stationery
Rental Batteries	Hydrometers
Transportation - Freight	Anti-Freeze Testers
Advertising	

Very truly yours,

THE B. F. GOODRICH COMPANY

Geo. A. Hoban

Merchandise Manager
Tire Division

J A Hoban
a k

JAX 11
Commission's Exhibit 6

902 3rd
Rockwell
Cleveland file

THE TEXAS COMPANY
135 EAST 42ND STREET
NEW YORK 17, N.Y.

WALTER HOHNULI
GENERAL SALES MANAGER

February 21st, 1946

Mr. J. F. Bowen
The D. F. Scottish Company
Akron, Ohio

Dear Mr. Bowen:

In your letter to us of December 28th, 1945 you outlined a sales consignment arrangement which you did not believe to be violative of our anti-trust consent decree in connection with our production of the sale of Texaco products.

Under one part of this arrangement we are to report to a sales classification of all tire sales made by you to [illegible] Company operating [illegible] owned by the Texas Company or leased by the Texas Company (except where such leased [illegible] operated by it as one of its dealers).

Make it to inform you that from this date, in the case of any leased location, as mentioned above, where the dealer has been handling D. F. Scottish Company products for a long period of time preceding our lease, or where Scottish have a substantial financial investment in such an account, we will give consideration to any request you may make to exclude such account from our sales consignment arrangement.

It is understood that any such exception will be discussed with our New York office before a definite decision is reached.

Very truly yours,

Walter Hohnuli

WALTER HOHNULI

WH:BH

6473

6173

Commission's Exhibit 8

The B.F. Goodrich Company

FIRST IN RUBBER SINCE 1870 — OVER 30,000 RUBBER PRODUCTS

AKRON OHIO

January 2, 1948

Mr. Norton Bronson
The Texas Company
135 E. 42nd St.,
New York 17, New York

Dear Mr. Bronson:

Your letter of November 12 called to my attention a previous conversation regarding the addition of dealers of distributors to the B-47 list, and asked for a confirmation of our policy on this subject.

Inasmuch as there are occasional cases where it is impractical to inaugurate a TBA program with a Texaco consignee or distributor for any one of several reasons, we often solicit and sell all dealers serviced by such consignees or distributors through other channels. (Includes "C" and "D" type dealers as well as dealers under contract with the distributor, if dealing exclusively in Texaco petroleum products and so identified.)

In their solicitation, we ask the aid and cooperation of your sales organizations. In view of this, we are agreeable to all such dealers being listed on the B-47 report, subject to the same review and approval by the B. F. Goodrich District Manager as applies in the case of Texaco dealer accounts generally.

Very truly yours,

THE B. F. GOODRICH COMPANY

E. J. Lewis

Manager,
Petroleum Co. Tire Sales

E J LEWIS
mls

6874

Commission's Exhibit 10

July 14, 1950

Mr. E. J. Lewis
The B. F. Goodrich Company
Akron, Ohio

Dear Mr. Lewis:

According to our records, the following items are not subject to sales commission when sold to Tennco dealers:

[redacted] - tires and tubes
[redacted] - tires and tubes
[redacted] - freight
[redacted] Marine Kits
[redacted] dictionary
[redacted] letters
[redacted] Power Lawn Mowers
[redacted] water heaters
[redacted] (Refrigerators, Radios)
[redacted] Ventilation sets

Will you please check this list and advise whether or not our records are complete.

Very truly yours,

RMW:ED

Signed: M. A. WOLPE

6881

JAX 14

Commission's Exhibit 11

760 14

a-1

The B. F. Goodrich Company

FIRST IN RUBBER

AKRON, OHIO

July 21, 1950

Mr. M. A. Wolfe
The Texas Company
135 E. 42nd St.,
New York 17, New York

Dear Mr. Wolfe:

Your letter of July 14 requested that we check your listing of items not presently subject to sales commission when sold to Texaco dealers.

A careful check has been made and we find the list accurate and complete with the following exceptions:

Two classifications have been obsolete and inactive, but may again become a factor at some future date. These are: "Used Government Surplus Tires" and "Tires of Competitive Manufacturer".

Power Lawn Mowers do not show on the listing and should be added. Sales of conventional Lawn Mowers are included for sales commission purposes.

After the listing, "Motorola Radios" we suggest you insert "(except Auto Radios)".

These minor revisions will bring your listing entirely up-to-date.

Very truly yours,

THE B. F. GOODRICH COMPANY

E. J. Lewis

Manager,
Petroleum Company Tire Sales

E J LEWIS
nlh

6883

JAX 15

Commission's Exhibit 12

The B. F. Goodrich Company

FIRST IN RUBBER

AKRON, OHIO

March 17, 1952

Mr. Morton Bronson
The Texas Company
Chrysler Building
New York 17, New York

Dear Mr. Bronson:

As you know, it has been our policy to include recapped tires for sales credit and sales commission when the capping service and carcasses are purchased as a complete unit from a B. F. Goodrich plant. Purchases of recapping service only, resulting when the dealer furnished his own tire carcasses, have not been subject to sales credit and sales commission.

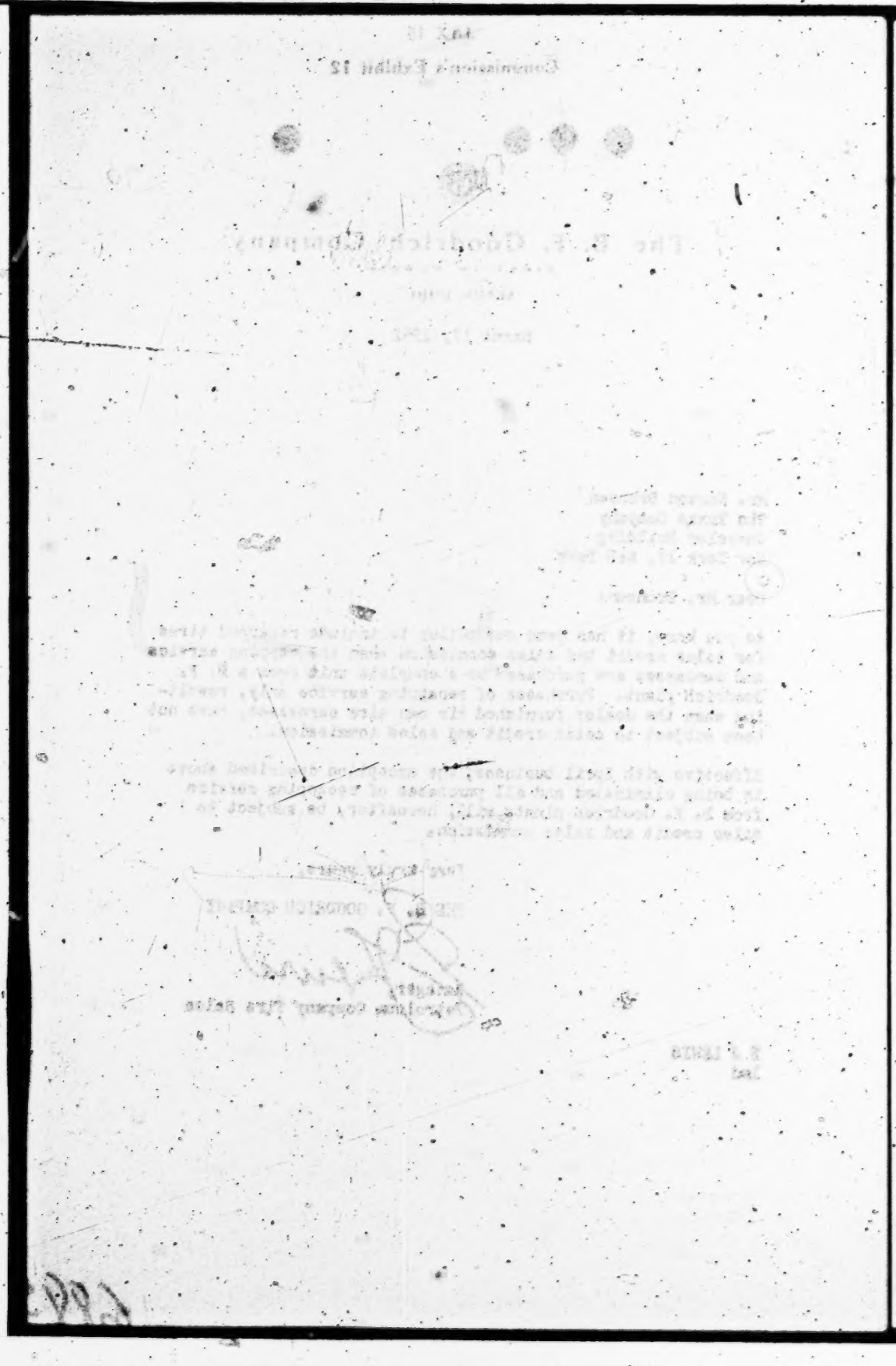
Effective with April business, the exception described above is being eliminated and all purchases of recapping service from B. F. Goodrich plants will, hereafter, be subject to sales credit and sales commission.

Very truly yours,

THE B. F. GOODRICH COMPANY

Manager,
Petroleum Company Tire Sales

B J LEWIS
lmd



JAX 16

Commission's Exhibit 13A

THE Firestone

Tire & Rubber Company

HARVEY S. FIRESTONE
FOUNDER

AKRON, OHIO

September 15, 1943

Mr. W. H. Kershaw
The Texas Company
135 E. 42nd Street
New York, New York

Dear Mr. Kershaw:

In consideration of the assistance and cooperation to be given The Firestone Tire & Rubber Company by your sales organization in promoting the sale of Firestone products, The Firestone Tire & Rubber Company will pay The Texas Company, effective as of August 21, 1943, a sales commission on all net purchases of Firestone Tires and Tubes, and Home and Auto Supplies, including batteries, sold by Firestone to any Consignee, Distributer, Tank Car Buyer or Dealer handling Texaco gasoline 100%, on the following basis:

	Classification of Account	Rate of Commission
(1) All Texaco Dealers operating locations owned in fee by The Texas Company or leased to The Texas Company (except where such a location is leased or subleased to Firestone and operated by it as one of its stores)	"C"	10%
(2) All other Texaco Sales Contract Dealers	"D"	10%
(3) Texaco Tank Car Buyers		
(a) Buying gasoline exclusively for resale at retail in one or more service stations operated by such Buyer	"D"	10%
(b) Buying gasoline for resale by tank-wagon to service stations not operated by such Buyer	"E"	7½%
(4) All Texaco Consignees and Distributers, including Consignee-operated and/or Distributer-operated 'Store Front' locations with Firestone Complete Business Franchise	"B" (Cons.) "E" (Distr.)	7½% 7½%
Except Consignees and Distributers functioning under Firestone Wholesaler Program, on which the sales commission for Home and Auto Supplies, including batteries, shall be as in the preceding paragraph but on which the sales commission on tires and tubes is to be	"BW" (Cons.) "EW" (Distr.)	5% 5%

6887

KEEP 'EM ROLLING!

-2-

Classification Rate of
of Account Established

(5) Notwithstanding the foregoing, the sales commission to be paid on net purchases of Home and Auto Supplies, including Batteries, made from Firestone on a minimum discount basis (currently 33⅓ below Key Dealer) by any of the above classifications is to be 4% 5%

It is understood that sales commission will be paid upon net purchases made by all of the foregoing classifications of Tenant accounts as outlined except such Tenant Sales Contract Dealers, Junk Car Buyers, and Distributors as are not approved by The Firestone Tire & Rubber Company.

The term 'net purchases' is defined as the net recovery to Firestone resultant from total billings at invoice price, less all returned goods, allowances, volume or quantity discounts and other credits, except cash discounts.

This agreement supercedes all previous agreements of similar character and will continue in force until terminated by either party on one hundred and twenty (120) days' written notice to the other.

Very truly yours,

THE FIRESTONE TIRE & RUBBER COMPANY

By: _____
Vice President

ACCEPTED:
THE TEXAS COMPANY

By: _____

6889

JAX 18

Commission's Exhibit 14

14

THE [illegible]

Tire & Rubber Company

HARVEY S FIRESTONE
FOUNDER

GENERAL OFFICES
AKRON, OHIO

AKRON 17, OHIO
July 25,
1944

REC[illegible]

Mr. H. A. Wright
The Texas Company,
135 East 42nd St.,
New York 17, N. Y.

Dear Mr. Wright:

In answer to your letter of July 17th, perhaps the following information written from our General Instructions will serve the purpose of advising your districts concerning sales which are reported by our districts.

1. We do not report sales made through store front locations where the location is not directly a part of the service station operation. This applies to either C or D accounts, as we have recognized store front locations involving your consignees and distributors.

2. We do not include the following when reporting sales:

Used tires and tubes
Adjustment sales
Wheels, rims, and weights
Mechanical goods
Home & Auto Supplies, purchased locally by stores
Equipment items (battery chargers and cleaners, lubrication equipment, etc.)
Advertising material

3. We do not include sales made by one oil company qualified account to another oil company qualified outlet, where Firestone pays a sales commission to the other oil company on such sales.

It is of course understood that we report on a net sales basis after deduction of quantity discounts, volume bonuses, wholesale commissions, and excise taxes, also the increase mark-up on tires and tubes, and any other similar deductions, excepting cash discounts.

I think it will be helpful for you to advise your districts in this connection, as we are having some difficulty with your people in our districts, because they are taking figures from our statements, which include the above and therefore feel that they have not received proper sales credit on the S-47 report.

Yours very truly,

J. A. Wright, Manager
Petroleum Sales

JAA:kh

[illegible] the Voice of Firestone every Monday Evening over N.B.C.

JAX 19

Commission's Exhibit 17

The Firestone Tire & Rubber Company

HARVEY S FIRESTONE
FOUNDER

GENERAL OFFICES
AKRON 17 OHIO

AKRON 17, OHIO

December 15,
1948

Mr. M. A. Wolfe
The Texas Company
135 East 42nd Street
New York, N. Y.

Dear Mr. Wolfe:

You recently wrote Mr. Addison regarding your discussions concerning the "DE" accounts. As you know, he has been out of town for some time; and he has asked me to acknowledge your letter and to confirm these arrangements, as set forth in your letter.

We have prepared revised Operating Instructions to our field, which should go forward to our districts very soon. Our instructions covering "DE" accounts will read as follows:

Dealers in Oil Company distributor or jobber territories - Includes only dealers handling oil companies gasoline 100% in oil company distributor or jobber territories where distributor or jobber is not now handling Firestone. Nomination and approval of such accounts must be individually agreed upon jointly by Oil Company Division and Firestone District Managers. Such Dealers of Distributors currently handling Firestone who were handling the oil company's petroleum products subsequent to January 1, 1944, may be nominated and qualified and sales may be reported beginning with June 21, 1948.

We trust that this will verify the arrangements and enable you to pass on the necessary information to your division offices.

Yours very truly,

G. M. Elliot
Petroleum Sales

GME:ph

6897

Listen to the Voice of Firestone every Monday Evening over N.B.C.

LEASE

Agreement dated the _____ day of _____, 19___, by and between THE TEXAS COMPANY, a Delaware corporation, having a place of business at _____ (lessor) and _____ of _____ (lessee) WITNESSETH:

(1)—Premises Leased. Lessor does hereby lease and permit lessee to enter upon, use and occupy for the purposes and on the conditions herein set forth the following described property situated in the City of _____ County of _____, State of _____, described as follows:

together with the buildings, improvements, fixtures, equipment and facilities of lessor now located on said premises as follows:

FEDERAL TRADE COMMISSION
DOCKET NO. 6480 EXHIBIT NO. 18
IN THE MATTER OF B F Goodrich + Texas Co's
DATE SEP 10 1956 WITNESS
ACE REPORTING CO., Official Reporters
By MONICK

and such other buildings, improvements, tools, fixtures, equipment and facilities owned or leased by lessor as may now be on said premises or as lessor may hereafter, during the continuance of this lease, erect or place thereon.

(2)—Term. This lease shall remain in full force and effect for a period of one (1) year beginning _____ and ending _____, and thereafter from year to year, subject to termination by either party at the end of the first year or any subsequent year on ten (10) days' prior written notice; but subject always to the condition that if lessor is holding said premises under lease from a third party, said term shall not continue beyond the date of lessor's tenancy, which tenancy may terminate by failure to renew or extend the term of said lease at the expiration or cancelation thereof or by a voluntary surrender of lessor's rights, it being understood that lessor shall have full and complete freedom to cancel and terminate its said tenancy without the consent of lessee and shall be under no obligation to exercise any option it may have to renew or extend the term of any lease under which it holds or may hold said premises or to exercise any option of purchase of said premises which it may hold.

(3)—Rental. Lessee agrees to pay to the lessor, as rent for the use of the above described premises:

Strike out inapplicable Provision

(a) A sum of $_____ per month payable in advance, on the first day of each and every month; or,

(b) A sum of $_____ per month, plus _____ cents per gallon for each gallon of gasoline delivered to the demised premises for resale in excess of _____ gallons per month, such rental to be payable on the 15th day of each month following the month for which the rental is due; or,

(c)

Csley EXHIBIT 42
OBTAINED 8-27 1952 by mail
BY W. W. Cloyd
ATTORNEY-EXAMINER
FILE NO. 7-7-7-7 GRO)
CY 10 11

Commission's Exhibit 18B (6755)

(4)—Use. Lessee shall use the said premises and the buildings, improvements and facilities thereon primarily for the operation of a gasoline service station and the sale of automobile accessories; but in no event shall said premises be used for any unlawful or offensive purpose. Lessee shall not suffer or permit the said premises to be vacant or unattended for any period in excess of 48 hours.

(5)—Maintenance. Lessee shall, during the term of this agreement, maintain the said premises, buildings and equipment, in good repair and in a clean, safe and healthful condition. In event of lessee's failure so to do, the lessor may make the necessary repairs for the account of lessee. Lessee shall make no change, alteration or substitution in the demised premises, buildings or equipment, except such as may be necessary to enable lessee to continue business on said premises, unless the consent in writing of lessor be first obtained.

(6) Licenses, Etc. Lessee shall obtain all necessary licenses or permits to do business on the leased premises, which [illegible] municipal ordinances, state law or regulation, governmental authority, or otherwise, and shall pay all taxes in connection therewith as well as fees imposed by reason of inspections of the leased premises or the equipment situated thereon.

(7)—Re-Delivery. Upon the expiration of this agreement or the termination thereof, lessee shall yield up and return to lessor the said premises and all the said buildings, improvements, fixtures, tools, equipment and facilities in as good condition as when received by lessee, ordinary wear and tear excepted.

(8)—Holdover. If, at the expiration or termination of this lease or any extension thereof, lessee should hold over with the consent of lessor, express or implied, the tenancy of the lessee thereafter shall be from month to month only and be subject to all of the other terms and conditions of this lease, in the absence of a written agreement to the contrary.

(9)—Gas, Water and Electricity. The lessee, during occupancy of the leased premises, shall pay all charges accruing for gas, water and electricity. Upon his failure so to do, the lessor may pay such charges and, in that event, such charges shall be added to the rental payable and shall be collectible as rent.

(10)—Lessee's Default. In the event said premises are closed or unattended for any period in excess of forty-eight (48) hours, default by lessee in the payment of rent or breach of any of the terms, covenants and conditions of this lease, or if bankruptcy or insolvency proceedings are instituted by or against lessee, or if lessee becomes insolvent, or if lessee files a petition for a composition or extension under Section 74 or 77B of the Bankruptcy Act, or if any attachment, garnishment, execution, or any other legal process or proceedings is levied or instituted by anyone other than lessor against the said premises, or any of the equipment thereon, or if lessee sells, assigns, pledges, or mortgages the said premises, or any part thereof, or attempts to do so, or allows any lien to attach thereto, or in event of death of lessee, lessor may, without notice, immediately terminate this agreement and all lessee's rights hereunder, and reenter and, in any manner, resume possession of said premises, improvements and facilities, the lessee hereby waiving all statutory rights inconsistent herewith.

(11)—Waiver. It is agreed that the waiver by lessor of any breach of any covenant, condition or stipulation contained herein shall not be considered to be a waiver of any subsequent breach of the same or any other covenant, condition or stipulation of this lease nor affect or prejudice any of lessor's rights or remedies hereunder.

(12)—Leases held by Lessor. This lease is subject to the terms and conditions of the lease, if any, between lessor and the owner or tenant of the demised premises, and also any extension, renewal, or new lease, on the demised premises.

(13)—Notice. Notices from lessor to lessee shall be sufficient if placed in the United States mails, addressed to the leased premises, and any such notice shall take effect at the time of the mailing thereof. Notices from lessee to lessor shall also be sufficient if delivered to lessee or left on the leased premises in any manner. Notices from lessee to lessor shall be sufficient if posted in the United States mails, postage prepaid, addressed to the lessor's place of business as shown in this lease.

(14)—Assignment. The lease hereby given may not be assigned, transferred or sublet, either in whole or in part, by lessee without the written consent of lessor. Lessor's consent, however, shall not be unreasonably withheld.

(15)—Entirety of Agreement. No prior stipulation, agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in the provisions of this lease.

(16)—Approval and Execution by Lessor. This agreement, whatever the circumstances, shall not be binding on the lessor unless and until approved and signed in its behalf by its Executive Officer, or by any of the following employes of the Domestic Sales Department: General Manager, Assistant General Manager, Manager Dealer Sales, Territorial Manager, Assistant Territorial Manager, Division Manager, or Assistant Division Manager.

IN WITNESS WHEREOF the lessor and lessee have hereunto caused their names to be subscribed the day and year first above written.

THE TEXAS COMPANY (LESSOR)

Attest:_____ By_____

Witness:_____ _____

(LESSEE)

Witness:_____ _____

Approved as to: Terms_____ Description_____ Form_____

Commission's Exhibit 19A

Form 5-Comp—4-10-[illegible]

THE TEXAS COMPANY

No. _____

AGREEMENT OF SALE (In duplicate) made on the _____ day of _____, 19__, between THE TEXAS COMPANY, a Delaware corporation, having a Division Sales Office at _____, hereinafter called Seller, and _____ of _____, hereinafter called Purchaser.

(1)—Sale. Seller hereby sells and agrees to deliver and Purchaser buys and agrees to receive and pay for the following products of the kind and quality purchased by Seller at time and place of delivery in quantities specified from time to time by Purchaser, but in respect of each product not less per year than the minimum quantity stated below:

Product	Minimum	Maximum
(a) Texaco Sky Chief Gasoline	_____ gallons	_____ gallons
(b) Texaco Fire-Chief Gasoline	_____ "	_____ "
(c) Texaco Motor Lubricants	_____ "	_____ "
(d) Texaco Motor Lubricants	_____ pounds	_____ pounds
(e) _____	_____	_____

(2)—Point(s) of Delivery. _____

(3)—Prices. The prices for:

a. For Texaco Sky Chief Gasoline, and Texaco Fire-Chief Gasoline: Seller's posted dealer price therefor at time of delivery, as posted for the area in which delivered at the bulk plant from which deliveries are made.

b. For Texaco Motor Lubricants: The prices shown on Seller's Schedule for Motor Lubricants, hereinafter referred to as "Seller's Schedule," in effect at time and place of delivery. (Schedule now in effect, dated _____, 19__, is hereto attached.)

(4)—Delivered Discounts. If, during the yearly period commencing on the date hereof or any anniversary of said date, Purchaser accepts and pays for the quantity specified below of Motor Lubricants shown in Seller's Schedule, Seller will allow and pay or credit Purchaser at the end of each yearly period the following delivered discounts:

	Quantity	Delivered Discount
a. Oils:	From 500 to 999 gallons	_____ ¢ per gallon
	From 1000 to 2499 gallons	_____ ¢ " "
	Over 2500 gallons	_____ ¢ " "
b. Greases:	From 500 to 999 pounds	_____ ¢ per pound
	1000 or more pounds	_____ ¢ " "

Provided, however, that if, under this agreement or otherwise, Purchaser purchases, accepts and pays for motor fuels, made up forth on the attached schedule, any special discounts are allowed at time of such purchases (hereinafter called "special purchases") the quantity of motor fuel purchased shall be added to other purchases hereunder in determining the total quantity on which a discount is allowable, but the delivered discount allowable hereunder on special purchases(s) shall be equal only to the difference between the special discount(s) allowed at time(s) of the special purchase(s) and the applicable delivered discount hereinabove set forth.

(5)—Terms of Payment:
Gasoline: C. O. D. only.
Motor Lubricants: C. O. D. but 15 of prior, exclusive of any tax included therein or added thereto.

(6)—Other Provisions. The Provisions of Agreement printed on the reverse side hereof, except those that by their terms are inapplicable, are parts of this agreement.

(7)—Duration of Agreement. This agreement shall remain in full force and effect from _____ to _____, and thereafter from year to year; provided, however, that

a. Either party may terminate this agreement on the last mentioned date or any succeeding anniversary thereof by giving written notice to the other at least thirty days prior to the date upon which termination shall become effective; and

b. If this agreement covers delivery of gasoline tested by dealer to Purchaser, it shall automatically terminate upon termination or cancellation of such tests; and

c. Either party may terminate this agreement forthwith by written notice upon failure of the other party to perform strictly any of the obligations imposed upon the other hereby.

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 19
IN THE MATTER OF [illegible]
DATE SEP 10 1952 WITNESS _____
ALDERSON REPORTING CO., Official Reporters
BY MONCK

Witness: _____ (Purchaser)

_____ By _____

Witness: _____ THE TEXAS COMPANY (Seller)

_____ By _____

Countersigned by: _____

Chkd _____ Amount 43
Division 9-12 19 52 Norfolk
By W. W. Royal
ATTORNEY-IN-FACT

File No. 149690

6901

JAX 32

Commission's Exhibit 1082

PROVISIONS OF AGREEMENT

Entirety of Agreement.—No prior alterations, agreement or understanding of the parties or their agents shall be valid or enforceable unless embodied in this agreement or covered by these provisions.

Delivery.—Unless otherwise stated in this agreement, delivery shall be deemed complete when goods, properly conditioned, are placed free on board cars, boats or other vehicles.

Waiver.—The right of either party to require strict performance by the other, or any custom or usage at variance upon the other by this agreement shall not in any way be affected by any provision contrary, inconsistently or custom of trading.

Trade Cases.—Any trade cases furnished by the seller shall be accompanied by the invoiced description upon which and delivered hereby, showing how many pieces and what quantity of each article are packed in each case, and shall be and remain the property of the seller, and the buyer shall not use the same for any purpose other than as packing for the goods sold by the seller but shall return the same to the seller free of charges at the destination of the goods, or pay the seller the invoiced value thereof within ten days after expiration of 60 days.

Vessel Delivering.—When delivered in part by boat, barge, lighter or other craft, the Purchaser hereby binds and agrees that such vessel shall furnish, and shall be the proper, and sufficient vessel for the safe receipt of the goods, and shall arrive with the necessary documents, and at the proper time and place, and shall receive the goods as fast as delivered, and shall be pumped out at the expense of the Purchaser, and shall proceed to the next port of discharge, or to such other port as may be designated by the Purchaser, and shall there discharge the goods in the same manner, and shall be responsible for all damages to the goods on board vessels, the Purchaser shall not be liable for demurrage, unless the same shall have been caused by the negligence of the Purchaser, his agents or employees, and the vessels and the penalties for demurrage, and shall not be liable for any damages to the goods on board vessels, and specifically agreed upon at the time of execution of this agreement.

Deliveries in Bonds.—Purchaser as specified in this agreement may be allowed to accept delivery of goods in the original in-bonds, expressly, or in default of such acceptance, the seller may, at his option, store the goods at the expense of the Purchaser within the premises of the seller, and a delivery shall be deemed complete from the time of such storage. Upon such delivery, Purchaser agrees to assume all risks of damage to the goods from the time of delivery, and to insure the goods against loss, and to pay storage charges, and to remove the goods from the premises of the seller as soon as possible, but in no event later than thirty (30) days from date of delivery. In case of failure to remove the goods within the time specified, the seller may remove the goods to a warehouse, and the Purchaser shall pay the cost of such removal, and storage charges, and the goods shall be held subject to the order of the Purchaser, but the seller will not be responsible for any damage to the goods while in storage. Any goods not removed within thirty days from the date of delivery shall be subject to a storage charge of one per cent per month, and the seller will release to the Purchaser the goods upon payment of all charges.

Force Majeure.—Failure, the whole or in part, or delay in the performance of any of the obligations hereof upon either party hereto, shall be excused by the other party hereto, during the continuance of any inability so caused, when such inability or delay is due to fire, strikes, lockouts, boycotts, labor disputes, embargoes, acts of God, inability to obtain labor, material or manufacturing facilities, delays of carriers, acts of the public enemy, acts of the United States, any state, territory or municipality or any subdivision thereof, riots, civil disturbances, insurrections, explosions, quarantine restrictions, strikes, lockouts, boycotts, labor disputes, embargoes, acts of God, inability to obtain labor, material or manufacturing facilities, delays of carriers, acts of the public enemy, acts of the United States, any state, territory or municipality or any subdivision thereof, riots, civil disturbances, insurrections, explosions, quarantine restrictions, failure or delay in transportation, or inability to obtain necessary materials in the open market, or inability to manufacture the goods specified, or any other cause, whether similar to the causes specifically mentioned above or not, which is beyond the reasonable control of the party affected. Such causes or contingencies affecting the performance hereunder by the seller or Purchaser shall not relieve it of liability for the period during which such cause or contingency was in effect, provided that the party so affected shall use reasonable diligence to remove such cause or contingency as soon as reasonably possible. Failure to make delivery on account of any of the causes mentioned herein shall not give rise to any claim for damages or entitle the Purchaser to cancel any unfilled portion of this agreement unless the seller shall fail to make delivery within a reasonable time after the cessation of such cause, and in the event of any partial failure of delivery for any of the causes mentioned herein, the Purchaser shall not be relieved of his obligation to accept and pay for such portion of the goods as are delivered.

Default.—In the event of default by the Purchaser in the performance of any of the terms of this agreement, or in the failure to make any payment when due hereunder, or in the event of the bankruptcy or insolvency of the Purchaser, or in the event a petition in bankruptcy is filed by or against the Purchaser, or in the event the Purchaser shall make an assignment for the benefit of creditors, or in the event a receiver is appointed for the Purchaser, then in any such event the seller may, at his option, without notice, declare the whole amount unpaid under this agreement or any other agreement between the parties hereto immediately due and payable, and may cancel this agreement as to any unfilled portion hereof, and may recover from the Purchaser all damages the seller may sustain by reason of the Purchaser's default.

Cancellation.—Any order given hereunder may not be canceled except with the consent of the seller, and in such event only upon terms that will indemnify the seller against all loss.

Law.—This agreement, and any sale made hereunder, shall be governed by the laws of the State of [illegible] and any action at law or in equity brought by either party hereto against the other for the breach hereof shall be instituted and maintained in the courts of said State.

Attorney's Fees.—In the event that any action is filed in relation to this agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all sums that either party may be called on to pay, a reasonable sum for the successful party's attorney's fees.

Taxes.—In the event any tax, excise or assessment is imposed upon the manufacture, sale or delivery of the goods sold hereunder, or upon the materials used in the manufacture thereof, the same shall be paid by the Purchaser in addition to the prices herein set forth.

Insolvency.—If the Purchaser shall become insolvent, or if the financial condition of the Purchaser at any time shall in the opinion of the seller justify such action, the seller may, at its option, defer shipments hereunder except upon receipt of cash or its equivalent, or upon such security as the seller may deem adequate.

Arbitration.—In the event of any dispute arising between the parties hereto, the same shall be referred to arbitration, each party to appoint one arbitrator, and the two arbitrators so appointed shall appoint a third arbitrator, and the decision of any two of the arbitrators shall be binding upon the parties hereto, and the expenses of arbitration shall be paid as the arbitrators may determine.

Patent Indemnity.—The Purchaser shall pay for goods ordered pursuant to drawings or specifications furnished by the Purchaser, and if at any time any claim or suit is instituted against the seller for infringement of any patent or trademark by reason of the manufacture, sale or use of any goods furnished hereunder, the Purchaser shall indemnify the seller against any loss, damage or expense arising out of such claim or suit, and shall defend any such suit at its own expense.

Claims.—Any claims for defect or variance in quality or shortage in quantity shall be made, and the same shall be received and given due consideration by the seller, within ten days after the receipt of goods and shall be deemed waived by the Purchaser if not made within such period, and unless such claims are made in writing and accompanied by the shipping receipt showing the condition in which the goods were received. Any claim for shortage in quantity shall be given upon the receipt of the goods by the Purchaser, and unless such claim is made and presented to the seller at the time of delivery of the goods to the carrier and proper acknowledgment of the same is had upon the delivery receipt by the agent of the carrier, the Purchaser shall be deemed to have received the full quantity of goods shipped by the seller, and no claim for shortage will be considered. Failure of the Purchaser to comply with these requirements shall operate as a waiver of any and all claims by the Purchaser.

Taxes.—Purchaser hereby pays the amount of any tax and/or duty now or hereafter imposed, directly or indirectly, by the United States or any state or municipality or governmental subdivision thereof, or by any governmental agency, on the production and/or (b) the manufacture, processing, sale, use or consumption of any goods sold hereunder, or (c) the gross receipts, net income, profits, franchises, sale, use, excise, stamp, occupation or other taxes measured by the amount of such goods sold hereunder or the proceeds of said goods or from which said goods are wholly or partly produced or manufactured, and/or (d) the value or quantity of any of the foregoing, or (e) any other matter in connection with the production, manufacture, sale, use or consumption of any of the foregoing, if measured by the sales price of said goods, and the seller may bill Purchaser for and the Purchaser shall pay the amount thereof.

Price Revision.—If Seller's right to change or revise any price provided pursuant hereto, or to waive any such price as herein provided, is restricted or prohibited by law, regulation or order of any Government, then the seller may, at its option, terminate the provisions of this agreement insofar as they apply to the product or products for which any price is restricted or prohibited, upon thirty days' notice in writing to Purchaser. Upon the expiration of said thirty days, it is understood and agreed that the seller shall be relieved from all obligations under this agreement as to the product or products so specified, to remain in full force and effect.

Freight Rates.—The prices mentioned in this agreement are based on existing freight rates, and if under this agreement the Seller is to pay freight, then in case the rates are increased or decreased the prices shall be increased or decreased accordingly.

Monthly Shipments.—If this agreement extends over a period of months, shipments or deliveries shall be made in equal monthly quantities, subject to reasonable seasonal variations as determined by the parties; provided that, subject to the other provisions of this agreement, the agreed quantity must be taken within the year fixed.

Approximate Quantities.—In case deliveries are made in railroad, lighter, chartered boats or lots, subject to which has any kind of commercial usage, or by the custom of the trade, or any modification thereof shall be allowed without reference to the seller, and the agreed quantities shall be the guide.

Trademarks and Names.—Purchaser shall not sell products purchased from others under the trademarks or trade names of the seller. Name, trade mark or other designation of the seller shall not be used in connection with the goods, and the Purchaser shall have the right to use the name of the seller in connection with the goods, or to advertise the goods for resale, and the Purchaser shall make no reference to or mention of seller, nor shall he represent himself as agent or employee of seller.

Assignability.—This agreement shall not be assigned by the Purchaser without the written consent of the seller.

Approval and Signing by Seller.—Agreements covering the sale of merchandise involving amounts not in excess of [illegible] and accepting any and all of the terms and conditions thereof, on behalf of the Home Corporation, and any of the following officers: Vice President, Secretary, Treasurer, Assistant Secretary, Assistant Treasurer, Manager of Sales, Assistant Manager of Sales, Division Manager, and Assistant Division Manager, Manager of Branches.

THE TEXAS COMPANY

No. _____

AGREEMENT OF SALE (in duplicate) made on the _____ day of _____, 19___, between THE TEXAS COMPANY, a Delaware corporation, having a Division Sales Office at _____, hereinafter called Seller, and _____ of _____, hereinafter called Purchaser.

(1) SALE—Seller hereby sells and agrees to deliver and Purchaser buys and agrees to receive and pay for the following products of the kind and quality marketed by Seller at time and place of delivery in quantities specified from time to time by Purchaser but not less per year than _____ gallons of _____ gallons of _____ and _____ pounds of _____ and not more per year than _____ gallons of _____ gallons of _____ and _____ pounds of _____

(2) POINTS OF DELIVERY. _____

(3) PRODUCTS AND PRICES—The products and the prices therefor, f.o.b. _____ are:

PRODUCTS	PRICES
TEXACO	
TEXACO	
TEXACO	
TEXACO	
TEXACO	
TEXACO	
TEXACO	
TEXACO	
TEXACO	
TEXACO	
TEXACO	

PETITIONER'S EXHIBIT NO. 20
CAUSE NO. 5150 RAILROAD COMMISSION OF TEXAS
IN THE MATTER OF GAS UTILITIES DOCKET NO. 69
DATE SEP 10 1964 HEARING
A. C. REPORTING CO. Official Reporter
By

(4) TERMS _____

(5) PLACE OF PAYMENT _____

(6) OTHER PROVISIONS—The Provisions of Agreement printed on the reverse side hereof, except those that by their terms are inapplicable, are parts of this agreement.

(7) DURATION OF AGREEMENT—This agreement shall remain in full force and effect from _____ to _____ and thereafter from year to year; provided, however, that

a. Either party may terminate this agreement on the last mentioned date or any succeeding anniversary thereof by giving written notice to the other at least sixty days prior to the date upon which termination shall become effective; and

b. Either party may terminate this agreement forthwith by written notice upon failure of the other party to perform strictly any of the obligations imposed upon the other hereby.

OBTAINED PURSUANT TO

Witness: BY _____
ATTORNEY-EXAMINER

Witness: FILE NO. _____

(Purchaser)

By _____

Negotiated by:

THE TEXAS COMPANY (Seller)

By _____

6903

Commission's Exhibit 208

PROVISIONS OF AGREEMENT

Entirety of Agreement.—No prior stipulations, agreement or understandings of the parties or their agents shall be valid or enforceable unless embodied in this agreement or covered by these provisions.

Delivery.—Unless otherwise stated in this agreement, delivery shall be deemed complete when goods, properly consigned, are placed free on board cars, boats or other vehicles.

Waiver.—The right of either party to require strict performance by the other of any and/or all obligations imposed upon the other by this agreement shall not in any way be affected by any previous waiver, forbearance or course of dealing.

Tank Cars.—Any tank cars furnished by the Seller shall be discharged by the Purchaser immediately upon arrival and delivered back to the railway from which they were received, billed in accordance with forms furnished by the Seller, and for any cars delivered more than 48 hours after the Purchaser, besides paying such demurrage charges as may accrue, shall pay the Seller the amount per car stated in this agreement, or if not stated, then Two (2.00) Dollars for each day or portion of a day after expiration of 48 hours.

Vessel Deliveries.—When shipment is made by boat, lighter, tank ship, or other vessel, the Purchaser immediately upon arrival thereof shall furnish, without cost to the Seller, berth at which the vessel may be safely moored at all times, together with the necessary connections and facilities for receiving, and shall receive the product from the Seller in such manner as to make the discharge as rapid as possible, but in no event later than ninety (90) days from the date of delivery, to be good condition as when received, less ordinary wear and tear, at Seller's expense, by transportation as directed by the Seller. Said containers shall be complete and in serviceable condition with all parts and fixtures intact, and upon the return thereof to the Seller in compliance with the foregoing, Seller will refund to the Purchaser the deposit charge previously paid.

Vessel Demurrage.—When shipment is made by boat, lighter, tank ship, or other vessel, the Purchaser immediately upon arrival thereof shall furnish, without cost to the Seller, berth at which the vessel may be safely moored at all times, together with the necessary connections and facilities for receiving, and shall receive the product from the Seller in such manner as to make the discharge as rapid as possible, but in no event later than ninety (90) days from the date of delivery, to be good condition as when received, less ordinary wear and tear, at Seller's expense, by transportation as directed by the Seller. Said containers shall be complete and in serviceable condition with all parts and fixtures intact, and upon the return thereof to the Seller in compliance with the foregoing, Seller will refund to the Purchaser the deposit charge previously paid.

Drums Required.—Products as provided for in this agreement may be delivered in metal drums of 55-gallon, 55-gallon or 55-gallon capacity, or in steel barrels of 55-gallon capacity. Unless otherwise stated in this agreement, the price quoted shall include the property of the Seller, and a deposit will be charged for them on the invoice at the rates in effect as of the time of delivery. Purchaser agrees to empty them promptly and not to place therein any other product, and to return the same as soon as possible, but in no event later than ninety (90) days from the date of delivery, to an agent designated by the Seller, in good condition as when received, less ordinary wear and tear, at Seller's expense, by transportation as directed by the Seller. Said containers shall be complete and in serviceable condition with all parts and fixtures intact, and upon the return thereof to the Seller in compliance with the foregoing, Seller will refund to the Purchaser the deposit charge previously paid.

Force Majeure.—Failure (in whole or in part) or delay on the part of either party in the performance of any of the obligations imposed upon such party hereunder shall be excused and such party shall not be liable for damages or otherwise on account thereof, when such failure or delay is the direct or indirect result of any of the following causes, whether or not existing at the date hereof, and whether or not reasonably within the contemplation of the parties at the date hereof, namely: Acts of God, fire, flood, or the elements, malicious mischief, insurrection, riot, sinking, explosion, boycotts, picketing, labor disturbances, public enemy, war (declared or undeclared), compliance with any federal, state or municipal law, or with any regulation, order, rule, recommendation, request or suggestion (including, but not limited to, priority, rationing or allocation orders or regulations) of governmental agencies, or authorities or representatives of any governmental agencies (foreign or domestic) acting under claim or color of authority; total or partial failure or loss or shortage of all or any part of transportation facilities ordinarily available to and used by a party hereto in the performance of the obligations imposed by this agreement, whether such facilities are such party's own or those of others; or, if failure or delay be total or partial, total or partial loss or shortage of raw or component materials or products ordinarily received by Seller; the inability of Seller to obtain from the proper authorities of any raw or component materials, products, or facilities, howsoever and by whomsoever controlled, by civil or military requisition, allocation and delivery facilities; perils of navigation, even when occasioned by the negligence, misfeasance, default, or errors in judgment of pilots, masters, mariners or other servants of the ship's owner; or any cause whatsoever beyond the control of either party hereto, whether similar to or dissimilar from the causes herein enumerated.

If, by reason of any of said causes, Seller is unable to make deliveries to all its customers (whether under contract or not) the failure in whole or in part to make deliveries to Purchaser, while delivering to others, shall not be a breach of this agreement, and in such event Seller may, but shall not be obligated to, prorate its available supply.

Upon cessation of the cause or causes for any such failure or delay, performance hereof shall be resumed, but such failure or delay shall not operate to extend the term of this agreement nor obligate either party to make up deliveries or receipts, as the case may be.

Seller may suspend deliveries as long as its cost of performance is increased and the increased cost cannot be recovered by an equivalent increase in the price to be paid by Purchaser.

Nothing herein contained shall excuse Purchaser from paying Seller, when due, any amounts payable hereunder or pursuant hereto.

Intoxicating Liquor Treated Gasoline.—Purchaser shall comply with all applicable rules and regulations in existence as well as those which have been or may hereafter be issued by the Surgeon General of the United States Public Health Service or any governmental agency and shall have his employees properly instructed in respect to the same.

Payments.—The Purchaser shall pay for goods without discount or deduction except as stated in this agreement; and if at any time the financial responsibility of the Purchaser shall become impaired or unsatisfactory to the Seller or to the Seller's opinion inadequate to secure the obligations hereunder, cash payments or satisfactory security may be required. A failure to pay any amount when due may at the option of the Seller terminate this agreement as to further deliveries.

Claims.—Any claims for defect or variance in quality or shortage in quantity shall be made, and the Seller shall be notified and given an opportunity to inspect, within two days after the product or goods are delivered, except that if delivery is made by shipment furnished by the Seller such notice and opportunity shall be given before the goods or drums are unloaded, and if delivery is made by shipment furnished by the Purchaser such notice and opportunity shall be given before the products or goods move from point of shipment. If equipment furnished by the Seller is in bad order or leaking the Purchaser shall notify the carrier and secure examination of the conditions of the shipment before the same is unloaded. Failure of the Purchaser to comply with these requirements shall operate as a waiver of any and all claims by the Purchaser.

Taxes.—Purchaser assumes the payment of any tax and/or duty now or hereafter imposed, directly or indirectly, by the United States, or any State or foreign country, or governmental subdivision thereof, on (a) the goods covered by this agreement and/or (b) the production, manufacture, transportation, sale, use and/or other handling of said goods, and/or (c) the production, manufacture, transportation, purchase, sale, use, exportation, importation and/or other handling of any material contained in said goods or from which said goods are wholly or partly refined or manufactured, and/or (d) the Seller on account of the sale or measured by the sales price of said goods; and the Seller may bill Purchaser for such tax or duty and the Purchaser shall pay the amount thereof.

Price Adjustment.—Seller reserves the right at any time during the period of this agreement to increase or decrease the agreement price provided for herein on thirty (30) days' prior written notice to Purchaser. In the event any such increase or decrease in price is unacceptable to Purchaser, Purchaser shall have the right within said thirty-day period to cancel the agreement on written notice insofar as the particular product or products affected by any such increase or decrease are concerned, and cancellation to be effective as the time stated in said notice but in no event later than the last day of said thirty-day period. On the failure of Purchaser to exercise this right of cancellation, the increase or decrease in price shall become automatically effective.

If Seller's right to charge or receive any price payable pursuant hereto, or to refer any such price as herein provided, is restricted or limited by law, regulation or order of any Governmental authority, then Seller may, from time to time, terminate the provisions of this agreement insofar as they apply to the product or products, the price or prices for which are so restricted or prescribed, upon thirty days' prior written notice to Purchaser. Upon the expiration of said thirty days it is understood that any such product or products shall be deemed deleted from this agreement but that this agreement shall otherwise continue to remain in full force and effect.

Freight Rates.—The prices mentioned in this agreement are based on existing freight rates, and if under this agreement the Seller is to pay freight, then in case the rates are increased or diminished those prices shall be increased or diminished accordingly.

Monthly Shipments.—If this agreement extends over a period of months, shipments or deliveries shall be made in equal monthly quantities, subject to reasonable seasonal variations as determined by the Seller; provided that, subject to the other provisions of this agreement, the agreed quantity must be taken within the time fixed.

Approximate Quantities.—In case deliveries are made in carload, truckload, transport truck or tankwagon lots, delivery within ten per cent of approximate called for by this agreement or any installment thereof shall be deemed sufficient deliveries by the Seller, only the actual amounts delivered to be paid for.

Trademarks and Names.—Purchaser shall not sell products purchased from others under the trademark or trade name of Seller, unless Seller shall, after application thereof, give special consent in writing; Purchaser, however, shall have the right to use the trade names and trade marks of others as hereby authorized, provided such use is limited by Purchaser's obligation to conform to Purchaser shall follow directions as to manner of such use given to Purchaser by Seller.

Assignability.—This agreement shall not be assigned by the Purchaser without the written consent of the Seller.

Approval and Signing by Seller.—Agreements covering the sales of merchandise involving amounts not in excess of $25,000 and covering one year or less may be approved and signed on behalf of The Texas Company by any of the following: Manager of Division, Division Manager, Manager of Marketing Sales Division, Manager of Aviation Sales Division, Manager of Marine Sales Division, Division Manager, or any Assistant Division Manager, duly appointed.

Agreements covering the sales of merchandise to service station supply accounts upon the Company's standard forms for a period of thirty days or less and more than one year may be approved and signed by Division Managers and Assistant Division Managers, duly appointed.

All other agreements must be approved and signed by one of the following:

[illegible] President, any Vice-President, any Director, the General Manager, Assistant General Managers and General Attorney in the Law Department; Manager of Sales Department, Manager of Motor Sales Department, Manager of Aviation Department, Manager of Marine Department, Manager of Marketing Sales Division, Manager of Aviation Sales Division, Manager of Marine Sales Division, Division Managers and Assistant Division Managers of Territories of the Sales Department; Manager and Assistant Manager of Purchases, Manager and Assistant Manager of Transportation, Manager and Assistant Managers of the Railway Sales Department, Manager of the Boat, Barge and Canal Division, and Manager of Purchasing Department.

All agreements must be signed on behalf of the Seller by the persons authorized to sign and binding on The Texas Company and [illegible] commencement of performance hereunder prior to such approval and signing shall in no case be construed as a waiver by the Texas Company or the foregoing requirements.

6904

Commission's Exhibit 21A-1

CONSIGNMENT AGREEMENT

FEDERAL TRADE COMMISSION
DOCKET NO. 6466 COMMISSION EXHIBIT NO. 31-4

AGREEMENT, made this _____ day of _____, 19__, between THE TEXAS COMPANY, a Delaware corporation, having its principal office at _____, hereinafter called Consignor, and _____ of _____, hereinafter called Consignee;

WITNESSETH:

FIRST: Consignor agrees to deliver to Consignee such quantity of Consignor's products as Consignee desires for sale at his place of business at _____ on the terms and conditions hereinafter set forth.

SECOND: Consignee agrees to:

(1) Promptly account for all Consignor's moneys and property in his possession, and pay Consignor for any shortages which may develop at any time.

(2) Sell the products of Consignor to such customers as Consignee may select, either for cash, or on credit properly authorized, except that Consignee may extend credit (a) to any customer he chooses on his own account and (b) to Consignor's customers in excess of credit limits approved by the Consignor; provided that, in either instance, Consignee pays Consignor cash, on demand, for sales of products so made.

(3) Not sell Consignor's products at less than Consignor's authorized prices.

(4) Not retain any moneys due him from Consignor from or as a charge against funds or any other property of Consignor for which he is accountable.

(5) Bear all expenses incident to the conduct of his business and the sale of products hereunder.

(6) At his own expense, furnish trucks and any other equipment which he may require in the conduct of his business.

(7) At his own expense, hire and pay the wages of all assistants and employes he requires for the operation of his business, and assume full direction and control over and responsibility for all such assistants and employes.

(8) Pay any indebtedness accruing to Consignor at _____.

THIRD: Consignor shall:

(1) Have the right at its option to withhold any commissions, moneys or anything of value in its possession belonging to or due Consignee, for the purpose of reimbursing itself for any indebtedness due Consignor by Consignee at any time.

(2) In the event of the termination of this agreement, have the right, for a period of not to exceed three (3) months following the date of such termination to (a) use Consignee's storage facilities for petroleum products located at Consignee's bulk plant premises at _____ (b) replenish its stock of merchandise in such facilities, (c) sell and deliver its products from the said premises, and (d) remove all of its products and other properties therefrom during the said period; provided Consignor pays a rental at the rate of _____ Dollars ($_____) per month for the period said facilities are so used.

(3) Pay (a) freight on products shipped and (b) taxes on Consignor's merchandise, stock and equipment.

(4) Pay Consignee commissions in accordance with the provisions of "Schedule A" attached.

(5) Have the right at reasonable times to enter the premises where the business of Consignee is being conducted hereunder for the purpose of inspecting Consignor's property in Consignee's possession and of auditing Consignee's books and records pertaining to the storage and sale of petroleum products delivered to Consignee under the terms of this agreement.

FOURTH: Title to all products consigned and delivered to Consignee hereunder shall at all times remain in Consignor until they shall have been sold by Consignee in accordance with the terms of this agreement.

FIFTH: Consignee agrees to and does hereby accept full and exclusive liability for the payment of any and all premiums, contributions and taxes for workmen's compensation insurance, unemployment insurance and for old age pensions, annuities and retirement benefits, now or hereafter imposed by or pursuant to federal and state laws, which are measured by the wages, salaries or other remuneration paid to persons employed by Consignee in connection with the performance of this contract; and Consignee further agrees to indemnify and hold Consignor harmless against any liability for any such premiums, taxes or contributions respecting Consignee's employes which may be asserted against Consignor. Consignee further agrees to enter into any agreement that has been or may hereafter be prescribed by any federal or state governmental body or authority in order to effectuate the foregoing purposes.

CX 21A 6905

Commission's Exhibit 21A-2

SIXTH: If Consignee stores upon premises owned by Consignor property other than Consignor's products, such as tires, tubes, batteries, accessories, and petroleum marketing equipment, title to which is in Consignee or in other persons or corporations, it is understood that any such property is stored at Consignee's own risk and responsibility and that Consignor shall not be liable in any wise for any loss or damage to the same by reason of fire, theft, seepage, explosion or any other cause. Consignee agrees that he will indemnify Consignor and hold it harmless against all such loss and damage.

SEVENTH: The right of either party to require strict performance by the other hereunder shall not be affected by any previous waiver, forbearance or course of dealing.

EIGHTH: (1) This agreement shall continue in full force and effect until terminated by either party on five (5) days' written notice and shall not be assignable by Consignee without the written consent of Consignor.

(2) Any and all agreements heretofore existing between Consignee and Consignor respecting compensation from the sale of Consignor's products are hereby superseded and cancelled, and no modification of this agreement shall be binding unless signed by the parties hereto.

NINTH: FORCE-MAJEURE. — Failure (in whole or in part) or delay on the part of either party in the performance of any of the obligations imposed upon such party hereunder shall be excused and such party shall not be liable for damages or otherwise on account thereof, when such failure or delay is the direct or indirect result of any of the following causes, whether or not existing at the date hereof, and whether or not reasonably within the contemplation of the parties at the date hereof, namely: Acts of God, earthquakes, fire, flood, or the elements, malicious mischief, insurrection, riot, strikes, lockouts, boycotts, picketing, labor disturbances, public enemy, war (declared or undeclared), compliance with any federal, state or municipal law, or with any regulation, order, rule, recommendation, request or suggestion (including, but not limited to, priority, rationing or allocation orders or regulations) of governmental agencies, or authorities or representatives of any government (foreign or domestic) acting under claim or color of authority; total or partial failure or loss or shortage of all or any part of transportation facilities ordinarily available to and used by a party hereto in the performance of the obligations imposed by this agreement, whether such facilities are such party's own or those of others; or, if failure or delay be that of Consignor, total or partial loss or shortage of raw or component materials or products ordinarily required by Consignor; the commandeering or requisitioning by civil or military authorities of any raw or component materials, products, or facilities, including, but not limited to producing, manufacturing, transportation and delivery facilities; perils of navigation, even when occasioned by negligence, malfeasance, default, or errors in judgment of the pilot, master, mariners or other servants of the ship's owner; or any cause whatsoever beyond the control of either party hereto, whether similar to or dissimilar from the causes herein enumerated.

If, by reason of any of said causes, Consignor is unable to make deliveries to all its consignees or customers, its failure in whole or in part to make deliveries to Consignee hereunder, while delivering to others, shall not be a breach of this agreement and in such event Consignor may, but shall not be obligated to, prorate its available supply.

Upon cessation of the cause or causes for any such failure or delay, performance hereof shall be resumed, but such failure or delay shall not operate to extend the term of this agreement nor obligate either party to make up deliveries or receipts, as the case may be.

Nothing herein contained shall excuse Consignee from paying Consignor, when due, any amounts payable hereunder or pursuant hereto.

TENTH: This agreement shall not be binding upon The Texas Company until approved and signed on behalf of The Texas Company by an Executive Officer, General Sales Manager, Assistant General Sales Manager, Territorial Manager (Domestic Sales Department) or Division Manager (Domestic Sales Department). Commencement of performance hereunder prior to approval and signing as above stipulated, in no case shall be construed as a waiver by The Texas Company of this requirement.

IN WITNESS WHEREOF, The parties hereto have duly executed this agreement the day and year first above written.

Witness:

_____

_____
Consignee

_____ By_____

Witness:

THE TEXAS COMPANY
Consignor

_____ By_____

SCHEDULE "A"

(Attached to and a part of Consignment Agreement dated _____, 19____, between The Texas Company and _____)

I—The following commissions are payable to Consignee, based on (1) less than carload sales delivered through the bulk station, when products are invoiced at the authorized prices, and (2) transfers:

(a) Cents per gallon on sales of the following products:

FEDERAL TRADE COMMISSION
6405 EXHIBIT No. 21

	National Accounts	Federal, State and Municipal Governments	Other Sales except as provided in I (h) below
Sky Chief Gasoline			
Fire-Chief Gasoline			
Kerosine			
Tractor Fuel			
Diesel Fuel			
Aviation Gasolines			

(b) On sales of lubricating oil, grease and wax and Texaco Permanent Type Anti-Freeze, except as provided in I (h) and I (i) below, _____% of net revenue, exclusive of freight from station to destination.

(c) On sales of roofing, shingles and roofing asphalt products, a percentage of net revenue, after deduction of trade discount, if any, exclusive of freight from station to destination, as follows:

Delivered by Consignee's Truck_____%. Delivered at the Bulk Station_____%.

(d) On sales of products when not otherwise specified:

If product is sold by the gallon_____¢ per gal. If product is sold by the pound_____¢ per lb.

(e) On transfers of the following products from Consignee's bulk station to Bulk Stations, Divisions or Departments of Consignor:

Black Line Products_____¢ per gal.

Asphalt _____$_____ per ton. Roofing and Shingles_____¢ per lb.

(f) On transfer of other products sold by the gallon or by the pound from Consignee's Bulk Station to Bulk Stations, Divisions or Departments of Consignor, as follows:

If product is delivered by Consignee's truck:_____¢ per gallon or_____¢ per lb.

If product is delivered at the Bulk Station:_____¢ per gallon or_____¢ per lb.

(g) No commission will be paid on products delivered to Consignee's Sales Department equipment used in Consignor's service, when such products are for use in operating that equipment.

(h) On sales of the following products to or by Tank Truck Dealers: Gasoline _____¢ per gallon; Kerosine_____¢ per gallon; _____¢ per gallon; _____¢ per gallon; on sales of Lubricating Oil, Grease, Wax and Texaco Permanent Type Anti-Freeze, _____% of net revenue, exclusive of freight from station to destination.

(i) On deliveries of products sold by the gallon or by the pound, from Consignee's Bulk Station to purchasers under contract between Consignor and the United States Government, or any department, bureau or agency thereof, which deliveries are transferred to Consignor's Division Office for invoicing, as follows:

If product is delivered by Consignee's truck: _____¢ per gallon _____¢ per pound.

If product is delivered at the Bulk Station: _____¢ per gallon _____¢ per pound.

II—(a) No commission will be paid on carload transactions unless specifically agreed to in writing prior to the date such sales or transfers are made, with the exception of II (b) below:

(b) On L.C.L. or carload sales of roofing, shingles and roofing asphalt products, negotiated by Consignee but moving direct to customers from factories, terminals and other stations, a commission of _____% will be computed and allowed on the net F.O.B. factory price after deduction of trade discount, if any.

III—These commissions shall be subject to deductions herein mentioned and/or counter claims by Consignor, and after deductions therefor have been made, the resulting sum shall be in full payment for all sums due Consignee hereunder.

IV—(a) Consignee shall not be entitled to (1) commissions on any accounts or bills receivable transferred to Accounts Receivable "B" or turned over to an agency or attorney for attention and/or collection, or (2) commissions on products returned to stock or products purchased from competitors for resale.

All commissions will be computed on current sales and transfers. Deduction will be made from Consignee's current commission statement of commissions which have previously been allowed on those accounts or bills receivable transferred to Accounts Receivable "B" or turned over to an agency or attorney for attention and/or collection.

(b) Consignor shall withhold from Consignee's commissions a sum equivalent to 10% of the Accounts Receivable "A" outstanding at the end of each month and at termination of this agreement. Consignor shall pay Consignee each month a sum equivalent to commissions on all sales and transfers handled through Consignee during the month, less 10% of the Accounts Receivable "A" outstanding at the end of the current month, plus the 10% of Accounts Receivable "A" withheld at the close of the next preceding month, less deductions made in accordance with the provisions of this agreement. In event of termination of this agreement, Consignee shall not be entitled to receive thereafter or Consignor obligated to pay, any of the amount withheld in accordance with this provision.

(c) 1—The term "Accounts Receivable 'A'" as used herein means those accounts current and delinquent less than four months.

2—The term "Accounts Receivable 'B'" as used herein means those accounts not collected when four months past due and such other accounts as Consignor's Credit Manager may deem of doubtful collectibility, whether by reason of the death or bankruptcy of the debtor, or otherwise.

(d) Consignor reserves the right to make sales and deliveries in the area served by Consignee, and Consignee will not be entitled to any commission on such sales.

V—The foregoing commissions are effective_____, 19____.

VI—This Schedule "A" supersedes and replaces Schedule "A" dated _____, 19____, which is hereby cancelled. All other terms and conditions of the Consignment Agreement dated _____, 19____, between the parties hereto shall remain in full force and effect.

Witness:

_____

_____ Consignee

By_____

Witness:

THE TEXAS COMPANY

_____

By_____

Consignee 6907

JAX 29

Commission's Exhibit 22A

Form 3141-15-50-12M

THE TEXAS COMPANY

Distributor Agreement

No._____

Agreement of Sale (in duplicate) made on the _____ day of _____, 19____, between The Texas Company, a Delaware corporation, having a Division Sales office at _____, hereinafter called Seller, and _____ of _____, hereinafter called Purchaser.

1. Sale.—Seller hereby sells and agrees to deliver and Purchaser buys and agrees to receive and pay for the following products of the kind and quality marketed by Seller at time and place of delivery in quantities specified from time to time by Purchaser, but in respect of each product not less per year than the minimum quantity nor more per year than the maximum quantity stated below:

Product	Minimum	Maximum
Texaco Sky Chief Gasoline	_____ gals.	_____ gals.
Texaco Fire Chief Gasoline	_____ gals.	_____ gals.
Texaco Crystallite Kerosene	_____ gals.	_____ gals.
Texaco Motor Lubricants	_____ gals.	_____ gals.
Texaco Motor Lubricants	_____ lbs.	_____ lbs.
Texaco Industrial Lubricating Oils	_____ gals.	_____ gals.
Texaco Greases (Except Motor Lubricants)	_____ lbs.	_____ lbs.
Texaco _____	_____	_____
Texaco _____	_____	_____
Texaco _____	_____	_____
Texaco _____	_____	_____

Orders for gasoline or kerosene must specify quantities at least equivalent to the capacity of a tank car. Seller, however, shall have the option to make deliveries in smaller quantities.

2. Prices.—Prices, exclusive of all applicable taxes, shall be:

a. *Texaco Fire Chief Gasoline:*

FEDERAL TRADE COMMISSION
DOCKET NO. 6465 EXHIBIT NO. 22A
IN THE MATTER OF The Coca-Cola & Texas Co.
DATE SEP 10 1951 WITNESS _____
REPORTING CO., Official Reporters
By MONICK

b. *Texaco Sky Chief Gasoline:*

As Offered EXHIBIT 46
OBTAINED 9-17 1952 from Monick
BY W. W. Kogel
ATTORNEY-EXAMINER
FILE NO. 179690

c. *Texaco Crystallite Kerosene:*

d. *Texaco*

a. Texaco

TRADE COMMISSION
6465 EXHIBIT NO. 22

f. Texaco

g. Texaco

DELIVERY. (1) Seller shall deliver the said products into tank cars, or, at Seller's option, into some other adequate transportation facility, at a refinery, terminal, bulk plant, or other shipping point of Seller, consigned to Purchaser at one of the following points of distribution to be designated by Purchaser:

(2) Seller may at its option deliver the said products in its own transportation facilities, in which event it is understood that delivery to Purchaser will take place at the points of distribution designated by Purchaser, as above listed.

(3) Seller shall bear the cost of transportation on all the foregoing products delivered hereunder from Seller's shipping point to the point of distribution to which consigned, either (1) by delivering in Seller's own transportation facilities, or (2) by prepaying the freight thereon, or (3) by shipping transportation cost collect and deducting the cost from the face of the invoice.

A. For Motor Lubricants and Industrial Lubricating Oils and Greases, Seller's applicable schedule prices as listed in Seller's Selling Schedule for Lubricating Products in effect on date of shipment, freight allowed or prepaid to Purchaser's point of distribution, less discounts and/or at prices as follows:

	In Carload Lots	In Less Than Carload Lots
(1) Texaco Automotive Lubricants, except as noted below:		
(2) Texaco and Havoline Motor Oils and Aircraft Engine Oils in 1- and 5-quart and 5-gallon cans		
(3) Texaco Industrial Lubricants, except as noted below:		
(4) Texwax		
(5) Valor Oils		

Seller's Spot LCL (1000# & Up) Price

Seller's special Distributor's schedule in effect date of shipment.

The special Distributor's schedule dated _____, now in effect, is attached.

Commission's Exhibit 22C

8. DISPUTES AS TO PRICES.—If at any time during this agreement there shall arise between the parties hereto a difference of opinion in respect of the amount payable by Purchaser to Seller for any of the products delivered or deliverable hereunder, Seller, at its option, may suspend all shipments hereunder until the difference of opinion be settled to the satisfaction of the Seller; provided, however, that, upon request of the Purchaser, Seller shall continue shipments on sight draft with bill of lading attached at the prices for which Seller contends, and, as to shipments so made, the price at which made shall be final and conclusive, but shall not prejudice Purchaser's contentions in respect of any prior shipments. In event shipments are suspended as herein provided, the Seller shall not be obligated to make up shipments so suspended.

4. TERMS.—

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 COMMISSION EXHIBIT NO. 22C

5. PLACE OF PAYMENT.—Seller's Division Sales Office at _____

6. OPTION.—In consideration of the premises, if at any time during the term of this agreement, or any extension or renewal thereof, Purchaser shall receive a bona fide offer to purchase, lease, or sublease all or any part of the land, buildings, structures, improvements, equipment, facilities, leaseholds, assets or other interest in land owned or used by Purchaser in his business of storing, handling, selling and distributing petroleum products, hereinafter referred to as "property", which offer Purchaser shall desire to accept, Purchaser shall immediately give Seller written notice by registered mail of the receipt of such offer, the complete terms thereof, together with a true copy of the offer, and a statement of Purchaser's desire to accept the same, and Seller shall have thirty (30) days after the receipt of such notice in which to elect to purchase, lease, or sublease said property, as the case may be, upon the same terms and conditions as those contained in such offer. During said thirty (30) day period Purchaser shall furnish Seller complete information in respect of the property involved in such offer and give Seller complete access to all of Purchaser's books and records in respect of said property.

Seller's notice of election to purchase, lease, or sublease, as the case may be, shall be sufficient if deposited in the mail addressed to the Purchaser at or before midnight of the day on which the option period expires. Purchaser, when requested by Seller, shall deliver to Seller complete information covering the property involved, together with the customary evidence of Seller's title or interest therein, upon receipt of which Seller shall proceed with diligence to examine title. Any closing shall take place at Seller's Division Office, above mentioned, or through an escrow established with a reputable title company or bank selected by Seller, on the fifteenth day after Seller shall notify Purchaser of the completion of title examination, and at the closing Purchaser shall convey and assign a good and marketable title to Seller by full covenant and warranty deeds, assignments, bills of sale, or other instruments to effectuate transfer of good title, in form reasonably satisfactory to Seller, subject only to such liens and encumbrances as were specifically excepted in the written offer from the third party received by Purchaser and which Purchaser notified Seller as aforesaid of Purchaser's desire to accept. The right and option herein granted to Seller shall be continuing and preemptive, and failure of Seller to exercise said right and option in any one case shall not affect Seller's right to exercise the same in other cases thereafter arising during the term of this agreement or any extension or renewal thereof.

7. OTHER PROVISIONS.—The provisions printed below and on page 4 hereof, except those which by their terms are inapplicable, are part of this agreement.

8. DURATION OF AGREEMENT.—This agreement shall remain in full force and effect from _____ to _____ and thereafter from year to year; provided, however, that

a. Either party may terminate the agreement at the last mentioned date or any succeeding anniversary thereof by giving to the other written notice of such termination 60 days or more prior to the date upon which termination shall become effective;

b. Either party may terminate this agreement forthwith by written notice upon failure of the other to perform strictly any of the obligations imposed upon the other hereby.

IN WITNESS WHEREOF Seller and Purchaser have hereunderto subscribed their names the day and year first above written.

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 COMMISSION EXHIBIT NO. 22C

_____
(Purchaser)

Witness:

By _____

_____

Witness:

THE TEXAS COMPANY (Seller).

_____

By _____

Negotiated by:

_____

Approval and Signing By Seller.—Agreements involving $25,000 or less and covering one year or less may be approved and signed on behalf of The Texas Company by any of the following: by the Manager of National Sales Division; Manager of Heating Division; Manager of Aviation Division; Manager of Marine Sales Division; and Division Managers and Assistant Division Managers.

All other agreements must be approved and signed by one of the following: by the Company's President; any Vice President; Secretary; General Sales Manager; Assistant General Sales Manager; Assistants to the Vice Presidents of Sales Department; Manager of Dealer Relations; Manager of Industrial Sales; Manager of Operations; Managers and Assistant Managers of Territories of the Sales Department; Managers and Assistant Managers of Asphalt Sales Department; Manager and Assistant Managers of the Railway Traffic and Sales Department; Manager of Bulk, Fuel and Government Sales Division, and Manager of Purchasing Department.

Until approved and signed on its behalf as above stipulated, agreements are not binding on The Texas Company, and commencement of performance hereunder prior to such approval and signing shall in no case be considered as a waiver by The Texas Company of the foregoing requirements.

ROSSBORO BOARD

PROVISIONS OF AGREEMENT

Entirety of Agreement.—No prior stipulation, agreement or understanding of the parties or their agents shall be valid or enforceable unless embodied in this agreement or covered by these provisions.

Delivery.—Unless otherwise stated in this agreement, delivery shall be deemed complete when goods, properly packaged, are placed free on board cars, boats or other vehicles.

Waiver.—The right of either party to require strict performance by the other of any and/or all obligations imposed upon the other by this agreement shall not in any way be affected by any previous waiver, forbearance or course of dealing.

Tank Cars.—Any tank cars furnished by the Seller shall be discharged by the Purchaser immediately when received and delivered back to the railway lines, within forty hours after placement in connection with tracks designated by the Purchaser, and cars not so discharged and delivered back to the railway lines, within said forty hours, shall result in the Purchaser paying demurrage charges at the rate stated in the tariffs of the railway lines for each car not so discharged and delivered back to the railway lines within said forty hours. Any demurrage charges so paid by the Purchaser shall be reimbursed by the Seller to the Purchaser upon presentation of the demurrage bills. Cars not discharged and delivered back to the railway lines within forty hours after placement in connection with tracks designated by the Purchaser shall be subject to demurrage charges at the rate stated in the tariffs of the railway lines for each car not so discharged and delivered back to the railway lines within said forty hours after placement in connection with tracks designated by the Purchaser, unless the Seller shall have been notified by the Purchaser prior to the placement of the cars that the Purchaser is unable to discharge and deliver back to the railway lines within said forty hours after placement in connection with tracks designated by the Purchaser, and the Seller shall have consented to the placement of the cars with the Purchaser under the circumstances. The Purchaser shall not be liable for demurrage charges on any cars placed in connection with tracks designated by the Purchaser which are not discharged and delivered back to the railway lines within said forty hours after placement in connection with tracks designated by the Purchaser, if the Purchaser has been notified by the Seller prior to the placement of the cars that the Seller is unable to accept the cars after the expiration of said forty hours.

Vessel Deliveries.—When shipment is made by boat, barge, tank ship or other vessel, the Purchaser immediately upon the arrival thereof shall furnish, without cost to the Seller, berth at wharf, the privilege of discharging all cargo, together with the necessary connections and facilities for receiving, and shall receive the vessel as fast as it can safely and shall be prepared out of the entirety of the Seller. In that Said responsibility resting on the boat's mail. In ports where dock and placed on board vessels, the Purchaser shall find and furnish steam for discharging purposes. For any delay or loss sustained from the vessels and the premiums for detention beyond such time shall be to the Purchaser only when such delay shall be specifically agreed upon at the time of execution of this agreement.

Deliveries in Drums.—If drums or used barrels of the Seller are used, said drums or used barrels shall remain the property of the Seller, and a charge will be charged for same at the rates in effect at the time of delivery. All said drums or used barrels of the Seller shall be returned promptly on demand, in as good condition as when received, fair ordinary wear and tear, and nothing other than the original contents shall be placed therein.

Transport Trucks.—Any shipments in transport trucks furnished by the Seller shall be unloaded by Purchaser immediately upon arrival. Two hours free time will be allowed for unloading, after which a charge of Three dollars per hour or major fraction thereof will be made until the shipment is unloaded and the vehicle released to the carrier.

Force Majeure.—Failure (in whole or in part) or delay on the part of either party in the performance of any of the obligations imposed upon such party hereunder shall be excused and such party shall not be liable for damages or otherwise on account thereof, when such failure or delay is the direct or indirect result of any of the following causes, whether or not existing at the date hereof, and whether or not reasonably within the control of the party at the date hereof, namely: acts of God, earthquakes, fire, flood or the elements, epidemics, quarantine restrictions, war (declared or undeclared), hostilities, riots, disturbances, public enemy, war (declared or undeclared), conditions with any federal, state or municipal law or with any regulation, order, rule, recommendation, request or suggestion thereof, but not limited to, the refusal, withdrawal or cancellation orders or proclamations of governmental agencies, or cancellation or repossession of any government contracts (whether or domestic) acting under claim or color of authority, total or partial failure or loss or shortage of all or any part of transportation facilities ordinarily available to and used by a party in the performance of its obligations hereunder, or the unavailability of such facilities are such party's own or lack of effort on, if failure or delay is the result of such party's own or negligence of any or omission, or the negligence or omission of any agent, employee or representative of such party, or any of the authorities of any city or a governmental subdivision, agency or department thereof, or any railroad, steamship, transportation, road delivery facilities, parts of, or facilities, trade union, association, or organization, or employees, or strikes, or walkouts in whole or in part, slow down, work stoppage or other difficulty of the above persons or any other circumstances beyond the control of either party hereto, whether similar to or dissimilar from the matters hereinbefore enumerated.

If, by reason of any of said causes, Seller is unable to make deliveries to all its customers hereunder, Seller may apportion its facilities in whole or in part to such customers as Seller, in its sole discretion, may determine, and Seller shall not be in breach of this agreement and in such event Seller may, but shall not be obligated to, purchase or otherwise supply.

Upon removal of any cause, or cause for the delay or failure of delivery, delivery shall be resumed, but such failure or delay shall not operate to extend the term of this agreement nor obligate either party to make up deliveries or receipts, as the case may be.

Seller may suspend deliveries as long as its cost of performance is increased and the increase may cannot be recovered by an equivalent increase in the price to be paid by Purchaser.

Nothing herein contained shall excuse Purchaser from paying Seller, when due, any amounts payable hereunder or pursuant hereto.

Blind-Packed Goods.—The Purchaser shall handle blind-packed goods in accordance with the trade and customs now in existence or which may be established in the trade, and shall not be responsible for any loss or damage to such blind-packed property occasioned in respect to all such other and different goods.

If Purchaser is required to obtain a license to handle, distribute or sell blind-packed goods, this agreement shall not be effective in respect of said goods or any item other than those which Purchaser is at the time licensed to handle.

Payments.—The Purchaser shall pay for goods without discount or deduction except as stated in this agreement, and if at any time the financial responsibility of the Purchaser shall become impaired or unsatisfactory to the Seller, or in the Seller's opinion inadequate to meet the obligations hereunder, cash payment or satisfactory security may be required. A failure to pay any amount when due may at the option of the Seller terminate this agreement or its further operation.

Claims.—Any claims for defect or variance in quality or shortage in quantity shall be made, and the Seller shall be notified and given an opportunity to inspect, within two days after the shipment or goods are delivered to the Purchaser. Any claim made to equipment furnished by the Seller must notice and opportunity shall be given before the product or goods are unloaded, and at delivery. A claim for equipment furnished by the Purchaser must notice and opportunity shall be given before the products or goods move from point of shipment. If equipment furnished by the Seller is to be used under the Purchaser shall notify the carrier and delivery examination by the authorized agent of the carrier or in the presence of the shipment before the goods is unloaded. Failure of the Purchaser to comply with these requirements shall operate as a waiver of any and all claims by the Purchaser.

Freight Rates.—The price mentioned in this agreement are based on existing freight rates, and if under this agreement the Seller is to pay freight, then in case the rates are increased or diminished these prices shall be increased or diminished accordingly.

Taxes.—Purchaser assumes the payment of any tax and/or duty now or hereafter imposed, directly or indirectly, by the United States, or any State or foreign country, or governmental subdivision thereof, on (a) the goods covered by this agreement and/or (b) the production, manufacture, transportation, sale, use and/or other handling of said goods, and/or (c) the production, manufacture, transportation, sale, use and/or other handling of the materials and/or containers used in said goods or from which said goods are wholly or partly produced, and/or (d) the receipts on account of the sale or shipment of the said goods; and the Seller may bill Purchaser for same or any part thereof and Purchaser shall pay the amount thereof.

Monthly Shipments.—If this agreement extends over a period of months, shipment or delivery shall be made in equal monthly quantities, subject to reasonable seasonal variations as determined by the Seller; provided that, subject to the other provisions of this agreement, the agreed quantity must be taken within the time fixed.

Approximate Quantities.—In case deliveries are made in carload, truckload, transport load or bulk cargo lots, following which lots pay equal or approximately equal for by this agreement or any installment thereof shall be deemed sufficient delivery by the Seller, only the actual amounts delivered to be paid for.

Product Quality Maintenance.—Purchaser undertakes and agrees that Texaco Products shall not be mixed with or substituted by any other petroleum products or by any chemical or other materials whatsoever and that Texaco Products purchased hereunder shall be sold only under Texaco brand names.

Trademarks and Names.—Purchaser shall not sell products purchased from others under the trademark or trade name of Seller, unless Seller shall, after examining thereof, give special consent in writing; Purchaser, however, shall have the right to use the trademarks and trade names of Seller in facility and advertising Seller's products handled by Purchaser on conditions that Purchaser shall follow directions as to manner of such use given to Purchaser by Seller.

Assignability.—This agreement shall not be assigned by the Purchaser without the written consent of the Seller.

JAX 23

Commission's Exhibit 23A

THE TEXAS COMPANY New York, N. Y., February 7, 1950

SALE OF TIRE COMPANY PRODUCTS
12 MONTHS 1949

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 23-A
IN THE MATTER OF B. F. GOODRICH COMPANY
DATE OCT 15 1950 WITNESS
ACME REPORTING CO., Official Reporter
By

Messrs. R. R. Kibbe (5)
R. W. Debnam (5)
C. B. Barrett (5)
D. E. Beaton (4)

Gentlemen:

Attached is 12 months statement of sales by Firestone and Goodrich to Texaco accounts.

As expected, nearly all Divisions showed further decreases because of the tremendous volume of TBA sales in December 1948 with accumulative sales of all products for all Territories being 18% below the volume for 1948.

In looking forward to the TBA program in 1950, I think you will agree that we should all make an effort to equal and better our 1948 volume rather than only have an objective showing increases over the year just past. However, to do so, we must definitely do better than the industry expects. We understand that the rubber industry anticipates only between 5% and 10% increases in replacement tire sales for 1950 over 1949.

Since our decline for the year was 15% on tires and tubes and 25% on batteries, home and auto supplies, it seems clear that particular emphasis should be placed on the proper stocking, display and sale of batteries, home and auto supplies by our dealers during the coming year. Taking into account the decline in prices, the volume of tires and tubes through our dealers showed about the same decline as the industry, but it seems that our decline in batteries, home and auto supplies is greater than the sale of retail merchandise generally.

We are sure you will agree that our entire organization should do everything in its power to keep in close touch with and stimulate all representatives of the tire companies whom they normally contact.

Very truly yours,

WB:SD
Att.

RLS WH SCB

23(R)
6913

JAX 34

Commission's Exhibit 24A

24-A

THE TEXAS COMPANY New York, N. Y., February 1, 1951

SALE OF TIRE COMPANY PRODUCTS
12 MONTHS 1950

Messrs. R. R. Kibbe (3)
R. W. Debnam (3)
C. B. Barrett (3)
D. E. Beaton (4)

FEDERAL TRADE COMMISSION
DOCKET NO. 6435
IN THE MATTER OF B. F. GOODRICH CO.
DATE OCT. 15 1956 WITNESS
ACE REPORTING CO., Official Reporters
By MONICK

Gentlemen:

Attached is statement of sales by Goodrich and Firestone to Texaco dealers showing an overall 43% increase for 12 months 1950 over the same period 1949.

The volume of $40,130,736, an all-time high, seems very gratifying, but while the tire and tube volume has increased 58%, battery and accessory volume shows an increase of only 5%.

A substantial portion of our increased volume in tires and tubes was the result of higher price levels during 1950. However, our increase exceeds that enjoyed by the industry. I feel this speaks well for our organization as well as the cooperation of our suppliers. The Rubber Manufacturers Association for 11 months of 1950 reports a 30% increase over the same period in 1949 on shipments of replacement tires and tubes, while our dealers for the same period show a 56% increase.

Even if we were going to have an adequate supply of tires and tubes, it would be apparent that our emphasis this year should be on greatly improving battery and accessory volume. Because of the scare buying on tires and tubes last year and the shortage and difficult situation confronting us, it is important that we help the dealers maintain their TBA sales and profits through concentrated effort on the improvement of auto supplies business.

Due to the tremendous volume of tire and tube sales in recent months, it appears that the dealers have neglected their accessory business, and their shelves are thinly covered with merchandise. The 20.7% ratio of accessories to total sales is distorted by the large store front business of our consignees and distributors. This also includes a large volume of home supplies which are not handled by our dealers.

Therefore, we feel that our 1951 objective should be to encourage the dealer to increase his TBA volume and profit through the sale of balanced stocks of accessories.

This year we will furnish you gentlemen with monthly objective figures based on improved accessory sales with minimum emphasis on tires and tubes.

I hope that you will find means of reminding our organization throughout the year of the phrase coined by Mr. Walter Hochuli, "Empty shelves earn no profits."

Very truly yours,

MB:SD

24-A

6917

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO.

JAX 25
Commission's Exhibit 24B

SALES BY FIRESTONE & GOODRICH
12 months 1950

	Tires & Tubes	% Incr.	Batt. B&A Suppl.	% Incr / Decr.	Total Sales	% Incr.	% of Batt B&A Suppl to to Total Sales
NORTHERN TERRITORY							
Boston	$ 1,796,784	57%	$ 505,420	26	$ 2,302,184	40%	21.9%
Buffalo	1,111,893	60	261,861	5	1,367,204	65	18.9
New York	2,575,978	49	657,889	- 7	3,193,487	33	20.6
Norfolk	2,661,065	53	777,946	7	3,691,011	45	21.0
TOTAL	$ 8,145,720	51%	$ 2,203,238	15	$10,569,848	41%	20.8%
CENTRAL TERRITORY							
Chicago	$ 2,545,437	61%	$ 632,264	14%	$ 3,077,701	48%	21.2%
Denver	1,886,508	76	541,914	21	2,428,422	58	22.3
Indianapolis	2,301,125	62	580,319	- 1	2,881,444	43	20.1
Minneapolis	2,277,733	72	460,647	- 1	2,738,380	53	16.8
TOTAL	$ 8,807,803	67%	$ 2,215,144	8%	$11,022,947	50%	20.0
SOUTHERN TERRITORY							
Atlanta	$ 2,390,964	38%	$ 738,136	- 4%	$ 3,129,100	25%	23.5%
Dallas	2,321,483	61	730,454	20	3,057,937	49	23.8
Houston	2,302,689	53	552,150	- 1	2,854,839	38	19.3
New Orleans	2,130,326	40	578,744	10	2,709,070	24	21.4
TOTAL	$ 9,751,462	47%	$ 2,599,484	6%	$12,350,946	34%	21.0%
PACIFIC COAST TERRITORY							
Butte	$ 1,093,132	50%	$ 268,791	5%	$ 1,362,123	45%	19.7%
Los Angeles	2,440,816	70	565,081	8	3,006,897	56	18.7
Seattle	3,362,885	61	473,690	4	1,815,975	41	26.0
TOTAL	$ 6,892,833	62%	$ 1,294,562	6%	$ 6,186,995	45%	20.9%
TOTAL ALL TERRITORIES	$ 31,816,308	58%	$ 8,312,428	5%	$40,130,736 V	43%	20.7%

RB:ESD
1/24/51

6919

JAX 36

Commission's Exhibit 25A

THE TEXAS COMPANY New York, N. Y., February 11, 1952

THE TEXAS COMPANY TBA PROGRAM
12 MONTHS 1951

FEDERAL TRADE COMMISSION
DOCKET NO. 6435 EXHIBIT NO. 25-A
IN THE MATTER OF B. F. GOODRICH COMPANY
DATE OCT 15 1956 WITNESS
ACE REPORTING CO., Official Reporters
By MONICK

Messrs. R. R. Kibbe (5)
J. A. Winger (5)
C. B. Barrett (5)
D. E. Beaton (4)

Gentlemen:

Attached is statement of sales by Firestone and Goodrich to Texaco accounts for the year 1951. Total TBA volume declined 7% with a loss in tires and tubes of 13% and an increase of 13% in accessories. This decline in tires, however, should be compared with the 27% drop in sale of replacement tires by the industry.

Sales of tires in December 1951 for the industry suffered a heavy decline from the abnormally high sales of December 1950. A second wave of panic buying in December 1950 was caused by the entry of Chinese communists in the war in November. Announcement of the Dating Program further reduced December 1951 sales. Thus, tires and tubes sold by Firestone and Goodrich to Texaco dealers in December showed a decline of 53%.

The sale of tires for the industry compared to the seasonal pattern was abnormal in 1950, through January and February 1951; and subnormal the balance of the year, approaching seasonal pattern in December 1951. As a result, it is to be expected that sale of tires in January and February 1952 will also suffer by comparison; volume should hold its own in March; and it is predicted will follow the seasonal pattern thereafter, with a 30% increase for the year 1952 over 1951.

It seems important to continue emphasis on improving the ratio of battery, auto supply sales to total sales. While in 1951 the ratio was 25%, an increase of 4 points over 1950, it was short of our goal by 3 points. Texaco accounts should be urged to take advantage of the present supply of batteries and maintain as large inventories as possible. There may be a battery shortage later in the year due to restrictions in the use of lead.

Our congratulations to Houston, which has the distinction of being the only Division with an increase over their 1950 sales. With a 2% increase, they have moved up from ninth position at the end of 1950 to fifth place in total dollar volume.

Very truly yours,

Marion Brunson

MB:SD

RLS WHI BH

6021

JAX 37

Commission's Exhibit 26A

THE TEXAS COMPANY New York, N. Y., July 8, 1952

THE TEXAS COMPANY TBA PROGRAM
5 MONTHS, 1952

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 6-A
IN THE MATTER OF B. F. GOODRICH COMPANY
DATE OCT 15 1958 WITNESS
ACE REPORTING CO., Official Reporters
By MONARK

Messrs. R. R. Kibbe (5)
J. A. Winger (5)
C. B. Barrett (5)
D. E. Beaton (4)

Gentlemen:

Attached is report of sales by Firestone and Goodrich to Texaco accounts for the first 5 months.

Total sales for the year are in the black as a result of the 8% increase in the month of May. Central Territory is 4% ahead for the year. The Pacific Coast is 3% ahead because of the splendid 21% increase in May. The South, who were 1% in the red the previous month, are even up with their 1951 volume. According to preliminary reports, the Northern Territory will be well in the black when the June records are complete

The May increase was due to the sharp rise in tire and tube sales by Firestone of 25%. It is apparent that Goodrich sales to our dealers, which were down 10% in May, will require close examination by your Division Managers. For example, it is difficult to understand why such Divisions as Chicago and Los Angeles, who had increases on Firestone tires and tubes of 117% and 142% respectively, should show losses with Goodrich of 9% and 15%. Accessory sales also continue to be unsatisfactory and will need considerable stimulation if we are to overcome the $500,000 loss for the cumulative period.

While reports are not complete, June sales will probably show substantial increases and July sales should be large because of the aggressive July tire promotions of both suppliers. If your field organization will continue to urge their dealers to get their share of the big tire replacement market, placing equal emphasis on their accessory sales, the results should be gratifying.

Very truly yours,

Morton Brennan

MB:ESD

WMI WBH

2641

6925

FEDERAL TRADE COMMISSION
EXHIBIT NO. 6485 COMPLAINT EXHIBIT NO. 268

THE TEXAS COMPANY TIRE PROGRAM
5 MONTHS 1957

Division	TIRES AND TUBES Firestone	% Incr.	TIRES AND TUBES Goodrich	% Incr.	BATTERIES AND SERVICE Firestone	% Incr.	BATTERIES AND SERVICE Goodrich	% Incr.	TOTAL SALES Total	% Incr.	Ratio
EASTERN TERRITORY											
Boston	$ 273,346		$ 87,689	-28	$ 147,287	-16	$ 38,136	20	$ 889,048	2	20
Buffalo	238,976	-7	81,270	-18	69,772	-3	17,713	-19	447,731	-10	20
New York	232,111	-17	138,088	2	130,842	-14	27,823	-9	1,135,072	-12	19
Norfolk	230,118	-1	122,823	-14	111,903	-13	30,380	12	1,143,630	-4	18
Total	2,350,[illegible]	-	930,[illegible]	-3	958,[illegible]	-10	179,[illegible]	-3	5,133,[illegible]	-4	19
CENTRAL TERRITORY											
Chicago	577,660	33	411,163	-23	148,051	-10	71,071	-21	1,181,945	4	18
Denver	263,097	26	177,201	-15	168,015	-21	30,477	-13	911,090	5	21
Indianapolis	697,478	20	198,726	- 6	182,121	-17	28,345	-24	1,116,398	5	20
Minneapolis	782,098	7	224,268	- 4	137,132	- 4	46,036	- 5	1,189,534	4	18
Total	2,320,331	21	991,358	- 9	635,319	-15	175,929	-18	4,398,127	4	19
SOUTHERN TERRITORY											
Atlanta	782,538	17	228,040	- 9	257,120	7	71,228	26	1,338,920	10	25
Dallas	651,799	10	219,597	2	243,067	-11	60,089	- 5	1,174,492	3	20
Houston	752,345	19	340,098	-18	138,652	-24	71,160	-16	1,102,257	- 4	19
New Orleans	608,072	15	310,351	-26	120,260	-30	73,211	-28	1,115,181	- 9	17
Total	2,993,755	15	1,098,088	-16	759,379	-12	277,688	-11	4,730,848	-	22
PACIFIC TERRITORY											
Butte	330,348	29	70,266	49	77,502	-43	10,835	11	328,997	10	17
Los Angeles	633,180	13	495,985	-14	89,865	- 7	164,985	9	1,183,414	- 2	21
Seattle	454,372	26	69,773	-47	148,005	-16	12,[illegible]	-25	662,[illegible]	- 8	24
Total	1,228,[illegible]	23	636,024	-11	315,371	-23	188,[illegible]	6	2,[illegible]	3	21
TOTAL ALL TERRITORIES	$8,633,655	13	$3,423,140	-10	$2,261,038	-16	$793,073	- 7	$15,110,986	1	20

RB:KSD - 6/30/5

6927

Commission's Exhibit 268

26(a)

JAX 39

Commission's Exhibit 27A

THE TEXAS COMPANY New York 17, N.Y., June 2, 1950.

STUDY OF INTEGRATION BY RESPONDENTS

FEDERAL TRADE COMMISSION
DOCKET NO. 6428 EXHIBIT NO. 27A
IN THE MATTER OF BP Corporation & Texas Co.
DATE SEP 10 1952 WITNESS
ACME REPORTING CO., Official Reporter
By MONICK

Mr. Norton Brenson

Building

Dear Sir:

The Legislative Committee, of which I am a member, is having an analysis made of the major economic effects of vertical integration and divorcement in the petroleum industry, and to assist the economic group which is preparing this analysis, we have been requested to have a story prepared by each of our divisions covering all phases of our marketing set-up and methods of marketing.

I would appreciate your letting me have an outline showing:

1. The importance of dealers handling TBA products and how The Texas Company does all that it can to assist dealers in purchasing and selling these items.

2. Describe our TBA set-up and how our Tire Representatives operate.

3. Outline how we assist dealers in making contacts to purchase TBA items and the advantages to the dealer.

4. Sales and promotional aids we give to the dealers to help them to sell TBA items.

In addition to the above, I would appreciate your including in your outline any other important details you can think of as we want to bring out in this analysis just what the effect of integration and divorcement will mean to the industry and to the public. Please let me have this information in triplicate.

Yours very truly,

Walter Hamilton

WH-OPD

27(a) 6929

JAX 40

Commission's Exhibit 27B

New York, N. Y., June 14, 1950

STUDY OF INTEGRATION BY ECONOMISTS

Mr. Walter Hochuli

Building

FEDERAL TRADE COMMISSION
DOCKET NO. 6455 EXHIBIT NO. 246

Dear Sir:

Below is the information requested in your letter of June 2nd.

There are two basic reasons why it is necessary for a dealer operating a service station selling petroleum products to merchandise other automotive necessities. These other automotive necessities are generally called TBA (a contraction for tires, batteries and accessories.

First, there is a rapidly increasing trend in the motorist's buying habits to look to the service station to supply all of his automotive needs. Second, the need of the service station operator to supplement his earnings from the sale of petroleum products by the sale of TBA merchandise. The reason for this need, is the rapidly mounting costs of operating a service station (such as, higher wages, taxes, utility charges, rentals) added to a shrinking profit margin on gasoline due to severe competition in this field.

At the risk of making this report too long, the above basic facts may be expanded and explained as follows:

The Importance of Dealers Handling TBA Products -

The display and aggressive merchandising of TBA by Tenaco Service Station Dealers is of utmost importance to successful operation for both defensive and offensive reasons. Defensively, a full line of TBA merchandise and services fulfills the motorist's essential needs, thereby eliminating occasion or necessity to visit other stations where good service or other factors may hold him as a steady customer. Of far greater importance, however, are the offensive factors described below.

Satisfying the Customer - Extensive surveys made during recent years indicate the motorist's overwhelming preference to buy TBA needs from his favorite Service Station Dealer rather than from less accessible specialists in the tire, battery or accessory fields.

Additional Profits. For each 1,000 gallons of gasoline consumed in automobiles, TBA merchandise and services valued at approximately $105.00 are also consumed. The dealer who sells these TBA requirements adds approximately $50.00 to his profits per 1,000 gallons of gasoline sold.

27(6) 6031

Commissioner's Exhibit 2128

New York, N. Y., June 19, 1950

NOTICE OF INTERPLEADER BY PETITIONER

[illegible]

[illegible]

[illegible]

Wider Way of Buyer Appeals. Well-displayed TBA lines, particularly those representing well-known national brands, attract new customers who come in for TBA needs, but by favorable impression are retained as permanent customers for petroleum needs as well.

More Attractive Station. Well-kept TBA displays make a station more attractive and business-like, giving passersby an impression of success, permanence, and complete service . . . a good place to buy.

Additional Advertising and Promotion. TBA merchandise and services present a wider appeal in station advertising and promotion, and plus profits from TBA help warrant greater advertising and promotional expenditures.

More and Better Employees. The added profits from TBA permit the dealer to employ more and better sales and service employees. That, in turn, helps build sales on all lines.

A Description of our TBA Setup and How Our Tire Representatives Operate -

The activities of our TBA program are directed from our New York Office, Tire Sales Division. We have a Manager and an Assistant Manager Tire Sales, as well as other clerical help. In our Territorial Offices the TBA program is under the direction of the Assistant Manager (Sales Promotion) as a rule, and the responsibility of directing the program in each Division Office is charged to the Assistant Manager (Sales Promotion). There are four Territorial Offices and fifteen Division Offices in the United States.

In each Division, there is a Representative (TBA Promotion) and a tire clerk under the supervision of the Assistant Manager (Sales Promotion). The tire clerk handles all clerical work in connection with the TBA program.

The Representative (TBA Promotion) is the liaison officer between the selling organization and that of the tire company. He maintains contact with the District Managers of the tire companies and is responsible for the promotion of the tire company programs with both our salaried personnel and our dealers. The Representative (TBA Promotion) is especially trained in the merchandising of the TBA line and is kept familiar with tire company programs. Thus he is able to keep our organization fully informed so that they in turn may intelligently counsel with the dealers in the proper merchandising of the complete TBA line.

How The Texas Company Assists Dealers in Making Contacts to Purchase TBA Items and the Advantages to the Dealers -

TBA merchandising is more successful when dealers stock and sell items of established quality and public acceptance. Profits are greatest when dealers purchase advantageously from permanent, reputable sources of supply offering a complete line of TBA items.

FEDERAL TRADE COMMISSION
DOCKET 8485 EXHIBIT NO. 27C
6033
27(c)

When occasion warrants, Texas Company personnel counsels with its new and less experienced dealers on the selection of a TBA supplier, recognizing that the final choice is to be entirely the selection of the dealer.

When the dealer has made his decision, The Texas Company representative may aid in effecting the initial contact between the dealer and the chosen supplier. This aid may be in the form of an immediate call to the supplier, or information to the dealer as to how and where the supplier may be contacted.

The Texas Company Representative's experience and his familiarity with the local market permits him to appraise prospective suppliers with the measuring sticks outlined below, permitting the dealer to evaluate each in terms of his own needs.

1. Merchandise of good quality, resulting in satisfied customers and continued patronage.

2. Brands having public acceptance, thereby reducing the time and selling ability and effort required to merchandise successfully.

3. Complete line of TBA essentials, eliminating occasion for several suppliers. A single supplier for all TBA needs reduces time required for purchasing, prevents duplication of items, eases bookkeeping, and increases supplier cooperation and support.

4. A permanent source of supply eliminates the confusion of switching frequently from one supplier to another.

5. A reputation for fair dealing assures the dealer of correct prices and accurate billing.

6. The supplier serves best who has an understanding and experience with the particular problems of service station merchandising.

7. Supplier's help on advertising and promotional needs for TBA items, will make the dealer's program more successful.

How The Texas Company Does All It Can to Assist Dealers in Purchasing and Selling TBA

It is obvious from the facts outlined above that TBA activities are not a separate and supplementary enterprise with service station dealers, but are an integral part of successful station operation. As such, The Texas Company has a great responsibility to foster and assist each dealer in establishing and exploiting an aggressive TBA Program. Texas Company aids may be outlined briefly as follows.

FEDERAL TRADE COMMISSION
DOCKET NO. 6465 COMMISSION EXHIBIT NO. 2766-35
53(d)

Training. Training courses dealing specifically with TBA merchandising are offered all Texaco dealers and their employes. Dealer publications and other materials feature successful methods... teaching by example. General dealer meeting materials (movies, displays, etc.) incorporate phases of TBA operation.

Advertising, Promotion, Display. Materials offered dealers for advertising and promoting the sale of Texaco products also include, when appropriate, promotional messages pertaining to TBA items and services. Such references are general, however, and do not specify brand names.

Assistance of Sales Personnel. All sales personnel contacting dealers are required to be fully informed on principles of TBA merchandising from the selection of lines and items, and the initial purchase, to the service or installation which may follow the sale. This knowledge and experience is made available to all Texaco dealers through the medium of counsel without regard to brand or source of the dealer's TBA merchandise.

In answer to the question in your last paragraph as to the effect on the industry and to the public from divorcement as compared to our present vertical integration from the point of view of TBA:

Under divorcement, if no separate selling organization were possible for The Texas Company, the question arises as to who would and could promote TBA for the dealer's benefit.

On the assumption that the dealer's petroleum needs would be supplied by jobbers, who would have the facilities to train and educate the jobbers to in turn educate the dealers on sound merchandising methods?

Many gasoline service station dealers will go out of business without a centralized TBA program. This is because, without it they habitually tend to rely solely on profits from petroleum to operate their business. Without the central program there is no way to train and constantly remind the jobber of the importance of continuously selling the dealer the advantages of carrying a full line of automotive accessories and training him to merchandise profitably.

Even if it were possible to constantly remind the jobbers of the importance of a TBA program, it is doubtful if they would have the financial resources to provide adequate promotion. If they had programs, it is quite certain that there would be no uniformity about their methods throughout the country, an important feature of our present integrated program.

This lack of uniformity would result in scattered purchases from many suppliers so that merchandise handled would lack the quality and appeal of nationally advertised and distributed products.

Neither would jobbers be financially able to rehabilitate stations to provide adequate salesroom facilities for TBA.

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 27E
6937
27 (E)

If divorcement should mean a separate Texas Company selling organization; first, we must remember that it could not tie itself down to buying and selling only Texaco petroleum products. Consequently, if the organization bought and sold more than one brand of petroleum it would tend to encourage the handling of several brands of TBA merchandise which weakens the dealer's buying advantage which he has in buying a larger volume from one supplier.

On the assumption that we have a separate selling corporation buying product and supplying present Texaco stations, the company might be:

(a) Unable to finance the rehabilitation of our older type stations to provide adequate salesroom facilities for the merchandising of TBA.

(b) Might be limited in providing the efforts of sales personnel for counseling with and educating our dealers in better merchandising methods.

(c) Limited and perhaps prevented in the present allocation of expense to the numerous sales promotional and advertising aids for the dealer mentioned above.

Under divorcement, whether our dealers are supplied by jobbers or by a separate Texas Company selling organization, either of these situations would react unfavorably to the dealer in less profits; unfavorably to the motorist in failing to supply his needs at a competitive price, which would result in failure of many dealers due to inadequate earnings. This in turn would adversely affect the earnings of the industry and of the selling company if it existed. This should be obvious because less prosperous dealers would mean loss of good dealers as many of them would go out of business --- which results in lower petroleum volume and lower profits.

Either of these situations would adversely affect the public by removing the time-saving and money-saving advantages of purchasing its entire automotive needs from one dealer -- the service station.

Very truly yours,

THONSON

HB:SD

FEDERAL TRADE COMMISSION
E... X. 6465 EXHIBIT NO. 27F.

6933

JAX 45

Commission's Exhibit 28A

THE TEXAS COMPANY

New York, N. Y., December 14, 1950

SALE OF TIRE COMPANY PRODUCTS
FORM S-1213

Messrs. R. H. Kibbe (6)
R. W. Debnam (6)
C. B. Barrett (6)
D. E. Beaton (5)

Gentlemen:

The present Form S-1213, as you know, shows the total number of accounts approved by each tire company and the total number of active accounts. The number of active accounts includes the associate dealers of active Texaco consignees or another Texaco dealer who also serves as a TBA distributor.

In our opinion the present method of including the associate dealers in our number of active accounts does not give us a true picture of the actual progress of our TBA program. For instance, on the national summary of the S-1213, there are 9,452 company owned and leased stations ("C" accounts) approved for handling TBA. Of these, we show 8,107 stations to be active. By deducting the associate accounts included in this active figure, we have only 5,385 dealers on which we have positive records. In other words, even though we say they are active accounts we do not know that the associate dealers are actually buying their TBA products from the consignee or supplying dealer. In the case of contract dealers ("D" accounts) the picture is even more distorted. Of the total of 6,746 dealers, shown as active, by deducting the associate dealers, there are only 2,656 accounts on which we have proof of activity.

Even though it is important that we maintain records of the associate dealers and include them in some way on the Form S-1213, we believe there is some better way of presenting our Forms S-1213 in a manner that a clearer picture of activity on our TBA program may be had.

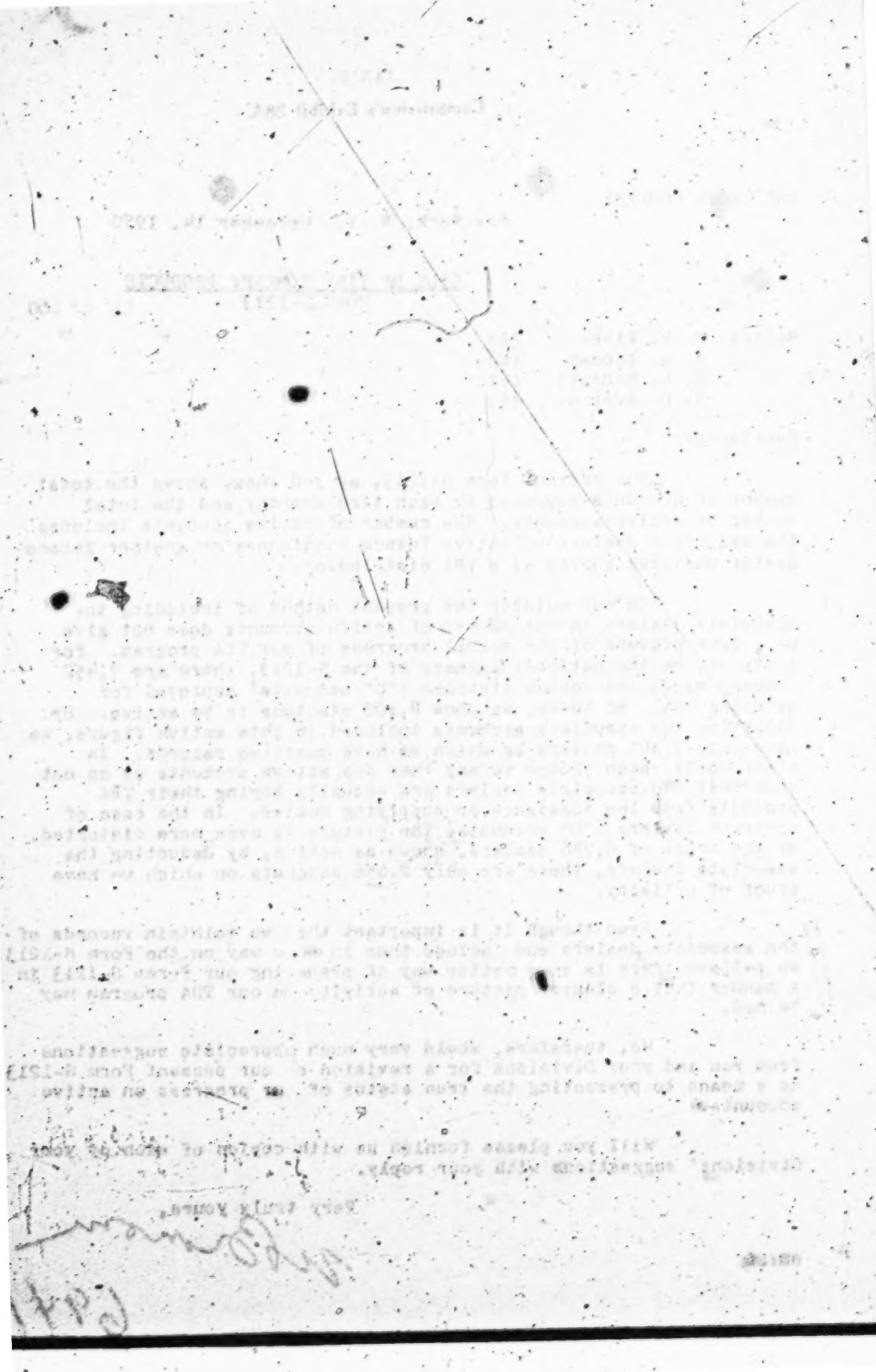
We, therefore, would very much appreciate suggestions from you and your Divisions for a revision of our present Form S-1213 as a means to presenting the true status of our progress on active accounts.

Will you please furnish us with copies of each of your Divisions' suggestions with your reply.

Very truly yours,

RB:BD

6941



Commission's Exhibit 29A

MEMORANDUM FROM NORTON BRONSON

[redacted] N. Y. January 8, 1951

PERSONAL

TO MR. Doyle Driver

DEAR Doyle:

Just for my own personal information, would you give me your best estimate of the percentage of time spent on TBA by the resale salesmen in the Norfolk Division. I am interested only in your sober best judgment of the facts, not wishful thinking. Could you estimate this on the basis of indirect attention to TBA as well as direct?

For instance, I have in mind when a salesman enters a service station that he talks to the dealer about Circle Service, Sparkle, lubricating sales, improvement of service on petroleum products, etc., and perhaps some direct reference to TBA.

What I am curious to know is whether speaking from the point of averages, the salesman spends 3%, 5%, 15%, or 20% directly on actual reference to TBA. Could you break this down further as to the percentage of his time spent on tires and tubes, percentage spent on batteries, and percentage of his time spent discussing balanced stocks and inventory control of accessories on his shelves.

10% overall

1% on tires & tubes

5% on batteries & ATH's

4% on Balanced stocks & Inventory Control

6943

Commission's Exhibit 29B

MEMORANDUM FROM NORTON BRONSON

NEW YORK, N. Y.

TO MR.

- 2 -

I realize that when discussing Circle Service, he is indirectly discussing TRA even if he doesn't mention it as such.

Please just give this to me in a personal note as a horseback guess.

Regards,

NB:SD

6945

MEMORANDUM FROM DOYLE DRIVER

NORFOLK, VA. 1-11-50

TO MR. Morton Bronson

Dear Mr. Bronson:- 182-00

Your memo of January 9th.

It is very difficult for me to answer your questions in as much as you receive varied opinions from the salesmen themselves in discussing the time consumed in handling the TMA program.

However, in my opinion, I would say that approximately [illegible] of a salesman's time is spent on the TMA program, broken down as follows:-

- 1/4 on Tires & Tubes
- 1/4 on Batteries, Home & Auto Supplies
- 1/4 Indirectly - On Circle Service, Merchandising, Pricing, etc.
- 1/4 On balanced stocks and Inventory control.

Here's hoping that you and yours will have a most happy and prosperous year.

Sincerely,

6947

JAX 49

Commission's Exhibit 31

[illegible] January 12, 1951

HANDLING OF THIRD PARTY PRODUCTS
BY THE GOODYEAR DEALER AND STORE

[redacted]13

[illegible]

182-00

Gentlemen:

We have been having difficulty securing from Consignees each month, the sales to LEASED ACCOUNTS of T.B.A. merchandise.

This is very seriously affecting the operating cost of each leased station, for as you know, we take the figures reported by the Consignees and multiply them by our rate of commission from the tire companies, thereby reducing the cost, and this is a strong point in renewing leases.

We find that the list we now have is not complete and up to date, and we must therefore ask that you immediately prepare a list of all leased stations in consignee areas, where the [illegible] is handling T.B.A. merchandise, and forward to this office at once, as per example below:-

(Consignee Name and Address here).
Name of Dealer, address, whether Company-Owned, Third Party, or Same Party leased.

We will check these lists in this office and prepare on the proper forms, and return them to you in order that you may go to each consignee and explain how to properly report.

This is a very important phase of your work and it is your responsibility to see that these lists are kept current, and that they are promptly returned each month.

Yours very truly,

C. R. FROHLICH

CRF-HP

RBA-CRF-JTH-JMH-RRG-DD-WEB-RAH
RHHL-DDB-WLL-PCH-JHH-WFH-RGH-ICH
ACB-CEF-MHMcL-AHH-WJS-WHE-GJM
RLAn-NCK-HLB-RED(2)-WFDn-GHBy-FH
MTW-WAD-HLT-JWB-HHP

6949

JAX 50

Commission's Exhibit 34A

THE TEXAS COMPANY

New York 17, N. Y., November 15, 1951

THE TEXAS COMPANY TBA PROGRAM

Messrs. R. E. NEY
J. E. NORMAN
DOYLE DRIVER
M. C. WALL

Gentlemen:

You have been active in assisting Texaco dealers to secure more profits through the sale of TBA merchandise regardless of the supplier and while we have data on the progress of customers of Firestone and Goodrich we would like additional information on the Texaco dealer customers of other suppliers. Accordingly it is requested that you develop and furnish this office the following information.

A list of all Company owned and all leased service stations in your Division handling TBA which is neither Firestone nor Goodrich showing the following information for each such service station.

1. Dealer's name and location.

2. Date station was opened or began handling Texaco products.

3. Principal brand of TBA products presently handled by the dealer.

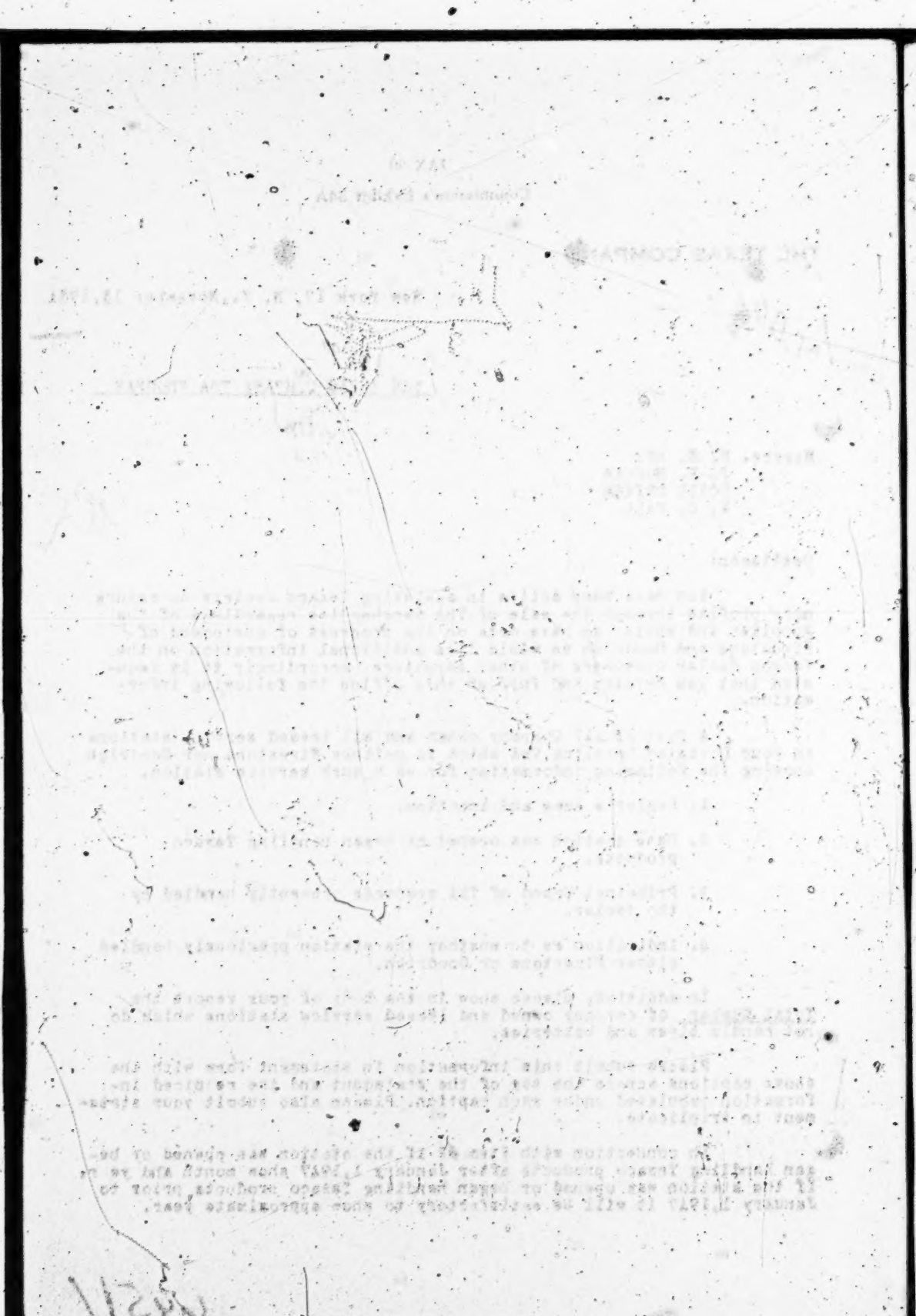
4. Indication as to whether the station previously handled either Firestone or Goodrich.

In addition, please show in the body of your report the Total Number of company owned and leased service stations which do not handle tires and batteries.

Please submit this information in statement form with the above captions across the top of the statement and the required information tabulated under each caption. Please also submit your statement in triplicate.

In connection with Item #2 if the station was opened or began handling Texaco products after January 1, 1947 show month and year. If the station was opened or began handling Texaco products prior to January 1, 1947 it will be satisfactory to show approximate year.

69511



JAX 51

Commission's Exhibit 34B

11/15/51

Messrs. R. F. NEX
J. B. NORMAN
DOYLE DRIVER
M. C. WALL

In connection with Item #4, it will be satisfactory to show this information for the period January 1, 1947 to date. If doubtful that you can develop it with any degree of accuracy prior to January 1, 1947, if the station previously handled either Firestone or Goodrich please so indicate by placing an asterisk [illegible] Baptism opposite the dealer's name. If the station did not handle habitually either Firestone or Goodrich leave the item blank.

It is requested that you develop this information [illegible] statement as soon as possible.

JAX 52

Commission's Exhibit 35A

Norfolk, Va., January 7, 1952

THE TEXAS COMPANY TBA PROGRAM

182-00

Mr. J. K. Pannill

New York

Dear Sir:

Attached is statement in triplicate as requested in your letter of November 15th.

Yours very truly,

DOYLE DRIVER

AAB:GK

DEALER'S NAME & LOCATION	DATE STATION OPENED OR BEGAN HANDLING TEXACO PRODUCTS	PRINCIPAL BRAND OF TBA PRODUCTS FREQUENTLY HANDLED BY DEALER	STATION FREQUENTLY HANDLED PERMANENT OR TEMPORARY
R.V. Bailey, 21st & Colley Ave., Norfolk, Va.	1938	Gates	•
D.M. Smith, 21st & Colonial Ave.	1950	Miscellaneous	•
J.S. Baltimore, 18th & Broad Sts., Richmond, Va.	1928	Goodyear	•
Lyle K. Reed, 2827 Bladensburg Rd.NE.,Washington,D.C.	1939	(Lloth Bros.)	•
L. W. Warner, Dover & East Sts., Hudson, Md.	1933	Lee, Willard & Exide	
Lillian Norris, R.F.D. #2 & Main St., Union,W.Va.	1938	Century	
Milton Transit Co., 1127 Main Street, Milton, W.Va.	October 1949	Kelly	
B. O. Whiting, R.F. #1, Ripley, W.Va.	June 1947	Mohawk	
E. E. Grist, Main & Salem Sts., Oak Hill, W. Va.	1946	U.S. & Others	
W. S. Easter, Hwy. #10, Jesse, W. Va.	July 1947	Armstrong	
E. H. Akers, Lapperated Rd., Butcher, W. Va.	January 1947	Armstrong	
S. H. Hopkins, Water St. & River Ridge,Barboursville,W.Va.	Jan. 1951	Fisk	
C. E. Willey, Main Street, Hinton, W. Va.	August 1950	Armstrong	
C. L. Teetsman, 5th & Fairmont, Fairmont, W.Va.	1940	Gates, Exide	
A. J. Gerris, Drake Street, Greenville, N.C.	November 1951	Dayton	
S. L. Whitehead, Whitakers, N.C.	June 1950	Gates	
J. A. Hodges, Kinston, N.C.	1945	Gates	
C. J. Best, Goldsboro, N.C.	1946	Dunlop	•
J. L. Van Dyke, Garnett & Andrews Sts.,Henderson,NC	1936	Seiberling	•
Powers & Swain, Rainey & Scott Ave., Fayetteville,NC	January 1947	Miscellaneous	•
R. C. Butler, Russell & Gillespie Sts., " "	Oct. 1947	Goodyear	•
Bloodworth & Hurt, Hay & Woodside Sts., " "	Sept. 1950	Goodyear	•
K & B Texaco, Hwy. #301 & Cox St. " "	April 1950	Goodyear	
Walker J. Cooper, Main & Fort Sts., Marion, N.C.	1940	Goodyear	•
Jacob L. Hill, 7th & Ash St., Hendersonville, N.C.	Feb. 1951	Cooper	•
Garland Medaillard, Hwy. 70 & Italy St.,Valdese,N.C.	1939	Goodyear	•
J. O. Nash, Front & Oakland, Statesville, N.C.	1946	Lee	
Fred Cline, Main & 8th Street, Newton, N.C.	1929	Lee, Autolite	•
E. C. Hewitt, Claremont, N.C.	1946	Gates	•
L. R. Leonard, Main & 3rd Sts. Lexington, N.C.	1940	Seiberling	
Gordon Williams, Hwy. #29, Reidsville, N.C.	1930	U.S.	•
C. F. Wise, Main & Henry Sts., Stoneville, N.C.	1940	U.S.	•
Roy Saunders, Va. & Early Sts., Draper, N.C.	May 1950	U.S.	
Petroleum Service Inc.,Harrison & Paradise Sts., Reidsville, N.C.	May 1950	U.S.	
E. T. Myers, Hwy. #10, Thomasville, N.C.	1944	Richmond	
W. C. [illegible]more, Main & Cemetery Sts., Thomasville,NC	1935	Dunlop	
W. [illegible]ster, Church & Factory Sts., Greensboro, NC	1944	Dunlop	•
J. [illegible]rrison, Webb & Anthony Sts., Burlington, NC	1940	Kelly	
J. T. Harris, Hwy. #52, Pilot Mountain, N.C.	May 1950	General	

JAX 33
Commission's Exhibit 38

6451

DEALER'S NAME & LOCATION	DATE STATION OPENED OR BEGAN HANDLING TEXACO PRODUCTS	PRINCIPAL BRAND OF TBA PRODUCTS PRESENTLY HANDLED BY DEALER	STATION PREVIOUSLY HANDLED FIRESTONE OR GOODRICH
C. J. Thomas, Fayetteville & Brittain Dr., Asheboro, N.C.	March 1950	Dunlop	
Paul R. Swain, Salisbury & Fayetteville St., Asheboro, N.C.	1938	Kelly	•
Solo Miles, Madison St., Whiteville, N.C.	1942	Penn	•
C. C. Spivey, Lisbon St., Clinton, N.C.	1936	Inland	•
W. J. Johnson, U.S. #17, South Mills, N.C.	1930	Gates-Richmond-Pure	•
J. I. Nix, US #17, Elizabeth City, N.C.	1940	General	
H. C. Owens, Fearing & Poindexter Sts., Eliz.City, NC	1930	U.S. Dunlop	
H. R. Sawyer, Main & Road Sts., Elizabeth City, NC	1935	Goodyear	•
Creef-Ward Motor Co., Hwy. #345 & Hwy. St. Pantee, NC	1940	Goodyear	•

Total Number of Company-Owned and Leased service stations which do not handle tires and batteries 59.

JAX 34
Commission's Exhibit 36C

JAX 55

Commission's Exhibit 36

THE TEXAS COMPANY

New York 17, N.Y. March 8, 1951

SALE OF TIRE COMPANY PRODUCTS

Messrs. R. F. May
J. B. Norman
M. C. Wall
Doyle Driver

Gentlemen:

Early in January you furnished me with very complete information on the TBA volume of your consignees and distributors for the 11 months ending November 30, 1950.

As a part of the further study of this matter it is now requested that you prepare a list of your consignees and distributors who are in the TBA business but not handling the products of either Firestone or Goodrich. Please indicate for each the name of the brand or brands of TBA which they handle as well as the number of Texaco Dealers served. This information should be indicated separately for tires and tubes and batteries, home and auto supplies.

Please also indicate a rough estimate of the actual TBA volume of each consignee or distributor listed. It is realized that this might be difficult to estimate in some cases and, if you do not believe that you can do so with a reasonable degree of accuracy, it will be satisfactory to indicate whether the volume is considered large or small.

Please let me have your reply as soon as possible.

Very truly yours,

J. K. PARNELL

EP-AS

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JAX 56

Commission's Exhibit 37

Norfolk, Va. March 19, 1951.

SALE OF TIRE COMPANY PRODUCTS
182-00

Mr. J. K. Pannill,
New York, N. Y.

Dear Sir:-

Yours of March 8th.

We are listing below those Consignees and Distributors in the Norfolk Division, who are in the TBA business but not handling either Firestone or Goodrich:-

C. C. Spivey, Clinton, N. C.	Handling U. S. and Inland Tires and tubes and various MAAS. (Medium)
C. M. Frank, Elkins, W. Va.	Handling Goodyear Tires & Tubes with very little varied MAAS. Has 10 counties and doing a large volume. Just recently hasbeen buying some Goodrich but cannot determine whether this is temporary due to shortage.
Bellamy & Co., Scotland Neck and Enfield, N. C.	handle Goodyear Tires and tubes but very little varied MAAS. (Volume small)
H. C. Watson, Onley, Va.	Handles U. S. with varied MAAS. Nice account approximately $5,000.00 to $7,000.00 per month.
John C. Baker, Gassaway, W. Va.	Was split between U. S. and Goodrich for years but recently dropped Goodrich entirely, claiming injustice due to price change.

We trust this is the information desire.

Yours very truly,

JHH-sw

DOYLE DENVER

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JAX 37

Commission's Exhibit 38A

THE TEXAS COMPANY New York, N.Y., December 19, 1951

THE TEXAS COMPANY TBA PROGRAM
REVISION IN METHOD OF HANDLING
FORMS, RECORDS AND PROCEDURES
FEDERAL TRADE COMMISSION
DOCKET NO. 6465 EXHIBIT NO. 38-A
IN THE MATTER OF DF Companies + Texas Co
Dec. Sep 10 1956 WITNESS
ACE REPORTING CO., Official Reporters
By MONICK

Messrs. R. R. Kibbe (10)
J. A. Winger (10)
C. B. Barrett (10)
D. E. Beaton (8)

Gentlemen:

An account approved by a tire company and listed on its Form S-47 is classed as inactive if no purchases are made over a period of 90 days. Present instructions provide for handling inactive accounts as follows:

1. A Division staff member, or Representative (TBA Promotion) will discuss such inactive account with the tire company District Manager on whose S-47 the account is listed. He will determine the status of negotiations with the account and endeavor to effectuate an early activation of the account.

2. Our field representative contacting the account will have:

(a) Discussed with the account our inability to interest the supplier first chosen by the account.

(b) Contacted the account for this purpose before the end of the 90-day period or shortly after.

3. If the tire company is unable to sell the account in a reasonable length of time after the 90-day period:

(a) Our field representative will have endeavored to secure the account's agreement to invite the other tire company with whom we work to call on him.

(b) The tire clerk is instructed to prepare Form S-237 for the nomination of the account to the other tire company with whom we work.

(c) We then transfer the recording of such an inactive account from one tire company's Form S-47 to the Form S-47 of the other tire company.

Effective January 1, 1952, we will change the procedure in Item 3(c) as follows:

(I) Removal of inactive accounts from a tire company's Form S-47 will be discontinued.

(II) After a full discussion with the dealer, the inactive account on the Goodrich Form S-47 will be nominated to the proper Firestone District Manager by use of Firestone's Form S-757.

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Commission's Exhibit 39B

(III) The same procedure should be followed in adding to the Goodrich Forms S-47, all inactive accounts appearing on the Firestone Forms S-47. These accounts should be nominated however by use of Goodrich's Form 1325.

(IV) The account's name, location, etc. will also be shown indented and with an asterisk (*) preceding the name on the proper supply point sheet of the Forms S-47 in subsequent months.

There may be cases where a customer has previously purchased a sufficient supply for three months' requirements. It is obvious that such an account would not be classed as inactive should he make no purchases during that 90-day period.

Attached is a detailed outline of the modified procedure of handling records of inactive accounts. The outline also provides for handling records of accounts which are to be newly nominated to a tire company subsequent to January 1, 1952. It is important that there be no exceptions to the method of handling as provided in the attached outline.

Sufficient copies of this letter and attachment are furnished you to supply two copies to each Division. We suggest that you assign to a Division staff member the personal responsibility of seeing to it that this new method of handling is put into effect.

Very truly yours,

Martin Brinson

NB:SD
Att.

RLS WRi WBH

WFW(2)

FEDERAL TRADE COMMISSION
6465 EXHIBIT NO. 39B

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JAX 59

Commission's Exhibit 39C

December 19, 1951

FEDERAL TRADE COMMISSION
DOCKET NO. 6488
RESPONDENT EXHIBIT NO. 34

THE TEXAS COMPANY TBA PROGRAM

REVISION IN METHOD OF HANDLING FORMS, RECORDS AND PROCEDURES

The procedure to be followed after January 1, 1952, in handling certain forms and records in connection with our TBA Program is outlined below. This should be studied very carefully by a Division staff member, the Representative (TBA Promotion), and the tire clerk inasmuch as revisions have been made in procedures to be followed without exception in the future.

Form S-237 has been revised. All revisions in this form have been covered in another letter.

Zone Managers and/or salesmen will continue to prepare Form S-237 in triplicate covering new and replacement accounts. The original and duplicate copy will be forwarded to the Division Office, and the tire clerk will handle the forms as called for in present instructions.

When nominating a new or replacement account to the tire companies, the tire clerk will prepare in quintuplicate the tire company form (Firestone Form S-757, Goodrich Form 1325), attaching four copies to the original of our Form S-237 on the account and forward them to the proper tire company District Manager for approval.

The tire clerk should set up a separate follow-up folder for each tire company marked "Accounts Nominated to (name of tire company)".

The file copy of the tire company's form should be attached to the duplicate copy of our Form S-237 covering the new or replacement account. These together with the account's Form S-40 card

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JAX 60

Commission's Exhibit 39D

FEDERAL TRADE COMMISSION
DOCKET NO. 6465 EXHIBIT NO. 39D

should be placed in the follow-up folder. When the original of the tire company form bearing the District Manager's approval is returned to our Division Office, it should be attached to the account's Form S-237, etc., and retained in the follow-up file until the account becomes active, or until the account is classified as inactive, in which case it should be handled as outlined below. When such a newly nominated account becomes active, the S-40 card will be filed in its proper place in the Active Section of Form S-40 file in accordance with present instructions. The Form S-237 and tire company form should be filed in Customer's File.

If the tire company does not report sales made to the account 60 days after an account has been approved, the Assistant Division Manager should write a letter to the tire company District Manager at interest requesting information as to progress made with the account and advising the District Manager that if he is unable to sell the account within the next 30 days, we must consider it an inactive account. However, should the tire company District Manager advise that there is a strong possibility of his company securing the account's business within the next 60 days, it will be satisfactory to continue to carry the account in the follow-up file for that period. Nevertheless, no new or replacement account nomination shall be carried in the follow-up file for more than 120 days from the date the account is approved by the tire company.

A copy of our 60-day follow-up letter to the tire company should be furnished the Zone Manager or salesman at interest with the

JAX 61

Commission's Exhibit 39E

FEDERAL TRADE COMMISSION
6415 EXHIBIT NO. 39E

request that he personally discuss the matter with the account and th the tire company's sales representative who called on the account. If from these discussions it is determined that the tire company originally preferred by the account will be unable to sell him, the Zone Manager or salesman should be instructed to endeavor to secure the account's permission to invite a sales representative of the other tire company with whom we work to make a call on him. The Division Office should then be fully informed as to the account's wishes.

Copies of the letters to the tire company District Manager and to our field sales representative should be furnished the Representative (TBA Promotion). The Representative (TBA Promotion) should contact the tire company District Manager as soon as possible and discuss the possibilities of activating the account.

If the account has not been activated after being handled as outlined above within a maximum period of 120 days from date of tire company approval, and if the account expresses his desire to have the other company with whom we work call on him, the tire clerk should nominate the account to the other tire company by use of that tire company's form only. (Firestone Form S-757, Goodrich Form 1325). In such cases, it will not be necessary to furnish the second tire company to whom the account is nominated with a copy of our Form S-237.

We will continue to place immediately the name, location, etc. of all newly nominated accounts on the proper supply point sheet of Forms S-47 for the tire company to whom the nomination is made.

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JAX 62

Commission's Exhibit 39F

TTCo. TBA Program
Revision in Method of Handling
Forms, Records & Procedures

December 19, 1951

In those cases where an account is nominated to a second tire company due to the failure of the first tire company to activate the account, the customer's name, etc. will not be removed from the Forms S-47 of the first tire company but an asterisk (*) will be placed in front of account's name and in the same manner the account's name, etc. will be also placed on the proper supply point sheet of Form S-47 of the other tire company.

Thus as outlined above, any account remaining inactive for 120 days after original approval by a tire company will be shown with an asterisk (*) preceding the name of the dealer on our Forms S-47 for both tire companies.

After an account is nominated to the second tire company, the tire clerk will retain one copy of the tire company's form in the follow-up file. If such an account has not been activated within 60 days by the second tire company, the Assistant Division Manager should write a letter to the tire company District Manager asking for immediate advice as to the progress made with the account. A copy of this letter will be passed to the Representative (TBA Promotion) requesting him to contact the tire company District Manager as soon as possible and determine whether or not there might be a possibility of activating the account, and if so, how soon. We should continue to maintain a close follow-up on such accounts until activated or for a maximum period of 120 days from the date the account was nominated to the second tire company District Manager. This follow-up should be handled in the same manner as our follow-up on newly nominated accounts.

FEDERAL TRADE COMMISSION
6465 EXHIBIT NO. 3 2-6973

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Commission's Exhibit 39G

...ADE COMMISSION
...646 ...IBIT NO. 39-G

When an account has been nominated to both tire companies, and if neither tire company has been able to activate the account within the maximum of 120 days from nomination, the Representative (TBA Promotion) as soon as convenient should make a call on the account in company with the Zone Manager or salesman, at which time they should endeavor to find out the desires of the account insofar as his TBA Program is concerned. After such discussions, the Representative (TBA Promotion) should then discuss the account's potentials with both tire company District Managers at interest, and a decision should be made as to whether or not we should continue to carry the account on our TBA records.

We, of course, do not wish to continue to carry on our records any account which will not under any circumstances do a TBA business of any consequence. However, we do not want to eliminate from our TBA records any account which represents an attractive TBA potential.

In any event, The Texas Company's selling personnel contacting accounts which are not handling either Firestone or Goodrich merchandise will continuously promote the merits of The Texas Company's TBA Program but will also continue to lend every possible assistance in the development of the account's TBA business regardless of the brand of merchandise handled.

If an account which has been regularly purchasing merchandise from either Firestone or Goodrich fails to purchase any merchandise for two consecutive months, our Division Office should write a letter to the tire company District Manager at interest calling this fact to his attention and requesting advice as to why the account

FEDERAL TRADE COMMISSION
6485 FILED FOR IN 37H.

failed to buy. A copy of such letters should be furnished the Representative (TBA Promotion) and our field selling employe who normally contacts the account. The Representative (TBA Promotion) should be instructed to contact the tire company District Manager in an effort to determine the status of the account. Our field sales representative should be requested to contact the account for the same purpose. Should such an account fail to purchase merchandise from the tire company at interest for three consecutive months, and if from contacts as outlined above, the fact develops that the account does not wish to continue to do business with that particular tire company, we should inform the tire company District Manager of the facts developed and our field selling employe should be instructed to endeavor to secure the account's permission to invite a representative of the other tire company with whom we work to call on him and present that tire company's program to him. After the tire company District Manager has verified the facts and if the account is willing, we should then nominate the account to the other tire company by use of their form and handle as outlined above for inactive accounts.

Under no condition, however, will we carry an account's name on the Forms S-47 of one tire company as an active account and at the same time carry the same account's name on the Forms S-47 of the other tire company as an inactive account.

The Form S-40 cards for all inactive accounts which are carried on both tire companies' Forms S-47 will be kept in a separate file. The S-40 cards will be filed in Zone order, alphabetically by towns, and accounts in each town alphabetically by account name. In this inactive Form S-40 hard file, there will, of course, be no division between tire companies.

Forms S-79 for both Firestone and Goodrich will carry the name, etc. of each inactive account which is shown on both tire companies' Forms S-47.

Other than the change in method of listing inactive accounts on Form S-47 as outlined above, Forms S-47 will be prepared and distributed as called for in present instructions.

FEDERAL TRADE COMMISSION
6485 EXHIBIT NO. 391

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Commission's Exhibit 40A

THE TEXAS COMPANY
LEGAL DEPARTMENT
135 EAST 42nd STREET
NEW YORK 17, N. Y.

MARION J. EPLEY, JR.
ATTORNEY

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 40-A
IN THE MATTER OF B. F. GOODRICH COMPANY
DATE OCT 16 1956 WITNESS BARTLETT
ACE REPORTING CO., Official Reporters
By MONICK

August 26th, 1952

Re: File 1-19690
File 1-22441

Federal Trade Commission
Bureau of Antimonopoly
Washington, D. C.

Gentlemen: Attn: Mr. Wm. W. Rogal

Attached is copy of letter addressed to me by Mr. Norton Bronson, under this date, enclosing all photostats requested by you during your visit here. If the enclosures do not fully check with your list, please promptly advise me.

The other statistical data and information requested is also set forth in letter from Mr. Bronson to me.

I am enclosing the four forms of leases generally used by The Texas Company. These are its forms G-77, G-77A, G-77B and G-77C.

I believe this is all data and information requested. If not, please let me know.

Very truly yours,

MJEJr:MHH

Encl.

Faithfully yours for Fifty Years 1902 1952

6283

CX 40 a
B. 71,77

JAX 67

Commission's Exhibit 403

New York, N. Y., August 26, 1952

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 403-B

Mr. N. J. Epley, Jr.,
Building

Dear Sir:

In accordance with your request, with this letter I am forwarding you photostats in duplicate of all letters and documents in our files which were marked by Mr. William Rogal of the F.T.C. These are described on the list attached and include photostats of our Form S-47 for Washington, D.C., for both Firestone and B. F. Goodrich for the month of June 1952.

Other information and data requested by Mr. Rogal is given below:

(1) The next attachment is from our Manual of Procedures, Sales Department Division Offices, Part 25, pages 1-21, dated August 1, 1951, and photostats of modifying letters dated March 4, 1952; January 18, 1952; December 27, 1951; December 3, 1951; and October 9, 1951, which pertain specifically to the handling of forms, records, and procedures of our TBA Program.

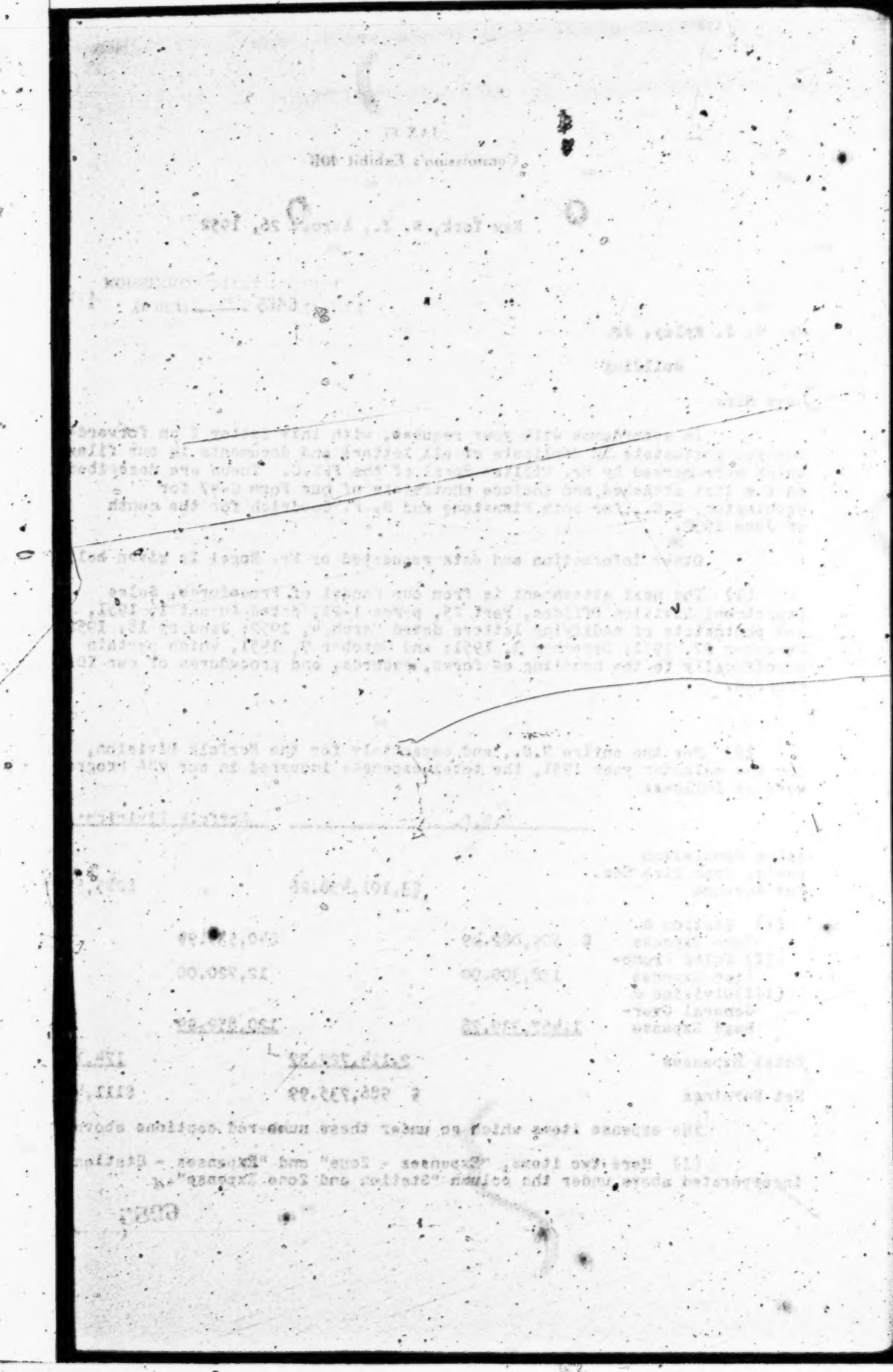
(2) For the entire U.S., and separately for the Norfolk Division, for the calendar year 1951, the total expenses incurred in our TBA Program were as follows:

	U.S.A.		Norfolk Division	
Sales Commission rec'd. from Tire Cos. Net Revenue		$3,101,458.26		$285,579.79
(I) Station & Zone Expense	$ 509,082.49		$40,539.99	
(II) Sales Promotion Expense	138,300.00		12,720.00	
(III) Division & General Overhead Expense	1,467,339.78		120,859.99	
Total Expenses		2,114,722.27		174,119.98
Net Earnings		$ 986,735.99		$111,459.81

The expense items which go under these numbered captions above are

(I) Here two items, "Expenses - Zone" and "Expenses - Station" are incorporated above under the column "Station and Zone Expense".

6985



Commission's Exhibit 40C

FTC No. 6485 EXHIBIT NO. 40-C

"Expenses - Zone" is based on the proportion of Zone expense applicable to the TBA Program. This represents a portion of the salaries and expenses (excluding bonus) of the Zone Manager, Clerk (Zone Manager) and the Salesman (Resale). The accounting office first totals the amount of salaries and expenses (excluding bonus) of these employes. The Division Manager, or a responsible informed person designated by him, is consulted for the purpose of establishing the percentage chargeable to TBA sales, and the amount allocable is then computed in the accounting office. The percentage of the employes' salaries and expenses to be allocated to the TBA Program represents the best judgment of the management as to the portion of the employes' total time devoted to promoting the sale of this type of merchandise.

The total monthly rental value of space in consignees' operated warehouses used for TBA storage is incorporated under "Expenses - Stations". The Division Manager, or a responsible person designated by him, is consulted for the purpose of determining the applicable amount. The rental value of the space used is based on the estimated amount that would be charged by others for similar space in the locality.

(II) "Sales Promotion Expense" represents the amount of Sales Promotion expense allocable to TBA sales and is developed by the Sales Promotion Division in New York, which is responsible for sales promotion of all products, including certain portions of the TBA promotion. The Sales Department Agent's office advises the Chief Accountants regarding amounts applicable to their respective Divisions.

(III) "Division and General Overhead Expense" - The amount of Division Overhead Expense is developed by the Division accounting office after consultation with the Division Manager, or a responsible informed person designated by him, by estimating the percentage applicable to TBA sales promotion, based on percentage of time the employes devote to promotion of sales of TBA merchandise. The Division employes included in this group are: State Managers, Representatives (Dealer Service), Representatives (Dealer Training), and Representatives (TBA Promotion).

The Division's portion of Territorial Office, Domestic Sales, and General Company overhead applicable to TBA sales promotion is based on the percentage that the total TBA sales for the particular Division bears to the net revenue from total petroleum sales of such Division. This percentage is used to compute the particular Division's share of General Domestic overhead and the Territorial Office overhead in that Division.

(3) By the term "Direct Account" below, we mean any Texaco account buying TBA merchandise direct from a Firestone or B. F. Goodrich District Warehouse; a Firestone or B. F. Goodrich operated store; or from a Firestone or B. F. Goodrich distributing dealer.

By the term "Associate Account", we mean any Texaco dealer buying TBA merchandise from a consignee or another Texaco dealer. For the entire U.S., the total number of "Direct" and "Associate" accounts as of

JAX 9

Commission's Exhibit 40D

FEDERAL TRADE COMMISSION
DOCKET NO. 6488
COMMISSION EXHIBIT NO. 40-D

June 30, 1952, were as follows:

Direct Accounts	9,456
Associate Accounts	5,577
Total	15,033

(4) The total number of all Texaco dealers in the U.S. of the "C" and "D" classifications as of December 31, 1951, are 11,970 and 28,657 respectively. The symbol "C" is used to indicate owned and leased service stations, and the symbol "D" to indicate service stations on which The Texas Company has no lease.

The "B" classification refers to our Consignees, of whom there are 1,225, and the "E" classification are Distributors, of whom there are 687.

(5) The total sales by the Firestone Company and The B. F. Goodrich Company to Texaco dealers in Richmond, Washington, Baltimore and Philadelphia as shown by our S-47 reports for the 18 months period from January 1, 1951, to June 30, 1952, were as follows:

Washington, D.C.	$245,891
Baltimore, Md.	196,261
Philadelphia, Pa.	283,188
Richmond, Va.	81,988
TOTAL	$809,328

Very truly yours,

NB:SD

6989

PART TWENTY FIVE - T.B.A. PROMOTION

SECTION 1 - T.B.A. MERCHANDISING

1 - The Texas Company does not market tires, tubes, batteries, accessories or items other than petroleum products that might be sold through a service station, however it is recognized that it is to the advantage of service station dealers to handle such merchandise in order to meet the needs of their customers and to increase their earnings. For this reason dealers should be encouraged to expand their business beyond the sale of petroleum products.

2 - Although dealers should be encouraged to handle merchandise other than petroleum products, there should be no attempt to influence them as to the type of merchandise that should be handled or the source from which it should be purchased.

3 - Where fixtures and display shelves have been installed at Company-owned or leased service stations for use in selling merchandise, the dealer should be urged to use those fixtures to increase his earnings by keeping on hand a satisfactory amount of accessories but no pressure should be exerted to have the dealer do so.

4 - There is no objection, after proper fixtures for the sale of tires, tubes, batteries and accessories have been provided at a service station, to The Texas Company representative introducing to the dealer a salesman who has such items for sale, or to recommending to the dealer that consideration be given to the purchase of a certain brand of merchandise, but it must be borne in mind at all times that after an introduction has been made, the negotiations and arrangements should be between the dealer and the TBA salesman solely, without interference of any kind by the representative of The Texas Company.

SECTION 2 - CLASSIFICATION OF ACCOUNTS

1 - The following is an explanation of the classification of tire company accounts, indicating for each classification the letter symbol that should be used to designate "Type of Account" on Forms S-237, and Firestone Forms S-757, also on Forms S-40 and S-47.

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 41
IN THE MATTER OF B. F. GOODRICH COMPANY
DATE OCT 15 1956 WITNESS
ACE REPORTING CO., Official Reporters
BY MONICK
EXHIBIT 26
OBTAINED 8-09 1952 by mail

Cancels November 1, 1949 BT
*Denotes change

August 1, 1951

ATTORNEY-EXAMINER

FILE NO. 1-19-03

6971

Type of Account	Explanation
B	Firestone and Goodrich Texaco Consignees, including Consignee-owned or operated "Store Front Store" locations handling the complete tire company line. The Consignee must have at least 50% ownership of the "Store Front Store," otherwise such locations will not qualify. This classification also includes tank truck dealers operating tank wagons out of The Texas Company's bulk plant and serving resale dealers in an assigned territory. Such an account is considered a Consignee without bulk plant.
BW	Firestone and Goodrich (This classification applies to purchases of tires and tubes only.) Texaco Consignees functioning under the wholesaler program (Firestone) or agency plan (Goodrich.)
E	Firestone and Goodrich Texaco Distributors, including Distributor-owned or operated "Store Front Store" locations handling the complete tire company line. The Distributor must have at least 50% ownership of the "Store Front Store," otherwise such locations will not qualify. This classification also includes Texaco tank car buyers buying gasoline for resale by tank wagon to service stations not operated by such buyer.
EW	Firestone and Goodrich (This classification applies to tires and tubes only.) Texaco Distributors functioning under the wholesaler program (Firestone) or agency plan (Goodrich.)
C	Firestone and Goodrich Texaco dealers operating Company-owned or leased locations. Where a location is leased or subleased to a tire company and operated by it as one of its stores, such a location does not qualify under the "C" classification. Purchases of tire company products by a "C" type dealer for a "Store Front Store" owned by such a dealer, but not directly a part of the service station or not on property owned or leased by The Texas Company, will not qualify.

Commission's Exhibit 41

Tax 3004)

Type of Account	Explanation
D	Firestone and Goodrich All other Texaco resale dealers under contract with The Texas Company. Purchases of tire company products by a "D" type dealer for a "Store Front Store" owned by such a dealer, but not directly a part of the service station property, will not qualify. This classification also includes Texaco tank car buyers buying gasoline exclusively for resale at retail in one or more service stations operated by such a buyer.
DE	Firestone and Goodrich Texaco resale dealers who are supplied with petroleum prdducts by Texaco Distributors.
BJ) CJ) DJ) EJ)	Firestone only (The "J" classification applies to purchases of Firestone batteries and home and auto supplies only.) Any Texaco account ("B", "C", "D", or "E") purchasing batteries and home and auto supplies from Firestone on a maximum discount basis.

2 - An additional symbol, the letter "O", is used only on Form S-47, preceding the name and address of the tire company dealer or distributor supply point in instances where the supply point is not handling Texaco products and is not a tire company store or district office.

SECTION 3 - FORM S-237, ANALYSIS OF ACCOUNT FOR SALE OF TIRE COMPANY PRODUCTS

1 - Form S-237 filled out in complete detail should be prepared in triplicate by Zone Manager or Salesman covering all new resale accounts. Original and duplicate copies should be forwarded to Division Office attached to the initial sales agreement entered into with the new account for the sale of petroleum products. The triplicate copy of Form S-237 should be retained by Zone Manager or Salesman in the file for the account.

2 - There should be a clear understanding on the part of Zone Managers and Salesmen, and Division Office personnel, that Form S-237 is an important part of the papers that are to be submitted * initially covering every new outlet, and upon receipt of such papers in the Division Office, the Form S-237 should be detached and passed immediately to the Clerk (TPA Promotion).

Oberg EXHIBIT 26
OBTAINED 8-29 1952
BY
W. H. Riegel
ATTORNEY-EXAMINER
FILE NO. 37-71

3.- Form S-237 should be used only for the nomination of new accounts, either the opening of an entirely new outlet not heretofore listed on our tire records or the replacement of a Consignee or dealer at a previously listed bulk plant or service station. This form should not be used merely for reporting correction of name or address, change in trade name, or for the reporting of cancellations such as lost accounts or accounts no longer considered prospects for TBA.

4 - Form S-237 may be submitted by Zone Manager or others covering nomination of Texaco resale dealers who are supplied with petroleum products by Texaco Distributors. All concerned should understand that discussions of such dealers' TBA business should be with the Distributor; however, upon request of the Distributor, Zone Manager or others concerned may accompany the Distributor to the service station dealer's place of business for further discussion.

5 - As received in the Division Office, Forms S-237 should be studied by an Assistant Division Manager or Representative (TBA Promotion) and an appraisal made of the account's potentialities. After it is decided the account should be nominated for handling by a tire company, the lower portion of the form should be filled out and both copies signed by an Assistant Division Manager.

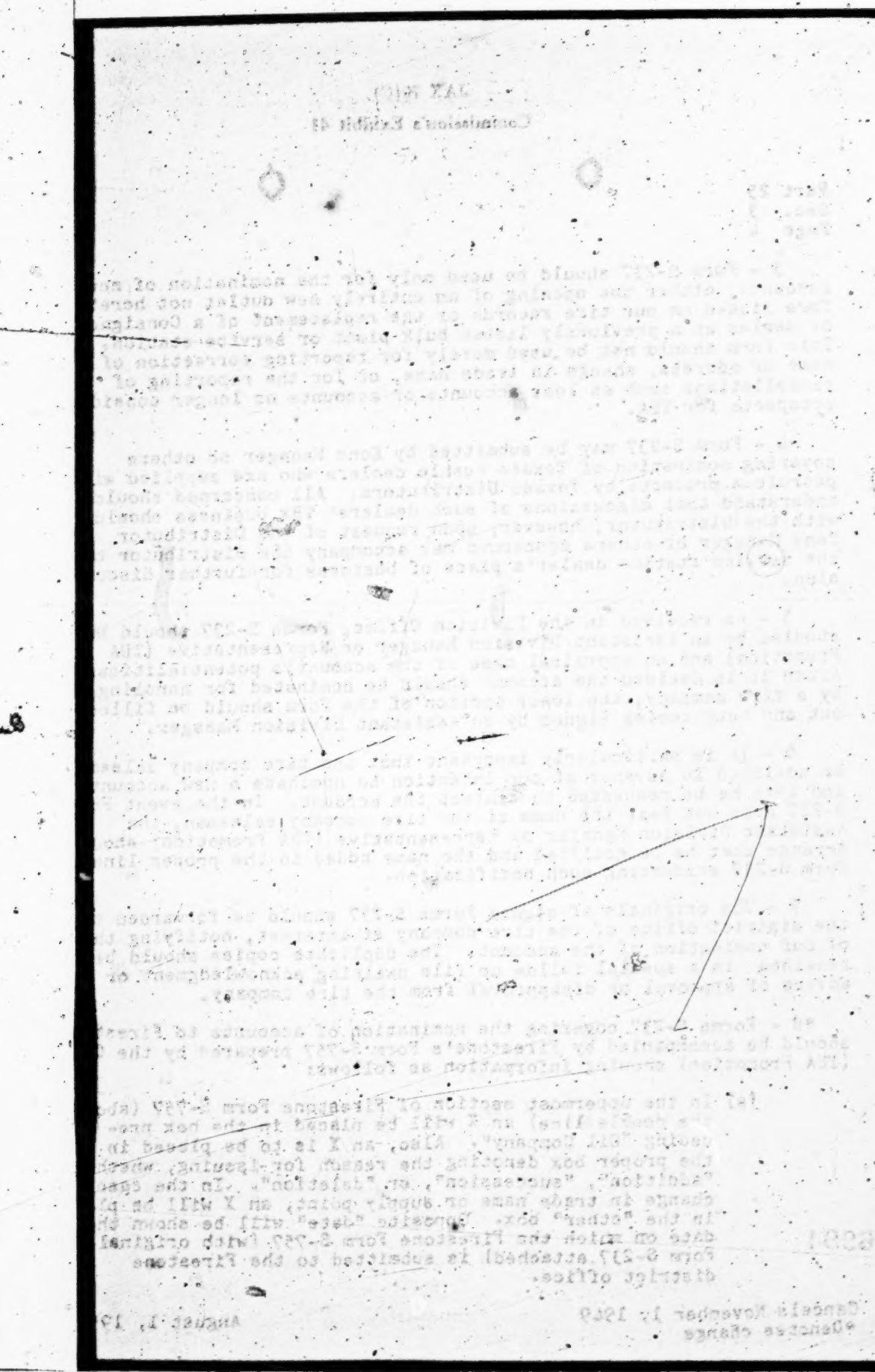
6 - It is particularly important that the tire company salesman be notified in advance of our intention to nominate a new account and that he be requested to contact the account. In the event Form S-237 does not bear the name of the tire company salesman, the Assistant Division Manager or Representative (TBA Promotion) should arrange that he be notified and the name added to the proper line of Form S-237 evidencing such notification.

7 - The originals of signed Forms S-237 should be forwarded to the district office of the tire company at interest, notifying them of our nomination of the account. The duplicate copies should be retained in a special follow up file awaiting acknowledgment or advice of approval or disapproval from the tire company.

*8 - Forms S-237 covering the nomination of accounts to Firestone should be accompanied by Firestone's Form S-757 prepared by the Clerk (TBA Promotion) showing information as follows:

(a) In the uppermost section of Firestone Form S-757 (above the double line) an X will be placed in the box preceding "Oil Company". Also, an X is to be placed in the proper box denoting the reason for issuing, whether "addition", "succession", or "deletion". In the case of change in trade name or supply point, an X will be placed in the "other" box. Opposite "date" will be shown the date on which the Firestone Form S-757 (with original Form S-237 attached) is submitted to the Firestone district office.

699-1



(b) On the first line in body of the form (below double line) all captions are to be filled in showing town and state, location of Firestone district office, inserting "The Texas Company" and town and state location of our Division Office in the appropriate spaces.

(c) On the second line will be shown the type account, whether "B", "C", "D", "E", "CE", or "DE". Also, name of consignee, distributor, or dealer being nominated and trade name, if known.

(d) On third line is to be shown the street address, town and state of the account named on the preceding line, also the name of the consignee, distributor or dealer being replaced in the case of a "succession".

(e) On the next line, the effective date of the account's lease and/or sales agreement with The Texas Company is to be shown following "date effective", and The Texas Company's zone number inserted following "Oil Co. Rep. No.".

*9 - Firestone Forms S-757 should be prepared in quadruplicate, sending the original and 2 copies, with the original Form S-237, to the Firestone district office and retaining one copy, together with copy of Form S-237, in the Division Office. A ten day follow-up should be set up on all Forms S-757. After handling by the Firestone District Manager, the original Form S-757 indicating approval or disapproval will be returned to the Division Office.

*10 - Upon receipt of the Firestone Forms S-757 in triplicate, Firestone's District Manager will immediately fill in the balance of the information called for. He will indicate his approval or disapproval and sign in the space provided below the double line at bottom of form, returning the signed original to the Division Office. The Clerk (TBA) should make sure that complete information as shown on the returned Firestone Form S-757 is then recorded on Forms S-40, S-47 and S-79. The signed Firestone Form S-757 will then be filed with Form S-237.

*11 - Firestone Forms S-757 which are approved by the tire company District Manager will designate the approved supply point. Where the supply point is the Firestone district office, it is permissible to have one emergency supply point, and this may be designated by Firestone at that time, or designation of the emergency supply point may be deferred until the account's buying habits are known and at that time entered to Forms S-40, S-47 and S-79.

12 - Notification of approval of Forms S-237 by Goodrich will designate only one supply point, as Goodrich makes no provision for emergency supply points. Advice of approval, when received, should be attached to copy of Form S-237 and both papers passed to customers file.

EXHIBIT 26 47
OBTAINED 6-29-52

Cancels November 1, 1949 BY August 1, 1951
*Denotes change

ATTORNEY-EXAMINER

FILE NO.

Commission's Exhibit 41

Part 25
Sec. 1
Page 5

13 - If the tire company does not extend approval, as in cases such as the following:

(a) "D" or "E" accounts not approved by Firestone

(b) "D" accounts not approved by Goodrich

(c) "C" accounts (locations leased by The Texas Company) where the dealer has been handling Goodrich products for a long period of time preceding our lease or where Goodrich has a substantial financial investment in the account. (The Texas Company will give consideration to any request Goodrich may make to exclude such "C" accounts).

explanatory notation to that effect should be made on the Form S-237 or Firestone Form S-757 and that form passed to the Assistant Division Manager or Representative (TBA Promotion) for handling. If it is felt the account should be qualified, it may be desired to handle further with the tire company District Manager, or it may be considered preferable to nominate the account to the other tire company for approval. If this handling proves unsuccessful and it is still felt the account should be qualified, a letter should be written to the Territorial Office giving complete details in connection with the account and reasons why it is believed the account should qualify. The Territorial Office, if in agreement with the Division, will handle with the tire company or will refer the file to Manager, Tire Sales Division, New York, for handling. In either event, the Division Office will be informed of the results.

14 - If final disposition results in disapproval of the account, the Zone Manager or Salesman who issued the Form S-237 should be so informed and Form S-237 and/or Firestone Form S-757, also the Form S-40 prepared in anticipation of approval, should be filed in a special folder marked "Accounts Disapproved by Tire Company".

SECTION 4 - FORM S-40, RECORD OF SALES BY TIRE COMPANY

1 - Form S-40 should be maintained for each approved tire company account and prepared in the following manner for each new account at the time it is nominated:

(a) The information required for completion of Form S-40 should be taken from Forms S-237, Analysis of Account for Sale of Tire Company Products, or from Firestone Form S-757. Before actually preparing Form S-40 cards, the Clerk (TBA Promotion) should carefully check Form S-237 and Firestone Form S-757 as to spelling of dealer's name, correct street address, bulk station serving, type of account, effective date of agreement with the Company, zone number, and recommended supply point.

Commissioner's Exhibit 41

Part 25
Sec. 3-A
Page 6

3. If the company does not extend approval, as in cases such as the following:

(a) "OP" or "E" accounts not approved by Firestone

(b) "OP" accounts not approved by Goodrich

(c) OP" accounts (locations leased by the Texas Company) where the dealer has been handling Goodrich products for a long period of time preceding our lease or where a Goodrich tire is qualified. (The Texas Company will give cooperation to any reasonable contract you make to exclude such accounts.

appropriate notation to that effect should be made on the Form S-237 or Firestone Form S-752 and that form passed to the Assistant Division Manager for Representative (TSA Promotion) for handling. If it is (a) the account should be qualified, it may be desired to handle further with the Texas Company Dealer Jobber, or it may be considered preferable to mediate the account to the other tire company that the account, if the mediation proves unsuccessful and it is still felt the account should be qualified, a letter should be written to the Territorial Office giving complete details in connection with the account and reasons why it is believed the account should qualify. The Territorial Office, if in agreement with the Division, will handle with the area Company or will refer the file to Manager, Tire Sales, Division, New York, for handling. In either event, the Division Office will be informed of the results.

4. - If final disposition results in disapproval of the account, the Zone Manager or Salesman who issued the Form S-237 should be informed and Form S-237 and/or Firestone Form S-752, also the Form S-40 prepared in application of approval, should be filed in a special folder marked "Accounts Disapproved by Tire Company".

SECTION 4. - FORM S-40, RECORD OF SALES BY TIRE COMPANY

1. - Form S-40 should be maintained for each approved tire company account and prepared in the following manner for each new account at the time it is contracted:

(a) The information required for completion of Form S-40 should be taken from Forms S-237, Analysis of Account for Sale of Tire Company Products, or from Firestone Form S-752. Before finally preparing Form S-40 cards, the Clerk (TSA Promotion) should carefully check Form S-237 and Firestone Form S-752 as to spelling of dealer's name, correct street address, bulk station serving, type of account, effective date of agreement with the company, zone number and recommended supply points.

Canceled November 1, 1950 August 1, 1951

Operations change

(b) In the case of "C" accounts, Form S-40 card provides for indication as to whether the location is Company-owned, or third-party or first-party leased and such information should be entered on the card.

* (c) Date of issuance of Form S-237 or Firestone Form S-757 should be entered on Form S-40 in the space provided. When approved by either company, Firestone or Goodrich, the date of such approval should be indicated in the appropriate caption of this form.

(d) When initially prepared, subject to approval of tire company the apparently most logical supply point should be written in pencil on Form S-40. Subsequently, upon receipt of notification of approval and designation of supply point, the official supply point should be typed or written in ink.

(e) In the event approval is not obtained, the Form S-40 should be removed, attached to disapproved Form S-237 and/or Firestone Form S-757 and placed in a special file.

2 - Postings should be made on the reverse side of Form S-40 in whole dollars only, from Forms S-47 received from tire companies, showing the amount of purchases as follows:

Tires and tubes for month

Batteries and auto supplies for month

Total for month

Batteries and auto supplies, cumulative

Total, cumulative

3 - Form S-40 provides for detailed postings for 2 years; in addition, at left side, column is provided for cumulative total for the preceding year. The purpose of such postings is to facilitate preparation of Form S-79 reports, as all information required may be taken from a single Form S-40 card.

4 - Form S-40 cards should be filed separately by tire companies in zone order, and further subdivided between active and prospective accounts in the following order:

Obtained by Exhibit 26.64
E-27-1952
N. M. Engel
Attorney-Examiner

(a) Active Accounts

(i) In zone order by types of accounts, cards for each type of account being filed in alphabetical order by town, and the accounts in each town filed in alphabetical order by account name.

(ii) An account should be considered active on tires and tubes unless it has not purchased tires and tubes during 3 consecutive months, in which case it should be counted as a prospective tire and tube account. The same procedure should be followed to determine an active or prospective battery and home and auto supplies account. Thus, it is possible to count an account active for tires and tubes, but prospective for batteries and home and auto supplies (or vice versa) for any given month. However, as long as the account is considered active on either tires and tubes or batteries and home and auto supplies, the Form S-40 card should remain in the active section of the file. The Form S-40 card of an account that does not purchase either tires and tubes or batteries and home and auto supplies for 3 consecutive months should be moved to the prospective section of the file.

(iii) An account's Form S-40 card is placed in the active section of the file when the tire company reports individual purchases on Form S-47 unless the account is an "Associate Account." Associate accounts should be handled as outlined in later paragraphs of this section.

(b) Prospective Accounts

(i) In the back of the active section of each zone file, following a subdivision card marked "Prospective Accounts," Forms S-40 covering prospective accounts should be filed by type of account in alphabetical order as outlined in paragraph 4 (a), subparagraph (i). The prospective section should include all accounts for which no purchases have been recorded for 3 consecutive months.

*5 - If considered preferable to do so, and providing approval of the Division Manager has been obtained, it will be satisfactory to comingle and file together all Forms S-40 rather than maintain separate files for active and prospective accounts within each Zone (or Salesman's) area.

* 6 - For each zone a Form S-40 card should be filed in back of the subdivision card for the zone, on which should be hand printed: "Summary Card Zone No. _____" and the Zone Manager"s name. On the reverse side of this card, under each respective caption, should be posted the total purchases of all accounts within the zone for each month. The Clerk (T.B.A. Promotion) should also maintain State Manager"s summary cards in the front of each tire company file. Purchases shown on the State Manager's summary cards should equal the total purchases shown on the summary cards for zones within each State Manager's area.

* 6A -Where there is more than one Salesman in a zone, at the option of the Division Management the Form S-40 files may be divided by Salesman and, if desired, a "Salesman Summary Card" provided for each Salesman's area. Where this is done, the grand total amount of postings to summary Forms S-40 for all Salesmen within the zone should be balanced each month with the amount of postings to the Zone Manager's summary card.

7 - The above summary cards are maintained for the purpose of balancing the total monthly purchases shown on Form S-79 for each State Manager, Zone Manager and Salesman.

8 - An "Associate Account" is one which purchases tire company products from another Texaco dealer, Consignee or Distributor who serves as a supply point. The Form S-40 card for the associate account should not show the volume of purchases made from the Texaco dealer, Consignee or Distributor constituting his supply point, inasmuch as the purchases of the supplying Texaco account only should be reported on Forms S-47.

9 - Form S-40 cards should show the purchases of the supplying Texaco accounts as reported by the tire company on Form S-47 each month; however, the associate account must be considered an active account for the tire company products (tires, tubes, and/or batteries and home and auto supplies) purchased by its supplying Texaco account. Therefore, on the reverse side of Form S-40 card where purchases would ordinarily be recorded, the notation "Associate Account" should be shown in respective column for the particular tire company products (tires, tubes and/or batteries and home and auto supplies) as purchased by the supplying Texaco dealer, Consignee, or Distributor. Thus, an associate account may also be counted as an active tire and tube account, but a prospective batteries and home and auto supplies account as explained under paragraph 4 (a) (ii). The Form S-40 card of an associate account should be filed in its proper place in the active section of the zone and counted as an active account for the specific tire company products so long as the supplying account purchases that particular tire company product and remains in the active section of the file.

Exley EXHIBIT 24-5
OBTAINED 8-24 1952
BY W. W. Beal ATTORNEY-EXAMINER

10 - An account may purchase part of its tire company products (tires, tubes, or batteries, and home and auto supplies) from a Texaco dealer, Consignee, or Distributor and also purchase other tire company products direct from a tire company district, warehouse, store or other outside supply point as designated by the tire company. Such account should not be considered an associate account. The Clerk (TBA Promotion) should prepare Form S-40 card for the account with notation "Associate Account" on reverse side of the proper revenue column for the product he does purchase from the Texaco dealer, Consignee, or Distributor. The Form S-40 card should be filed under the true classification and treated as any other account buying all tire company products direct from the tire company or its designated supply point. The account should be listed on Form S-47 under proper supply point and the tire company will report all direct purchases each month. The account should be counted as an active account for each classification of tire company product, as outlined above, even though there may be two different supply sources.

11 - In front of the file for each tire company there should be a summary Form S-40 card for each type of account and on the face of each summary card a statement should be pasted, reading as follows:

NUMBER OF * ACCOUNTS
(* Insert type of account)

	TIRES AND TUBES				BATTERIES AND HOME AND AUTO SUPPLIES			
	Active				Active			
Month	Direct	Assoc.	Total	Total / Prosp.	Direct	Assoc.	Total	Total Prosp.

12 - After all Forms S-47 have been posted to Forms S-40 each month, the Form S-40 cards for each type of account should be counted as to the number of active direct accounts (accounts where individual purchases are reported on Form S-47) and active associate accounts (accounts where the supply point is another Texaco account) and prospective accounts. The totals of each should be shown on the front of the respective summary card under captions provided. On the reverse side should be posted the total of purchases reported on Form S-47 for that month, in the respective captions provided.

NOTE: Ordinarily the number of "active direct" accounts will be the number whose purchases were reported individually on Forms S-47. In the case of accounts who handle both Firestone and Goodrich products, however, care should be exercised to include them only in the count for the company which is the principal supplier.

13 - The total amounts of all summary cards, separately by tire company, should be checked by the Clerk (TBA Promotion) against Form S-1213, Report of Sales by Firestone and B. F. Goodrich to Dealers, Consignees, and Distributors, prepared by the Accounting Department before it is typed. If there is any discrepancy in the number of accounts or the amount of purchases, investigation should be made by the Clerk (TBA Promotion) and the employe in the Accounting Department preparing Form S-1213, to determine the cause of the discrepancy and to make necessary corrections.

SECTION 5 - FORM S-47, PURCHASES BY TEXACO ACCOUNTS HANDLING PRODUCTS

1 - Forms S-47 should be prepared separately by tire companies and, for each tire company, separately by designated supply points, listing thereon all accounts approved by the tire company for purchase of tire company products from that particular supply point.

2 - In the event more than one tire company territory is served from the supply point, separate sets of Form S-47 should be prepared, each indicating the tire company territory number assigned to it.

3 - Forms S-47 should be typed with hectograph ink and, by reproduction, a sufficient number of copies obtained to serve for several months. It is the responsibility of the Clerk (TBA Promotion) to make certain that all accounts are listed correctly under the proper supply point, and extreme caution should be used in the preparation and typing of this form. Particularly when additions or deletions are made, care should be taken to verify proper spacing and that each sheet is printed identically, as the tire companies must use carbon paper when inserting purchases. Any misalignment, therefore, would detract from the value of the report.

4 - If preferred, rather than reproduce several months supply of Form S-47 immediately after preparation of new sheets, Division Office may reproduct only sufficient number of sheets for current month's use, retaining master sheet and using it for subsequent months after all necessary changes (additions, deletions, corrections, etc.,) have been made.

5 - Account listings on Forms S-47 should be alphabetically by town with the account under each town in alphabetical order by account name. There should be no segregation on Form S-47 between active and prospective accounts.

Clerk EXHIBIT 26 46
OBTAINED 2-27 1952
BY
W. W. Liegal
ATTORNEY-EXAMINER

6 - Separate Forms S-47 should not be prepared for a supply point that is a Texaco account supplying associate accounts, as the supplying Texaco account should be listed under the tire company supply point from which it purchases tire company products. Associate accounts purchasing all of their requirements from a Texaco supply point should be listed directly following the listing of the supplying Texaco account and indented to indicate they are associate accounts. No purchases will be reported by the tire company for associate accounts.

7 - A separate set of Forms S-47 should be made up for each tire company district office. A set of Forms S-47 comprises separate sheets for each supply point and each territory number within that tire company's district.

8 - Each set of Form S-47 sheets for a tire company district office should be numbered starting with "1" and continuing in consecutive order until the last sheet. On the first sheet indicate directly to the left of the sheet number the total number of sheets for that tire company district office, i.e., "15-1". This will indicate to the tire company that we have sent them 15 sheets, and the Clerk (TBA Promotion) should check to see that all sheets are returned from the tire company each month.

9 - The detailed preparation of the Form S-47 should be done in the following manner:

(a) The name of the tire company should be recorded on the line in the upper center of the form preceding the word "products."

(b) "Prepared by The Texas Company office at": The location of the Division Office preparing the form should be shown on this line.

(c) "Tire Company District Office at": Insert the location of the tire company district office.

(d) "Tire Company territory no.": Insert the number of the tire company salesman's territory. On newly nominated accounts, this information should be furnished in the tire company's acknowledgment of our Form S-237, Analysis of Account for Sale of Tire Company Products. For each account now approved, but for which the tire company territory number is not known, the Clerk (TBA Promotion) should obtain this information from the tire company district office.

(e) "Tire Company supply point": If the supply point is the tire company district office, the words "District Office" should be shown. If it is a tire company store, the name and address of the tire company store should be shown. If the supply point is an "O" account, the letter "O" should be indicated, followed by the name and address of the tire company dealer or distributor supply point.

(f) "Zone number": The Texas Company zone number in which the account is located should be inserted here. When Form S-40, Records of Sales by Tire Company, are separated by salesmen within the zone, the salesman's initials should be shown following the zone number; for instance; Salesman R.A. Bell in Zone 9 would be indicated as "9-RAB." This procedure will assist the Clerk (TBA Promotion) in locating the account's S-40 card when posting purchases from the Form S-47.

(g) "Type of account": Here should be shown the proper type of account classification as applies to the individual account, as heretofore explained in Section 2, this part. The account should be listed as a "B", "C", "D", or "E" account and should not show a "W" or "J" classification. Should the purchase of any account fall within the "W" classification, the tire company will show a "W" to the left of the revenue under the "Tire and Tube" caption. If it is a "J" account, they will indicate the letter "J" to the right of the revenue under the "Battery and Home and Auto Supplies" caption.

10 - In setting up Form S-40 cards from Forms S-237 and Firestone Form S-757, the Clerk (TBA Promotion) should set up a "B", "C", "D", or "E", card only. When purchases are recorded on Form S-47 with the letters "W" or "J", another Form S-40 card should be set up for the "BW" account or "EW" or"J" account and such cards maintained in their respective order in the file. The "BW" and "EW" cards should show only tire and tube purchases of the account, whereas the "J" cards should reflect the batteries and home and auto supplies purchased by the account. The card should be cross-referenced with the account's regular "B", "C", "D" or "E" classification cards. The regular "B", "C", "D" or "E" cards should show the account's purchases of other tire company products not shown on the "BW", "EW" or "J" cards.

11 - Four copies of each sheet of Form S-47 covering Firestone accounts are to be mailed to the Firestone district office to reach them on the 25th day of each month. The Firestone district will insert the purchases and otherwise complete the form, returning one copy to The Texas Company Division Office not later than the 10th day of the following month

Copy EXHIBIT 26 & 7
OBTAINED 2-6-69 IBM
BY

*12 - Goodrich requires only 3 copies of each sheet of Form S47 and these should be mailed to reach the Goodrich District Office not later than the 20th day of each month. One copy of each Form S-47 should be returned, completed, not later than the 12th day of the following month.

13 - The tire company district office, when returning Forms S-47 will complete the 2 captions at the top of the form reading as follows:

Purchase Amounts Inserted by_____

*Approved by_____

(*Forms S-47 will be approved for Firestone by the District Office Manager and for Goodrich by the District Operating Manager.

14 - If Forms S-47 are not returned to the Division Office on or before the dates due, the Clerk (TBA Promotion) should contact the tire company district office to determine the reason for the delay. Should any tire company district office be habitually late in returning Forms S-47, the matter should be referred to the Representative (TBA Promotion) for handling.

*15 - As returned by the tire companies, completed Forms S-47 should be passed at once to the Accounting Department for recording in connection with the monthly statement, Form S-1213, Report of Sales by Firestone and B.F.Goodrich to Dealers, Consignees and Distributors, after which the Forms S-47 will be returned to the Clerk (TBA Promotion) for posting to Form S-40 cards.

16 - Forms S-47, when completed by Firestone and Goodrich, will include the "NET PURCHASES" as defined below, of all accounts shown thereon that are eligible and approved by the tire company.

(a) Firestone: The term "net purchases" is defined as the net recovery to Firestone resultant from total billings at invoice price, less all credits for returned goods, volume or quantity discounts and other allowances, except cash discounts. Sales of the following items will not be reported:

7004

Camelback

Used tires and tubes

Adjustment sales of tires and tubes (replacements on adjustment basis)

Wheels, rims and weights

Mechanical goods

Home and auto supplies purchased locally by stores and not part of Firestone regular line of merchandise

Equipment items (battery chargers, wheel balancers, tools, display fixtures, etc.)

Rest room supplies

Advertising material

Transportation-freight charges

(b) Goodrich: The term "net purchases" means the total billings at net invoice price less all returned goods and other allowances, discounts or credits but with no deduction for volume bonus or cash discount. Sales of the following items will not be reported:

Adjustment sales of tires and tubes (replacements on adjustment basis)

Seconds, tires and tubes; used government surplus tires

Tires of competitive manufacture

Wheels and parts

Rental batteries

Transportation-freight charges

Advertising

Battery service kits

Equipment items

Exhibit 26 1.8
Obtained 8-29 1952
By

November 1, 1949

Attorney-Examiner

File No. 1-1995

Budget dealer stationery

Hydrometers

Anti-freeze testers

Recapping and retreading service and vulcanizing repairs (sales of retreaded and recapped tires will be reported.)

Refrigerators, freezers, electric ranges and electric water heaters.

*Washing machines; ironers; oil space heaters
*Motorola radios (except auto radios)
*Motorola television sets
*Power lawn mowers

*17 - By special arrangement with Goodrich, the Division Office will be advised each month by the tire company district office of the names and addresses of any accounts to whom sales have been made and who apparently are eligible for listing on Form S-47, but have not been so listed. Upon receipt of information from Goodrich the Clerk (TBA Promotion) should investigate all such names with a view of issuance of Forms S-237, if warranted, or correction of dealer's name or trade name listing on Form S-47, etc., so that purchases will be reported properly in future months. If, however, it develops that the account is not eligible for listing on Form S-47, the Goodrich district office should be so advised by letter.

*18 - When listings of additional accounts are made to Forms S-47, it is the Goodrich practice to report sales for a period of 3 months prior to the month of first listing, and to include all sales made during the 3 month period on the current report. If, in any particular case, circumstances seem to warrant a check-back of more than 3 months, the complete facts in the case should be reported to the Territorial Office for handling, when considered advisable, with the Tire Sales Division, New York.

19 - Forms S-47 should be used also for memorandum purposes only, for the development by field personnel of information regarding purchases of those individual dealers operating Company-owned or leased service stations who are classified as associate accounts because some or all of their purchases are made from another Texaco dealer, Consignee or Distributor who serves as a supply point. When so used, the memorandum Forms S-47 should be prepared listing the associate accounts for which information is desired, in the usual manner except for certain changes in headings as follows:

(a) Obliterate line titled "Tire Co.District Office at."

(b) Obliterate line "Tire Co. Terr. No."

(c) Obliterate words "Tire Co." from line "Tire Co. Supply Point."

(d) The name and address of the Texaco dealer, Consignee or Distributor from whom information is required (for memorandum purposes only), will be inserted on the line titled "Supply Point."

20 - Completed Forms S-47 of the type described in the preceding paragraph, when received from field personnel should be rubber stamped "Memorandum for Statistical Purposes, Only," and referred at once to the Accounting Department. No postings whatever should be made from such memorandum forms to the regular Form S-40 or Form S-79 records.

SECTION 6 - FORM S-79, PURCHASES BY TEXACO ACCOUNTS FROM _____ TIRE COMPANY

1 - Forms S-79 should be prepared monthly, separately by zone, reporting thereon for each account the following:

EXHIBIT 26
OBTAINED 8-29 1952
BY
H. H. Rogal

Total purchases current month

Purchases batteries and auto supplies, cumulative

Total purchases, cumulative

Total purchases previous year, cumulative

Zone or area objective, current year

2 - For each account listed, the tire company's regular supply point and emergency supply point, if any, should be shown.

3 - Separate Forms S-79 listing each tire company's accounts, will be prepared in quadruplicate, from Forms S-40. Both active and prospective accounts are to be listed in strictly alphabetical order by towns and account's name.

4 - To facilitate monthly rendition of Form S-79 reports, a supply of sheets sufficient for several months should be obtained by hectograph reproduction. Care must be exercised each month to the end that all additions and deletions authorized since the current supply of Form S-79 was prepared, are properly entered to the sheets to which they apply.

5 - If preferred, rather than reproduce several months supply of Form S-79 immediately after preparation of new sheets, Division Office may reproduce only sufficient number of sheets for current month's use, retaining master sheet and using it for subsequent months after all necessary changes (additions, deletions, corrections, etc.,) have been made.

6 - Inactive accounts, meaning accounts for which no purchases have been reported for 3 consecutive months or longer, will be indicated by an asterisk (*) in column immediately following name and street address of account.

7 - Each Zone Manager's Form S-79 should be totaled and balanced, for current year only, with the Form S-40 summary card for the zone.

8 - Original and duplicate Form S-79 should be mailed to Zone Managers by the 22nd of each month; triplicate should be forwarded to State Manager attached to a summary for his area and the quadruplicate retained in Division Office.

9 - The quadruplicate may be used by Assistant Division Manager or Representative (TBA Promotion); however, should it be necessary to take this copy into the field, the Clerk (TBA Promotion) should make a notation of same and follow to see that it is returned to the Division Office file.

Exhibit 24 p. 10
OBTAINED 8-24-1953
BY
ATTORNEY-EXAMINER

November 1, 1949

FILE NO.

7008

10 - State Manager's copies of zone Forms S-79 should be forwarded to him attached to a summary Form S-79 addressed to State Manager, on which should be recorded the zone number and the total purchases disclosed by each of the individual zone reports attached, The State Manager's copy should be totaled and balanced against summary Forms S-40 cards and the State Manager's objective inserted.

11 - Zone Managers, upon receipt of the original and duplicate copies of Forms S-79 should review the accounts as to the accuracy of the information shown (name, address, supply point, etc.). When checking supply points, if the Firestone store emergency supply point is not indicated on Form S-79 it should be called to the attention of Clerk (TBA Promotion) by a notation on the reverse side. All such notations should be handled to ensure that purchases are being transferred to the Firestone district office supply point and included with the dealer's purchases on Form S-47.

12 - The Zone Manager should record on the reverse side of Forms S-79 any comments he believes necessary as a result of his review of the form. Upon concluding such handling, Zone Manager should return the original to the Division Office, showing date the form is returned and his signature on the line provided in the upper right corner.

13 - Where Zone Manager has more than one Salesman in his zone with the approval of the Division Management separate Form S-79 may be issued to each Salesman for the accounts in that Salesman's area. Where this procedure is observed, Form S-79 for individual salesmen should be balanced (current year, only) against a Form S-40 summary card maintained for each Salesman, if maintained, otherwise the aggregate of all Forms S-79 for Salesmen within the zone should be balanced with the zone summary card. Distribution of such Forms S-79 may be made direct to Salesmen, or with Division Management's approval, the Salesmen's Form S-79 may be sent to Zone Manager for distribution. In either event, Zone Manager should be furnished Form S-79 summary by Salesmen, to which should be attached a copy of the Form S-79 prepared for each of the Salesmen under his supervision.

14 - In such cases, a copy of the individual Salesman's Form S-79 should not be sent to the State Manager attached to summary for the state; instead there should be attached a Form S-79 summary for each of the zones under his supervision, as the zone form will only indicate the names of the Salesmen and the total amount of the dealer's purchases, etc. When the State Manager wishes to review the Forms S-79 for an individual Salesman, he can secure the Zone Manager's copy of the salesman's Form S-79 or the duplicate which the Salesman retains.

15 - Where Form S-79 is sent direct to Salesman, the Salesman should handle the same as outlined for Zone Manager and return the original to the Division Office with any comments that he believes necessary recorded on the reverse side.

16 - A strict control should be maintained to ensure return from Zone Managers or Salesmen of original Forms S-79 bearing evidence of checking by the responsible employe. If not received within a reasonable time, tracer letter should be written and copy furnished to immediate superior of the delinquent. In addition, on or about the end of each month a memorandum letter should be written to Representative (TBA Promotion) listing the names and titles of employes who have not returned Forms S-79, stating the month covering all instances where Forms S-79 have been outstanding with field personnel for more than 30 days. Tracer activities should be continued by Clerk (TBA Promotion) and Representative (TBA Promotion) until all Forms S-79 have been received.

17 - The Clerk (TBA Promotion) upon receipt of Forms S-79 after handling by Zone Managers or Salesmen, should review the comments on the reverse side and arrange for any handling that may be required due to such comments.

18 - After completeion of all required handling, original Forms S-79 should be filed in special file folders set up by zones or Salesmen to conform with original distribution of the reports.

19 - Where approval has been granted by Territorial Office, it will be in order to prepare an extra copy of zone and Salesman Forms S-79 for mailing to the Dealer Service Representative every month. If preferred by Division Management, the triplicate copies of Forms S-79 furnished to State Managers, may be used for the purpose. The Dealer Service Representative should not be concerned with the accuracy of names, etc., but should use the report merely as general information to assist him in measuring the progress of the dealers.

SECTION 7 - ANALYSIS OF TBA PURCHASES BY ACCOUNTS

1 - If an account remains inactive 90 days after it has been approved by a tire company and listed on Form S-47 of that tire company, Clerk (TBA Promotion) should notify the Assistant Division Manager and Representative (TBA Promotion), giving the name, address, classification, and date of tire company approval of such account. The Assistant Division Manager or Representative (TBA Promotion) should immediately handle with the tire company District Manager in an effort to change the account to the active status. If, after a reasonable length of time, the account does not become active with the tire company originally approving the account, the person handling should request Clerk (TBA Promotion) to prepare a Form S-237 for nomination of the account to the other tire company. The Clerk (TBA Promotion) should maintain a close follow up on the handling of such accounts.

2 - Every 3 months, Forms S-40 for all inactive accounts should be scrutinized closely by Assistant Division Manager, Representative (TBA Promotion) and Clerk(TBA Promotion) to eliminate any accounts that do not represent real potential outlets for the sale of TBA merchandise, or for consideration of nomination to the other tire company.

SECTION 8 - ELIMINATION OF ACCOUNTS FROM TIRE COMPANY LISTS

1 - When and as it is concluded, based on notice of cancellations of agreement with Consignee, Distributor or other account, or based on authentic information received from any other source, that accounts should be eliminated from tire company lists and records for reasons such as:

(a) Cancellation of Distributor, Consignee or Dealer agreement;

(b) When elimination is recommended by the Zone Manager or Salesman, for reasons stated on reverse side of Form S-79, and Representative (TBA Promotion) is in agreement;

(c) Other reasons which justify or necessitate the elimination of an account from tire company lists and records;

the following will be observed:

*(i) Deletion of account from FIRESTONE lists:

Firestone Form S-757, Changes in Oil Company Listings, will be prepared in duplicate, sending the original to the Firestone district office and retaining the duplicate for Division Office file. The reason for the deletion of the account should be stated under "Comments" on the form.

FTC EX. 1-19-72
ATTORNEY-EXAMINER
BY
OBTAINED 8-25 19[illegible]
EXHIBIT 26

(ii) Deletion of account from GOODRICH lists:

A form letter, reproduced on outside letterhead, should be written to the Manager of the Goodrich district office concerned, advising of the elimination and the reason therefor. The form of letter to be used for this purpose is as follows:

SALE OF TIRE COMPANY PRODUCTS
ELIMINATION OF TYPE____ACCOUNT

Mr._____
B.F. Goodrich Company,
(Address)

Dear Sir:

Effective , 19 , the following type____account should be eliminated from our list of approved accounts:

Name_____

Trade name_____

Address_____

Supply point_____#

Reason for elimination_____

_____

The above change will be made on our next Form S-47.

Yours very truly,

_____

#Show also the "Tire Company Territory Number", if any assigned.

*2 -

EXHIBIT 26 p. 12
OBTAINED 6-29-55
BY
H. N. Royal
ATTORNEY-EXAMINER
FILE NO. 1-19-91.

Cancels November 1, 1949
Page 22 eliminated

August 1, 1954

JAX 71

Commission's Exhibit 42

CY 42

ANALYSIS OF ACCOUNT FOR SALE OF T. B. A. PRODUCTS

FEDERAL TRADE COMMISSION
DOCKET E. 6485 EXHIBIT NO. 42
IN THE MATTER OF B. F. GOODRICH COMPANY
DATE OCT 15 1956 WITNESS
ACE REPORTING CO., Official Reporter
By - MONICK

To The Texas Company Division Office at:.....

Name of Account:..... Trade Name:.....

Replaces:..... Trade Name:.....
(Outgoing Account's name)

Street Address:..... Town & State:.....

Bulk Station Serving:..... The Texas Company Zone No.:.....

EFFECTIVE DATE of account's Lease and/or Agreement with The Texas Company..... 19....

Account's monthly gasoline gallonage:..... Actual ☐ Estimated ☐

This is: A Consignee ☐ A Company Owned Station ☐

A Distributor ☐ A 1st Party Leased Station ☐

A Contract Resale Account ☐ A 3rd Party Leased Station ☐

If not a regular drive-in type service station explain type:.....
If consignee or distributor, number of drive-in type service stations served:.....

Brands sold by outgoing account: Tires:..... Batteries:.....

Home and auto supplies:.....
(Show major lines only)

Estimated potential annual dollar purchases of T. B. A. Products:

Tires & Tubes $..... Batteries $..... Home & Auto Supplies $.....

Name of Tire Company selected by this account:.....

How Selected Company Notified: By Phone ☐ By Letter ☐ In Person ☐ Date Notified:..... 19....

Have you made appointment with Tire Company Salesman for joint call? Yes ☐ No ☐ Date of appointment:..... 19....

Suggested T. B. A. supply point for this account:.....
(Name and Address)

.....

Submitted by:..... Date..... 19....
(Zone Manager — Salesman)

To:..... Tire Company District Office at.....

For information purposes only, we furnish you the above analysis of this type..... account.

Attached is your Form..... covering this addition ☐, replacement ☐, as of the effective date shown. Please return one signed copy immediately, advising whether or not you approve the account. If approved, indicate your Territory number and the logical supply point for the account. If and when your products are sold to this account, please furnish us with another signed copy of your form indicating the date of first sale and the actual supply point that will serve the account.

Sufficient copies of your form are furnished you for your notices of approval and activation.

....
(Date) (Signed)

7213

JAX 72

Commission's Exhibit 43

S-757-Rev. 2/57-3M

CHANGES IN OIL COMPANY LISTINGS

CX 7-

ISSUED BY: ☐ OIL COMPANY ☐ FIRESTONE DISTRICT

REASON FOR ISSUING: ☐ ADDITION ☐ SUCCESSION ☐ DELETION ☐ OTHER Date _____

Firestone District _____ Oil Co. _____ Oil Co. Division _____

Acct. Type (Code) _____ Name _____

Address _____ Proprietor _____ Trade _____

Street _____ Town _____ State _____ Dealer Replaced _____

Date Effective _____ Oil Co. Reg. No. _____ Firestone Store City or Terr. No. _____ Regular Supply Point _____ Emerg. Supply Point _____

Date Firestone Contract _____ Initial Order $ _____ Passn. Ass. Vol. Firestone Prod. $ _____

% Firestone Products

Tires _____ % Batteries _____ % Home and Auto Supplies _____ %

Brands Handled Other Than Firestone: Tires _____ Batteries _____ Home and Auto Supplies _____

Principal Business _____

Comments _____

INSTRUCTIONS:—Oil Company will forward three copies to Firestone District Office. District Manager will immediately approve, inserting territory number or store name, and emergency supply point when necessary, or will disapprove, returning original promptly to Oil Company. District will receive one copy on deletions for file.

On approved accounts, forward duplicate copy to Territory or Store Manager with sales assignment. Where field investigation indicates change in approval or other revisions necessary, or change in dealership, supply point, etc., prepare new S-757 in duplicate showing reason and sending original to Oil Company.

DISTRICT APPROVAL

APPROVED ☐

NOT APPROVED ☐

By _____ District Manager

Date _____ 7015

FEDERAL TRADE COMMISSION

DOCKET 6485 43

IN THE MATTER OF Goodrich

DATE 12/6/57

Miss Mandel

REPORTER

Gallichan

MAX 73

Commission's Exhibit 44

[redacted]

FORM 1329 11-8-61
CITHO IN U S A

B. F. Goodrich

NOTIFICATION OF OIL COMPANY DEALER CHANGE

CX 44

NATURE OF CHANGE: ADDITION ☐ REPLACEMENT ☐ DELETION ☐ Date

(a) Oil Co. (b) BFG District

Division This form initiated by ☒ a ☐ b

Oil Company Signature

Proprietor Name Trade Name

Outlet Data: Street Address City — State

Type of Outlet Oil Co. Code

Date change effective If replacement: Former Dealer

FEDERAL TRADE COMMISSION

Terr. Mgr. or Store Mgr. DOCKET NO. 6485 EXHIBIT NO. 44

TBA Primary Supply Point Emergency Supply Point IN THE MATTER OF B. F. GOODRICH COMPANY

DATE OCT 15 1956 WITNESS

ACE REPORTING CO., Official Reporter

Data: Initial Order $ Date Comments:

By MORICK

Est. Ann. Potential "T" "B" "A"

Form Use: When initiated by Oil Co. — four copies sent to BFG District. Disposition — Original returned to Oil Co. 2nd Copy — to Terr. or Store Mgr. for solicitation and return after contact. 3rd Copy to Div. Oper. Center. 4th Copy Dist. Mgr. follow-up file.

When initiated by BFG advise Oil Co. of initial order, Supply Point change, etc., Orig. to Oil Co. 2nd Copy — Dist. file.

BFG ACCEPTANCE
☐ ACCEPTED ☐ REJECTED

District Mgr. 7913

Date

JAX 74

Commission's Exhibit 45A

RECORD OF SALES BY TIRE COMPANY

Form S-13 3-52-24M

Co. Owned ☐
1st Party ☐
Type of Account ____ 3rd Party ☐

City and State CYUS(A)

Street Address (2) Bulk Station Serving ____

Texaco Zone No. ____ Texaco Salesman ____ Date I. G. Installed ____

Tire Co. 6 Tire Co. District ____ Tire Co. Territory No. ____

ACCOUNT NAME	TRADE NAME	Effective Date TTCo Agreement	DATE FORM S-237 Issued to Tire Co.	Approved
FEDERAL TRADE COMMISSION				
DOCKET NO. 4584				
FOR RE CORDED IN TEXAS CO				
DEC 10 1956 WITNESS				
REPORTING CO., Official Reporter				

By MONICK TBA SUPPLY POINT DATE SET UP

EXHIBIT 35

OBTAINED BY

ATTORNEY-EXAMINER

FILE NO.

Emergency Supply Point

7320

JAX 75

Commission's Exhibit 45B

MONTHLY PURCHASES (Dollars)

Additional purchases for previous months will be interlined and keyed with [illegible]

Month	19	19					19				
	Total Cumulative	Tires and Tubes	Batteries and Auto Supplies	Total	Total Cumulative Batteries and Auto Supplies	Total Cumulative	Tires and Tubes	Batteries and Auto Supplies	Total	Total Cumulative Batteries and Auto Supplies	Total Cumulative
Jan.											
Feb.											
Mar.											
April											
May											
June											
July											
Aug.											
Sept.											
Oct.											
Nov.											
Dec.											
Total											

District No. 6466

FEDERAL TRADE COMMISSION
EXHIBIT NO. 45B

PURCHASES BY TEXACO ACCOUNTS HANDLING GOODRICH PRODUCTS

SHEET NO. 17

FEDERAL TRADE COMMISSION

DOCKET NO. 6485 EXHIBIT NO. 46A

IN THE MATTER OF B.F. Goodrich + Texas Co.

DAI. SEP 10 1951 WITNESS TIME CO. 2374

MONTH OF JUNE 1951

TIME CO. DISTRICT OFFICE AT WASHINGTON, D. C. PURCHASE REQUISITION RECEIVED BY

TIME CO. SUPPLY POINT WASH. D/O By MONICK APPROVED BY

ZONE NO.	ACCOUNT NAME	TRADE NAME	STREET ADDRESS CITY AND STATE	CLASS OF TRADE	TIRES AND TUBES (Quantity)	BATTERIES, RADIO AND AUTO SUPPLIES (Dollars)
C	J. V. Bauer	Carl & Jack's Texaco	6th & Md. Ave. Washington, D. C.	C	1	-
PMHS	Charles W. De Priest	Bethesda Texaco	5201 Wisconsin Ave. Bethesda, Md.	C	922 X	46 X
PMHS	[illegible]	[illegible]	[illegible]	[illegible]		
PMHS	R.J. & J.T. Dodson	Dodson Bros.	Rockville Pike Rockville, Md.	C	300 X	
TAES	J. J. Freeman	Johnny's S/S	20th & N.Y. Ave., N.W. Washington, D. C.	C	651 X	
PMHS	H. J. Heisman	Burt Heisman's	1503 Lee Hwy. Arlington, Va.	C	1042 X	187 X
PMHS	L. P. Kelley	Triangle S/S	King & Braddock Rd. Alexandria, Va.	C	376 X	223 X
TAES	Richard D. Lapeloss	Dick's Texaco Ser. Sta.	U. S. Hwy. 1 Beltsville, Md.	C	1	-
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		
CWTS	L. E. Williams	Suitland Ser.	Suitland Rd. & Ewing Ave. Suitland, Md.	C	1750 X	288 X
CWTS	T. C. Winn	Winn's Texaco Service	East-West Hwy. Silver Springs, Md.	C	923 X	98 X
TAES	Lyle E. Rowe	One Stop Service	3107 Bladensburg Rd., NE Washington, D. C.	C	1	
	In Li Cancelled		Mr. Lee Director Va.	C	1	-
			TOTALS		5348	851

PREPARED BY THE TEXAS COMPANY OFFICE AT NORFOLK, VIRGINIA

7022

JAX 76
Commission's Exhibit 46A

PURCHASED BY TEXACO ACCOUNTS HANDLING PETROLEUM PRODUCTS

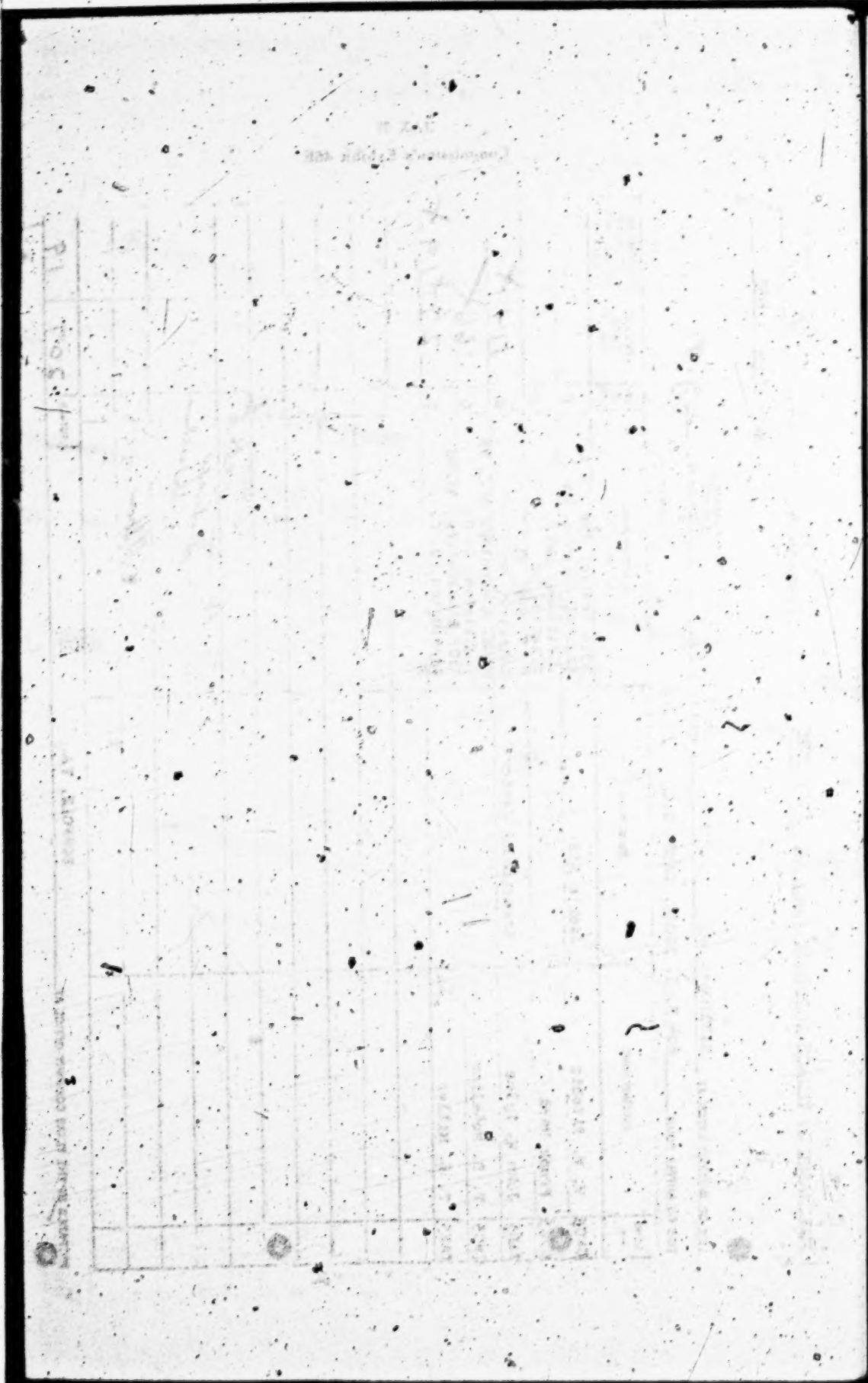
SHEET NO. 2

MONTH OF JUN 1952

TEXACO DISTRICT OFFICE AT BALTIMORE, MD. TEXACO TERRITORY NO. 4 PURCHASE ACCOUNTS INSERTED BY J. P.

TEXACO SUPPLY POINT 604 R. I. STORE, WASH. D.C. /321 PREPARED BY

LOCATION NO.	ACCOUNT NAME	TRADE NAME	STREET ADDRESS CITY AND STATE	CLASS OF TRADE	TIRES AND TUBES (Dollars)	BATTERIES, ACCESSORIES AND SERVICE (Dollars)
DWDS	W. W. Ritchie	Jack's S/S	5115 Central Ave., S.E. Capitol Heights, Md.	C		
DWDS	Frank Ward		Piscataway Hwy. Clinton, Md	C		
TARS	John W. Lyles	Transitruck Center	U. S. Hwy. #1 Muirkirk, Md.	D	114 X	
DWDS	T. B. McKeller		Minn. & Hennings Rd., NE Washington, D. C.	C	66 X	
TARS	T. E. Miller		3107 Bladensburg, Rd. NE Washington, D. C.	C	27 X	19 X



PURCHASES BY TEXACO ACCOUNTS FROM _____ TIRE CO. MONTH OF _____ 19____

NAME OF ACCOUNT OR TRADE NAME			CURRENT YEAR'S PURCHASES			PURCHASES PREVIOUS YEARS TOTAL CUMULATIVE		TIRE CO. SERVICE CHARGES

JAX 79

Commission's Exhibit 48A

(7044)

New York, N. Y., May 8, 1951

THE TEXAS COMPANY

THE TEXAS COMPANY TBA PROGRAM

Messrs. R. R. Kibbe (5)
R. W. Debnam (5)
C. B. Barrett (5)
D. E. Beaton (4)

Gentlemen:

Last year you operated a test TBA program successfully in one state in each Division, except the Houston Division. In accordance with your recommendations, this has been adopted as a policy for all states except Texas as covered in the attached outline.

This program should be put in operation as soon as the new Inventory Guides prepared by the suppliers are distributed, which will be about June first. Necessary quantities of the suppliers' regular order forms will be made available, as outlined in the program, and will take the place of the special order forms in use last year.

We cannot overemphasize how important it is for our sales personnel to respect the independence of the Texaco dealer and his right to exercise his free and independent judgment as to what brand and how much TBA products he will purchase. In the same spirit, we wish to reiterate no TBA supplier shall be preferred by us over any other as to any territory or portion thereof.

Very truly yours,
Norton Bronson

NB:SD
Att.
WHi WBH

JAX 80

Commission's Exhibit 48B

(7046)

May 8, 1951

THE TEXAS COMPANY TBA PROGRAM

It is The Texas Company policy to encourage dealers, consignees and distributors to establish superior service to their customers by handling TBA as a means of attracting customers and increasing their business and profits. In so doing, The Texas Company makes recommendations to its dealers, consignees and distributors as to automotive accessories having a national acceptance as merchandise of merit and dependability. In this connection we recommend the lines of merchandise of Firestone Tire & Rubber Company and B. F. Goodrich Company, and will aid and assist a dealer, consignee or distributor in making proper contacts with the representatives of either company who will thereupon make his own arrangements for the sale and distribution of T.B.A. of the company selected by him. Regardless of our recommendations, we should always, to his interest and ours as well, be ready to aid and assist the dealer, consignee or distributor in his T.B.A. program whoever his supplier or suppliers might be, Firestone, Goodrich, or anyone else.

The activities of The Texas Company's selling personnel in carrying out our TBA program will effectuate this policy of aid and assistance but will not *supplant* the efforts or activities of the T.B.A. supplier's selling personnel.

Definite responsibilities and activities necessary to the effective adaptation of our TBA program are now a part of the regularly assigned duties of certain of The Texas Company's field personnel who normally contact dealers or consignees or distributors. In the outline of these duties given below, reference is made in most instances to "dealers". It should be understood, however, that every phase of

this program is readily adaptable to the wholesale T.B.A. programs of consignees or distributors, and equal effort should be used by The Texas Company's personnel in trying to sell them on the merits of this program and the benefits they can gain by adopting it for their own use and wholeheartedly encouraging their dealers to adopt it.

The aim of this program is to counsel with and assist the dealer in the selection of T.B.A. merchandise that will be most suitable to his specific needs and in his establishment of an effective control over the stock through the use of the Suggested Basic Stock Assortments and the Inventory Guide Forms like those furnished by both Firestone and B. F. Goodrich. It is not to be applied in any manner whatsoever that would impair any dealer's freedom to purchase such brands and quantities of T.B.A. merchandise as he desires. Our dealers, consignees and distributors are independent businessmen, and instructions that no undue influence is to be used to interfere with their free and independent judgment remain unchanged.

The Texas Company's selling personnel are expected to become familiar with Firestone and Goodrich Inventory Guide Systems and T.B.A. merchandise and the merchandising of T.B.A. products generally. But, it should be clearly understood that we will render equal assistance to all dealers in setting up and maintaining his own basic TBA stock assortment and Inventory Guide system along these lines regardless of the brand of merchandise handled.

We list here in their proper sequence the more important steps to be followed by The Texas Company's selling personnel in the proper application of this program.

Commission's Exhibit 48D

(7050)

1. They should use their best efforts to sell the dealer for his own benefit and interest on the proper and continual use of the Basic Stock Assortment and Inventory Guide Form as a means of establishing and maintaining a well-balanced stock of T.B.A. merchandise suitable to the dealer's specific needs. Some of the advantages to the dealer are:

(a) Required investment in inventory is smaller and turns over faster due to more frequent reordering.

(b) Faster turning inventory means greater profits.

(c) More complete stocks—less lost sales.

(d) Less hazard of obsolescence, less shopworn merchandise.

(e) Signals dormant and slow-moving stock, permitting immediate liquidation and minimizing loss of profit.

(f) Less time required to take inventory and place orders.

(g) Less time required for interviewing T.B.A. salesmen presenting specialty items and diverse lines.

(h) Less necessity to make emergency purchases resulting in reduced profits and lack of uniform quality.

(i) Less occasion for loss of business due to out-of-stock merchandise—"YOU CAN'T DO BUSINESS FROM EMPTY SHELVES".

If and when the dealer wishes to adopt such a plan, The Texas Company's personnel should:

2. Immediately contact the sales representative of the dealer's chosen supply point, and if possible make a definite appointment with him for a joint call on the dealer for the purpose of setting up his Basic Stock and Inventory Guide System. Joint calls for such purposes

Commission's Exhibit 48E

(7052)

are not only proper but highly desirable. However, when The Texas Company's personnel become completely familiar with suppliers' merchandise and the installation of this program, it should not be absolutely necessary that the supplier's representative be present when proceeding to set up the system. Also, there is no reason why the supplier's representative could not complete the installation without the assistance of The Texas Company's sales representative.

The Texas Company's representative and/or the supplier's representative, should counsel with the dealer in the establishment of his desired basic stock assortment. Care should be given in the selection of items and recommended quantity to be carried in inventory, making certain that the dealer has full understanding of what a well balanced stock should contain in order to assure the best turnover and maximum profit. This basic stock as decided upon by the dealer should be recorded in the "Basic" Stock column on the Inventory Guide Form. When this phase of the system has been accomplished, they should then assist the dealer in taking a physical inventory of his merchandise on hand. The quantity of each item on hand should be recorded in the first "Inventory" column of the Inventory Guide Form.

From this item to item inspection and comparison of the quantity in actual inventory with the quantity decided upon by the dealer as his desired basic stock assortment can be developed the obsolete, shopworn, and overstocked merchandise as well as out-of-stock items or items in short supply. Here, the dealer should be encouraged to start an immediate liquidation sale of dormant and slow-moving stock, thereby freeing that portion of his capital that has become a dead investment to him, and thus possibly minimizing his potential loss of profit.

Commission's Exhibit 48F

(7054)

If the supplier's representative is present when the installation of the dealer's Inventory Guide has been completed, he will obviously solicit an order from the dealer for the TBA merchandise needed to bring his inventory up to his desired basic stock assortment. Otherwise, if desired by the dealer, The Texas Company's sales representative may write up such an order and personally mail or deliver it to the dealer's chosen supply point.

3. As an added assistance to the dealer and on each regular call on the dealer, The Texas Company's selling personnel should make a spot check of the stock on hand, then compare his findings to the dealer's basic stock in order to determine stock needed. He then, if requested by the dealer, may secure orders for B. F. Goodrich or Firestone T. B. A. merchandise from dealers who handle those brands. Such orders may be written upon the tire company's order form regularly in use by their field selling personnel. A supply of these order pads for use in such instances will be furnished to our selling personnel.

Obviously our sales representative should encourage the dealer to himself assume the responsibility of the proper maintenance of his own T.B.A. inventory records.

So that there will be no misunderstanding, we repeat that these activities are designed to aid and assist the dealer and not to *supplant the taking of orders or the selling efforts of those TBA suppliers.* This program is to be used as an aid to the dealer's merchandising of TBA products by assisting him in the proper maintenance of a well balanced stock adequate for his particular needs and further assisting him in submitting orders for these products between the calls on the dealer by the sales representative of his tire company supply source.

Commission's Exhibit 48G

(7056)

Orders written by The Texas Company's personnel for TBA merchandise should show the tire company stock numbers and definite description of the items ordered.

All orders for TBA merchandise should be written in triplicate. The original of the order will be personally mailed or given to the dealer's chosen supply point by The Texas Company's sales representative. The duplicate copy will be left with the dealer, and the triplicate copy will be handled in accordance with The Texas Company Division Managers' instructions. It will be necessary for the dealer to personally sign in the space provided on the form all copies of such TBA orders submitted by The Texas Company personnel. Also, The Texas Company sales representative must sign all copies of the order in the space provided for "Salesman".

In their efforts to promote the dealer's TBA merchandising, our sales representative no doubt will run into situations where the dealer is not entirely clear on his buying arrangements or has some complaint as to the merchandise or treatment received from his supplier. In such cases, our sales representative should arrange with the sales representative of the supplier to make a prompt call on the dealer to clear up any misunderstandings. When desirable or necessary, if requested by the dealer our sales representative may be present when the supplier's representative makes his call on the dealer for this purpose.

If the dealer's supply point does not carry out such arrangements as requested by The Texas Company sales representative, our representative should inform his supervisor of the difficulties.

Commission's Exhibit 48H

(7058)

which he confronted in order that The Texas Company Division Office may be in turn informed and institute a follow-up for correction with the District Manager of the supplier.

In the case of a new dealer (replacement dealer or dealer for a new station) when the dealer has indicated an interest in the Firestone or Goodrich line, The Texas Company sales representative should make definite arrangements with the sales representative of the selected supplier for a joint call on the dealer. This call is for the purpose of introducing the dealer to the supplier representative. This will be followed by a discussion of an initial basic stock assortment suited to the dealer's needs and desires. For the protection of the dealer's interests, The Texas Company's sales representative and the supplier's representative should explore fully with the dealer the problem of what his TBA stock should contain to assure him the fastest possible turnover and maximum profits. The Texas Company's sales representative should make sure the dealer not only understands their recommendations but is in complete agreement that the proposed basic stock assortment will satisfy his initial requirements, and is the result of his free and independent judgment.

As stated before, all phases of this plan, including the benefits to be gained, can be just as effectively applied to wholesale stocks maintained by a consignee or distributor as to his dealer's stocks. Consignees and distributors should be encouraged to put this plan in operation with each dealer to whom he sells TBA merchandise. Where the consignee or distributor is not in the TBA business or does not handle a complete line of TBA merchandise for his dealers, The

Commission's Exhibit 481

(7060)

Texas Company's sales representative should expose this plan in its entirety as a means of encouraging consignees and distributors either to enter the TBA field or to expand their lines of TBA merchandise so that they can supply adequately the needs of their dealers.

It should be understood that the primary objective of The Texas Company's TBA Program is the prosperity of our dealers. Due to increasingly competitive conditions, and for the good of our dealers, it is essential that we help the dealer establish a workable TBA merchandising program to maintain his income, and if possible to increase it. Thus, while this program is primarily in the dealer's interests, it is also very much in The Texas Company's interest for it may well be the means of survival of many of our dealers as well as dealers served by our consignees and distributors.

In order to discuss this program intelligently with dealers, consignees and distributors, each member of The Texas Company's sales organization must take advantage of every available opportunity to gain a more thorough knowledge of Firestone and Goodrich TBA merchandise as well as to keep abreast of successful TBA merchandising methods generally.

Accordingly, it is apparent that our sales organization should be impressed with the importance of The Texas Company's TBA program and the fact that they must become better equipped to carry on their part in it. Again, it should be mentioned that the execution of this program is supplemental to and is not to supplant the activities of the suppliers. It does become the responsibility of each member of the sales organization normally contacting dealers, consignees, or distributors to do his part to make certain that they

Commission's Exhibit 48J

(7062)

receive reasonable and proper attention from their supplier, promptly reporting to management any situations where this is not the case. Thus The Texas Company selling personnel is expected to have the TBA picture in mind on every call made on our dealers, consignees and distributors. The success of The Texas Company's TBA program as well as the maximum benefits to the dealer depend upon the systematic follow-up given this program by our sales personnel.

Within the clear limits defined herein it is expected that The Texas Company's sales organization will take advantage of every available opportunity to sell Firestone and Goodrich merchandise to dealers, consignees and distributors, *always keeping in mind the fact that dealers, consignees and distributors are independent business men and entitled at all times to exercise their free and independent judgment as to what brands and how much TBA products they will buy.*

JAX 89

Commission's Exhibit 49A

Bartlett
9/9 ht

THE TEXAS COMPANY

New York, N. Y., December 19, 1951

THE TEXAS COMPANY'S TBA PROGRAM
STATEMENT OF POLICY

CIRCULAR LETTER NO. 524

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 49-A
IN THE MATTER OF B. F. GOODRICH COMPANY
DATE OCT 16 1956 WITNESS BARTLETT
ACE REPORTING CO., Official Reporter
By MONICK

Messrs. R. R. Kibbe
J. A. Winger
C. B. Barrett
D. E. Beaton

Gentlemen:

In order that all concerned may be fully informed, The Texas Company's policy with respect to the procedure to be followed in carrying out its TBA program, which policy has been in effect for many years, is reiterated below:

1. When presenting the merits of the Company's TBA program to Texaco dealers, the selling personnel should explain to the dealer that even though The Texas Company does not handle tires, batteries and auto supplies, it recognizes the advantages to be derived by the dealer from the handling of such merchandise and the necessity for the dealer to do so in order to be competitive, meet the requirements of his customers, and enjoy more profitable operations.

   Texaco dealers should be encouraged to expand their business beyond the sale of petroleum products for the reasons outlined.

2. To facilitate the handling of TBA merchandise by Texaco dealers the Company provides adequate display equipment in its service stations for the sale of such items.

3. The Company recommends certain lines of merchandise which are nationally advertised and enjoy national distribution, just as is true with respect to Texaco products.

4. Notwithstanding the fact that the Company recommends to its dealers certain lines of TBA merchandise, it should be recognized by all concerned that the Company has neither the right nor desire to dictate to the dealer the type of merchandise he should handle or the source from which he should purchase such merchandise.

7231

JAX 90
Commission's Exhibit 498
FEDERAL TRADE COMMISSION
DOCKET NO. 6456 COMMISSION EXHIBIT NO.

5. In the interest of the dealer any recommendation with respect to TBA merchandise made by a Texaco representative to a Texaco dealer should take into consideration the following factors:

   (a) The dealer's requirements based on an analysis of the potential market;

   (b) The availability of a convenient source of supply;

   (c) The representation of the tire companies already established in the area, and the type of service that will be available through the wholesale supply point;

   (d) In all dealings the fact that the Texaco dealer is an independent businessman must be emphasized and he must be permitted to operate as such.

6. If, in exercising his own free choice of the brand of TBA merchandise he desires to handle, the dealer expresses a preference either for the Goodrich or Firestone line, following a clear cut and straight forward presentation of the Texaco TBA program as outlined, the Texaco representative should assist the dealer further by arranging to introduce him to a sales representative of the supplier chosen by the dealer. It should be recognized at all times that the negotiations between the dealer and the TBA representative, and any purchase arrangement resulting therefrom, are matters for their mutual consideration, and the Texaco representative should not interfere with or attempt to influence such negotiations or purchase arrangements in any way.

7. The Company's assistance to Texaco dealers goes beyond the mere recommendation covering the Goodrich or Firestone line. In an effort to assist dealers to expand and develop their business, the Company urges them to keep on hand an adequate amount of merchandise of the proper type to serve fully the motorists' needs. The Firestone or Goodrich Suggested Basic Stock Assortment and Inventory Guide System is considered to be the simplest method available to assure the maintenance of a well balanced stock of fast moving TBA merchandise.

JAX 91
Commission's Exhibit 49C
FEDERAL TRADE COMMISSION
DOCKET NO. 6455 COMPANY EXHIBIT NO. 49-C

The Texaco selling personnel should therefore offer to make recommendations to the dealers with respect to the proper selection of basic stocks of TBA merchandise and to assist them in the initial installation of the Inventory Guide System. After the inventory is properly set up Texaco personnel should take no further part in maintaining and handling of such inventory except to the extent of taking orders for merchandise required, as indicated in Item 8.

8. If the dealer so desires, The Texas Company's selling personnel will further aid him by actually writing up the dealer's order for Goodrich or Firestone merchandise and will personally mail or deliver such orders to the dealer's regular source of supply.

9. The primary purpose of The Texas Company in sponsoring its TBA program is to counsel with and continually assist Texaco dealers so that they will establish and maintain superior service to their customers and thereby earn greater profits.

10. Although in the foregoing program reference is made to Texaco dealers, it should be understood that every phase of the program outlined is readily adaptable to all TBA programs of Texaco consignees and distributors. Equal effort should be made by the Company's selling personnel to sell them on the merits of the program and the benefits to be derived by adopting it for their own use, and wholeheartedly encouraging the dealers they serve to adopt it.

11. Definite responsibilities and activities necessary to the effective adaptation of the Company's TBA program are a part of the regularly assigned duties of all of The Texas Company's field personnel who normally contact dealers, or consignees, or distributors. The Company's selling personnel are expected to become familiar with the Firestone and Goodrich Suggested Basic Stock Assortment and Inventory Guide System and the merchandising of TBA products generally. It should be clearly understood, however, that assistance will also be rendered by Texaco personnel to all dealers in setting up their own Basic Stock Assortment and Inventory Guide System regardless of the brand of merchandise handled.

It should be further understood by all concerned that the activities of The Texas Company's personnel in carrying out its TBA program must be considered as an addition to the efforts or activities of the TBA suppliers' selling personnel and not in lieu thereof.

Commission's Exhibit 49D
FEDERAL TRADE COMMISSION
DOCKET NO. 6455 COMMISSION EXHIBIT NO. 13-B 49-D

12. The importance of respecting the independence of the Texaco dealer and his right to exercise his free and independent judgment with respect to the brand of TBA merchandise he will handle, and the quantities he will purchase, cannot be over-emphasized. Insofar as The Texas Company is concerned no TBA supplier shall be preferred over any other as to any territory or portion thereof.

The foregoing covers completely The Texas Company's TBA policy of long standing and it must be adhered to without deviation.

Yours very truly,

RLS:MJD

WH SCB WBH NB JMG WFW
DWS WJR FMH GWS

PCH

OJD GWJ

7070

JAX 93

Commission's Exhibit 50

CX 50

THE TEXAS COMPANY

New York, N. Y., May 29, 1952

THE TEXAS COMPANY TBA PROGRAM

FEDERAL TRADE COMMISSION
DOCKET 6125 EXHIBIT NO. 50
IN THE MATTER OF B. F. GOODRICH COMPANY
DATE OCT 15 1956 WITNESS
ACE REPORTING CO., Official Reporter
By MONICK

Messrs. R. R. Kibbe (10)
J. A. Winger (10)
C. B. Barrett (10)
D. E. Beaton (8)

Gentlemen:

Mr. Saunders' Circular Letter No. 524 dated December 19, 1951, points out that "the Company's assistance to Texaco dealers goes beyond the mere recommendation covering the Goodrich or Firestone line". Also that "definite responsibilities and activities necessary to the effective adaptation of our TBA Program are part of the regularly assigned duties of Texas Company field personnel who normally contact dealers, consignees, or distributors".

One of these activities, the installation of the Inventory Guide has been rather successful. Another, that our field personnel assist Texaco dealers by the taking of orders for Firestone and Goodrich merchandise apparently has not been clearly understood.

So that we may continually assist the Texaco dealer at the time of each regular call at the service station, our field personnel should be sufficiently alert to call the dealer's attention to their willingness to write up an order for the Goodrich or Firestone merchandise needed without waiting for a formal request from the dealer to do so. It is only through a constant flow of merchandise from his supplier that the dealer can be assured of adequate stocks at all times. The actual taking of orders by our personnel for TBA merchandise needed by the dealer in between the calls made on him by the salesman of Firestone or Goodrich is an effective means of assisting the dealer to earn the greatest possible profits from his TBA sales.

It is suggested that the Division management, starting with the month of June 1952, follow up with the line organization regularly on the order-taking phase of the TBA Program. Also, we suggest that a copy of this letter be furnished each Division with the request that the information be passed to every member of the field organization who normally contacts dealers, consignees or distributors.

Very truly yours,

WHi:SD

W. H. Walter

7072

JAX 94

Commission's Exhibit 53A

CX 53-A

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 53-A
IN THE MATTER OF B. F. GOODRICH COMPANY
DATE OCT 15 1958 WITNESS —
ACE REPORTING CO., Official Reporter
By MONICK

THE TEXAS COMPANY
LEGAL DEPARTMENT
135 EAST 42nd STREET
NEW YORK 17, N. Y.

MARION J. EPLEY, JR.
ATTORNEY

October 15th, 1952

Your File 1-19690
1-22441

Federal Trade Commission
Bureau of Antimonopoly
Washington, D. C.

Attn: Mr. Wm. W. Rogal

Gentlemen:

At the time of your recent visit to our Norfolk Division Office, you requested photostatic copies of 20 letters and memoranda. These are designated on the attached list and a photostatic copy of each of them is enclosed.

You also requested that we advise you of the total number of "C" dealers approved by Firestone and Goodrich for handling TBA in the United States. The only records we have available show the total approved for Firestone and Goodrich, but not separately. This total number is 921 for the Norfolk Division and 10,364 for the United States.

You also requested copies of our distributor, consignee and sales agreements. I, accordingly, enclose our printed forms S-82 and S-82A, consignee agreements, S-141, distributor agreement, S-207, agreement of sale, and S-207D, agreement of sale (resale - gasolines and motor lubricants).

In Norfolk, I delivered to you at the time of your visit our printed forms S-40, S-47, S-78, S-79, S-237, S-757, and 1325.

As to the letter listed as No. 5 on the enclosed list, you will recall your inquiry while in Norfolk about this particular letter and the information furnished to you at that time. It was pointed out that consignees usually report merely the total sum of all their TBA sales to all dealers, without breaking down the TBA volume of each dealer. It is thus difficult in some cases for the Norfolk Division to determine the TBA revenue of a particular station. As you were ad-

Faithfully yours for Fifty Years
1902 1952

7177

JAX 95

Commission's Exhibit 53B

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 53-B

CX 53 (G)

vised, the total revenue of a station from both its petroleum products and its TBA line assists in determining whether the outlet is a profitable operation. When the TBA volume of a particular dealer purchasing TBA through a consignee is known, our commission on TBA can be taken into consideration by the Norfolk Division in attempting to sell the Territorial Management on the desirability of continuing a particular outlet. This letter numbered 5 was written for the purpose of assisting in procuring such a breakdown.

I believe this is all of the information you have requested.

Very truly yours,

MJEjr:MHH

Encl.

Commission's Exhibit 87A

SALES OR BROKERAGE COMMISSION TO OIL COMPANIES

1. Explanation. Division Operating Centers will issue sales or brokerage commission to oil companies.

Only general procedure applicable to all Oil Companies are outlined in this section. The District will maintain a file of bulletins covering the specific accounts in their territories.

Prepare one report, pass one credit memo, and issue one sales or brokerage commission check each month on all purchases by controlled outlets for each Oil Company Division Office.

2. Rates and Items Subject to Commission. Refer to the latest bulletin covering report of sales to Oil Company controlled dealers to determine rates and items on which sales or brokerage commission is paid. Watch those accounts on which the price basis determines the rate of commission and mark the report of purchases in such a manner that no confusion will exist in applying the proper rate.

3. Commission Base. Commission is computed on the total billing less returned goods at net invoice price after deducting quantity or other discounts, but before adding Federal Excise Tax. Do not deduct cash discount or credit memo covering bonus for volume.

4. Source and Period Covered. Use the bookkeeping copies to obtain the purchases from the 26th to the 25th each month.

Accumulate net purchases for each oil company controlled account broken down into the commodities as shown on the report of purchases.

Request stores with sales to oil company accounts to report sales subject to sales commission made each month. Districts must inform stores of the commodities approved for payment for each controlling oil company involved.

5. Associate Dealer Purchases. Division Operating Centers will request a monthly report of sales subject to commission from BPC Stores and Distributors selling to oil company controlled accounts.

For reporting sales to Texas Company controlled dealers use Form 1324-B "Report of Sales to Texas Company Outlets." For other oil company controlled dealers, Division Operating Centers will prepare their own forms to be used by BPC Stores and Distributors.

Division Operating Centers will follow to see that all reports are received from Stores and advise the Districts of any missing Distributor's reports. The District will, in turn, follow through with their Distributors to obtain the reports of sales to oil company controlled outlets.

Where Distributors selling to Texas Company controlled outlets prefer to tabulate sales currently, Division Operating Centers will furnish them with a supply of Form 1324-B. However, Division Operating Centers will mail request for report monthly as at present.

Do not list the purchases of an associate dealer when that outlet is handling the same brand of gasoline as his distributor and on whom we are paying commission.

FEDERAL TRADE COMM. DKT. NO. 6408 EXH. NO. 87-A

Commission's Exhibit 57B

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 57-B

If sales by an oil company distributor is to an outlet of another oil company, deduct the outlet's purchases when reporting the distributors purchases to avoid payment of two sales commissions on one sale.

6. Report of Purchases. Summarize purchases by oil company outlets as follows:

Texas on Form S-47 furnished by Texas.
Shell American Petroleum - on Form SA-471-R furnished by Shell.
All others on plain paper - list by salesman and by town.

If an Oil Company outlet changes hands, but retains the same locations, cross out the old name and insert the new.

Prepare copies as required by the Oil Company plus one copy for the Petroleum Sales Representative and for District files.

7. List of Oil Company Outlets. The District must maintain a complete file of all Oil Company Controlled Outlets on whose purchases it has been agreed to pay sales commission.

Prepare another list of Oil Company outlets on those purchases the BFG District Manager and the Oil Company Division Manager have agreed that no sales commission shall be paid. In general, this list of exceptions will include BFGS, BFG Warehouse Accounts and Oil Company Outlets major financed by B. F. Goodrich.

Refer any accounts which are questioned by the District Manager and which the Oil Company Division Manager refuses to approve and the list of exceptions to the Petroleum Sales Department, Akron, with all possible information, for discussion with the Oil Company Home Office to arrive at a decision.

8. Credit, Refund and Check Issued. Issue credit to each Oil Company Division Office for the amount of commission due on net purchases as shown on the report of purchases in the following manner:

Sales Commission for (Month) 19

Tires & Tubes	- Agency	$6,455.12	@ 5%	$ 322.76	
	- Distributor	2,599.55	@ 7½%	194.97	
	- Dealer	11,003.49	@ 10%	1,100.35	$1,618.08
Batteries	- Agency	545.77	@ 7½%	40.93	
	- Distributor	780.92	@ 7½%	58.57	
	- Dealer	4,959.37	@ 10%	495.94	595.44
Accessories*	- Agency	36.21	@ 7½%	2.72	
	- Distributor	89.31	@ 7½%	6.70	
	- Dealer	142.80	@ 10%	14.28	23.70
A&H Supplies	- Agency	171.99	@ 7½%	12.90	
	- Distributor	308.60	@ 7½%	23.15	
	- Dealer	1,912.95	@ 10%	191.30	227.35
			Total Credit		$2,464.57

* "Accessories" comprise the Dill & Schrader line and BFG stock number which have for the first three digits:

7188

310 to 314 Inclusive
322 to 324 "
350 to 352 "

Note - type of accounts and rates used in above example are for Texas, substitute correct type of accounts and rates for other Oil companies.

Commission's Exhibit 57C

CX 57C

As soon as the credit is passed, have the bookkeeper issue a Refund (Form 2117-B) and a check drawn in favor of the Oil Company for the amount of the Commission.

Mail the check with customer's copy of credit memo and recap of purchases by outlets to the Oil Company Division Office specified in the bulletins, before the 10th of the month.

Attach the salesman's copy of the credit to the Oil Company Summary Report (Form 1321-B) mailed to the Petroleum Company Tire Sales Dept., Akron.

9. Form 1321-B, Oil Company Summary Report. Division Operating Centers will prepare Form 1321-B in triplicate for each Oil Company division or district office by B. F. Goodrich Sales Districts. A separate report is to be used for (1) salary operated, (2) consumption, and (3) sales on which sales commission is paid. If there are no sales in the first two classifications, prepare only the report for the third classification, and indicate thereon "No Sales to Salary Operated Accounts" and "No Sales For Consumption Accounts." When reporting (3), sales subject to commission, complete the "Commissions" section as provided for on the 1321-B. On Oil Companies other than Texas, strike out the "B-E-T" and "C-D" classifications under the "Commissions" section, and use only the percentage breakdown applicable in each case.

The sales reported on each Form 1321-B report rendered must be grouped according to the following classifications, and listed on the 1321-B in exactly the same order as shown here:

1. Sales by BFGS
2. Sales by Dealers and Distributors
3. Sales to Dealers

Distribute Form 1321-B as follows:

Original - Petroleum Company Tire Sales Dept., Akron.
Duplicate - B. F. Goodrich District Manager.
Triplicate - B. F. Goodrich Division Operating Center files.

FEDERAL TRADE COMMISSION
DOCKET NO. 6485
COMMISSION'S EXHIBIT NO. 57-C

CX 57C EXHIBIT 342
OBTAINED 10-2-1951
BY W W Rogers
ATTORNEY-EXAMINER
FILE NO. 1-13-626

JAX 99

Commission's Exhibit 57D

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 COMMISSION EXHIBIT NO. 57-D

57(d)

WHOLESALE OPERATING MANUAL
SALES RECORDS

SECTION L-6
Page 1, 6-1-53

SALES COMMISSION TO OIL COMPANIES

1. Explanation. Zone Operating Centers will issue sales commission to oil companies.

Only general procedure applicable to all Oil Companies are outlined in this section. The District will maintain a file of bulletins covering the specific accounts in their territories.

Prepare one report, pass one credit memo, and issue one sales commission check each month on all purchases by controlled outlets for each Oil Company Division Office.

2. Rates and Items Subject to Commission. Refer to the latest bulletin covering report of sales to Oil Company controlled dealers to determine rates and items on which sales commission is paid. Watch those accounts on which the price basis determines the rate of commission and mark the report of purchases in such a manner that no confusion will exist in applying the proper rate.

3. Commission Base. Commission is computed on the total billing less returned goods at net invoice price after deducting quantity or other discounts, but before adding Federal Excise Tax. Do not deduct cash discount or credit memo covering bonus for volume.

4. Source and Period Covered. Use the bookkeeping copies to obtain the purchases from the 26th to the 25th each month.

Accumulate net purchases for each oil company controlled account broken down into the commodities as shown on the report of purchases.

Request stores with sales to oil company accounts to report sales subject to sales commission made each month. Districts must inform stores of the commodities approved for payment for each controlling oil company involved.

5. Associate Dealer Purchases. Zone Operating Centers will request a monthly report of sales subject to commission from BFG Stores and Distributors selling to oil company controlled accounts.

For reporting sales to controlled dealers use Form 1324-B "Report of Sales to Company Outlets."

Zone Operating Centers will follow to see that all reports are received from Stores and Distributors advising the Districts of any missing reports. The District will, in turn, follow through with their Stores or Distributors to obtain the reports of sales to oil company controlled outlets.

Where Distributors selling to controlled outlets prefer to tabulate sales currently, Zone Operating Centers will furnish them with a supply of Form 1324-B. However, Zone Operating Centers will mail request for report monthly as at present.

Do not list the purchases of an associate dealer when that outlet is handling the same brand of gasoline as his distributor and on whom we are paying commission.

7190

JAX 100

Commission's Exhibit 57E

FEDERAL TRADE COMMISSION
DOCKET NO. 6469 EXHIBIT NO. 57-E

WHOLESALE OPERATING MANUAL
SALES RECORDS

If sales by an oil company distributor is to an outlet of another oil company, deduct the outlet's purchases when reporting the distributors purchases to avoid payment of two sales commissions on one sale.

6. Report of Purchases. Summarize purchases by oil company outlets as follows:

Texas on Form S-47 furnished by Texas.
Shell American Petroleum - on Form SA-471-R furnished by Shell.
Jenny Mfg. Co. - on plain paper
Ohio Oil Co. - on Form 1502 furnished by Ohio
Continental Oil Co. - on Form F15-381 furnished by Continental

If an Oil Company outlet changes hands, but retains the same locations, cross out the old name and insert the new.

Prepare copies as required by the Oil Company plus one copy for the Petroleum Sales Representative and for District files.

7. List of Oil Company Outlets. The District must maintain a complete file of all Oil Company Controlled Outlets on whose purchases it has been agreed to pay sales commission.

Prepare another list of Oil Company outlets on whose purchases the BFG District Manager and the Oil Company Division Manager have agreed that no sales commission shall be paid. In general, this list of exceptions will include BFGS, BFG Warehouse Accounts and Oil Company Outlets major financed by B. F. Goodrich.

Refer any accounts which are questioned by the District Manager and which the Oil Company Division Manager refuses to approve and the list of exceptions to the Petroleum Sales Department, Akron, with all possible information, for discussion with the Oil Company Home Office to arrive at a decision.

8. Credit, Refund and Check Issued. Issue credit to each Oil Company Division Office for the amount of commission due on net purchases as shown on the report of purchases in the following manner:

Sales Commission for (Month) 19

Tires & Tubes	- Agency	$6,455.12 @ 5%	$ 322.76	
	- Distributor	2,599.55 @ 7½%	194.97	
	- Dealer	11,003.49 @ 10%	1,100.35	$1,618.08
Batteries	- Agency	545.77 @ 7½%	40.93	
	- Distributor	780.92 @ 7½%	58.57	
	- Dealer	4,959.37 @ 10%	495.94	595.44
*Accessories	- Agency	36.21 @ 7½%	2.72	
	- Distributor	89.31 @ 7½%	6.70	
	- Dealer	142.80 @ 10%	14.28	23.70
A&H Supplies	- Agency	171.99 @ 7½%	12.90	
	- Distributor	308.60 @ 7½%	23.15	
	- Dealer	1,912.95 @ 10%	191.30	227.35
		Total Credit		$2,464.57

* "Accessories" comprise the Dill & Schroder line and BFG stock number which have for the first three digits:

310 to 314 Inclusive
332 to 334 "
350 to 354 "

7191

Note - type of accounts and rates used in above example are for Texas, substitute correct type of accounts and rates for other oil companies.

JAX 101

Commission's Exhibit 57F

As soon as the credit is passed, have the bookkeeper issue a Refund (Form 2117-B) and a check drawn in favor of the Oil Company for the amount of the Commission.

Mail customer's copy of credit memo and recap of purchases by outlets to the Oil Company Division Office specified in the bulletins, before the 10th of the month. Attach check.

Attach the salesman's copy of the credit to the Oil Company Summary Report (Form 1321-B) mailed to the Petroleum Company Tire Sales Dept., Akron.

9. Form 1321-B Oil Company Summary Report. Zone Operating Centers will prepare Form 1321-B in triplicate for each Oil Company division or district office by B. F. Goodrich Sales Districts. A separate report is to be used for (1) salary operated, (2) consumption, and (3) sales on which sales commission is paid. If there are no sales in the first two classifications, prepare only the report for the third classification, and indicate thereon "No Sales to Salary Operated Accounts" and "No Sales For Consumption Accounts." When reporting (3), sales subject to commission, complete the "Commissions" section as provided for on the 1321-B. On Oil Companies other than Texas, strike out the "B-E-T" and "C-D" classifications under the "Commissions" section, and use only the percentage breakdown applicable in each case.

The sales reported on each Form 1321-B report rendered must be grouped according to the following classifications, and listed on the 1321-B in exactly the same order as shown here:

1. Sales by BPGS
2. Sales by Dealers and Distributors
3. Sales to Dealers

Distribute Form 1321-B as follows:

Original - Petroleum Company Tire Sales Dept., Akron.
Duplicate - B. F. Goodrich District Manager.
Triplicate - B. F. Goodrich Zone Operating Center files.

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 COMMISSION EXHIBIT NO. 57-F
IN THE MATTER OF B. F. GOODRICH COMPANY
DATE OCT 18 1956 WITNESS
ACE REPORTING CO., Official Reporter
By

JAX 102

Commission's Exhibit 59

CX 159

THE TEXAS COMPANY

TEXACO PETROLEUM PRODUCTS

SALES DEPARTMENT
HEATON DOHERTY
MANAGER, THE SALES DIVISION

135 EAST 42nd STREET
NEW YORK 17, N. Y.

November 12, 1947

FTC TRADE COMMISSION
DATE 9-16-49 EXHIBIT NO. 59
IN THE MATTER OF B F Goodrich & Texas Co
DATE SEP 16 1949 WITNESS
NBC REPORTING CO., Official Reporters
By MONICK

Mr. E. J. Lewis
The B. F. Goodrich Co.
Akron, Ohio

Dear Mr. Lewis:

You will recall that in a conversation in my office that Mr. Hoban felt there was no reason why Goodrich wouldn't be willing to include hereafter your sales to our dealers who are served by our distributors.

If you will kindly write confirming this we would like to ask our Division Offices to furnish your District Managers with the names of these dealers to complete their records.

We would like your letter as promptly as possible so that we can incorporate this matter in our revised instructions to our Divisions which are now in preparation.

Very truly yours,

Norton Brown

NB:SD

Date EXHIBIT
OBTAINED 10-2-49
BY W W Royal
ATTORNEY-EXAMINER
FILE NO. 1-7-96-94

JAX 103

Commission's Exhibit 60

CX 1060

E.J. Lewis
Town to me
A.O.D.
11-20-47

December 19, 1947

FEDERAL TRADE COMMISSION
EXHIBIT NO. 60
IN THE MATTER OF B F Goodrich + Texas Co
DATE SEP 10 1950 WITNESS
REPORTING CO., Official Reporter
By MONICK

Mr. J. A. Hoban
Bldg. 25-A

Subject: THE TEXAS COMPANY

It is my understanding that although sales to Texas Company Distributors are eligible for the S-47, we have never placed on this report, direct sales to individual Stations serviced and controlled by a Distributor unless the property involved was owned by or leased to the Texas Company.

When we were last in New York, this subject was discussed in Mr. Bronson's office, I believe, in connection with the situation at Knoxville, Tennessee. During that conversation, you voiced no objections to such accounts being placed on the S-47. Since that is a change in general policy, Mr. Bronson apparently anticipates an announcement to his field organization so that Dealers of Distributors on placed on the TBA record. His letter asking for required confirmation is attached.

Perhaps our acceptance of these accounts should be on the basis of Paragraph 3 of our present Contract which states,

"Said commission will be paid upon all net purchases made by all of the above mentioned classifications of Texaco accounts, excepting, however, such "D" accounts as are not approved by The B. F. Goodrich Company, and such "C" accounts where their location would cause a conflict with our already established distribution."

On this basis, our District Managers would have an opportunity to review the accounts and approve for the S-47 only those on which Texas Company assistance in solicitation is desired.

May I discuss this with you before replying to Mr. Bronson?

E. J. LEWIS

EJL:mls
Attachment

Lewis EXHIBIT 12
OBTAINED 10-3-51
BY W. M. Boyd
FILE NO. 2-25-471

7495

JAX 104

Commission's Exhibit 62

FOR CONTRACT FILE

CX ID 62

January 2, 1948

FEDERAL TRADE COMMISSION
1. [illegible] EXHIBIT 62
IN THE MATTER OF B F Goodrich Co. TEXAS CO.
DOCKET

Mr. Morton Bronson
The Texas Company
135 E. 42nd St.,
New York 17, New York

Dear Mr. Bronson:

You will recall that the first draft of the letter attached was considered inadequate, as it failed to specifically mention dealers under contract with the Texaco distributor rather than direct with the Texas Company. You will note that this class of dealer is specifically mentioned in Paragraph 2 of this revised letter.

Very truly yours,

THE B. F. GOODRICH COMPANY

Manager,
Petroleum Co. Tire Sales

E J LEWIS
mls

Attachment

Accepted

Ryan L:
CX E
(TR VI)

Lewis EXHIBIT 1-C
OBTAINED 12-2 1948
BY [illegible] ATTORNEY-EXAMINER
FILE NO. 1-7.96.50

7196

JAX 105

Commission's Exhibit 63

CX 63

REPORT OF SALES TO TEXAS CO. OUTLETS

TO _____ DISTRICT FOR MONTH OF _____ 19____

BY DEALER OR STORE SHOWN NEXT BELOW

FEDERAL TRADE COMMISSION
DOCKET NO. 6460 EXHIBIT NO. 63
IN THE MATTER OF B F Goodrich Co.
DATE SEP 10 1956 WITNESS _____
RAPORTING CO., Official Reporter
By MONICK

In the space below, please list the account name and location of all Texas Co. dealers who purchased from you during the current month. Show your net sales by commodity in the appropriate column following each Associate Dealer you have listed. Net sales means total billing less returned goods at net invoice price after deducting all discounts but before adding Federal Excise Tax. If you had no sales to Associate Dealers, please return the report marked "None."

Items to be reported are:

1. Tires & Tubes — BFG new first-class Passenger, Truck & Bus, Farm, Solids, Industrials, Vulcanized-on and retreads and recaps.
2. Batteries — BFG batteries and parts, BFG Spark Plugs.
3. Accessories & Repair Materials — BFG accessories (tire bolts, floor mats, etc.), Repair & Treading materials, Schrader & Dill Hardware.
4. Auto & Home Supplies — ASHS merchandise, excluding Power Lawn Mowers, Motorola Home Radios and Television Sets, and major appliances.

Do not include the sale of:

Seconds	Transportation Charges	Battery Equipment	Major Appliances
Rejects	Wheels, Rims & Parts	Advertising	(Electric Ranges, Water
Adjustments	Rental Batteries	Anti-freeze Testers	Heaters, Refrigerators
Stationery	Chargers & Testers	Power Lawn Mowers	& Freezers, Laundry
Recapping Service	Battery Service Kits	*Motorola Home Radios	Equip., Space Heaters)
Repairs		& Television Sets	

Report only sales of merchandise which you purchased from B. F. Goodrich and show to the nearest dollar.

Mail the report, using the attached self-addressed envelope, by the 4th of the following month.

Name of Texas Co. Associate Dealer	Location	Tires & Tubes	Batteries*	Access. & Repair Materials	Auto & Home Supplies

Stipulated EXHIBIT 4
OBTAINED 10-22-56
BY W. W. Boland
ATTORNEY-EXAMINER
FILE NO. 219690

7197

(Signed) _____
Dealer or Store Manager

M 13248 5-1-51 LITHO. IN U. S. A.

JAX 106

Commission's Exhibit 64

Form 1321-B 6-54
Copies: Akron 2/0607 OIL CO. SUMMARY REPORT AKRON CODE NO's.
TEXAS - OIL SHELL - '60
ZIDOT - 51

NAME OF OIL COMPANY The Texas Co. B.P.O. DISTRICT NAME AND BILLING PREFIX NO. Albany 1800

OIL CO. DIVISION Buffalo MONTH August 1958

CHECK TYPE OF REPORT AND ENTER CREDIT MEMO NO. [2] CONSUMPTION [3] SALES COMMISSION [ ] CREDIT MEMO NO. BELOW

TOTAL ACTIVE OUTLETS	TYPE OF B.P.O. SALES OUTLET	AKRON CODE NO.	TOTAL	TIRES & TUBES	BATTERIES	ACCESS. & REP. MDSE.	AUTO & HOME SUP.
			PURCHASES BY TYPE OF B.P.O. SALES OUTLET				
1	SALES BY B.P.O. STORES	10	312	312			
3	SALES BY DEALERS & DISTRIBUTORS	11	382	382			
4	SERVICE STATIONS & DEALERS	12	1339	1101	68	30	140
	OIL COMPANY CONSUMPTION SALES	12					
8	TOTALS		1773	1535	68	30	140

TEXAS CO. COMMISSION CODE	AMOUNT	RATE	PURCHASES BY RATE OF COMMISSION				
1 - 2		7½%					
8 - 9	177.30	10%	1773	1535	68	30	140
22 - 23 (Agents)		5%					
		7½%					
	177.30	TOTALS	1773	1535	68	30	140

7.93

JAX 107

Commission's Exhibit 68A

CX 1D 68A

THE TEXAS COMPANY

TEXACO PETROLEUM PRODUCTS

SALES DEPARTMENT
THE SALES DIVISION
W. A. WOLFE, ASST. MANAGER

135 EAST 42ND STREET
NEW YORK 17, N. Y.

September 10, 1952

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 CX 4
IN THE MATTER OF B.F. Goodrich Co. et al
DATE SEP 24 1952 REPORTER
ACE REPORTING CO., Official Reporters
By

Mr. E. J. Lewis
The B. F. Goodrich Company
Akron, Ohio

Dear Mr. Lewis:

Attached is statement of active Texaco-Goodrich accounts by our Divisions and Territories and for all Territories as of July 1952 compared with the number of active accounts shown on our July 1951 reports. The number of accounts shown does not include those dealers purchasing TBA merchandise from a Texaco consignee or from another Texaco dealer. In other words, this statement represents only those accounts on which your District Offices report sales on our Forms 8-47 Monthly Report.

You will notice from these statements that in the majority of our Divisions, you are selling tires and tubes to either the same number or a fewer number of consignees and distributors than was the case this same time last year. The gains made in a few of the Divisions, however, brings your net loss of active "B" and "E" accounts down to a total of only 13 for all Territories. On the other hand, there are more active service station dealer accounts in the tire and tube section in almost all of our Divisions reports. In some Divisions this gain is considerable, which produces a total net increase for all Territories of 237 active tire and tube accounts of all types. This means that either your Territory salesman or the salesmen of your dealer distributors("O" type supply points) are selling on 237 more accounts now than they were in July 1951.

In all Territories, you will note there are 18 less consignees and distributors buying battery, auto supplies than was true in July 1951. For all types of accounts, there is a net increase of 154 as a result of the gain of 207 active service station dealers in the battery, auto supplies section.

As of July 1952, Goodrich tires and tubes were being sold to 2,736 Texaco accounts, whereas only 2,076 accounts were buying Goodrich battery, auto supplies. Thus, there is a difference of 660 so-called active Goodrich accounts where only a portion of

Fortieth year
50
for Fifty Years

7038

JAX 108

Commission's Exhibit 688

CX 10,480

Mr. E. J. Lewis -2- September 19, 1952

your products is being solicited and/or sold.

We believe you must agree that if The B. F. Goodrich Company would take the proper steps to bring this picture up to the desired balance, your 2% decrease in the sale of battery, auto supplies for the first 7 months of 1952 would be easily wiped out. May we suggest that you might want to institute a closer analysis by your Districts of the facts brought out in the attached statements to the end that not only the small decrease mentioned above would be wiped out, but more important, we believe you could produce a very substantial overall increase in TBA generally.

We would appreciate any comments on this subject you may wish to make.

Very truly yours,

MAW:ED

FEDERAL TRADE COMMISSION
6468

JAX 109

Commission's Exhibit 68C

CX 1D 68-C

NUMBER OF ACTIVE ACCOUNTS

THE B. F. GOODRICH CO.
THE FIRESTONE TIRE & RUBBER CO.

JULY 1952 vs. JULY 1951
FROM FORMS S-1213

ALL TERRITORIES

FEDERAL TRADE COMMISSION
DOCKET NO. 6765

THE B. F. GOODRICH CO.

	TIRES AND TUBES					BATTERIES, AUTO SUPPLIES				
	B	E	C	D	Total	B	E	C	D	Total
Total U.S.										
1951	343	130	1499	527	2499	278	95	1147	372	1892
1952	336	124	1712	564	2736	267	88	1312	409	2076
Dif.	- 7	- 6	213	37	237	- 11	- 7	165	37	184
Ratio - Batt. Auto Suppl. to Tire Sales - U.S.					1951	15	11	25	20	19
					1952	14	13	23	16	18
					Dif.	- 1	2	- 2	- 4	- 1

7211

JAX 110

Commission's Exhibit 69A

CX-139A-

THE TEXAS COMPANY

TEXACO PETROLEUM PRODUCTS

SALES DEPARTMENT
THE SALES DIVISION
W. A. GULFS, AGRT MANAGER

135 EAST 42nd STREET
NEW YORK 17, N. Y.

October 22, 1952

Mr. E. J. Lewis
The B. F. Goodrich Company
Akron, Ohio

Dear Mr. Lewis:

You are well aware of the fact that for sometime now we have been wrestling with the problem of trying to bring the ratio of battery and auto supply purchases to total TBA purchases by Texaco accounts up to a volume more in keeping with the balanced selling potentials recommended by the TBA industry as well as most oil companies. We believe that if more Texaco accounts are to enjoy the best possible profits from their TBA sales, the present ratios must be greatly improved. We also believe that only through the concerted efforts of your field selling organization and ours will we be successful in our attempted assistance to Texaco accounts in this respect.

In an effort to coordinate and to concentrate our efforts, we would in our opinion accomplish more if the field selling organizations were directed to institute an aggressive selling campaign with one particular type of account at a time. In this way we will avoid the fallacy practiced for the most part in the past of "scattering our shots" too thinly with only spotted results.

Of your TBA sales to Texaco accounts in 1951, our consignees and distributors' ("B" and "E" type accounts) purchases accounted for 47% of the total. Their ratio of batteries, auto supplies to total TBA purchases amounted to 16% as compared to a ratio of 28% in the purchases of batteries, auto supplies made by service station dealers ("C" and "D" type accounts). For the first eight months of 1952, the "B" and "E" accounts' purchases were 40% of your total sales to Texaco accounts, with a ratio of batteries, auto supplies to total volume of only 13%. The ratio to total B. F. Goodrich TBA purchased by "C" and "D" accounts for the same period was 21%. From this you can see that your company has lost still further ground in 1952 on your sales of batteries and auto supplies to both our wholesale and retail type accounts.

It is a known fact that the majority of our consignees and

Faithfully yours

50 for Fifty Years

7213

CX 1069B

distributors who handle Goodrich tires and tubes do not handle Goodrich battery and auto supplies. Since they do represent 40% or better of your total sales to Texaco accounts, we are wondering if your office could formulate; first, a special battery and auto supply selling campaign for this type of Texaco account, which could be put into effect not later than January 1, 1953. We believe that if an aggressive and enthusiastic follow-through on such a special drive could be maintained from your office through your organization down to your District and Territory Managers, most of the obstacles encountered in the past in trying to sell our consignees and distributors on the idea of handling your batteries and auto supplies, in addition to tires and tubes, could be overcome. Their resistance for the most part has been due to their belief that the problems in connection with the maintenance of inventories and the sale of these items to their dealers were too great; and in addition that their percentage of profits to be realized were too small when compared to their experiences in the handling of tires and tubes alone.

We believe a strong sales story should be produced to convince the consignees and distributors that the overall percentage of profits from the handling of a complete TBA line will give them an adequate return on their investment with a nominal amount of selling and handling effort on their part.

Even if we were only successful in getting our consignees and distributors to add batteries to their TBA inventory, their profits and their services to Texaco dealers would be greatly improved.

Of course, when the best possible coverage has been accomplished with consignees and distributors, a similar program tailored to the battery and auto supply requirements of our service station dealers, who handle B. F. Goodrich tires and tubes, would then be in order.

If your company is desirous of this volume of battery and auto supply business and will develop a real selling campaign, you may rest assured that we, our Territorial and Division management, will wholeheartedly join with you in an all-out effort to improve the sales and profits of Texaco accounts through the handling of B. F. Goodrich's complete tire, tube, battery and auto supply line.

We would be interested in hearing further from you on this proposed selling campaign.

Very truly yours,

T. C. Wright

MAW:SD

FEDERAL TRADE COMMISSION
6465 EXHIBIT NO. 69B

JAX 112

Commission's Exhibit 70A

CX ID 70A

THE TEXAS COMPANY

TEXACO PETROLEUM PRODUCTS

March 12, 1953

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 70-A
IN THE MATTER OF B. F. GOODRICH COMPANY
DATE OCT 15 1958 WITNESS
4th REPORTING CO., Official Reporters
BY

Mr. E. J. Lewis
The B. F. Goodrich Company
Akron, Ohio

Dear Mr. Lewis:

We furnished you with copy of an analysis of the dollar volume of TBA merchandise sold by your company to Texaco accounts in 1952.

Attached for your information is copy of letter to our Territorial Offices commenting on some of the important facts developed from our study of this analysis. Also attached is a consolidated statement giving complete information from all of our Divisions for each type of account.

This data is passed on to you in the hope that from your own study of the information, you will be able to encourage your District Managers to energize the efforts of your field organization to the end that improved balanced selling to all Texaco accounts will be accomplished.

We would be interested in any comments you might have to make as a result of your study of our analysis.

Very truly yours,

MAW:SD

4

7217

JAX 113

Commission's Exhibit 70B

THE TEXAS COMPANY New York, N. Y., Mar 11, 1953 CX 10708

TBA PROGRAM
ACCOUNT ANALYSIS -
1952 VOLUME

Messrs. J. K. Pannill (5)
L. P. Raymond (5)
D. B. Monroe (5)
W. E. Paul (4)

FEDERAL TRADE COMMISSION
F.T.C. No. 6485 COMPANY'S EXHIBIT NO. 70-A

Gentlemen:

A study has been made of the 1952 TBA account analysis furnished us by all Divisions in accordance with our letter of December 5, 1952, this same subject.

From a consolidation prepared here of all Divisions' reports, we would like to point out certain facts which we believe you and your Division management will want to study carefully and where possible, take prompt action to improve the purchases by every type account.

The tires and tubes purchased from Firestone and Goodrich comprise our only records relating to these items. From these records, it appears that 11% of the active "B" (consignee) accounts and 16% of the active "E" (distributor) accounts amounted to less than $1,000 during the year 1952. Consignees and distributors are as a rule the wholesale supply source for a number of service station dealers. It, therefore, must be admitted that, unless other suppliers are being used to a substantial extent, such a wholesale account whose annual tire and tube purchases are less than $1,000 is not actually in the business. At least one must conclude that the service station dealers depending on these accounts for their tire and tube supplies have probably not received the service they rightfully expect and deserve.

Perhaps the most disturbing information developed from our study of this analysis is the fact that 55% of our active "C" (company owned and leased) accounts and 69% of the active "D" (contract dealers) purchased less than $1,000 in tires and tubes during the year. When we include the service station dealers whose purchases, according to our records, were between $1,000 and $2,499, we find that 82% of the "C" type dealers and 85% of the "D" type stations purchased less than $2,500 in tires and tubes during the year.

By referring to Forms S-1229 and S-1277, we find that our company-owned and leased stations averaged approximately 12,000 gallons of gasoline per month per station in 1952. If the "C" type accounts had, therefore, handled tires and tubes in keeping with the balanced selling ratios recommended on The Texas Company's "Profit Computer", they should have averaged better than $4,000 per year per account instead of the $1,861 as reflected from this analysis.

JAX 114

Commission's Exhibit 70C

Asst. Terr. Mgrs. - 2 - March 11, 1953 CX 10-70C

Of the accounts purchasing batteries and auto supplies, according to our records, we find the following percentages of each type account averaged less than $1,750 in total battery, auto supply purchases in 1952:

"B"	accounts	67%
"E"	"	68
"C"	"	91
"D"	"	96

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 COMMISSION EXHIBIT NO. 70C

Again working with averages, we would like to point out that using the recommended balanced selling ratios suggested on our Profit Computer, the "C" type accounts should have averaged approximately $2,200 per station in battery, auto supply purchases in 1952. By comparing this with their actual purchases, which averaged only $720 per account, it is apparent that much still is to be done if our dealers are in this way to develop better balanced selling and increased profits. I am sure these dealers know that, according to tire company policy, extra discounts usually begin to apply only when an account's purchases of batteries and auto supplies are $1,750 or more per year.

A study of this type made by the Divisions of their own particular results will certainly provide plenty of food for thought. Then, if discussed and studied with each tire company District Manager at interest, it should provoke definite action by the field selling organizations. We believe you will want to pass this information along to each Division with the request that they make a similar study of their own analysis of each type of account, and I am sure you will have some definite recommendations as to the action they should take.

Very truly yours,

Manager

MAW:SD

WH1 WBH

FEDERAL TRADE COMMISSION

EXHIBIT NO. 70-D

TBA ACCOUNT ANALYSIS
SALE OF GOODRICH PRODUCTS
1952

	"B" ACCOUNTS				"C" ACCOUNTS				"D" ACCOUNTS				"A" ACCOUNTS			
	No. Accounts	% to Total	Total Annual Volume	% to Total	No. Accts.	% to Total	Total Annual Volume	% to Total	No. Accts.	% to Total	Total Annual Volume	% to Total	No. Accts.	% to Total	Total Annual Volume	% to Total
TIRES AND TUBES																
Under $1,000	30	10.9	$16,517	0.6	1,549	60.5	$ 609,870	14.0	576	68.9	$187,622	12.7	18	13.3	$ 9,288	0.7
$ 1,000 - 2,499	62	17.9	115,648	4.2	610	23.9	1,009,799	23.1	136	16.3	227,245	14.6	21	15.4	38,041	2.7
2,500 - 4,999	79	22.8	292,238	10.5	252	9.8	867,042	19.9	64	7.7	227,479	14.6	24	17.6	97,835	6.9
5,000 -14,999	128	36.9	1,139,130	41.4	117	4.6	1,010,502	23.2	42	5.0	344,352	22.3	60	29.4	344,024	23.2
15,000 - over	40	11.5	1,199,788	43.1	31	1.2	863,543	19.8	17	2.1	366,037	36.1	11	24.1	923,188	66.6
Total	347	100.0	2,763,293	100.0	2,559	100.0	4,360,756	100.0	835	100.0	1,352,935	100.0	136	100.0	1,388,676	100.0
BATTERIES, ETC. SUPPLIES																
Less than $1,750	220	74.1	138,734	27.7	2,078	91.1	721,210	49.1	572	95.3	134,396	65.0	81	69.2	44,632	19.1
$ 1,750 - 9,999	71	23.9	273,835	55.1	150	6.7	379,586	40.0	22	3.7	61,449	20.6	31	26.5	123,652	38.6
10,000 -24,999	6	2.0	84,458	17.2	5	0.2	81,286	5.6	5	0.8	72,721	24.4	5	4.3	65,857	28.1
25,000 -39,999	-	-	-	-	1	-	38,606	2.2	1	0.2	29,936	10.0	-	-	-	-
40,000 - over	-	-	-	-	-	-	44,787	3.1	-	-	-	-	-	-	-	-
Total	297	100.0	531,027	100.0	2,235	100.0	1,119,475	100.0	600	100.0	298,502	100.0	117	100.0	234,141	100.0

Commission's Exhibit 70-D

JAN 11

JAX 116

Commission's Exhibit 71

(71)

JENNEY MANUFACTURING COMPANY
SALES OR BROKERAGE COMMISSION
REVISED JANUARY 1, 1956

1. Eligible Outlets. All Jenney Dealers operating on Jenney leased or owned property; also any 100% Jenney gasoline dealers recommended by Jenney and accepted by B. F. Goodrich.

2. Exceptions to Eligible List. Accounts which are BFGS, RSS, B. F. Goodrich major financed, dealers operating on property owned or leased by B. F. Goodrich and split gasoline outlets.

All exceptions to list of eligible outlets must be approved by the B. F. Goodrich District Manager and Mr. K. T. Howe of the Jenney Manufacturing Co.

3. Rate and Approved Items. Rate of commission applicable to net purchases of commodities are:

Rate	Commodities
10%	Tires and tubes, includes seconds, retreads, recaps.
10%	Batteries and parts, BFG Spark Plugs; excludes rentals, charging and testing equipment.
10%	Repair and Treading Materials, Schrader and Dill Hardware.
10%	Accessories, Radios, Auto & Home Supplies at Dealer Prices; excludes major appliances.
7½%	Accessories, Radios, Auto & Home Supplies at Distributor Prices; excludes major appliances.

Net purchases means total billing less returned goods at net invoice price after deducting quantity or other discounts, but before adding Tire Return Cost or Federal Excise Tax. Do not deduct cash discount allowed or credit memos covering bonus for volume.

4. Items Not Approved. Do not pay commission on sales covering:

Adjustments	Major Appliances:	Recapping & Retreading
Advertising	Electric Ranges &	Service
Anti-Freeze Testers	Water Heaters	Rental Batteries
Battery Chargers &	Home Freezers	Repairs
Testers	Laundry Equipment	Stationery
Battery Service Kits	Oil Space Heaters	Transportation
Equipment	Refrigerators	Wheels and Parts

5. Form Used and Distribution. Use B. F. Goodrich Form 4959 and prepare four copies for each month. Report is due by the tenth of the month. Distribute copies as follows:

Original - Mr. K. T. Howe, c/o Jenney Manufacturing Co., Boston, Mass.
Duplicate - Mr. K. T. Howe, c/o Jenney Manufacturing Co., Boston, Mass.
Triplicate - B. F. Goodrich District Manager
Quadruplicate - B. F. Goodrich District Operating Unit files.

Check for commission must accompany the original Form 4959 along with the customer copies of credit Form 1501-B.

FEDERAL TRADE COMMISSION
EXHIBIT NO. 71
FILED BY Goodrich
DATE 12/3/57
REPORTER'S CO., OFFICIAL REPORTERS

Boston District

7225

JAX 117

Commission's Exhibit 72

(74)

To: E. J. Lewis, Dept. 0607

SALES OPERATING INSTRUCTIONS

No. WHLSL. 990-A, RFGS 381-A

Address all correspondence to Petroleum Company Tire Sales

Date: 6-25-50

X	X				X					X						
X	X	X	X	X												

Subject: JENNEY MANUFACTURING COMPANY
SALES OR BROKERAGE COMMISSION

1. Effective with the month of June 1950 business, sales commission to the Jenney Manufacturing Company on sales of Motorola Home Radio and Television Sets is discontinued.

   Motorola Car Radios are still subject to sales commission as in the past.

2. BFGS will exclude the sales of Motorola Home Radios and Television Sets from their report of sales to Jenney Manufacturing outlets furnished each month to Division Operating Centers.

   Retail Operating Manual Section I-1, Paragraph 40, is hereby amended.

3. Division Operating Centers will not include the sales of Motorola Home Radios and Television Sets on the Form 4959 covering purchases made by Jenney Manufacturing outlets.

   If a form similar to Form 1324-B is used locally for reporting of sales made by BFGS and Distributors to Jenney outlets, correct the form before mailing so that the month of June 1950 and subsequent months' reports will be correct.

   Bulletin Whlse. 7858, of 3/13/46, is hereby amended.

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 COMM'N EXHIBIT NO. 72
IN THE MATTER OF Goodrich
DATE 11/2/52 WITNESS
ACE REPORTING CO., Official Reporter
By

This Bulletin sent to BOSTON DISTRICT & BFGS IN BOSTON DISTRICT - PHILADELPHIA DIVISION OPERATING CENTER.

6

7227

JAX 118

Commission's Exhibit 73

CX 73 (73)

SHELL AMERICAN PETROLEUM COMPANY
SALES OR BROKERAGE COMMISSION
REVISED JANUARY 1, 1946

1. Eligible Outlets. Any accounts 100% Shell American outlets and so classified by the Shell American Company and approved by B. F. Goodrich.

Accounts are classified as:

Regular Dealers - all dealers handling Shell American products in the area served by the Shell American Petroleum Company.
Special Dealers - all dealers who have a special price arrangement as properly authorized.

2. Exceptions to Eligible List. Accounts which are BFGS, BSS; dealers operating on property owned or leased by B. F. Goodrich and split gasoline accounts.

All exceptions to list of eligible outlets must be approved by the B. F. Goodrich District Manager and the Shell American Petroleum Co.

3. Rate & Approved Items. Rate of commission applicable to net purchases of commodities are:

All Regular Dealers	Special Dealers	Commodities
10%	7½%	Tires and tubes, includes retreads, recaps; excludes seconds.
10%	7½%	Batteries and parts, BFG Spark Plugs: excludes rentals, charging and testing equipment.
10%	7½%	Repair and Treading Materials, Schroder and Dill Hardware.
10%	7½%	Accessories, Radios, Auto & Home Supplies; excludes major appliances.

Net purchases means total billing less returned goods at net invoice price after deducting quantity or other discounts, but before adding Fire Return Cost or Federal Excise Tax. Do not deduct cash discount allowed or credit memos covering bonus for volume.

4. Items Not Approved. Do not pay commission on sales covering:

Adjustments	Major Appliances:	Recapping & Retreading Service
Advertising	Electric Ranges &	Rental Batteries
Anti-Freeze Testers	Water Heaters	Repairs
Battery Chargers &	Home Freezers	Seconds
Testers	Laundry Equipment	Stationery
Battery Service Kits	Oil Space Heaters	Transportation
Equipment	Refrigerators	Wheels and Parts

5. Form Used and Distribution. Shell American will furnish three copies of their Form SA-471-R on the 4th of each month. Report is due by the tenth of the month. Distribute copies as follows:

Original - Shell American Petroleum Co., Kokomo, Ind.
Duplicate - B. F. Goodrich District Manager
Triplicate - B. F. Goodrich District Operating Unit files.

Prepare an extra copy of Oil Company Summary Report (Form 1501-B) and mail with original of Form SA-471-R to Shell American.

Check for commission must accompany the original Form SA-471-R along with the customer copies of credit Form 1501-B.

Chicago and Indianapolis Districts, and ATDO

7229

L. D.

Commission's Exhibit 74

(74)

To: R. J. Lewis
Dept. 0607

SALES OPERATING INSTRUCTIONS

No. WHLSE 584-A
BFGS 373-A

Address all correspondence to Petroleum Company Tire Sales

Date 6-20-50

Div. Mgr.	Dist. Mgr. Tires	Dist. Mgr. Batt.	Dist. Mgr. Acc.	Dist. Mgr. Recaps	Div. Comm. Mgr.	Wholesr. Assocs.	Tire Reps.	Battery Assocs.	Tire Dlrs.	Dist. C.A.O. Mgr.	Spec. Rep.	MOVED BY	Date	ENTERED BY	Date
X	X				X					X					
Phila. Area	Atlanta Terr. Mgr.	Akron Assocs.	Akron Dlrs.	Akron Dlrs.	Akron Dlrs.			Akron Dlrs.	Akron Dlrs.	Akron Dlrs.					
X	X	X	X	X											

Subject

SHELL AMERICAN PETROLEUM COMPANY
SALES OR BROKERAGE COMMISSION

1. Effective with the month of June 1950 business, sales commission to the Shell American Petroleum Company on sales of Motorola Home Radio and Television Sets is discontinued.

   Motorola Car Radios are still subject to sales commission as in the past.

2. BFGS will exclude the sales of Motorola Home Radios and Television Sets from their report of sales to Shell American Petroleum outlets furnished each month to Division Operating Centers.

   Retail Operating Manual Section L-1, Paragraph 40, is hereby amended.

3. Division Operating Centers will not include the sales of Motorola Home Radios and Television Sets on the Shell American Form SA-471-R covering purchases made by Shell American Petroleum outlets.

   If a form similar to Form 1324-B is used locally for reporting of sales made by BFGS and Distributors to Shell American outlets, correct the form before mailing so that the month of June 1950 and subsequent months' reports will be correct.

   Bulletin Whlse. #858, of 3/13/46, is hereby amended.

FEDERAL TRADE COMMISSION
DOCKET NO. 6185 COMMISSION EXHIBIT NO. 74
IN THE MATTER OF Goodrich
DATE 4/7/52 WITNESS
ACE REPORTING CO., Official Reporter
By Gam

This Bulletin sent to Akron Dist. & Assocs.

Chicago & Indianapolis Districts and BFGS in these Districts. Chicago Division Operating Center.

723

JAX 120

Commission's Exhibit 75

(75)

Replacement Tire Sales Mgr.
Mr. Guy Gundaker-Jr.
General Manager

1/5/53
Central Div. Office
Detroit, Michigan

SHELL AMERICAN PETROLEUM COMPANY
ROBINO - INDIANA

Yesterday morning, I talked at length with "Bull" Durham and was told that they were having a meeting on Friday with the Goodyear people and probably would go forward in 1953 on a split basis.

The reasons were given as shortages of merchandise during 1952 and previous years, and also due to lack of close attention to some of their accounts.

I re-iterated to Mr. Durham a number of the things which we talked about in Kokomo a few weeks ago, and further intimated that we very probably would be assigning a man to work with their accounts immediately.

I asked "Bull" if he would hold off making any definite commitment until after we had a chance to further discuss the matter and to tell our story more completely at their TBA meeting in Kokomo on January 29. I got no assurance that they would hold off, although "Bull" did tell me that he was still very strong for BFG and was only opening the door for better handling of their accounts.

I covered a number of the pitfalls in a dual-supply situation and the breaking down of a positive selling approach when the dealer or the customer had choices.

Following my discussion with Mr. Durham, I talked with both Mr. Reichert and Mr. Cordry and urged them to step up their contacts and dating activity with all Shell American accounts, as I feel if we can get a dating order with a great number of the Shell American outlets, we will be keeping Goodyear out of the picture for at least the time being.

T.C.Y.

T.C. Yarnall

TCY:GCB
CC: E.J. Lewis-Akron

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 COMMISSION EXHIBIT NO. 75
IN THE MATTER OF Goodyear
DATE 18 NOV 1957 WITNESS
ACE REPORTING CO. Official Reporter
By

7233

JAX 121

Commission's Exhibit 76

(76)

E. J. LEWIS
AKRON

INTER-ORGANIZATION CORRESPONDENCE

Date 1/23/53

From Chicago

Your Letter

Subject SHELL AMERICAN

Please pardon the delay in writing you, as you requested over the phone, an opinion on our status with Shell accounts - just in case.

Our sales to stations for the first ten months of 1952 were $95,498. Of this volume, more than one third came from one account and over one half is this account plus two others or from three accounts. The total from the three accounts was $54,302. The balance of $41,000 came from the multitude of other stations - approximately 100 outlets, with the "main balance" activity in South Bend.

The No. 1 account, Walmer, would definitely stay with us. He is no longer in the Shell station, but is now set up as the Plymouth Tire Company. I explained this to you over the phone. So his business we will retain regardless. I can say that definitely because Thursday or Friday of last week I had a talk with Mr. Walmer about it. He supplies eight Shell stations. The volume from them is not great and they would probably be lost, with the exception perhaps of the station he formerly operated in Plymouth because his successor owes him $8000 on a note in connection with the take-over. Mr. Walmer expects his tire business to be markedly increased this year over last because he is giving full time to it, whereas in previous years, as you know, the station responsibility took most of his time. His dating order is approximately $18,000.

Vance Good is in a leased station, volume $13,313 for 11 months of 1952, dating order approximately $1000. He would have to do as his gasoline supplier says.

Bob Good, $7,250 volume for 11 months of 1952, no dating order - same story as Vance on and result.

In summation, all I can assure on retaining would be about one third of the business (Walmer's business) which volume I expect increased to at least $50,000 this year. In my opinion, I think we would have no trouble replacing the entire volume due to the fact that in some markets we have "held an umbrella" over the Shell Stations to the point where they are open or weak markets and with them definitely open, I would certainly put pressure on territory managers for replacement and plussing up of the return from the markets.

Exclusive of Walmer and Vance Good, we have taken dating orders from Shell accounts totaling $6,620. Most of these orders have been shipped and the remaining orders are being gotten out immediately.

FEDERAL TRADE COMMISSION
DOCKET NO. 6150 — 76
IN THE MATTER OF B. F. GOODRICH COMPANY
1955 REICHERT
CLERK

H. J. REICHERT
District Manager.

HJR:vk

cc: T. C. Yarnall

7235

9

Reply To

USE THE BACK OF THIS SHEET FOR YOUR REPLY IF POSSIBLE

JAX 122

Commission's Exhibit 77A

COPY

(77A)

FEDERAL TRADE COMMISSION
DOCKET NO. 6115 EXHIBIT NO. 77A
IN THE MATTER OF Goodrich
DATE 11/2/57 WITNESS
A.B.C. REPORTING CO., Official Reporter
By

January 16, 1952

Continental Oil Company
Ponca City,
Oklahoma

Gentlemen:

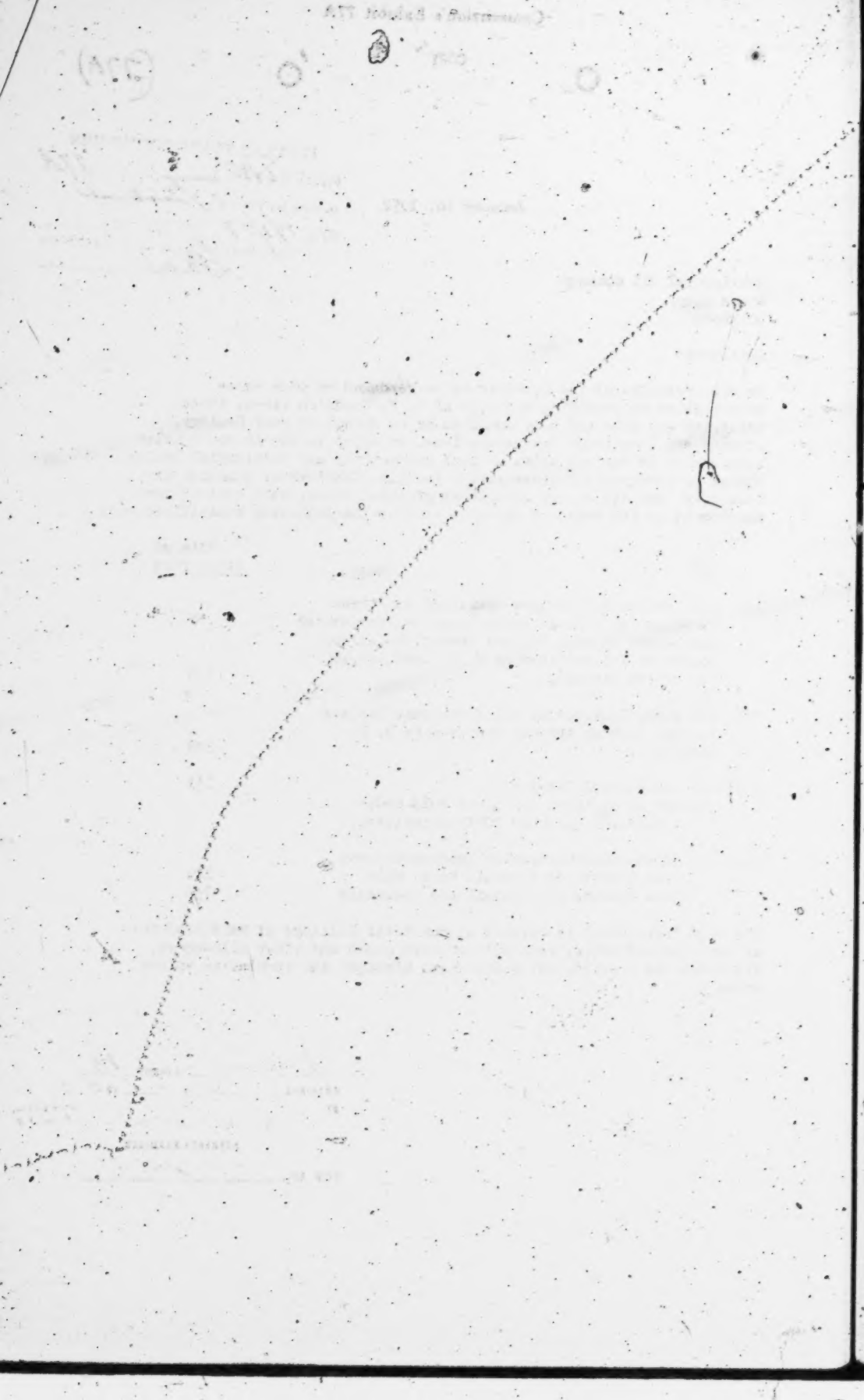
In consideration of the services to be rendered by your sales organization in promoting the sale of B. F. Goodrich tires, tubes, batteries and auto and home supplies by us direct to your Dealers, Jobbers and Commission Representatives, we agree to pay to you a sales commission on our net sales of such products to any Continental Dealer, Jobber or Commission Representative handling Continental gasoline exclusively, subject to any exceptions provided below, said rate of commission to be the rate set opposite each of the following classifications:

		Rate of Commission
(1)	All Continental Dealers operating locations owned in fee or held under lease by Continental and leased to said Dealers (except locations leased to and operated by B. F. Goodrich as one of its stores).	10%
(2)	All other Continental Sales Contract Dealers (except such as are not approved by B. F. Goodrich).	10%
(3)	All Continental Jobbers (Except 5% on tires and tubes sold under B. F. Goodrich plan for 100% wholesalers.)	7½%
(4)	All Continental Commission Representatives - who operate on a retail basis only - who operate both retail and wholesale	10% 7½%

The term "net sales" is defined as our total billings of said products at net invoiced price, less all returned goods and other allowances, discounts and credits, but before cash discount and cumulative volume bonus.

EXHIBIT 13
OBTAINED
BY
ATTORNEY-EXAMINER
FILE NO.

7237



GO - 123 (77B)

In the case of Sales Contract Dealers (#2), where the dealer has been handling B. F. Goodrich Company products for a long period of time preceding contract for the sales of Conoco products, or where B. F. Goodrich have a substantial financial investment in such an account, Continental will give consideration to any request B. F. Goodrich may make to exclude such account from our sales commission arrangement.

If the above is agreeable to you, will you kindly indicate your acceptance by signing and return to us the enclosed copy of this letter, whereupon it shall become effective as to our sales made on and after the date provided above and continue in full force and effect until terminated by either party one hundred twenty (120) days' written notice to the other.

Yours very truly,

THE B. F. GOODRICH COMPANY

By (S) J. J. Newman
Vice President

ACCEPTED this 30th day of January, 1952.

CONTINENTAL OIL COMPANY

By (S) Harry J. Kennedy
Vice Pres.

Certified correct
H Kilmon
9-2-53

Kilmon EXHIBIT 13 p 2
OBTAINED Apl 10 53
BY
ATTORNEY-EXAMINER

FEDERAL TRADE COMMISSION
DOCKET NO. 6410 COMMISSION'S EXHIBIT NO. 77B

FILE NO. 1-16 [illegible] 7230

JAX 124

Commission's Exhibit 78A

To

Attention

Your Letter

Subject: CONTINENTAL OIL CO. PONCA CITY, OKLA.

INTER-ORGANIZATION CORRESPONDENCE

Date February 7, 1952

From AKRON

FEDERAL TRADE COMMISSION

DOCKET 645 EXHIBIT 78A

IN THE MATTER OF Goodrich (78A)

DATE 11/7/52 WITNESS

ACE REPORTING CO., Official Reporters

by

IMPORTANT

We are pleased to announce an exclusive marketing relationship with the Continental Oil Company whereby B. F. Goodrich tires, tubes, batteries, accessories and auto supplies will be made available to Conoco outlets. The B. F. Goodrich organization will do the direct selling of these outlets, supported by the promotional assistance of the oil company and its entire field organization.

Continental, with its familiar red triangle trademark "Conoco", markets gasoline, oils and lubricants in 26 mid-continent states known as "Conocoland." (Conocoland map attached.) Although new in the field of TBA, Continental's principal roots date back to 1911 and the present company was formed in 1929.

The company and its management are recognized leaders in the oil industry and a vigorous future is being built on an illustrious past. Continental is known for handling each new venture exceptionally well.

B. F. Goodrich is extremely fortunate to be associated with Continental at the very outset of its TBA program, and is proud to have been selected after consideration of all principal tire manufacturers. Conoco dealers, jobbers and commission representatives provide opportunity for many new outlets of the high standard you are seeking. You will find Continental personnel to be of the highest type and most friendly and cooperative.

B. F. Goodrich TBA merchandise will be sold through Conoco outlets under the sales commission plan, details of which will be announced later. Selection and training of the Continental TBA staff and field TBA representatives must precede training of the general field sales organization and Conoco outlets. These activities will proceed as rapidly as possible.

Meanwhile, activation of the program in your area may begin in several ways. Get-acquainted visits and exchanges of information on company organization, policies and methods should be carried on with Continental field management personnel. Study of Continental distribution will help you formulate the best plan for exploiting the program as it unfolds. Actual solicitation by BFG personnel of immediate prospects among Conoco outlets may start at once following these discussions with Continental field management. (A list of field headquarters and personnel is attached.)

This BFG-Continental association materially strengthens your 1952 opportunities for better coverage -- increased sales and profits. A fast but carefully planned start will earn maximum benefits for your area.

J. A. MORAN

General Manager,
Tire Merchandising

lmd

Sent to: District Managers

cc: Division Mgrs., Regional Store Mgrs., Division Oper. Mgrs., Akron List.

Make Reply To

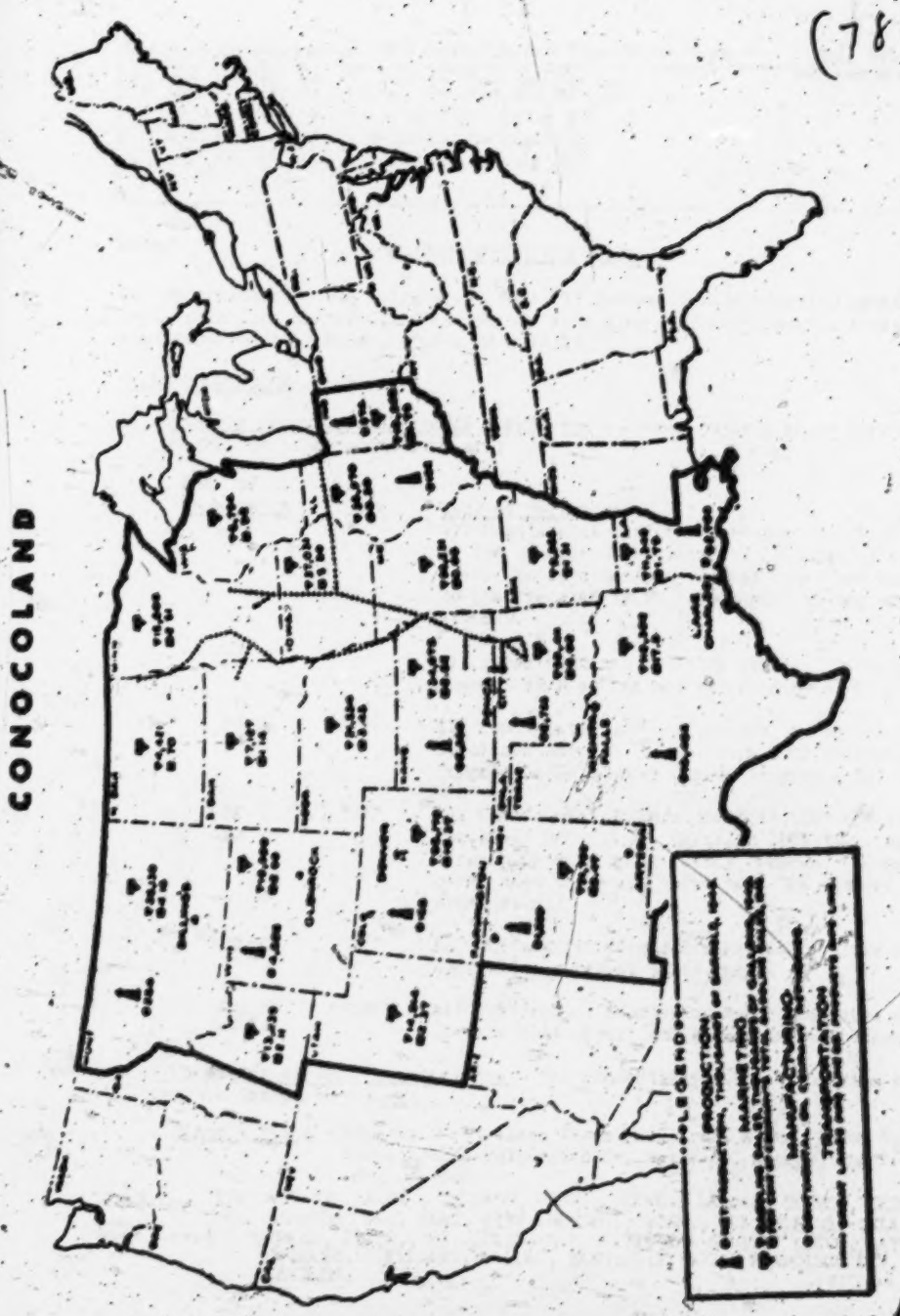
7289

USE THE BACK OF THIS SHEET FOR YOUR REPLY IF POSSIBLE FORM

JAX 125

Commission's Exhibit 78B

(78B)



FEDERAL TRADE COMMISSION
DOCKET NO. 6445 COMMISSION EXHIBIT NO. 78B

7241

JAX 125

Commission's Exhibit 81A

To: E. J. Lewis
Dept. 0607
7

SALES OPERATING INSTRUCTIONS

No. (NA) WHLSE. 914-A

Address all correspondence to Petroleum Company Tire Sales Dept. Date 12-5-52

													MOVED BY	Date	MOVED BY	Date
X	X			X						X						
X																

Subject CONTINENTAL OIL COMPANY

1. To consolidate and bring up to date all instructions concerning sales commission, etc., with Continental Oil Company, the following instructions will apply and supersede Bulletin Whlse. #848-A of 4/10/52.

SALES COMMISSION

2. Eligible Accounts and Rate of Commission - Conoco outlets whose purchases are subject to sales commission are:

Rate of Commission	Code	Type of Accounts
10%	"L"	All Continental Dealers operating locations owned in fee or held under lease by Continental and leased to said Dealers (except locations leased to and operated by B. F. Goodrich as one of its stores).
10%	"T"	All other Continental Sales Contract Dealers (except such as are not approved by B. F. Goodrich)
7½%	"J"	All Continental Jobbers (except on tires and tubes purchased under B. F. Goodrich 100% Wholesaler Program or sold under Agency Program - 5%)
5%	"JW"	All Continental Jobbers on their tire and tube purchases under B. F. Goodrich 100% Wholesaler Program or sold under Agency Program. (Commodities other than tires and tubes take 7½% rate of commission.)
10%	"CR"	All Continental Commission Representatives who operate on a retail basis only.
7½%	"CRW"	All Continental Commission Representatives who operate both retail and wholesale or wholesale only.

3. Commodities subject to Commission - The commodities subject to sales commission are the net purchases of:

Tires & Tubes - BFG new first-class Passenger, Truck & Bus, Farm, Solids, Industrials, Vulcanized-On, Retreads, Recaps, and Recapping Service.

This Bulletin sent to: TO: ATLANTA, BIRM., CHICAGO, CINN., CLEVE., DALLAS, DENVER, DETROIT, HOUSTON, IND. KANS. CITY, MEMPHIS, MINN., NEW ORLEANS, OKLA. CITY, OMAHA, PITTS., ST. LOUIS, S.L. CITY, AND SEATTLE DISTS. ATLANTA, CHICAGO, CLEVELAND, DALLAS, KANS. CITY & SAN FRANCISCO DIV. OFFICE CENTERS.

253

DOCKET F. 645 IN THE MATTER OF FTC REPORTER

(81B)

Batteries - BFG Batteries and battery parts, BFG Spark Plugs.

Accessories & Repair Material - BFG Accessories (fan belts, floor mats, etc.), Repair & Treading Materials, Schrader & Dill Hardware.

This classification includes the complete Schrader and Dill line and all B.F.G. 5 digit stock number items which have the first three digits of:

310 to 314 inclusive
332 to 334 "
350 to 354 "

Auto & Home Supplies - A&HS merchandise, excluding Power Lawn Mowers, Motorola Home Radios and Television Sets, and major appliances.

4. Items not subject to Commission - Do not pay sales commission on purchases covering:

Seconds	Transportation Charges	Battery Equipment	Major Appliances
Rejects	Wheels, Rims & Parts	Advertising	(Electric Ranges,
Adjustments	Rental Batteries	Anti-Freeze Testers	Water Heaters,
Stationery	Chargers & Testers	Power Lawn Mowers	Refrigerators &
Repairs	Battery Service Kits	Motorola Home Radios & Television Sets	Freezers, Laundry Equip., Space Heaters)

5. Net Purchases - Net purchases mean total billings at net invoice price less all returned goods and other allowances, discounts and credits, but before adding Federal Excise Tax or any Sales or Use Tax and before deducting cash discount allowed or credit memos covering bonus for volume.

6. Customer Account Coding - No special series of customer account numbers will be assigned to Conoco outlets.

Show the letter "C" after the regular customer account number assigned on all orders, billing, etc. - example 123-C.

7. Monthly Report of Sales - Continental Oil Company will furnish each Division Operating Center with their Form F15-381X7 for reporting sales made each month to outlets approved for payment of sales commission to Continental. Form will be broken down to list approved outlets by Continental Division and by B. F. Goodrich District territory.

Combine sales from Division Operating bookkeeping copies and report of sales made through BFGS and distributors.

Division Operating Centers will mail the original, fourth, fifth and sixth copies to the Continental Oil Division Office with customer copy of credit 1501-B and check for commission, mail the second copy to the B. F. Goodrich District Manager and retain the third copy.

8. Oil Company Summary Report - Form 1321-B - Division Operating Centers will prepare a separate report in triplicate for each Continental Division Office and by B. F. Goodrich District territory to cover the sales on which sales commission is paid.

FEDERAL TRADE COMMISSION
DOCKET 6415 FILED 31 1962

Distribute as follows:

Original - Mail to Petroleum Company Tire Sales Dept. (0607), Akron, with Salesman's copy of credit 1501-B issued.

Duplicate - Mail to The B. F. Goodrich District Manager with second copy of Continental Form F15-381X7.

Triplicate - Retain in Division Operating Center in files.

9. Credit for Sales Commission - Form 1501-B - Insert an extra copy (Form 1503-B) with credit Form 1501-B and issue credit in the regular way for sales commission due each month - a separate credit for each Continental Division Office and by B. F. Goodrich District territory.

Distribute copies in the regular way, except:

Customer's copy - Mail with the original, fourth, fifth and sixth copies of Form F15-381X7 and check for commission payment to the Continental Oil Division Office.

Extra copy (Form 1503-B) - Mail to the Continental Oil Company, Ponca City, Oklahoma - attention Mr. J. J. Nesmith, Manager TBA Sales.

Salesman's Copy - Mail with original Form 1321-B to Akron Dept. 0607.

10. Sales Commission Payment - Issue check to each Continental Division Office for total of all credits Form 1501-B issued for sales commission by the Division Operating Center. It is in order to combine the same Continental Division credits issued for two or more B. F. Goodrich Districts in one check.

Mail check to the Continental Division Office, together with customer's copy of credits 1501-B and original copy of monthly report of sales to approved outlets.

Check, along with credit and report, is due to be completed and mailed on or before the twelfth of each month for the previous month's business.

11. Continental Oil Company Division
The Continental Divisions are located at:

Division	Address
Albuquerque	117 E. Trumbull Albuquerque, New Mexico
Butte	1321 Kew Ave. Butte, Montana
Chicago	1301 W. Belden Ave. Chicago, Illinois
Denver	1755 Glenarm Place Denver, Colorado
Fort Worth	1710 Fair Building Fort Worth 2, Texas

FEDERAL TRADE COMMISSION
FILED
81C
7257

Division	Address
Houston	Armstrong Building 704 Dallas Houston 2, Texas
Kansas City	Union National Bank Building 900 Walnut St. Kansas 6, Missouri
Lincoln	827 Stuart Building Lincoln 1, Nebraska
Oklahoma City	125 N.W. First St. Oklahoma City, Okla.
Salt Lake City	727 West Second, S. Salt Lake City 10, Utah

CONSUMPTION PURCHASES

12. Bill Continental Oil Company at the point specified on their purchase order for all purchases made for consumption, at prices as outlined in the Fleet Sales Manual.

Key to the proper accounting center for the point charged and to the district in whose territory delivery is made for sales credit.

Use customer account #479 on all consumption purchases made on and after receipt of this bulletin.

13. Division Operating Centers carrying the account covering consumption purchases will prepare the monthly Oil Company Summary Report Form 1321-B for all consumption purchases. Issue a separate report in triplicate for each B. F. Goodrich District involved and distribute as follows:

Original - Mail to Petroleum Company Tire Sales Dept. (0677), Akron.

Duplicate - Mail to The B. F. Goodrich District Manager.

Triplicate - Retain in Division Operating Center's files.

If report Forms 1321-B have not been issued for consumption purchases starting with February 1952 business, issue the necessary reports to bring up to date.

14. With the close of December 1952 business, Division Operating Centers carrying the accounts receivable for consumption purchases will prepare a report of the year 1952 consumption purchases from the bookkeeping copies of items subject to bonus for volume. Show totals by the following breakdown:

(1) Passenger
(2) Truck & Bus excluding Defiance casings for period 2/1/52 through 6/17/52.
(3) Truck & Bus excluding Defiance casings for period 6/18/52 through end of December 1952 business.
(4) Defiance Truck & Bus casings for period 2/1/52 through 6/17/52.

FEDERAL TRADE COMMISSION EXHIBIT

(81E)

(5) Defiance Truck & Bus castings for period 6/18/52 through end of December 1952 business.
(6) Form
(7) Industrials, Solids and Vulcanized-Ch for period 2/1/52 through 6/17/52.
(8) Industrials, Solids and Vulcanized-Ch for period 6/18/52 through end of December 1952 business.

Mail report to Field Accounting Department (9240), Akron, attention Mr. E. B. Ensign.

This report should be mailed no later than January 15, 1952. A similar report will not be required for 1953 business as the consumption purchases will appear on Sales to Dealers Report Form 1411-B from the customer account number assigned per paragraph 12.

FEDERAL TRADE COMMISSION
EXHIBIT No. 81E

PAX 131

Commission's Exhibit 82A

(F.T.C.)

THE B. F. GOODRICH COMPANY

AKRON, OHIO

March 9, 1953

The Ohio Oil Company
Findlay, Ohio

Gentlemen:

In consideration of the services to be rendered by your sales organization in promoting the sale of B. F. Goodrich tires, tubes, batteries, and auto and home supplies by us direct to your Dealers, Distributors and Jobbers, we agree to pay to you a sales commission on our net sales of such products to any Ohio Oil Company Dealer, Distributor or Jobber handling Marathon gasoline, subject to any exceptions provided below, said rate of commission to be the rate set opposite each of the following classifications:

		Rate of Commission
(1)	All Marathon Dealers operating locations owned in fee or held under lease by Ohio Oil Company and leased to said Dealers (except locations leased to and operated by B. F. Goodrich as one of its stores).	10%
(2)	All other Marathon Sales Contract Dealers (except such as are not approved by B. F. Goodrich).	10%
(3)	All Marathon Distributors and/or Jobbers (Except 5% on tires and tubes sold under B. F. Goodrich plan for 100% Wholesalers.)	7½%

The term "net sales" is defined as our total billings of said products at net invoice price, less all returned goods and other allowances, discounts, and credits, but before cash discount and cumulative volume bonus. In the case of Sales Contract Dealers (#2), where the Dealer has been handling B. F. Goodrich products

FEDERAL TRADE COMMISSION
EXHIBIT
EXAMINER

Commission's Exhibit 82B

for a long period of time preceding contract for the sales of Marathon products, or where B. F. Goodrich has a substantial financial investment in such an account, Ohio Oil Company will give consideration to any request B. F. Goodrich may make to exclude such account from our sales commission arrangement.

If the above is agreeable to you, will you kindly indicate your acceptance by signing and return to us the enclosed copy of this letter, whereupon it shall become effective as to our sales made on and after the date of this agreement and continue in full force and effect until terminated by either party one hundred and twenty (120) days' written notice to the other.

Yours very truly,

THE B. F. GOODRICH COMPANY

By /S/ Jas. J. Newman
Vice President

ACCEPTED THIS 9th day of March

THE OHIO OIL COMPANY

By /S/ C. Z. Hardwick
Vice-Pres.

Certified correct copy
G. Kilmon
9-10-53

FEDERAL TRADE COMMISSION
DOCKETED 6485 EXHIBIT 82B

Kilmon EXHIBIT 14 & 2
OBTAINED _____ 19__
BY
ATTORNEY-EXAMINER 82B
FILE NO. _____

21

JAX 133

Commission's Exhibit 83A

Mr. J. A. Hoban
D/OCOL, Zk-8

October 15, 1952

(133A)

OHIO OIL COMPANY

At W. A. Cr[illegible]'s request and following arrangements made by him with Grant Young (Asst. Retail Mgr. of Ohio Oil Company), I visited Mr. Young and his associates at Findlay on Friday, October 10. My mission was to provide general information of the sales commission plan of TBA operation as Ohio Oil is seriously weighing a change to this type of program. In addition to Mr. Young, the following men attended parts of the discussions: Messrs. Dickerson (Market Analyst), Buescher (Retail Manager), Loos (Purchasing), Fiskal (Credit), and Tull (Legal).

General subject matter covered included:

Channels through which merchandise flows to the dealer.

Oil company responsibilities under the sales commission plan.

Rates of commission.

Justification of commission rates.

BFG oil company distribution in Ohio Oil Company marketing area.

Reasons for Ohio Oil interest in nationally advertised tire and the commission plan.

Nature and function of BFG stores.

FEDERAL TRADE COMMISSION
DOCKET NO. 6[illegible]
COMMISSION'S EXHIBIT NO. [illegible]
IN THE MATTER OF [illegible]
DATE [illegible]

Mr. Young revealed that Ohio's principal TBA interests are centered on 762 "investment" stations located in southern Illinois, Indiana, western Kentucky, and Ohio. In addition, there are in excess of 900 good stations not classified as investments. There are about 50 jobber bulk plants around Ohio's fringe, but these have not been a factor in TBA.

At the close of the more general discussions, I requested an opportunity to discuss BFG qualifications under the commission plan if and when they might decide to make a change. Mr. Young stated that they are at that point right now and would like an early meeting to study present BFG distribution in the area they cover. He suggested the week of November 2nd, subject to later confirmation.

Dissatisfaction with the Miller line and their present method of TBA operation (purchase and resale) was attributed to:

Increased costs of promotion, solicitation, and distribution without corresponding increase in margins.

Difficulty in providing supply points close to their retailers, permitting competitive delivery service.

7265

JAX 134

Commission's Exhibit 83B

(P52)

Mr. J. A. Ibbom -0- October 15, 1952

Lack of "Firsts" such as RPO Tubular Tires.

It is my opinion that Ohio Oil will definitely change to a nationally advertised line and the sales commission plan. Considering their present dealings, Goodyear or Firestone can and will sell them on a sales commission basis unless we step in at once. Pending discussion, I shall start preliminary work on the area information they request.

E. J. Lobb

lmd

cc: O. Candidor, Jr.
W. A. Green

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 COMMISSION EXHIBIT NO. 83B

JAX 135

Commission's Exhibit 84A

(142)

Mr. J. A. Eckert

February 27, 1953

FEDERAL TRADE COMMISSION
DOCKET NO. 6455 EXHIBIT NO. 84A
IN THE MATTER OF Goodrich
DATE 6/3/57 WITNESS
REPORTING CO., Official Reporter
By

OHIO OIL COMPANY

The visit Mr. Morledge and I made in Findlay on February 26 developed the following.

We have agreed to devote the efforts of four special men during the initial stages of solicitation, one to be permanent and three for whatever number of weeks may be required to cover the area initially.

Ohio Oil Company requests that we stock batteries in district warehouses from which a sizeable number of Marathon outlets will be serviced.

We are requested to stock a streamline assortment of auto supplies at the Indianapolis warehouse or make a comparable line through six or eight BFG stores in Central and Southern Indiana. Both Mr. Morledge and Ohio Oil Company management prefer use of the Indianapolis District Warehouse.

Principal question on which earliest possible word is required involves the stocks of Miller tires, tubes, and accessories which will be on hand on the cut-off day for TBA shipments by the Ohio Oil Company. As I understand it, that cut-off day may be one to two months after LFG solicitation starts and we will be allowed an additional thirty days for disposition of warehouse stocks. This means a total period of sixty to ninety days for liquidation. Meanwhile, every effort will be made to reduce stocks to a workable minimum.

We have agreed to assist Ohio Oil in liquidating full unbroken cartons of current auto supply items which are also a part of our line. Such merchandise will either be returned to the manufacturer without penality, or BFG will purchase where practical to do so at BFG buying price and the manufacturer's normal terms. Mr. Morledge will work this out.

Ohio Oil hopes that Miller will not make a "last ditch effort" to hold dealers and distributors that are willing to switch to BFG. They would like some assurance of BFG policy in this respect.

There is a large wholesaler at Ann Arbor, Michigan which has been doing a very large volume with Goodyear. We will be called upon to solicit immediately. This may prove to be a severe conflict. You may wish to check with Mr. Parnell.

As you know, we left two copies of our suggested letter of agreement, a copy of which is attached to this memo. Mr. Buechner or Mr. Young would like to talk with you by telephone as early next week as you find it practical to do so. At that time, they would like clarification of the questions posed above, principally the problem of Miller stock. They will also suggest the final step and report on the status of our letter of agreement.

7269

JAX 136
Commission's Exhibit 618

Mr. J. L. Eckam -2- February 27, 1953

I shall be prepared to return to Akron at once if it appears desirable that I do so.

R. J. Lewis

2nd
cc: C. T. Merlodge
Attachment

FEDERAL TRADE COMMISSION
DOCKET NO. 6115 EXHIBIT NO. 618

7271

JAX 137

Commission's Exhibit 85A

SALES OPERATING INSTRUCTIONS

No. (154)

No. UNISC. 997-A

Address all correspondence to Petroleum Company Tire Sales Dept. Date 4-16-53

X	X			X					X								
X				X													

Subject: OHIO OIL COMPANY

1. As announced in Mr. J. A. Hoban's letter of March 13, 1953, a market relationship has been established with the Ohio Oil Company to promote and encourage the sale of B. F. Goodrich tires, tubes, batteries, accessories and Auto & Home Supplies to approved Ohio Oil outlets.

The following instructions will apply.

SALES COMMISSION

2. Eligible Accounts and Rate of Commission - Ohio Oil outlets whose purchases are subject to sales commission are:

Rate of Commission	Code	Type of accounts
10%	"L"	Lessee - All Lessee Dealers operating Ohio Oil Co. numbered stations in Ohio Oil retail territory (except locations leased to and operated by B. F. Goodrich as one of its stores.)
10%	"D"	Dealers - Most Ohio Oil A and B Drivers and Tank Wagon Buyers, Resellers and all other Ohio Oil Dealers not in numbered stations.
7½%	"J"	Jobbers - All Ohio Oil wholesale department accounts (except on tires and tubes purchased under B. F. Goodrich 100% Wholesaler program - 5%.)
5%	"JW"	Jobbers - All Ohio Oil wholesale department accounts on their tire and tube purchases under B. F. Goodrich 100% Wholesaler program. (Commodities other than tires and tubes take 7½% rate of commission.)
7½%	"DS"	Distributors - Some Ohio Oil A and B Drivers and Tank Wagon Buyers (except on tires and tubes purchased under B. F. Goodrich 100% Wholesaler program - 5%)
5%	"DSW"	Distributors - Some Ohio Oil A and B Driver and Tank Wagon Buyers on their tire and tube purchases under B. F. Goodrich 100% Wholesale program (Commodities other than tires and tubes take 7½ rate of commission.)

This Bulletin sent to CHICAGO, CINCINNATI, CLEVELAND, DETROIT, INDIANAPOLIS, MINNEAPOLIS, OMAHA, PITTSBURGH AND ST. LOUIS DISTRICTS; CHICAGO, CLEVELAND AND KANSAS CITY MASTER WAREHOUSES; CHICAGO, CLEVELAND AND KANSAS CITY ZONE OPERATING CENTERS.

22

7273

(1550)

3. Commodities subject to Commission - The commodities subject to sales commission are the net purchases of:

Tires & Tubes - BFG new first-class Passenger, Truck & Bus; Farm, Solids, Industrials, Vulcanized-On, Retreads, Recaps and Recapping Service.

Batteries - BFG Batteries and battery parts.

Accessories & Repair Materials - BFG Accessories (fan belts, floor mats, etc.) Repair and Treading Materials, Schrader & Dill Hardware.

This classification includes the complete Schrader and Dill line and all BFG 5 digit stock number items which have the first three digits of:

310 to 314 inclusive
332 to 334 "
350 to 354 "

Auto & Home Supplies - A & HS merchandise excluding Power Lawn Mowers, Motorola Home Radios and Television Sets and major appliances.

4. Items not subject to Commission - Do not pay sales commission on purchases covering:

Seconds	Transportation Charges	Battery Equipment	Major Appliances
Rejects	Wheels, Rims & Parts	Advertising	(Electric Ranges,
Adjustments	Rental Batteries	Anti-Freeze Testers	Water Heaters,
Stationery	Chargers & Testers	Power Lawn Mowers	Refrigerators &
Repairs	Battery Service Kits	Motorola Home Radios & Television Sets	Freezers, Laundry Equip., Space Heaters.

5. Net Purchases - Net purchases mean total billings at net invoice price less all returned goods and other allowances, discounts and credits, but before adding Federal Excise Tax or any Sales or Use Tax and before deducting cash discount allowed or credit memos covering bonus for volume.

6. Customer Account Coding - No special series of customer account numbers will be assigned to Ohio Oil outlets.

Show the letter "H" after the regular customer account number assigned on all orders, billing, etc. - example 123-H.

7. Monthly Report of Sales - Ohio Oil Company will furnish each Zone Operating Center with their form for reporting sales made each month to outlets approved for payment of sales commission to Ohio Oil. Form will be broken down to list approved outlets by Ohio Oil Zone, and by B. F. Goodrich District territory and grouped by major supply points.

Ohio Oil Company will use BFG Form U-5660 for several months until they are able to have their own form prepared.

Combine sales from Zone Operating Bookkeeping copies and report of sales made through BFGS and distributors. Sales breakdown will be (1) Tire and Tubes, (2) Batteries and (3) Accessories and A & H.S.

FEDERAL TRADE COMMISSION
DOCKET NO. 6415

7275

Zone Operating will prepare report of sales in quadruplicate. Mail original and fourth copies to The Ohio Oil Company, Findlay, Ohio with customer copy of credit 1501-B and check for commission, mail the second copy to The B. F. Goodrich District Manager and retain the third copy.

8. Oil Company Summary Report - Form 1321-B - Zone Operating Centers will prepare a separate report in triplicate for each Ohio Oil Zone Office and by B. F. Goodrich District territory to cover the sales on which sales commission is paid.

Distribute as follows:

Original - Mail to Petroleum Company Tire Sales Dept. (0607), Akron with salesman's copy of credit 1501-B issued.

Duplicate - Mail to The B. F. Goodrich District Manager with the second copy of report of sales.

Triplicate - Retain in Zone Operating Center files.

9. Credit for Sales Commission - Form 1501-B - Insert an extra copy (Form 1503-B) with Credit Form 1501-B and issue credit in the regular way for sales commission due each month - a separate credit for each Ohio Oil Zone office and by B. F. Goodrich District territory.

Distribute copies in the regular way, except:

Customer's copy and extra copy - Mail with the original and fourth copies of report of sales and check for commission payment to Ohio Oil Company, Refining and Marketing Accounting Department - Attention Mr. C. M. Buffington (Room 234), Findlay, Ohio.

Salesman's copy - Mail with original Form 1231-B to Akron, Dept. 0607.

10. Sales Commission Payment - Issue one check to the Ohio Oil Company for total of all credits Form 1501-B issued for sales commission by the Zone Operating Center.

Mail check to the Ohio Oil Company, Findlay, Ohio, together with the customer's copy and extra copy of credits 1501-B and original and fourth copies of monthly report of sales to approved outlets.

Check, along with credit and report, is due to be completed and mailed on or before the twelfth of each month for the previous month's business.

Sales commission payment is effective with the month of April, 1953 business.

11. Ohio Oil Company Zones - The Ohio Oil Zone Offices are:

Ann Arbor, Mich.	Louisville, Ky.
Bloomington, Ind.	Mt. Vernon, Ohio
Chillicothe, Ohio	Muncie, Ind.
Columbus, Ohio	Robinson, Ill.
Dayton, Ohio	Salem, Ill.
Evansville, Ind.	South Bend, Ind.
Findlay, Ohio	Springfield, Ill.
Fort Wayne, Ind.	Terre Haute, Ind.

FEDERAL TRADE COMMISSION
6495

Commission's Exhibit 85D

(85D)

Indianapolis, Ind.
Kokomo, Ind.
Lima, Ohio
Toledo, Ohio
Urbana, Ill.

SALARY OPERATED STATION PURCHASES

12. At present the Ohio Oil Company has the following company owned stations:

Indianapolis, Ind.
Terre Haute, Ind.
Dayton, Ohio
Toledo, Ohio

There may be other locations which will be salary operated for a limited time until a new lessee has been set up.

13. Districts will assign a customer's account number for each salary operated location.

Districts will also establish the billing price basis to which each salary operated station is entitled.

Each salary operated location will receive bonus for volume as earned.

14. Normal stock requirements for salary operated stations will be covered by purchase orders issued by the Ohio Oil Company at Findlay, Ohio.

Bill shipments against Findlay originated purchase orders as specified on the purchase order to the Ohio Oil Company, Findlay, Ohio and show delivery in the "shipped to" space of order forms (1500-B, 1126-B etc.) to the salary operated station receiving the shipment.

Zone Operating Centers will set up a separate ledger account for each salary operated station headed Ohio Oil Company, Findlay, Ohio and showing a sub designation of the station involved. Remittances will be made by the Findlay Ohio Oil Office to cover.

15. Emergency stock requirements for salary operated stations will be covered by purchase orders issued by the salary operated station.

Bill shipments against local salary operated station purchase orders as specified on the purchase order to the Ohio Oil Company at the local station address.

Zone Operating Centers will set up a separate ledger account for each salary operated station headed Ohio Oil Company at the address of the salary operated location. Remittances will be made by the Ohio Oil District Office for these accounts.

This means that there will be two ledger accounts for each salary operated station.

Zone Operating Centers carrying the accounts covering salary operated station purchases will prepare the monthly Oil Company Summary Report Form 1321-B for all purchases made by salary operated stations. Issue a separate report in triplicate for each B. F. Goodrich District involved and distribute as follows:

(854

Original - Mail to Petroleum Company Tire Sales Dept. (0607), Akron.

Duplicate - Mail to The B. F. Goodrich District Manager.

Triplicate - Retain in Zone Operating Center's files.

Use the present Form 1321-B until revised forms are available. Indicate type of report by showing "(1) Salary Operated" on the second line just above the "(2) Consumption." Show "Salary Operated" on the "Totals" line just under "Oil Company Consumption Sales." List the purchases by commodity breakdown on the "Totals" line.

Sales commission will not be paid on purchases made by salary operated stations.

CONSUMPTION PURCHASES

17. A separate bulletin will be issued to cover Ohio Oil Company consumption purchases.

FEDERAL TRADE COMMISSION
DOCKET C-855 854E
725h

JAX 142

Commission's Exhibit 87

	Cincinnati	Cleveland	Detroit	Indianapolis	St. Louis	
Company-owned stations with complete facilities	63	150	134	72	121	140
Leased Stations with Complete Facilities	0	12	25	15	8	12
Company-owned Stations with Limited Facilities	0	0	0	1	0	1
Leased Stations with Limited Facilities	4	12	28	18	8	14
Jobbers	2	6	11	6	0	10
Tank Wagon Salesmen	2	4	3	3	1	5
Driver-Agt. (Salaried)	1	0	2	0	1	5
Tank Wagon Buyer	2	1	0	2	5	5
Class "A" Driver	13	11	9	11	8	13
Class "B" Driver	11	11	26	18	8	14
Tank Wagon Buyer - ?	1	1	2	2	1	1
Total	97	208	240	148	161	220

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 87
IN THE MATTER OF Socony
DATE 11/2/51 WITNESS
ACE REPORTING CO., Official Reporter
By

JAX 143

Commission's Exhibit 88

Mr. J. A. Hoban

May 7, 1953

EMBLEM OIL COMPANY
DIVISION OF UNITED REFINING COMPANY
WARREN, PENNSYLVANIA

On Tuesday, May 5, Mr. Hugh R. Logan, General Manager and Treasurer of Emblem Oil Company, phoned me from Warren, Pennsylvania requesting an opportunity to discuss a TBA marketing plan similar to that now being inaugurated with Ohio Oil Company. It seems that Mr. Logan had recently been in touch with Ohio Oil's management.

Emblem Oil is now on a purchase and resale basis and last year bought $80,000 in BFG merchandise through our Buffalo District. It is George Empson's opinion that total potential for the outlets involved would not exceed $150,000. Mr. Logan reported that the Company owns and operates more than 90 vehicles, but we have no way of knowing what portion of their BFG purchases have been going to this use.

The Elk Refining Company with headquarters at Charleston, West Virginia is also a Division of United Refining and is now handling Firestone merchandise on purchase and resale. If Emblem and Elk were combined, total volume might equal four to five hundred thousand dollars.

Mr. Logan has asked that I phone him on May 18 and, if possible, go visit him at Warren, Pennsylvania shortly thereafter. I feel that the call should be made, although present information indicates that purchase and resale is the proper marketing method for this relatively small account. It is quite probable that competition is also being invited to discuss TBA and our present as well as potential interests for the future undoubtedly should be protected.

E. J. Lewis

lmd

cc: W. C. Bray

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 88
IN THE MATTER OF Goodrich
DATE 4/7/54 WITNESS
NG CO., Official Reporter

7285

JAX 144

Commission's Exhibit 89A

To:

SALES OPERATING INSTRUCTIONS

No. WHSE.999 A

Address all correspondence to Petroleum Company Tire Sales Dept.

Date 6 13-53

Zone Mgr.	Dist Mgr Terr.	Dist Mgr Ind.	Dist Mgr Auto	Tire Oper Mgr	Gen Whse Mgr	Super Assoc Mgrs	Truck Rel Co. Tire Dep.	Sales Promo	Terr. Mgr.	Dist C.O. Mgr.	Serv. Dep.	NOTES BY	Date	NOTES BY	Date
X	X			X						X					
Field Asst	Whse Mgr	Assoc Gen Sup	Super Assoc Mgrs	Whse Mgr	Plan Rel Co. Whse Mgrs	1 area	Cross Sales Mgr	Re Sales Mgr	Cross Sales Mgr	1 area	Credit Sales Mgr				
X				X											

Subject EMBLEM OIL COMPANY

1 A market relationship has been established with the Emblem Oil Company, Warren, Penna., effective June 26, 1953, to promote and encourage the sale of B. F. Goodrich cases, tubes, batteries accessories and Auto & Home Supplies to approved Emblem Oil outlets.

The following instructions will apply.

SALES COMMISSION

2 Eligible Accounts and Rate of Commission Emblem Oil outlets whose purchases are subject to sales commission are:

Rate of Commission	Code	Type of Accounts
10%	"L"	Lessee - All Emblem Oil Dealers operating locations owned in fee or held under lease by Emblem and leased to said Dealers (except locations leased to and operated by B.F. Goodrich as one of its stores.)
10%	"D"	Dealers All other Emblem Oil Sales Contract Dealers (except such as are not approved by B.F. Goodrich.)
7½%	"J"	Jobbers All Emblem Oil Jobber accounts (except on tires and tubes purchased under B.F. Goodrich 100% Wholesaler program or sold under Agency Program 5%.)
5%	"JW"	Jobbers - All Emblem Oil Jobber Accounts on their tire and tube purchases under B.F. Goodrich 100% Wholesaler program or sold under Agency Program (Commodities other than tires and tubes take 7½% rate of commission.)
7½%	"DS"	Distributors - All Emblem Oil Distributor accounts (except on tires and tubes purchased under B.F. Goodrich 100% Wholesaler program or sold under Agency Program 5%.)
5%	"DSW"	Distributors All Emblem Oil Distributor Accounts on their tire and tube purchases under B.F. Goodrich

This Bulletin sent to BUFFALO AND PITTSBURGH DISTRICTS; CLEVELAND MASTER WAREHOUSE; CLEVELAND ZONE OPERATING CENTER.

FORM 1317 5-6-53

FEDERAL TRADE COMMISSION
EXHIBIT NO. 89A
IN THE MATTER OF Goodrich
DOCKET NO. 5785
WITNESS
DATE 11/4/57
By

28

7257

100% Wholesaler program or sold under Agency Program. (Commodities other than tires and tubes take 7½% rate of commission.)

Commodities subject to Commission - The commodites subject to sales commission are the net purchases of:

Tires & Tubes - BFG new first-class Passenger, Truck & Bus, Farm, Solids, Industrials, Vulcanized-On, Retreads, Recaps and Recapping Service.

Batteries - BFG Batteries and battery parts.

Accessories & Repair Materials - BFG Accessories (fan belts, floor mats, etc) Repair and Treading Materials, Schrader & Dill Hardware.

This classification includes the complete Schrader and Dill line and all BFG 5 digit stock number items which have the first three digits of:

310 to 314 inclusive
332 to 334 "
350 to 354 "

Auto & Home Supplies - A & HS merchandise excluding Power Lawn Mowers, Motorola Home Radios and Television Sets and major appliances.

4. Items not subject to Commission - Do not pay sales commission on purchases covering:

Refunds	Transportation Charges	Battery Equipment	Major Appliances
Reject's	Wheels Rims & Parts	Advertising	(Electric Ranges
Adjustments	Rental Batteries	Anti Freeze Testers	Water Heaters,
Stationery	Chargers & Testers	Power Lawn Mowers	Refrigerators &
Repairs	Battery Service Kits	Motorola Home Radios	Freezers, Laundry
		& Television Sets	Equip., Space
			Heaters.)

5. Net purchases - Net purchase mean total billings, at net invoice price less all returned goods and other allowances, discounts and credits but before adding Federal Excise Tax or any Sales or Use Tax and before deducting cash discount allowed or credit memos covering bonus for volume.

6. Customer Account Coding - No special series of customer accounts numbers will be assigned to Emblem Oil outlets.

Show the letter "E" after the regular customer account number assigned on all orders, billings, etc. - example 123 E.

7. Monthly Report of Sales - Emblem Oil Company will furnish Cleveland Zone Operating Center with their form #E 53 in quadruplicate for reporting sales made each month to outlets approved for payment of sales commission to Emblem Oil. Form will be broken down to list approved outlets by B. F. Goodrich District Territory and grouped by major supply points.

Obtain sales from Zone operating bookkeeping copies and report of sales made through BFGS and distributors. Sales breakdown will be (1) Tire and Tubes

FEDERAL T... DOCKET NO. 6685

7359

(89C)

and (2) Batteries, Accessories and A & H.S.

Cleveland Zone Operating will prepare report of sales in quadruplicate. Mail original and fourth copy to The Emblem Oil Company, Warren, Penna. with customer copies of credit 1301 B and check for commission, mail the second copy to The B. F. Goodrich District Manager and retain the third copy.

8. Oil Company Summary Report - Form 1321 B - Cleveland Zone Operating Center will prepare a separate report in triplicate for each Emblem Oil Zone Office and by B. F. Goodrich District territory to cover the sales on which sales commission is paid.

Distribute as follows:

Original - Mail to Petroleum Company Tire Sales Dept. (0607), Akron with salesman's copy of credit 1301-B issued.

Duplicate - Mail to The B. F. Goodrich District Manager with the second copy of report of sales.

Triplicate - Retain in Zone Operating Center files.

9. Credit for Sales Commission - Form 1301 B - Insert an extra copy (Form 1301 B) with Credit Form 1301 B and issue credit in the regular way for sales commission due each month - a separate credit for each B. F. Goodrich District territory.

Distribute copies in the regular way, except:

Customer's copy and extra copy - Mail with the original and fourth copies of report of sales and check for commission payment to Emblem Oil Company, Warren, Penna.

Salesman's copy - Mail with original Form 1321 B to Akron, Dept. 0607.

10. Sales Commission Payment - Issue one check to the Emblem Oil Company for total of all credits Form 1301 B issued for sales commission by the Zone Operating Center.

Mail check to the Emblem Oil Company, Warren, Penna. together with the customer's copy and extra copy of credits 1301 B and original and fourth copies of monthly report of sales to approved outlets.

Check, along with credit and report, is due to be completed and mailed on or before the twelfth of each month for the previous month's business.

Sales commission payment is effective with the month of July 1953 business.

SALARY OPERATED STATION EMPLOYEES

11. At present the Emblem Oil Company has only one company owned station and this station will not sell tires.

FEDERAL TRADE COMMISSION
EXHIBIT 6715 89C
7251

JAX 147

Commission's Exhibit 91C

(91C)

THE B. F. GOODRICH COMPANY

The number of Oil Company Outlets served by The B. F. Goodrich Company on whose purchases Commission was paid.

	As of 12/31/46	As of 12/31/47	As of 12/31/48	As of 12/31/49	As of 12/31/50	As of 12/31/51	As of 12/31/52	As of 6/30/53
Texas Co.								
Direct								
Factory or District	N.A.	N.A.	N.A.	N.A.	840	966	989	1,015
Through BFGS	N.A.	N.A.	N.A.	N.A.	479	536	516	595
Indirect								
Through Distributors	N.A.	N.A.	N.A.	N.A.	438	743	1,258	1,390
Total Outlets	N.A.	967	1,508	1,696	#1,974	2,245	2,763	3,000
Conoco								
Direct								
Factory or District	-	-	-	-	-	-	371	458
Through BFGS	-	-	-	-	-	-	176	170
Indirect								
Through Distributors	-	-	-	-	-	-	534	489
Total Outlets	-	-	-	-	-	-	1,081	1,117
Shell American								
Direct								
Factory or District	N.A.	N.A.	N.A.	N.A.	48	58	40	37
Through BFGS	N.A.	N.A.	N.A.	N.A.	14	21	16	24
Indirect								
Through Distributors	N.A.	N.A.	N.A.	N.A.	4	2	8	4
Total Outlets	N.A.	N.A.	N.A.	N.A.	66	81	64	65
Jenney Mfg.								
Direct								
Factory or District	N.A.	N.A.	N.A.	N.A.	N.A.	27	22	24
Through BFGS	N.A.	N.A.	N.A.	N.A.	N.A.	41	39	48
Indirect								
Through Distributors	N.A.	N.A.	N.A.	N.A.	N.A.	75	106	111
Total Outlets	N.A.	N.A.	N.A.	N.A.	N.A.	143	167	183
Ohio Oil Co.								
Direct								
Factory or District	-	-	-	-	-	-	-	801
Through BFGS	-	-	-	-	-	-	-	256
Indirect								
Through Distributors	-	-	-	-	-	-	-	136
Total Outlets	-	-	-	-	-	-	-	593

[illegible] Oil Co. account not established until August 1953.

Philadelphia Zone failed to furnish data in 1950 relative to number of active outlets served.

* Conoco contract not established until February 1952.

FEDERAL TRADE COMMISSION
DOCKET NO. 6445 [illegible] 91-C

* Ohio Oil Co. account not established until February 1953.

7257

U.S.
11 53

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 94
IN THE MATTER OF Goodrich
DATE 11/2/54 WITNESS
ACE REPORTING CO., Official Reporter
By

(CX 1092)

THE B. F. GOODRICH COMPANY

OIL COMPANY SALES AND COMMISSION PAYMENTS

	1946	1947	1948	1949	1950	1951	1952	6 Mos. Accum. 1953
The Texas Co.								
Total Commission Payments	N.A.	N.A.	$ 712,744	$ 673,863	$ 955,753	$ 933,830	$ 1,092,128	$ 583,959
Total Sales	$5,409,495	$7,544,325	$8,735,215	$8,401,775	$11,920,724	$11,405,718	$12,747,661	$6,789,563
Conoco								
Total Commission Payments	-	-	-	-	-	-	-	-
Total Sales	-	-	-	-	-	-	247,657	242,556
Jenney Mfg. Co.							2,918,391	2,898,981
Total Commission Payments	N.A.	N.A.	N.A.	N.A.	N.A.	34,611	41,482	19,464
Total Sales	171,932	307,055	406,876	376,370	493,425	352,865	437,509	196,525
Shell American								
Total Commission Payments	N.A.	N.A.	N.A.	N.A.	N.A.	25,097	27,451	13,215
Total Sales	195,593	211,763	197,108	197,508	219,995	250,979	274,514	132,143
Ohio Oil								
Total Commission Payments	-	-	-	-	-	-	-	33,505
Total Sales	-	-	-	-	-	-	-	344,139
Grand Total - Commission Payments	$501,862	$ 647,748	$ 747,863	$ 742,093	$ 970,208	$ 993,738	$ 1,408,717	$ 892,699
Grand Total - Sales	$5,777,020	$8,063,143	$9,339,199	$8,975,653	$12,634,144	$12,009,562	$16,378,075	$10,361,341

Commission payments for years 1951 to 1953 (6 Mos.) inc. taken from Dept. 0607 summary sheets.
Commission payments for years 1946 to 1950 inc. taken from Dept. 9290 sales records.

D.L.S.
9/11/53

JAX 148
Commission's Exhibit 92

JAX 149

Commission's Exhibit 94A

94-A

COPY

THE TEXAS COMPANY New York, N.Y., December 5, 1952

TBA PROGRAM
ACCOUNT ANALYSIS-
1952 VOLUME

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 91-A
IN THE MATTER OF B. F. GOODRICH COMPANY
DATE OCT 16 1956 WITNESS
ACE REPORTING CO., Official Reporters
By MONICK

Messrs. J. K. Pannill (5)
L. F. Raymond (5)
D. B. Monroe (5)
H. E. Paul (4)

Gentlemen:

We are working very closely with the management of the tire companies in an effort to formulate plans which we think will help to overcome, during 1953, many of our TBA sales obstacles. If we are to attack these problems successfully, and produce the desired improvement, it will be necessary for our respective organizations to carefully examine the present sales activities on these products with Texaco consignees, distributors, and dealers.

Jointly with each tire company, we expect, first to inaugurate a specific campaign with reference to interesting Texaco consignees and distributors in selling a complete line of TBA products. Particular stress will be laid on those who now handle tires and tubes but do not handle batteries and auto supplies. Similar promotions will also be worked out later for the service station dealers. We propose to launch these campaigns in the nature of a program to be followed throughout the year rather than a concerted drive of short duration. Certain statistics on results obtained in 1952 will be necessary in order to assist us in developing these programs.

Will you please request the Divisions to prepare a statement as per sample attached for each type of Texaco account ("B", "E", "C" and "D"). Each individual account's total 1952 purchases will be the determining factor when grouping them into the various dollar volume brackets shown.

Separate statements in duplicate covering purchases from Firestone and from Goodrich should be furnished this office not later than February 15, 1953. The information necessary for the preparation of these statements will be readily available from Form S-40 cards just as soon as the December Forms S-47 have been posted.

We direct your particular attention to the note at the bottom of the sample statement. The supplemental statements called for are to cover the purchases by consignees and distributors who operate, in whole or in part, retail stores handling a more or less complete line of tire company products.

Sufficient copies of this letter and attachment are furnished you for forwarding one copy to each Division.

Very truly yours,

/S/ Norton Bronson

MAW:SD
WM: WBH

7303

JAX 150

Commission's Exhibit 98

BFG

The B. F. Goodrich Company

Tire and Equipment Division

Akron, Ohio

Oct. 6, 1955

Mr. Norton Bronson, Mgr.
Tire Sales Division
The Texas Company
135 E. 42nd Street
New York 17, N. Y.

Dear Mr. Bronson:

B. F. Goodrich will, in accordance with our verbal understanding covered in a prior discussion, pay The Texas Company a service commission of five per cent (5%) on the sale of B. F. Goodrich TBA merchandise sold on extended credit terms to holders of Texaco credit cards.

This program became effective September 1, 1955. Details covering our Operating Instructions to the B. F. Goodrich Stores selling Texaco gasoline who are affected by this program have been sent to you in accordance with your request.

Very truly yours,

THE B. F. GOODRICH COMPANY

Manager,
Petroleum Company Tire Sales

H N ROBERTS
lmc

FIRST IN RUBBER

7306

JAX 151

Commission's Exhibit 96

The B. F. Goodrich Company

Tire and Equipment Division

Akron, Ohio

Oct. 31, 1955

Mr. Horton Bronson, Mgr.
Tire Sales Division
The Texas Company
135 E. 42nd Street
New York 17, N. Y.

Dear Mr. Bronson:

B. F. Goodrich will, effective October 1, 1955, pay The Texas Company a commission of 2½% on the sale of recapped tires produced from B. F. Goodrich Camelback sold to Texas Company by B. F. Goodrich approved supply point distributors.

As you know, our former program covered the sale of recapped tires produced in B. F. Goodrich store-operated recap plants only. There is no change in our former program and the sale of such recapped tires that are produced in those plants will still be subject to the regular rate of commission.

This change in program clears up a problem that has existed for some time, due to the fact that independent distributors operating their own recap plant have sold recapped tires to your dealers and there was no provision to include such sales in your sales volume on which commissions have been paid.

Operating Instructions covering the procedure for handling this new phase of our marketing program will be issued within the next few days and sufficient copies will be forwarded to you for distribution to your organization.

Very truly yours,

THE B. F. GOODRICH COMPANY

H N Roberts

Manager,
Petroleum Company Tire Sales

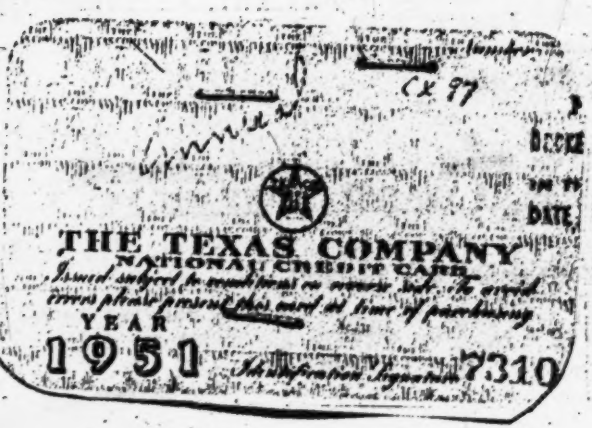
H N ROBERTS
lmc

FIRST IN RUBBER

73251

JAX 152

Commission's Exhibits 97-98



DERAL TRADE COMMISSION
NO. 6485 EXHIBIT NO. 97
MATTER OF B. F. GOODRICH COMPANY
OCT 16 1956 WITNESS Dan Hart
AGE REPORTING CO., Official Reporter
By MONICA

DERAL TRADE COMMISSION
NO. 6485 EXHIBIT NO. 98
MATTER OF B. F. GOODRICH COMPANY
OCT 16 1956 WITNESS Dan Hart
AGE REPORTING CO., Official Reporter
By MONICA

JAX 153

Commission's Exhibit 99

99

THE TEXAS COMPANY
135 EAST 42nd STREET
NEW YORK 17, N. Y.

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 99
IN THE MATTER OF E. F. DROPPO COMPANY
DATE OCT 16 1958 WITNESS
ACE REPORTING CO., Official Reporter
By

EQUIPMENT GENERALLY MADE AVAILABLE BY THE TEXAS COMPANY TO DEALERS

Gasoline Computing Pumps and Pump Globes
Underground Tanks
Compressors
Lifts
Air Stands
Air Wells
Lubsters
Kerosine Outfits
Motor Oil Can Racks
Road Map Holders
Registered Rest Room Pledge Frames and Key Tags
Signs of Various Types, including:
- 6 ft. diameter Trade Mark Sign, including Pole
- Marfak Sign
- Registered Rest Room Sign
- Motor Oil Sign
- Brand Name Sign
- Price Signs
- Decalcomanias
- "No Smoking" Signs

Porcelain Enamel Bands and Plastic Letters

JAX 154

Com 100-A

Commission's Exhibit 100A

Form G-77-11-61-1956

LEASE

Agreement dated the _____ day of _____, 19____, by and between

_____

_____

(lessor) and THE TEXAS COMPANY, a Delaware corporation, having a place of business at _____

_____ (lessee)

(1)—Premises Leased. Lessor hereby leases unto lessee a tract of land, with the improvements thereon, in the City of _____, County of _____

State of _____, described as follows:

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 100-A
IN THE MATTER OF B. F. GOODRICH COMPANY
DATE OCT 17 1956 WITNESS
ACE REPORTING CO., Official Reporter
By BROWICK

Together with all appurtenances thereto and all right, title and interest of lessor in and to any and all roads, streets and ways bounding the said premises;

Together with the buildings, improvements, fixtures, equipment and facilities of the lessor now located on said premises as follows:

(2)—Term. TO HAVE AND TO HOLD for the term of _____ years, from and after the _____ day of _____, Nineteen Hundred _____ (_____, 19____) but subject to termination by lessee at the end of the first year or any subsequent year upon thirty (30) days' prior written notice from lessee to lessor.

Commission's Exhibit 1098

(2)—Rental. Lessee agrees to pay the following rent by said premises:—

Lessee agrees that rental shall be payable in monthly installments and that if any installment thereof shall be due and unpaid for ten (10) days after written notice of such default has been delivered to the demised premises or the lessee, at its place of business as shown in this lease, lessor shall then have the right to terminate this lease on thirty (30) days' written notice to lessee.

Lessee, at its option, may apply at any time such rental or any installment thereof to the payment of any indebtedness due or to become due from lessee to lessor. Such application shall be deemed payment of such rental.

(4)—Maintenance. Lessee agrees to maintain said premises and improvements, fixtures, plumbing, heating, and electric wiring, in good repair, and to paint same according to lessee's specifications when deemed necessary by the opinion of the lessee during the term of this lease, and to rebuild within sixty (60) days any structures on said premises damaged or destroyed, in the event of lessee's failure to do so, lessee, at its election, may either terminate the lease on thirty (30) days' notice to lessee, in which event rental shall abate from the date of destruction or damage, or do the necessary repairing or rebuilding at the expense of the lessee and have the right to apply accruing rentals for the purpose of reimbursing itself for the principal expenditure, together with interest at six per cent. If, prior to and/or during the time the premises are undergoing repairs, the use thereof by lessee is materially interfered with, the rent accruing during such period or periods shall be abated.

START

(5)—Removal of Property. Lessee shall have the right at any time during the continuance of this lease or within thirty (30) days after its termination to move and remove all buildings, and improvements, fixtures, equipment and other property owned by lessee or placed on said premises by lessee during the term of this or any previous lease, or any extension or renewal thereof.

(6)—Lessee's Right of Termination. Should lessee be prevented from establishing or continuing the business of distributing petroleum products on the whole or any part of said premises, due to any law, ordinance or regulation by any Federal, State or Municipal authority, or due to any restriction on said premises and said restriction is not removed within ninety (90) days from the date thereof, then, in either of such events, lessee may terminate this lease upon giving lessor thirty (30) days' written notice of termination, in which event lessee shall be relieved of all obligations under this lease, including all liability for rent from the date lessee was prevented in any manner from conducting such business, and all rental obligations shall be adjusted between the parties as of such date. If, during the term of this lease, a part only of said premises be taken for public use under right of eminent domain, and if the remainder, in the opinion of the lessee, is not suitable for its purpose, lessee, at its option, may cancel and terminate this lease, but if it shall not elect so to do, the monthly rental thereafter to be paid shall be reduced by an amount which bears the same ratio to that herein provided for as the area taken bears to the total area prior to such taking.

(7)—Damages for Defect in Title. Lessor covenants that he is well seized of said premises, has good right to lease the same, and warrants and agrees to defend the title thereto; and to reimburse and hold lessee harmless from all damages and expenses which lessee may suffer by reason of any restriction, encumbrance or defect in such title.

(8)—Taxes and Encumbrances. Lessor agrees to pay all taxes, assessments and obligations which are or may become a lien on the demised premises and improvements as they become due. If lessor should fail to do so, lessee shall have the right to make such payments for the account of lessor, in which event it shall be subrogated to all the rights of the holder of such lien, and in addition thereto shall have the right to apply accruing rentals in satisfaction of such obligations; or lessee, in the event of a foreclosure of any such lien and the sale of said demised premises and improvements, shall have the right to buy in said premises and improvements for its own account.

(9)—Options to Purchase. Lessor hereby grants to lessee the exclusive right, at lessee's option, to purchase the demised premises, together with all structures, improvements, and equipment thereon, free and clear of all liens and encumbrances (including leases which were not on the premises at the date of this lease) at any time during the term of this lease or any extension or renewal thereof,

(a) for the sum of _____

_____dollars, it being understood that if any part of said premises be condemned, the amount of damages awarded to or accepted by lessor as a result thereof shall be deducted from said sum; (b) on the same terms and at the same price as any bona fide offer for said premises received by lessor and which offer lessor desires to accept. Upon receipt of a bona fide offer, and each time any such offer is received, lessor shall immediately notify lessee in writing of the full details of such offer, including the name and address of the offeror, whereupon lessee shall have thirty (30) days after receipt of such notice in which to elect to exercise lessee's prior right to purchase. No sale of or transfer of title to said premises shall be binding on lessee unless and until the foregoing requirements are fully complied with. If lessee elects to exercise lessee's prior right to purchase pursuant to any such bona fide offer, it is agreed that the terms and conditions set forth in the next to the last paragraph hereof shall govern such purchase.

Each such option herein granted shall be independent of the other, shall be pre-emptive and continuing, and shall be binding upon lessor, lessor's heirs, devisees, legal representatives, successors and assigns. The election by lessee not to purchase said premises in the case of any bona fide offer referred to in (b) above shall not terminate or in any wise affect either of such options but each shall thereafter continue unaffected as set forth in this paragraph.

Upon receipt of lessee's notice of election to exercise either of the options granted herein, which notice shall be given in accordance with the Notice Clause of this lease, lessor shall immediately deliver to lessee, at lessor's expense, a complete abstract of title or other evidence of title satisfactory to lessee, and shall also furnish, at lessor's expense, an up-to-date survey by a licensed or registered professional engineer or surveyor showing elevation of property and corners marked with concrete monuments, upon receipt of which the lessee shall have a reasonable time in which to examine title, and upon completion of such examination, if title is found satisfactory, and upon tender of the purchase price to lessor, lessor shall promptly deliver to lessee a good and sufficient Warranty Deed conveying the premises to lessee free and clear of all encumbrances (including, but without limiting, any rights of dower or curtesy). All rentals and taxes shall be prorated between grantor and grantee to the date of delivery of the aforesaid deed.

Lessee's notice of election to purchase pursuant to either of the options granted in this clause shall be sufficient if deposited in the mail addressed to lessor or if sent by telegraph at or before midnight of the day on which the option period expires.

(10)—Application of Option Purchase Price. In event accruing rentals are insufficient to reimburse lessee for expenditures made by lessee as authorized hereunder, and in event lessee exercises the option to purchase the demised premises, lessee may apply such part of the purchase price as is necessary to (a) completely reimburse itself for such expenditures and (b) pay any other indebtedness of lessor to lessee, together with interest at six per cent.

(11)—Option to Extend Term. (a) The lessor hereby grants to lessee the right and option to extend this lease for

JAX 156

Commissioner's Exhibit 100C

FEDERAL TRADE COMMISSION

DOCKET NO. 8485 FILED NO. 100-C

Lessee shall notify lessor in writing of his election to extend this lease along with plans relative to the date of the expiration of the term of this lease and subject thereto shall be deemed exercised if given in the manner hereinafter provided.

(b) If at any time during the term of this lease or any extension or renewal thereof, lessor shall receive a bona fide offer to lease the demised premises for a term to begin immediately on the expiration thereof, or any extension or renewal thereof, and lessor desires to accept such offer, lessor shall immediately submit to lessee a written copy of such offer with a full disclosure of all terms and provisions thereof and lessee shall have thirty (30) days after receipt thereof in which to elect to lease/sell privileges upon the same terms and provisions contained in such offer.

(c) In the event lessor is granted an option to extend under the provisions of paragraph (11)(a), it is agreed that if lessee does not in any instance elect to lease said premises in accordance with the provisions of paragraph (11)(b), such failure shall in no way limit or affect lessee's right and option to extend this lease as provided in paragraph (11)(a).

(12)—Holdover. If, at the expiration or termination of this lease or any extension thereof, lessee shall hold over for any reason, the tenancy of lessee thereafter shall be from month to month only, and be subject to all other terms and conditions of this lease, in the absence of a written agreement to the contrary.

(13)—Assignment and Sub-Letting. Lessee consents that lessor may assign or sub-let the premises, provided that lessee shall remain liable to lessor for the performance of all the terms hereof.

(14)—Notice. Notices from lessee to lessor shall be sufficient if delivered to lessor, or if sent by telegraph, or if placed in the United States mails addressed to the lessor at the address shown in this lease. Notices from lessor to lessee shall be sufficient if posted in the United States mails, postage prepaid, addressed to the lessee's place of business as shown in this lease.

(15)—Change in Ownership. No change in ownership, assignment of this lease, or assignment of rentals hereunder shall be binding upon lessee unless and until lessee has been furnished either the original instrument evidencing such transfer, or assignment, or a true copy thereof.

(16)—Successors and Assigns. This agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors or assigns.

(17)—Entirety of Agreement. No prior stipulation, agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in the provisions of this lease.

(18)—Approval and Signing by Lessee. This agreement, whatever the circumstances, shall not be binding on the lessee unless and until approved and signed in its behalf by an Executive Officer, or any of the following employees of the Domestic Sales Department: General Manager, Assistant General Manager, Manager Dealer Sales, Assistant to Manager, Manager Real Estate Division, Territorial Manager, Assistant Territorial Manager or Division Manager.

IN WITNESS WHEREOF lessor and lessee have hereunto subscribed their names the day and year first above written.

_____ (Seal)

_____ (Seal)

Witness: _____ _____ (Seal)

Witness: _____ _____ (Seal)

(Lessor)

THE TEXAS COMPANY (Lessee)

Attest: _____ By _____

Approved as to Terms _____ Description _____ Form _____

7318

(For Acknowledgments see reverse side)

JAX-15

Commission's Exhibit 101A

Form G-178--11-31--M5

LEASE

Agreement dated the _____ day of _____, 19____, by and between

_____

_____

(lessor) and THE TEXAS COMPANY, a Delaware corporation, having a place of business at _____

_____ (lessee).

(1)—Premises Leased. Lessor hereby leases unto lessee a tract of land, with the improvements thereon, in the City of _____, County of _____, State of _____, described as follows:

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 101-A
IN THE MATTER OF B. F. GOODRICH COMPANY
DATE OCT 17 1958 WITNESS
ACE REPORTING CO., Official Reporter
By MONEY

Together with all appurtenances thereto and all right, title and interest of lessor in and to any and all roads, streets and ways bounding the said premises;

Together with the buildings, improvements, fixtures, equipment and facilities of the lessor now located on said premises as follows:

(2)—Term. TO HAVE AND TO HOLD for the term of _____ years, from and after the _____ day of _____, Nineteen Hundred _____ (_____, 19____) but subject to termination by lessee at the end of the first year or any subsequent year upon thirty (30) days' prior written notice from lessee to lessor.

(3)—Rental. Lessee agrees to pay the following rent for said premises:—

Lessee agrees that rental shall be payable in monthly installments and that if any installment thereof shall be due and unpaid for ten (10) days after written notice of such default has been delivered to the Division Manager of the lessee, at its place of business as shown in this lease, lessor shall then have the right to terminate this lease on thirty (30) days' written notice to lessee.

Lessee, at its option, may apply at any time such rental or any installment thereof to the payment of any indebtedness due or to become due from lessor to lessee. Such application shall be deemed payment of such rental.

Commission's Exhibit 101B

(4)—Maintenance. (a) During the term of this lease, lessee shall at lessee's expense make minor repairs to said premises, buildings and improvements, including repairs to plumbing, heating equipment, electrical wiring and fixtures, and replace broken windows, provided the total cost of said repairs and/or replacement of windows does not exceed $50.00 at any one time. Lessee agrees to paint the buildings and improvements whenever it deems such painting necessary.

(b) Lessee agrees at lessee's expense to make all other repairs to the said premises, buildings and improvements, equipment and fixtures furnished by lessor, and to keep the same in good repair during the term of this lease, as well as to replace any equipment furnished by lessor which becomes worn-out or damaged and cannot in the opinion of lessee, be placed in first-class condition by reasonable repairs. In event lessor shall fail promptly to make repairs or replacements as provided for herein, lessee is authorized to make the necessary repairs or replacements and to apply accruing rentals to reimburse itself for such expenditures.

(c) Lessor further agrees that in the event any structures on said premises are damaged or destroyed, lessor shall notify lessee within twenty (20) days from the date of such destruction or damage whether or not lessor intends to restore the premises to their former condition and if lessor so elects to restore the premises to their former condition, lessor shall replace within sixty (60) days any such structures damaged or destroyed. If lessor fails to notify lessee within said twenty (20) day period or notifies lessee that lessor does not intend to restore the premises, or fails to restore the same, lessee at its election may immediately terminate the lease effective as of the date the damage or destruction occurred, in which event rental shall abate from the date of destruction or damage, or do the necessary repairing or rebuilding itself and have the right to apply accruing rentals to reimburse itself for the principal expenditure, together with interest at six per cent. If prior to and/or during the time the premises are undergoing repairs the one thereof by lessee is materially interfered with, the rent accruing during such period or periods shall abate.

(5)—Removal of Property. Lessee shall have the right at any time during the continuance of this lease or within thirty (30) days after its termination to move and remove all buildings, and improvements, fixtures, equipment and other property owned by lessee or placed on said premises by lessee during the term of this or any previous lease, or any extension or renewal thereof.

(6)—Lessee's Right of Termination. Should lessee be prevented from establishing or continuing the business of distributing petroleum products on the whole or any part of said premises due to any law, ordinance or regulation by any Federal, State or Municipal authority, or due to any restrictions on said premises, and such prevention is not removed within ninety (90) days from the date thereof, then, in delay of such remedy, lessee may terminate this lease upon giving lessor thirty (30) days' written notice of termination, to which event lessee shall be relieved of all obligations under this lease, including all liability for rent from the date lessee was prevented by any governmental body from conducting such business, and all rental adjustments shall be adjusted between the parties as of such date. If, during the term of this lease, a part only of said premises be taken for public use under right of eminent domain and if the termination, in the opinion of the lessee, is not advisable for the purpose, lessee, at its option, may accept such termination and this lease shall, as to all that shall so to do, the monthly rental thereafter to be paid shall be reduced by an amount which bears the same ratio to that herein provided for as the area taken bears to the total area prior to such taking.

(7)—Damages for Defect in Title. Lessor covenants that he is well seized of said premises, has good right to lease the same, and warrants and agrees to defend the title thereto; and to reimburse and hold lessee harmless from all damages and expenses which lessee may suffer by reason of any restriction, encumbrance or defect in such title.

(8)—Taxes and Encumbrances. Lessor agrees to pay all taxes, assessments and obligations which are or may become a lien on the demised premises and improvements as they become due. If lessor should fail to do so, lessee shall have the right to make such payments for the account of lessor, in which event it shall be subrogated to all the rights of the holder of such lien, and in addition thereto shall have the right to apply accruing rentals in reimbursement of such obligations; or lessee, in the event of a foreclosure of any such lien and the sale of said demised premises and improvements, shall have the right to buy in said premises and improvements for its own account.

(9)—Options to Purchase. Lessor hereby grants to lessee the exclusive right, at lessee's option, to purchase the demised premises, together with all structures, improvements, and equipment thereon, free and clear of all liens and encumbrances (including leases which were not on the premises at the date of this lease) at any time during the term of this lease or any extension or renewal thereof,

(a) for the sum of _____

_____ dollars, it being understood that, if any part of said premises be condemned, the amount of damages awarded to or accepted by lessor as a result thereof shall be deducted from said sum; (b) on the same terms and at the same price as any bona fide offer for said premises received by lessor and which offer lessor desires to accept. Upon receipt of a bona fide offer, and such thing any such offer is received, lessor shall immediately notify lessee in writing of the full details of such offer, including the name and address of the person whereupon lessee shall have thirty (30) days after receipt of such notice in which to elect to exercise lessee's prior right to purchase. No sale of or transfer of title to said premises shall be binding on lessee unless and until the foregoing requirements are fully complied with. If lessee elects to exercise lessee's prior right to purchase pursuant to any such bona fide offer, it is agreed that the terms and conditions set forth in the next to the last paragraph hereof shall govern such purchase.

Each such option herein granted shall be independent of the other, shall be pre-emptive and continuing, and shall be binding upon lessor, lessor's heirs, devisees, legal representatives, successors and assigns. The election by lessee not to purchase said premises in the case of any bona fide offer referred to in (b) above shall not terminate or in any wise affect either of such options but each shall thereafter continue unrestricted as set forth in this paragraph.

Upon receipt of lessee's notice of election to exercise either of the options granted herein, which notice shall be given in accordance with the Notice Clause of this lease, lessor shall immediately deliver to lessee, at lessee's expense, a complete abstract of title or other evidence of title satisfactory to lessee, and shall also furnish, at lessee's expense, an up-to-date survey by a licensed or registered professional engineer or surveyor showing correction of property and corners marked with concrete monuments, upon receipt of which the lessee shall have a reasonable time in which to examine title, and upon completion of such examination, if title is found satisfactory, and upon tender of the purchase price to lessor, lessor shall promptly convey to lessee, by good and sufficient Warranty Deed, conveying the premises to lessee free and clear of all encumbrances (including but without limiting any rights of dower or curtesy). All rentals and taxes shall be prorated between grantor and grantee to the date of delivery of the aforesaid deed.

Lessee's notice of election to purchase pursuant to either of the options granted in this clause shall be sufficient if deposited in the mail addressed to lessor or if sent by telegraph at or before midnight of the day on which the option period expires.

(10)—Application of Option Purchase Price. In event accruing rentals are insufficient to reimburse lessee for expenditures made by lessee on unexpired leaseholds, and in event lessee exercises the option to purchase the demised premises, lessee may apply such part of the purchase price as is necessary to (a) completely reimburse itself for such expenditures and (b) pay any other indebtedness of lessor to lessee, together with interest at six per cent.

(11)—Option to Extend Term. (a) The lessor hereby grants to lessee the right and option to extend this lease for

_____

_____

_____

_____

_____

Lessee shall notify lessor in writing of its election to extend this lease sixty (60) days prior to the date of the expiration of the term of this lease and notice thereof shall be deemed sufficient if given in the manner hereinafter provided.

(b) If at any time during the term of this lease or any extension or renewal thereof, lessor shall receive a bona fide offer to lease the demised premises for a term to begin subsequent to the present demised term or any extension or renewal thereof, and lessor desires to accept such offer, lessor shall immediately submit to lessee a written copy of such offer with a full disclosure of all terms and provisions thereof and lessee shall have thirty (30) days after receipt thereof in which to elect to lease said premises upon the same terms and provisions contained in such offer.

7321

FEDERAL TRADE COMMISSION
EXHIBIT NO. 6486

Commission's Exhibit 101C

FEDERAL TRADE COMMISSION

6485 Exhibit No. 101

(e) In the event lessee is granted an option to extend under the provisions of paragraph (11) (a), it is agreed that if lessee does not in any instance elect to lease said premises in accordance with the provisions of paragraph (11) (b), such failure shall in no way limit or affect lessee's right and option to extend this lease as provided in paragraph (11) (a).

(12)—Holdover. If, at the expiration or termination of this lease or any extension thereof, lessee shall hold over for any reason, the tenancy of lessee thereafter shall be from month to month only and be subject to all other terms and conditions of this lease, in the absence of a written agreement to the contrary.

(13)—Assignment and Sub-Letting. Lessee covenants that lessee may assign or sub-let the premises, provided that lessee shall remain liable to lessor for the performance of all the terms hereof.

(14)—Notice. Notices from lessee to lessor shall be sufficient if delivered to lessor, or if sent by telegraph, or if placed in the United States mails addressed to the lessor at the address shown in this lease. Notices from lessor to lessee shall be sufficient if posted in the United States mails, postage prepaid, addressed to the lessee's place of business as shown in this lease.

(15)—Change in Ownership. No change in ownership, assignment of this lease, or assignment of rentals hereunder shall be binding upon lessee unless and until lessee has been furnished either the original instrument evidencing such transfer, or assignment, or a true copy thereof.

(16)—Successors and Assigns. This agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors or assigns.

(17)—Entirety of Agreement. No prior stipulation, agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in the provisions of this lease.

(18)—Approval and Signing by Lessee. This agreement, whatever the circumstances, shall not be binding on the lessee unless and until approved and signed in its behalf by an Executive Officer, or any of the following employees of the Domestic Sales Department: General Manager, Assistant General Manager, Manager Dealer Sales, Assistant to Manager, Manager Real Estate Division, Territorial Manager, Assistant Territorial Manager or Division Manager.

IN WITNESS WHEREOF lessor and lessee have hereunto subscribed their names the day and year first above written.

_____ (Seal)

_____ (Seal)

Witness: _____ _____ (Seal)

Witness: _____ _____ (Seal)

(Lessor)

THE TEXAS COMPANY (Lessee)

Attest: _____ By _____

Approved as to Terms _____ Description _____ Form _____

(For Acknowledgments see reverse side)

7322

JAX 169

Commission's Exhibit 102A

Com 102-A

LEASE

Agreement dated the _____ day of _____ 19__ by and between

_____

_____

(lessor) and THE TEXAS COMPANY, a Delaware corporation, having a place of business at _____

_____ (lessee).

(1)—Premises Leased. Lessor hereby leases unto lessee a tract of land, with the improvements thereon, in the City of _____, County of _____, State of _____, bounded and described as follows:

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 102-A
IN THE MATTER OF B. F. GOODRICH COMPANY
DATE OCT 17 1956 WITNESS
ACE REPORTING CO., Official Reporters
BY MONICK

Together with all appurtenances thereto and all right, title and interest of lessor in and to any and all roads, streets and ways bounding the said premises.

(2)—Term. TO HAVE AND TO HOLD for the term of _____ years, from and after the _____ day of _____, Nineteen Hundred _____ (_____, 19__) but subject to termination by lessee _____ upon _____ (_____) days' written notice from lessee to lessor.

(3)—Rental. Lessee agrees to pay the following rent for said premises:—

Lessee agrees that rental shall be payable in monthly installments and that if any installment thereof shall be due and unpaid for ten (10) days after written notice of such default has been delivered to the Division Manager of the lessee, at its place of business as shown in this lease, lessor shall then have the right to terminate this lease on thirty (30) days' written notice to lessee.

Lessee, at its option, may apply at any time such rental or any installment thereof to the payment of any indebtedness due or to become due from lessor to lessee. Such application shall be deemed payment of such rental.

Commission's Exhibit 1028

(4)—Ownership and Removal of Buildings and Property. All buildings, improvements, fixtures, equipment, and other property owned by the lessee, or erected or placed on said premises by lessee during the term of this lease, or any extension or renewal thereof, shall be the property of and belong exclusively to the lessee, free from any lien or encumbrance. It is understood that the lessee has the right to remove or replace buildings, fixtures, aboveground equipment, underground tanks and other removable property at any time during the term of this lease at its sole discretion, and that upon the termination of this lease as herein provided or otherwise, the lessee shall have the right to sever and remove from said premises all buildings, improvements, fixtures, equipment and other property owned by the lessee or erected or placed upon said premises by the lessee. It is understood, however, that the lessee is under no obligation to remove the same or any part thereof, but that in the event of lessee's failure to do so within thirty (30) days after the date of the termination of this lease, such buildings and improvements not removed from said premises shall become the sole property of the lessor.

(5)—Lessee's Right of Termination. Should lessee be prevented from establishing or continuing the business of distributing petroleum products on the whole or any part of said premises, due to any law, ordinance or regulation by any Federal, State or Municipal authority, or due to any restriction on said premises and said restriction is not removed within ninety (90) days from the date thereof, then, in either of such events, lessee may terminate this lease upon giving lessor thirty (30) days' written notice of termination, in which event lessee shall be relieved of all obligations under this lease, including all liability for rent from the date lessee was prevented in any manner from conducting such business, and all rental adjustments shall be adjusted between the parties as of such date. If, during the term of this lease, a part only of said premises be taken for public use under right of eminent domain, and if the remainder, in the opinion of the lessee, is not suitable for its purposes, lessee, at its option, may cancel and terminate this lease, but if it shall not elect so to do, the monthly rental thereafter to be paid shall be reduced by an amount which bears the same ratio to that herein provided for as the area taken bears to the total area prior to such taking.

(6)—Damages by Suits to Title. (a) Lessor covenants that he is well seized of said premises, has good right to lease the same, that said premises are free and clear of all liens or encumbrances, except as hereinabove set forth, and covenants and agrees to defend the title thereto; and at lessee's own expense agrees to furnish lessee with an abstract of title or a title policy brought down to date; and to reimburse and hold lessee harmless from all damages and expenses which lessee may suffer by reason of any restriction, encumbrance or defect in such title.

(b) Liens and Encumbrances:

(7)—Destruction by Fire, etc. If, by fire, earthquake, the elements or any cause not due to lessee's negligence, the improvements now or hereafter existing on said premises are destroyed or so damaged as substantially to interfere with the business of lessee and/or its sub-tenants, or any of them, lessee shall have the right at its option, to be exercised within ten (10) days after such event, to terminate this lease and shall be thereupon released from all further obligations hereunder. Such termination shall be effective as of the date of such destruction or damage and lessee shall repay to lessor any rentals paid in advance for the time subsequent to such damage or destruction.

(8)—Taxes.

(9)—Assessments. Lessee shall in no event be responsible for or assume any obligation to pay any extraordinary or future assessments for street or sidewalk construction, paving or improvements, street repairs, street widenings, sewers, water lines, or assessments of any character imposed with respect to the demised premises, and the lessor agrees to assume all obligations to pay such assessments.

(10)—Water Rents. Lessee agrees to pay all water rents accruing upon said property for any period falling wholly within the term of this lease and a proper pro rata part of any such water rents for any period falling partly within said term.

(11)—Options to Purchase. Lessor hereby grants to lessee the exclusive right, at lessee's option, to purchase the demised premises, together with all structures, improvements, and equipment thereon, free and clear of all liens and encumbrances (including leases which were not on the premises at the date of this lease) at any time during the term of this lease or any extension or renewal thereof,

(a) for the sum of

_____ dollars,

understood that if any part of said premises be condemned, the amount of damages awarded to or accepted by lessor as a result thereof shall be deducted from said sum;

(b) on the same terms and at the same price as any bona fide offer for such premises received by lessor and which offer lessor desires to accept. Upon receipt of a bona fide offer, and each time any such offer is received, lessor shall immediately notify lessee in writing of the full details of such offer, including the name and address of the offerer, whereupon lessee shall have thirty (30) days after receipt of such notice in which to elect to exercise lessee's prior right to purchase. No sale of or transfer of title to said premises shall be binding on lessee unless and until the foregoing requirements are fully complied with. If lessee elects to exercise lessee's prior right to purchase pursuant to any such bona fide offer, it is agreed that the terms and conditions set forth in the next to the last paragraph hereof shall govern such purchase.

Each such option herein granted shall be independent of the other, shall be pre-emptive and continuing, and shall be binding upon lessor, lessor's heirs, devisees, legal representatives, successors and assigns. The election by lessee not to purchase said premises in the case of any bona fide offer referred to in (b) above shall not terminate or in any wise affect either of such options but such shall thereafter continue unaffected as set forth in this paragraph.

Upon receipt of lessee's notice of election to exercise either of the options granted herein, which notice shall be given in accordance with the Notice Clause of this lease, lessor shall immediately deliver to lessee, at lessor's expense, a complete abstract of title or other evidence of title satisfactory to lessee and shall also furnish, at lessor's expense, an up-to-date survey by a licensed or registered professional engineer or surveyor showing elevation of property and corners marked with aluminum monuments, upon receipt of which the lessee shall have a reasonable time in which to examine title, and upon completion of such examination, if title is found unmarketable or unsatisfactory, and upon tender of the purchase price by lessee, lessor shall promptly deliver to lessee a good and sufficient warranty deed conveying the premises to lessee free and clear of all encumbrances (including, but without limitation, any rights of dower, or curtesy). All rentals and taxes shall be prorated between grantor and grantee to the date of delivery of the aforesaid deed.

Lessee's notice of election to purchase pursuant to either of the options granted in this clause shall be sufficient if deposited in the mail addressed to lessor or if sent by telegraph at or before midnight of the day on which the option period expires.

FEDERAL TRADE COMMISSION
FILED NO. 6486 EXHIBIT NO.

F-791

1-3-63

JAX 162

Commission's Exhibit 102C

...ERAL TRADE COMMISSION
...6485

Com 102 c

(12)—Option to Extend Term. (a) The lessor hereby grants to the lessee the right and option to extend this lease for an additional period of.....years at the following rental:—

.....

.....

.....

Lessee shall notify lessor in writing of its election to extend this lease sixty (60) days prior to the date of the expiration of the term of this lease and notice thereof shall be deemed sufficient if given in the manner hereinafter provided.

(b) If at any time during the term of this lease or any extension or renewal provided for herein, lessor shall receive a bona fide offer to lease the demised premises for a term to begin subsequent to the present demised term or such extension or renewal, and the lessor desires to accept such offer, lessor will immediately submit to lessee a written copy of such proposed lease with a full disclosure of the terms and provisions thereof and lessee shall have thirty (30) days after receipt thereof in which to elect to lease said premises upon the same terms and provisions contained in such proposed lease.

(c) In the event lessee is granted an option to extend under the provisions of paragraph (12) (a), it is agreed that if lessee does not in any instance elect to lease said premises in accordance with the provisions of paragraph (12) (b), such failure shall in no way limit or affect lessee's right and option to extend this lease as provided in paragraph (12) (a).

(13)—Demolition of Buildings. The lessor hereby grants to the lessee the right to demolish any and all buildings, improvements and structures now erected upon the demised premises, and to remove the same therefrom, at such time or times as the lessee, in its judgment may deem proper, and the lessor hereby relinquishes any and all claim to any salvaged materials as a result of said demolition, and agrees that the same shall be and become the property of the lessee, to be disposed of as the lessee sees fit.

(14)—Survey. Lessor shall furnish lessee, at lessor's expense, a line and grade survey of the demised premises, prepared by a registered surveyor and in conformity with the requirements of lessee's construction department.

(15)—Construction of Service Station. Lessee hereby covenants and agrees to construct or cause to be constructed upon the demised premises a modern service station which will be completed in accordance with lessee's plans and specifications, and lessee will equip or cause the same to be equipped for operation as a service station at its convenience at an expenditure therefor of the sum of at least.....dollars. It is understood, however, that the lessee shall incur no obligation with respect to the foregoing unless and until the lessee secures the necessary permits for the erection and operation of such station as hereinafter provided.

(16)—Permits. Lessor covenants and agrees to make application for and to secure at his own expense the necessary permits for the erection and operation of the service station to be erected on the demised premises. In the event lessor fails or is unable to obtain the necessary permits then lessee shall have the right to make application for and to secure such permits in the place of the lessor or in his name, and the lessor agrees to furnish lessee with all necessary authority and to cooperate with lessee in securing said permits. In the event lessor fails or is unable to secure the necessary permits by ....., 19....., then lessee shall have the right to forthwith terminate this lease in which event the same shall become null and void and of no effect.

(17)—Holdover. If, at the expiration or termination of this lease or any extension thereof, lessee should hold over for any reason, the tenancy of lessee thereafter shall be from month to month only and be subject to all other terms and conditions of this lease, in the absence of a written agreement to the contrary.

(18)—Assignment and Sub-letting. Lessor consents that lessee may assign or sub-let the premises, or any part thereof, provided that lessee shall remain liable to lessor for the performance of all of the terms hereof.

(19)—Notice. Notices from lessee to lessor shall be sufficient if delivered to lessor, or if by telegram, or if placed in the United States mails addressed to the lessor at the address shown in this lease. Notices from lessor to lessee shall be sufficient if posted in the United States mails, postage prepaid, addressed to the lessee's place of business as shown in this lease.

(20)—Change in Ownership. No change in ownership, assignment of this lease, or assignment of rentals hereunder shall be binding upon lessee unless and until the date lessor furnishes to lessee either the original instrument evidencing such transfer or assignment, or a true copy thereof.

(21)—Successors and Assigns. This agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

(22)—Entirety of Agreement. No prior stipulation, agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in the provisions of this lease.

(23)—Approval and Signing by Lessee. This agreement, whatever the circumstances, shall not be binding on the lessee unless and until approved and signed in its behalf by an Executive Officer, or any of the following employees of the Domestic Sales Department: General Manager, Assistant General Manager, Manager Dealer Sales, Assistant to Management, Manager Real Estate Division, Territorial Manager, Assistant Territorial Manager or Division Manager.

IN WITNESS WHEREOF lessor and lessee have hereunto subscribed their names the day and year first above written.

.....(Seal)

.....(Seal)

Witness:.....

.....(Seal)

Witness:.....

.....(Seal)

(Lessor)

THE TEXAS COMPANY (Lessee)

Attest:.....

By.....

Approved as to: Terms.....Description.....Form.....

(For Acknowledgments see reverse side)

JAX 103

Commission's Exhibit 103A

Com. 103-A

LEASE

Agreement dated the _____ day of _____, 19___, by and between

_____

_____

(lessor) and THE TEXAS COMPANY, a Delaware corporation, having a place of business at _____

_____ (lessee).

(1)—Premises Leased. Lessor hereby leases unto lessee a tract of land, with the improvements thereon, in the City of _____, County of _____, State of _____, described as follows:

FEDERAL TRADE COMMISSION
DOCKET NO. 6488 COMMISSION EXHIBIT NO. 103-A
IN THE MATTER OF B. F. GOODRICH COMPANY
DATE OCT 17 1956 WITNESS _____
ACE REPORTING CO., Official Reporter
By _____

Together with all appurtenances thereto and all right, title and interest of lessor in and to any and all roads, streets and ways bounding the said premises.

(2)—Term. TO HAVE AND TO HOLD for the term of _____ years, from and after the _____ day of _____, Nineteen Hundred _____ (_____, 19___)

(3)—Rental. Lessee agrees to pay the following rent for said premises:—

Provided, however, that no rental shall accrue or become due until such time as a suitable service station, according to lessee's plans and specifications, shall have been (a) constructed upon the demised premises by the lessee as hereinafter provided, and (b) completed, equipped and delivered to lessee for the transaction of lessee's business.

Lessee agrees that rental shall be payable in monthly installments and that if any installment thereof shall be due and unpaid for ten (10) days after written notice of such default has been delivered to the Division Manager of the lessee, at its principal place of business as shown in this lease, lessor shall then have the right to terminate this lease on thirty (30) days' written notice to lessee.

Lessee, at its option, may apply at any time such rental or any [illegible] thereof to the payment of any indebtedness due or to become due from lessor to lessee. Such application shall [illegible] payment of such rental.

7328

JAX 164

Commission's Exhibit 1032

(4) Maintenance. (a) During the term of this lease, and all [illegible] premises under, either separate and replacing [illegible] at any one time. Lessee agrees to [illegible]

(b) Lessee [illegible]

(c) [illegible]

(d) [illegible]

(e) [illegible]

(f) [illegible]

(g) [illegible]

(h) [illegible]

(i) [illegible]

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JAX 165

Commission's Exhibit 103C

DISTRICT NO. 6485 EXHIBIT NO. 4193-C

(10)—Option to Purchase. Lessor hereby grants to lessee the exclusive option, of lessor's option to purchase the described premises, together with all structures, improvements, and equipment thereon, free and clear of all liens and encumbrances, including leases, (which were not on the premises at the date of this lease) at any time during the term of this lease or any extension or renewal thereof,

(a) for the sum of _____ dollars; it being understood that if any part of said premises be condemned, the amount of damages awarded to or accepted by lessor as a result thereof shall be deducted from such price,

(b) on the same terms and at the same price as any bona fide offer for said premises received by lessor and which offer lessor desires to accept. Upon receipt of a bona fide offer, and each time any such offer is received, lessor (or his assigns) shall immediately notify lessee, in writing, of the full details of such offer, including the name and address of any offeror, whereupon lessee shall have thirty (30) days after receipt of such notice in which to elect to exercise lessee's prior right to purchase. No sale of or transfer of title to said premises shall be binding on lessee unless and until these requirements are fully complied with.

Any option herein granted shall be continuing and pre-emptive, binding on the lessor's heirs, devisees, administrators, executors, or assigns, and the failure of lessee to exercise same in any one case shall not affect lessee's right to exercise such option in other cases thereafter arising during the term of this lease or any extension or renewal thereof.

Upon receipt of lessee's notice of election to exercise any option granted herein, which notice shall be given in accordance with the Notice Clause of this lease, lessor shall immediately deliver to lessee, at lessee's expense, a complete Abstract of Title or other evidence of title satisfactory to lessee, and shall also furnish, at lessee's expense, an up-to-date survey by a licensed or registered professional engineer or surveyor showing elevations of property and corners marked with concrete monuments. Upon receipt of which the lessee shall have a reasonable time in which to examine title and upon completion of such examination if title is found satisfactory, shall tender the purchase price to lessor, and lessor shall thereupon deliver to lessee a good and sufficient Warranty Deed conveying the property to the lessee free and clear of all encumbrances (including without limiting the foregoing the rights of dower and/or curtesy). All rentals and taxes shall be prorated between grantor and grantee to the date of delivery of the aforesaid deed.

Lessee's notice of election to purchase pursuant to either of the options granted in this clause shall be sufficient if deposited in the mail addressed to lessor or if sent by telegraph at or before midnight of the day on which option period expires.

(11)—Application of Option Purchase Price. In event accruing rentals are insufficient to reimburse lessee for expenditures made by lessee as authorized hereunder, and in event lessee exercises the option to purchase the demised premises, lessee may apply such part of the purchase price of as is necessary to (a) completely reimburse itself for such expenditures and (b) pay any other indebtedness of lessor to lessee, together with interest at six per cent.

(12)—Option to Extend Term. (a) The lessor hereby grants to lessee the right and option to extend this lease for

_____

_____

_____

_____

Lessee shall notify lessor in writing of its election to extend this lease sixty (60) days prior to the date of the expiration of the term of this lease and notice thereof shall be deemed sufficient if given in the manner hereinafter provided.

(b) If at any time during the term of this lease or any extension or renewal thereof, lessor shall receive a bona fide offer to lease the demised premises for a term to begin subsequent to the then current term or any extension or renewal thereof, and lessor desires to accept such offer, lessor shall immediately submit to lessee a true copy of such offer with a full disclosure of all terms and provisions thereof and lessee shall have thirty (30) days after receipt thereof in which to elect to lease said premises upon the same terms and provisions contained in such offer.

(c) In the event lessee is granted an option to extend under the provisions of paragraph (12) (a), it is agreed that if lessee does not in any instance elect to enter said premises in accordance with the provisions of paragraph (12) (b), such failure shall in no way limit or affect lessee's right and option to extend this lease as provided in paragraph (12) (a).

(13)—Holdover. If, at the expiration or termination of this lease or any extension thereof, lessee shall hold over for any reason, the tenancy of lessee thereafter shall be from month to month only and be subject to all other terms and conditions of this lease, in the absence of a written agreement to the contrary.

(14)—Assignment and Subletting. Lessee covenants that lessee may assign or sub-let the premises, provided that lessee shall remain liable to lessor for the performance of all the terms hereof.

(15)—Notice. Notices from lessee to lessor shall be sufficient if delivered to lessor, or if sent by telegraph, or if placed in the United States mails addressed to the lessor at the address shown in this lease. Notices from lessor to lessee shall be sufficient if posted in the United States mails, postage prepaid, addressed to the lessee's principal place of business as shown in this lease.

(16)—Change in Ownership. No change in ownership, assignment of this lease, or assignment of rentals hereunder shall be binding upon lessee unless and until lessee has been furnished either the original instrument evidencing such transfer, or assignment, or a true copy thereof.

(17)—Successors and Assigns. This agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors or assigns.

(18)—Entirety of Agreement. No prior stipulation, agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in the provisions of this lease.

(19)—Approval and Signing by Lessee. This agreement, whatever the circumstances, shall not be binding on the lessee unless and until approved and signed in its behalf by an Executive Officer, or any of the following employees of the Domestic Sales Department: General Manager, Assistant General Manager, Manager Lease Sales, Assistant to Manager, Manager Land Lease Division, Territorial Managers, or Division Managers.

IN WITNESS WHEREOF lessor and lessee have hereunto subscribed their names the day and year first above written.

_____ (Seal)

_____ (Seal)

Witness: _____ _____ (Seal)

Witness: _____ _____ (Seal)

(Lessor)

THE TEXAS COMPANY (Lessee)

Attest: _____ By _____

7330

Approved as to: Terms _____ Description _____ Form _____

(For Acknowledgments see reverse side)

JAX 166

Commission's Exhibit 104

(7332)

March 7, 1940.

Mr. H. W. Dodge,
The Texas Company,
135 East 42nd Street,
New York, N. Y.

Dear Mr. Dodge:

In consideration of the assistance and cooperation to be given The B. F. Goodrich Company by your sales organization in promoting the sale of Goodrich products, The B. F. Goodrich Company will pay The Texas Company, effective as of March 1st, 1940, a sales commission of five (5) per cent on all net purchases of Goodrich tires, tubes, batteries and auto supplies sold by Goodrich to the following classification of accounts:

(1) All Texaco Dealers operating locations owned in fee by The Texas Company (except where such locations are leased to Goodrich and operated by it as one of its stores).

(2) All Texaco Dealers operating locations leased to The Texas Company (except where such locations are subleased to Goodrich and operated by it as one of its stores).

(3) All Texaco Consignees.

(4) All Texaco Distributors.

The term "net purchases" is defined as total billings at net invoiced price, less all returned goods, and other allowances, discounts and credits except volume bonus and cash discount.

In addition, The B. F. Goodrich Company will pay to The Texas Company a commission of five (5) percent on all sales (i.e. made at any outlet selling Texaco products) of the aforesaid merchandise (except-

(JAX 166 *continued on next page*)

ing auto supplies) made through the use of Texaco credit cards, such commission to be figured against the net amount of the charge accepted by The Texas Company.

This agreement will continue in force until terminated by either party on one hundred and twenty (120) days' written notice to the other.

Yours very truly,

THE B. F. GOODRICH COMPANY

By .....
Vice President

ACCEPTED:

THE TEXAS COMPANY

.....

JAX 167

Commission's Exhibit 105

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THE B.F. GOODRICH COMPANY
AKRON, OHIO
June 21, 1940

Mr. E. W. Hedge, Vice President
The Texas Company
135 East 42nd Street
New York City

Dear Mr. Hedge:

This will confirm our understanding that the agreement between us, dated March 7, 1940, in respect to the sales commission payable by Goodrich to you on our sales of tires, tubes, batteries and auto supplies to Texaco Dealers, Consignees and Distributors, is amended so as to include our sales of such products to transport haulers, other than consignees and distributors, with whom you have contracts for the transportation of your products from one point to another on the basis of an agreed haulage rate.

It is understood, of course, that our tires and tubes will be sold by us direct to such haulers and that credit given the haulers will be on our own responsibility and that we will account to you monthly for the regular commission rate of 5% on all such sales.

Please indicate your acceptance of the foregoing below and return the original to the undersigned, retaining the duplicate copy for your files.

Very truly yours,

THE B. F. GOODRICH COMPANY

By_____
Vice President

ACCEPTED:

THE TEXAS COMPANY

By:_____

6 5

JAX 168

Commission's Exhibit 106

The B.F. Goodrich Company

Akron, Ohio, U.S.A.
July 22, 1941

Mr. H. A. Wright
The Texas Company
135 East 42nd Street
New York, New York

Dear Mr. Wright:

This is to confirm arrangements for sales commissions on M. D. merchandise sold to Texas outlets as specified in our agreement and The Texas Company's buying price on this merchandise for salaried stations and consumption.

Effective August 1, 1941, our sales commissions on M. D. merchandise will be 5% on sales at Dealer and Distributor Prices and 2½% on sales at Jobber Prices.

On purchases by your company for company operated stations and consumption, we shall bill M. D. merchandise at Distributor Prices, waiving the $250 initial order and $1,000 Minimum Volume requirement. The 5% Warehouse Allowance and Annual Bonus for Volume will be passed as earned.

The sales commission revenue received by your company should be considerably improved under this arrangement since our M. D. Program will bring increased sales through expansion of the lines of merchandise available.

Very truly yours,

THE B. F. GOODRICH COMPANY

Merchandise Manager
Goodrich Tire Division

J A Hoban
C C

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771

ANNUAL RECORD OF TBA PURCHASES AND COMMISSIONS FROM GOODRICH

BY DIVISIONS AND TERRITORIES
(DOLLARS)

1952		1953		1954		1955		To June 30, 1956	
Purchases	Commission	Pur.	Comm.	Pur.	Comm.	Pur.	Comm.	Pur.	Comm.
				ATLANTA DIVISION					
890,232	78,651	933,605	81,529	1,103,647	97,971	1,398,950	126,384	803,478	72,175
				DALLAS DIVISION					
822,122	64,232	830,782	65,956	921,212	72,889	1,040,498	82,677	488,971	39,997
				HOUSTON DIVISION					
1,178,841	97,472	1,180,421	104,678	1,357,399	106,567	1,576,068	135,763	792,196	69,109
				NEW ORLEANS DIVISION					
1,100,861	96,486	1,177,022	105,162	1,273,861	114,192	1,401,590	124,318	741,368	65,360
				SOUTHERN TERRITORY					
3,992,[illegible]	337,[illegible]	4,121,830	357,325	4,556,119	391,619	5,417,106	468,542	2,832,429	246,641

JAX 1[illegible]
Commission's Exhibit 114A

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 114-A
IN THE MATTER OF B. F. GOODRICH COMPANY
DATE OCT 17 1955 WITNESS
ACE REPORTING CO., Official Reporter
By MONICK

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 COMMISSION EXHIBIT NO. 114B

ANNUAL RECORD OF TBA PURCHASES AND COMMISSIONS FROM GOODRICH

BY DIVISIONS AND TERRITORIES
(DOLLARS)

1952		1953		1954		1955		To June 30, 1956	
Purchases	Commission	Pur.	Comm.	Pur.	Comm.	Pur.	Comm.	Pur.	Comm.
				BOSTON DIVISION					
342,453	31,253	414,470	41,614	515,327	46,392	646,032	60,235	314,269	26,634
				BUFFALO DIVISION					
388,743	36,327	465,152	43,054	575,800	52,068	765,104	70,576	388,955	35,796
				NEW YORK DIVISION					
1,516,295	138,725	1,746,329	160,218	1,703,537	159,446	1,998,899	188,003	987,943	93,285
				NORFOLK DIVISION					
764,948	66,741	905,447	79,657	950,788	84,491	1,101,539	98,473	509,086	45,270
				NORTHERN TERRITORY					
3,012,439	273,046	3,531,398	324,453	3,745,452	342,397	4,511,574	417,287	2,200,253	200,985

JAX 170
Commission's Exhibit 114B

7537

FEDERAL TRADE COMMISSION
DOCKET NO. 6455 COMMISSION EXHIBIT NO. -C

ANNUAL RECORD OF TBA PURCHASES AND COMMISSIONS FROM GOODRICH

BY DIVISIONS AND TERRITORIES
(DOLLARS)

1952		1953		1954		1955		To June 30, 1956	
Purchases	Commission	Pur.	Comm.	Pur.	Comm.	Pur.	Comm.	Pur.	Comm.
				CHICAGO DIVISION					
1,461,970	127,618	1,664,850	145,825	1,701,289	156,283	2,385,318	215,738	1,094,823	99,356
				DENVER DIVISION					
564,811	47,212	538,553	45,971	517,140	44,928	567,165	48,826	268,125	22,233
				MINNEAPOLIS DIVISION					
721,124	50,688	755,928	53,450	755,087	50,713	856,276	65,742	383,622	28,920
				INDIANAPOLIS DIVISION					
634,796	54,710	769,448	66,873	702,560	58,745	600,736	54,494	280,802	34,939
				CENTRAL TERRITORY					
3,382,701	280,228	3,728,579	311,919	3,676,076	310,689	4,409,495	384,800	2,128,172	185,448

JAX 171
Commission's Exhibit 114C

Item 8.

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 COMMISSION EXHIBIT NO.

114-D

ANNUAL RECORD OF TBA PURCHASES AND COMMISSIONS FROM GOODRICH

BY DIVISIONS AND TERRITORIES
(DOLLARS)

1952		1953		1954		1955		To June 30, 1956	
Purchases	Commission	Pur.	Comm.	Pur.	Comm.	Pur.	Comm.	Pur.	Comm.
BUTTE DIVISION									
237,543	18,000	286,805	16,806	185,627	12,561	219,184	16,614	138,662	11,125
LOS ANGELES DIVISION									
1,891,776	168,829	2,065,761	182,617	2,326,348	214,117	2,774,794	255,228	1,515,758	136,880
SEATTLE DIVISION									
229,768	17,747	298,862	20,874	363,722	30,309	602,891	53,919	293,354	26,302
PACIFIC COAST TERRITORY									
2,359,087	189,474	2,543,528	221,297	2,845,697	256,978	3,596,869	325,761	1,948,794	174,087
SUMMARY OF ALL DIVISION									
12,746,283	1,090,583	13,925,335	1,215,084	14,823,344	1,301,663	17,934,244	1,596,380	8,189,648	807,161

C-21

JAX 172
Commission's Exhibit 114D

Com. 115-A

ANNUAL RECORD OF TBA PURCHASES AND COMMISSIONS FROM FIRESTONE

BY DIVISIONS AND TERRITORIES
(DOLLARS)

1952		1953		1954		1955		To June 30th, 1956	
Purchases	Commission	Pur.	Comm.	Pur.	Comm.	Pur.	Comm.	Pur.	Comm.
				BOSTON DIVISION					
1,983,564	188,772	2,182,965	207,386	2,284,180	191,313	2,480,276	236,636	1,300,641	114,561
				BUFFALO DIVISION					
1,042,984	99,995	1,236,488	106,286	1,301,590	111,612	1,418,589	124,411	617,687	57,087
				NEW YORK DIVISION					
1,951,817	189,863	2,119,289	207,868	2,129,783	206,916	2,371,138	232,850	1,182,234	118,788
				NORFOLK DIVISION					
3,277,382	272,376	3,278,182	268,646	2,864,116	248,778	2,870,765	247,727	1,325,469	134,781
				NORTHERN DIVISION					
8,256,177	748,994	8,788,946	736,257	8,548,572	727,819	8,898,318	806,136	4,696,831	425,207

FEDERAL TRADE COMMISSION
DOCKET NO. 5987 OFFICIAL EXHIBIT NO. 115A
IN THE MATTER OF Goodyear Tire
DATE 7/25/57 WITNESS
ACE REPORTING CO., Official Reporter
By

JAX 173
Commission's Exhibit 115A

7910

ANNUAL RECORD OF TBA PURCHASES AND COMMISSIONS FROM FIRESTONE

BY DIVISIONS AND TERRITORIES
(DOLLARS)

1952		1953		1954		1955		To June 30th, 1956	
Purchases	Commission	Pur.	Comm.	Pur.	Comm.	Pur.	Comm.	Pur.	Comm.
				ATLANTA DIVISION					
[illegible]707,603	227,905	2,606,989	217,883	2,561,160	221,006	2,765,309	242,361	1,458,654	126,739
				DALLAS DIVISION					
2,391,549	196,383	2,270,358	193,736	2,209,472	187,000	2,666,901	235,618	1,272,726	113,143
				HOUSTON DIVISION					
1,911,131	172,050	2,100,764	182,109	2,065,615	189,837	2,086,868	190,961	844,118	76,863
				NEW ORLEANS DIVISION					
2,017,405	182,116	2,172,882	176,780	2,004,892	183,596	2,319,856	197,388	1,106,818	99,195
				SOUTHERN TERRITORY					
9,027,693	758,454	9,151,693	770,508	8,841,139	762,831	9,838,227	866,468	4,732,811	417,840

7691

FEDERAL TRADE COMMISSION
DOCKET NO. 6185 COMM'R EX. NO. 114

JAX 114
Commission's Exhibit 1158

115-B-

ANNUAL RECORD OF TBA PURCHASES AND COMMISSIONS FROM FIRESTONE

115-C

BY DIVISIONS AND TERRITORIES
(DOLLARS)

1952		1953		1954		1955		To June 30th, 1956	
Purchases	Commission	Pur.	Comm.	Pur.	Comm.	Pur.	Comm.	Pur.	Comm.
				CHICAGO DIVISION					
1,693,795	147,982	1,914,665	168,734	1,820,630	160,302	2,318,740	209,995	1,002,284	92,777
				DENVER DIVISION					
2,129,538	183,533	2,290,847	196,326	2,260,786	198,173	3,647,168	236,570	1,194,446	110,502
				MINNEAPOLIS DIVISION					
1,970,927	157,810	2,218,279	181,429	2,363,645	191,411	2,728,082	233,828	1,158,481	100,906
				INDIANAPOLIS DIVISION					
2,343,219	205,671	2,501,601	221,433	2,315,281	185,177	2,589,807	236,009	1,359,362	126,300
				CENTRAL TERRITORY					
8,137,479	694,996	8,925,392	767,922	8,760,342	735,153	10,283,797	916,102	4,714,673	430,485

7602

FEDERAL TRADE COMMISSION
DOCKET NO. 6488 COMMISSION EXHIBIT NO. 115-C

JAX 175
Commission's Exhibit 115C

760 - 175

ANNUAL RECORD OF TEA PURCHASES AND COMMISSIONS FROM FIRE ONE

1159

BY DIVISIONS AND TERRITORIES
(DOLLARS)

1952		1953		1954		1955		To June 30th, 1956	
Purchases	Commission	Pur.	Comm.	Pur.	Comm.	Pur.	Comm.	Pur.	Comm.
				BUTTE DIVISION					
1,177,567	88,291	1,275,039	100,558	1,271,234	104,182	1,738,699	152,157	677,581	60,302
				LOS ANGELES DIVISION					
1,392,672	127,372	1,309,182	129,267	1,595,129	154,347	2,034,662	195,438	1,209,009	112,317
				SEATTLE DIVISION					
1,598,143	147,884	1,459,382	137,464	1,729,945	164,173	1,836,067	175,373	885,251	85,048
				PACIFIC COAST TERRITORY					
4,168,382	362,547	4,133,603	367,288	4,596,358	422,702	5,609,428	522,968	2,771,841	257,667
				SUMMARY ALL DIVISIONS					
29,589,781	2,557,991	30,999,634	2,704,976	30,744,417	2,678,005	35,862,172	3,197,654	16,918,356	1,530,909

7603

JAX 176
Commission's Exhibit 1159

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 1159

TOTAL TTGO. DEALERS, CONSIGNEES & DISTRIBUTORS BY DIVISIONS AND NUMBER PURCHASING GOODRICH TBA

TTGO. & ers	DEALERS: Total Number	Number Purchasing Goodrich: Tires & Tubes	Batteries & Auto Supplies	Batteries	Accessories & Other Misc.	CONSIGNEES: Total Number	Number Purchasing Goodrich: Tires & Tubes	Batteries & Auto Supplies	Batteries	Accessories & Other Misc.	DISTRIBUTORS: Total Number	Number Purchasing Goodrich: Tires & Tubes	Batteries & Auto Supplies	Batteries	Accessories & Other Misc.
A	86	57	(Not Separated)			12	3	3	(Not Separated)		30	3	2	(Not Separated)	
A	123	81	" "			12	3	3	" "		28	4	3	" "	
980	154	86	" "			12	3	3	" "		26	5	5	" "	
990	210	-	76		33	13	2	-	2	1	29	4	-	3	2
A	300	-	57		29	NA	3	-	1	3	NA	4	-	2	3
A	72	35	(Not Separated)			9	0	0	(Not Separated)		21	6	6	(Not Separated)	
A	203	117	" "			9	1	1	" "		22	6	5	" "	
481	248	155	" "			8	1	1	" "		21	7	4	" "	
433	240	-	101		47	8	1	-	1	0	20	7	-	4	4
A	267	-	61		44	NA	0	-	0	0	NA	6	-	2	4
A	401	311	(Not Separated)			14	6	7	(Not Separated)		31	16	15	(Not Separated)	
A	466	364	" "			10	4	4	" "		30	15	15	" "	
928	478	347	" "			8	3	3	" "		29	13	13	" "	
961	775	-	318		496	10	3	-	3	3	29	16	-	8	10
A	775	-	318		496	NA	3	-	3	3	NA	16	-	8	10
A	187	109	(Not Separated)			91	28	16	(Not Separated)		36	9	8	(Not Separated)	
A	267	169	" "			88	24	18	" "		35	9	7	" "	
454	278	171	" "			89	25	20	" "		36	10	9	" "	
493	322	-	55		147	90	18	-	16	12	36	13	-	6	3
A	236	-	52		117	NA	22	-	9	6	NA	6	-	2	3
A	444	273	(Not Separated)			34	16	13	(Not Separated)		121	32	25	(Not Separated)	
A	536	388	" "			27	14	13	" "		117	29	24	" "	
014	542	425	" "			28	13	10	" "		123	23	14	" "	
176	395	-	266		256	47	12	-	9	9	123	21	-	14	11
A	410	-	185		236	NA	11	-	1	6	NA	19	-	4	8
A	64	49	(Not Separated)			106	27	25	(Not Separated)		59	4	4	(Not Separated)	
A	65	50	" "			99	22	18	" "		59	4	4	" "	
344	77	58	" "			98	21	19	" "		70	7	6	" "	
433	50	-	24		47	99	22	-	12	14	73	6	-	2	3
A	66	-	17		56	NA	21	-	9	8	NA	9	-	4	5
A	63	19	(Not Separated)			76	10	9	(Not Separated)		194	29	21	(Not Separated)	
A	81	30	" "			74	10	6	" "		189	31	22	" "	
383	101	51	" "			75	10	9	" "		203	38	26	" "	
467	89	-	30		36	75	8	-	3	2	213	36	-	18	15
A	116	-	19		52	NA	11	-	6	5	NA	43	-	12	10
A	103	63	(Not Separated)			74	8	7	(Not Separated)		38	7	7	(Not Separated)	
A	117	76	" "			72	12	6	" "		35	7	6	" "	
180	133	85	" "			71	9	5	" "		37	8	7	" "	
330	123	-	44		71	65	5	-	1	3	38	7	-	5	3
A	149	-	51		70	NA	6	-	1	2	NA	6	-	2	3
A	135	115	(Not Separated)			139	42	32	(Not Separated)		17	2	1	(Not Separated)	
A	150	111	" "			132	41	27	" "		15	3	2	" "	
881	197	167	" "			129	41	32	" "		17	4	2	" "	
924	162	-	79		110	129	33	-	11	21	21	5	-	2	1
A	234	-	103		123	NA	41	-	17	23	NA	4	-	2	1
A	109	133	(Not Separated)			187	52	46	(Not Separated)		13	2	2	(Not Separated)	
A	112	127	" "			185	49	47	" "		13	2	2	" "	
047	117	130	" "			185	49	49	" "		15	2	2	" "	
931	103	-	37		84	189	53	-	21	38	14	3	-	2	3
A	125	-	49		77	NA	55	-	20	32	NA	4	-	1	3
A	191	162	(Not Separated)			147	47	40	(Not Separated)		12	4	4	(Not Separated)	
A	235	205	" "			142	38	46	" "		12	3	4	" "	
863	260	222	" "			141	46	42	" "		13	3	1	" "	
022	231	-	159		164	144	49	-	31	26	13	4	-	3	2
A	270	-	197		185	NA	42	-	21	27	NA	3	-	1	2
A	112	80	(Not Separated)			107	22	17	(Not Separated)		25	4	3	(Not Separated)	
A	127	95	" "			106	26	17	" "		26	3	1	" "	
222	166	116	" "			108	30	22	" "		28	5	2	" "	
121	245	-	150		127	109	28	-	17	13	24	3	-	2	0
A	184	-	60		79	NA	25	-	11	12	NA	3	-	1	2
A	24	16	(Not Separated)			63	13	10	(Not Separated)		55	5	3	(Not Separated)	
A	23	16	" "			63	12	9	" "		57	6	3	" "	
626	24	9	" "			62	11	8	" "		61	5	5	" "	
664	33	-	8		13	62	7	-	6	6	61	3	-	1	2
A	39	-	12		39	NA	9	-	4	3	NA	7	-	3	3
A	485	431	(Not Separated)			73	46	37	(Not Separated)		8	3	3	(Not Separated)	
A	459	441	" "			69	43	37	" "		10	3	3	" "	
266	459	470	" "			69	44	36	" "		9	1	2	" "	
344	365	-	229		344	69	39	-	28	24	9	3	-	1	1
A	561	-	330		586	NA	35	-	14	26	NA	1	-	1	1
A	40	27	(Not Separated)			40	13	13	(Not Separated)		4	0	0	(Not Separated)	
A	38	34	" "			40	17	17	" "		4	0	0	" "	
858	77	67	" "			41	20	20	" "		9	2	2	" "	
883	224	-	178		207	41	16	-	8	10	8	2	-	1	1
A	242	-	148		230	NA	16	-	6	12	NA	1	-	1	1
564	2,516	1,880	(Not Separated)			1,172	333	275	(Not Separated)		664	126	104	(Not Separated)	
983	3,002	2,304	" "			1,128	316	269	" "		652	125	101	" "	
527	3,311	2,559	" "			1,124	326	279	" "		697	133	100	" "	
172	3,567	-	1,754	2,182		1,250	296	-	169	182	711	133	-	72	61
	3,974	-	1,659	2,419		NA	300	-	123	168	NA	132	-	46	59

Memo: All figures taken from December reports except Year 1956 taken from June reports.

JAX 177
Commission's Exhibit 110

TOTAL TTCO. DEALERS, CONSIGNEES & DISTRIBUTORS BY DIVISIONS AND NUMBER PURCHASING GOODRICH TBA

	TTCO. DEALERS						CONSIGNEES					DISTR.
			Number Purchasing Goodrich					Number Purchasing Goodrich				Number P
	Total TTCo. Dealers	"C" & "D" Dealers	Tires & Tubes	Batteries & Auto Supplies	Batteries	Accessories & Other Misc.	Total Number	Tires & Tubes	Batteries & Auto Supplies	Batteries	Accessories & Other Misc.	Total Number	Tires & Tubes	Batte & A Supp
BOSTON														
1952	NA	NA	86	57	(Not Separated)		12	3	3	(Not Separated)		30	3	
1953	NA	NA	123	81	" "		12	3	3	" "		28	4	
1954	2,318	1,980	154	86	" "		12	3	3	" "		26	5	
1955	2,278	1,990	210	-	76	33	13	2	-	2	1	29	4	
1956	NA	NA	300	-	57	29	NA	3	-	1	3	NA	4	
BUFFALO														
1952	NA	NA	72	35	(Not Separated)		9	0	0	(Not Separated)		21	6	
1953	NA	NA	203	117	" "		9	1	1	" "		22	6	
1954	2,049	1,481	248	155	" "		8	1	1	" "		21	7	
1955	2,025	1,433	240	-	101	47	8	1	-	1	0	20	7	
1956	NA	NA	267	-	61	44	NA	0	-	0	0	NA	6	
NEW YORK														
1952	NA	NA	401	311	(Not Separated)		14	6	7	(Not Separated)		31	16	
1953	NA	NA	466	364	" "		10	4	4	" "		30	15	
1954	3,915	2,928	478	347	" "		8	3	3	" "		29	13	
1955	3,938	2,961	775	-	318	496	10	3	-	3	3	29	16	
1956	NA	NA	775	-	318	496	NA	3	-	3	3	NA	16	
NORFOLK														
1952	NA	NA	187	109	(Not Separated)		91	28	16	(Not Separated)		36	9	
1953	NA	NA	267	169	" "		88	24	18	" "		35	9	
1954	5,350	3,454	278	171	" "		89	25	20	" "		36	10	
1955	5,510	3,493	322	-	55	147	90	18	-	16	12	36	13	
1956	NA	NA	236	-	52	117	NA	22	-	9	6	NA	6	
CHICAGO														
1952	NA	NA	444	273	(Not Separated)		34	16	13	(Not Separated)		121	32	
1953	NA	NA	536	388	" "		27	14	13	" "		117	29	
1954	3,018	2,014	542	425	" "		28	13	10	" "		123	23	
1955	3,169	2,176	395	-	266	256	47	12	-	9	9	123	21	
1956	NA	NA	410	-	185	236	NA	11	-	1	6	NA	19	
DENVER														
1952	NA	NA	64	49	(Not Separated)		106	27	25	(Not Separated)		59	4	
1953	NA	NA	65	50	" "		99	22	18	" "		59	4	
1954	1,437	1,344	77	58	" "		98	21	19	" "		70	7	
1955	1,473	1,433	50	-	24	47	99	22	-	12	14	73	6	
1956	NA	NA	66	-	17	56	NA	21	-	9	8	NA	9	
MINNEAPOLIS														
1952	NA	NA	63	19	(Not Separated)		76	10	9	(Not Separated)		194	29	
1953	NA	NA	81	30	" "		74	10	6	" "		189	31	
1954	2,584	1,383	101	51	" "		75	10	9	" "		203	38	
1955	2,678	1,467	89	-	30	36	75	8	-	3	2	213	36	
1956	NA	NA	116	-	19	52	NA	11	-	6	5	NA	43	
INDIANAPOLIS														
1952	NA	NA	103	63	(Not Separated)		74	8	7	(Not Separated)		38	7	
1953	NA	NA	117	76	" "		72	12	6	" "		95	7	
1954	2,934	2,180	133	85	" "		71	9	5	" "		37	8	
1955	2,835	2,330	123	-	44	71	65	5	-	1	3	38	7	
1956	NA	NA	149	-	51	70	NA	6	-	1	2	NA	6	
ATLANTA														
1952	NA	NA	135	115	(Not Separated)		139	42	32	(Not Separated)		17	2	
1953	NA	NA	150	111	" "		132	41	27	" "		15	3	
1954	3,314	2,881	197	167	" "		129	41	32	" "		17	4	
1955	3,330	2,924	162	-	79	110	129	33	-	11	21	21	5	
1956	NA	NA	234	-	103	123	NA	41	-	17	23	NA	4	
DALLAS														
1952	NA	NA	109	133	(Not Separated)		187	52	46	(Not Separated)		13	2	
1953	NA	NA	112	127	" "		185	49	47	" "		13	2	
1954	2,134	2,047	117	130	" "		185	49	49	" "		15	2	
1955	2,013	1,931	103	-	37	84	189	53	-	21	38	14	3	
1956	NA	NA	125	-	49	77	NA	55	-	20	32	NA	4	
HOUSTON														
1952	NA	NA	191	162	(Not Separated)		147	47	40	(Not Separated)		12	4	
1953	NA	NA	235	205	" "		142	38	46	" "		12	3	
1954	2,204	1,863	260	222	" "		141	46	42	" "		13	3	
1955	2,207	2,022	231	-	159	164	144	49	-	31	26	13	4	
1956	NA	NA	270	-	197	185	NA	42	-	21	27	NA	3	
NEW ORLEANS														
1952	NA	NA	112	80	(Not Separated)		107	22	17	(Not Separated)		25	4	
1953	NA	NA	127	95	" "		106	26	17	" "		26	3	
1954	2,502	2,222	166	116	" "		108	30	22	" "		28	5	
1955	2,540	2,121	245	-	150	127	109	28	-	17	13	24	3	
1956	NA	NA	184	-	60	79	NA	25	-	11	12	NA	3	
AUSTIN														
1952	NA	NA	24	16	(Not Separated)		63	13	10	(Not Separated)		55	5	
1953	NA	NA	23	16	" "		63	12	9	" "		57	6	
1954	919	626	24	9	" "		62	11	8	" "		61	5	
1955	930	664	33	-	8	13	62	7	-	6	6	61	3	
1956	NA	NA	39	-	12	39	NA	9	-	4	3	NA	7	
LOS ANGELES														
1952	NA	NA	485	431	(Not Separated)		73	46	37	(Not Separated)		8	3	
1953	NA	NA	459	441	" "		69	43	37	" "		10	3	
1954	2,315	2,266	459	470	" "		69	44	36	" "		9	1	
1955	2,442	2,344	365	-	229	344	69	39	-	28	24	9	3	
1956	NA	NA	561	-	330	586	NA	35	-	14	26	NA	1	
SEATTLE														
1952	NA	NA	40	27	(Not Separated)		40	13	13	(Not Separated)		4	0	
1953	NA	NA	38	34	" "		40	17	17	" "		4	0	
1954	1,021	858	77	67	" "		41	20	20	" "		9	2	
1955	1,052	883	224	-	178	207	41	16	-	6	10	8	2	
1956	NA	NA	242	-	148	230	NA	16	-	6	12	NA	1	
SUMMARY - ALL DIVISIONS														
1952	39,045	29,566	2,516	1,880	(Not Separated)		1,172	333	275	(Not Separated)		664	126	1
1953	37,385	28,983	3,002	2,304	" "		1,128	316	269	" "		652	123	1
1954	38,014	29,527	3,311	2,559	" "		1,124	326	279	" "		697	133	1
1955	38,420	30,172	3,567	-	1,754	2,182	1,150	296	-	169	182	711	133	
1956	NA	NA	3,974	-	1,659	2,419	NA	300	-	123	168	NA	132	

NA - Not Available.

Memo: All figures taken from December reports except Year 1956 taken from June re

TOTAL TTCO. DEALERS, CONSIGNEES & DISTRIBUTORS BY DIVISIONS AND NUMBER PURCHASING FIRESTONE TBA

TTCO. & lers	DEALERS: Number Purchasing Firestone: Tires & Tubes	Batteries & Auto Supplies	Batteries	Accessories & Other Misc.	CONSIGNEES: Total Number	Number Purchasing Firestone: Tires & Tubes	Batteries & Auto Supplies	Batteries	Accessories & Other Misc.	DISTRIBUTORS: Total Number	Number Purchasing Firestone: Tires & Tubes	Batteries & Auto Supplies	Batteries	Accessories & Other Misc.
NA	718	536	(Not Separated)		12	4	2	(Not Separated)		30	8	7	(Not Separated)	
"	669	496	" "		12	3	3	" "		28	7	7	" "	
,980	693	508	" "		12	4	2	" "		26	3	3	" "	
,990	611	-	159	286	13	3	-	1	1	29	4	-	1	1
NA	680	-	130	324	NA	3	-	0	1	NA	5	-	1	2
NA	377	300	(Not Separated)		9	6	6	(Not Separated)		21	4	3	(Not Separated)	
"	359	279	" "		9	7	7	" "		22	4	3	" "	
,481	381	277	" "		8	5	4	" "		21	5	5	" "	
,433	292	-	129	190	8	4	-	3	3	20	6	-	3	3
NA	312	-	80	222	NA	3	-	3	3	NA	6	-	4	4
NA	693	491	(Not Separated)		14	4	3	(Not Separated)		31	1	2	(Not Separated)	
"	661	460	" "		10	4	5	" "		30	2	2	" "	
,928	785	540	" "		8	5	3	" "		29	2	2	" "	
,961	957	-	257	527	10	4	-	1	4	29	2	-	2	2
NA	957	-	257	527	NA	4	-	1	4	NA	2	-	2	2
NA	487	389	(Not Separated)		91	41	33	(Not Separated)		36	13	6	(Not Separated)	
"	499	388	" "		88	41	35	" "		35	13	6	" "	
,454	554	401	" "		89	44	32	" "		36	13	7	" "	
,493	539	-	128	363	90	36	-	14	28	36	11	-	3	6
NA	728	-	210	340	NA	40	-	9	23	NA	10	-	0	0
NA	386	300	(Not Separated)		34	2	2	(Not Separated)		121	31	22	(Not Separated)	
"	512	394	" "		27	3	1	" "		117	30	22	" "	
,014	509	331	" "		28	3	2	" "		123	30	18	" "	
,176	398	-	141	235	47	4	-	1	0	123	26	-	9	17
NA	397	-	113	235	NA	7	-	1	5	NA	25	-	12	14
NA	358	311	(Not Separated)		106	47	41	(Not Separated)		59	28	23	(Not Separated)	
"	347	293	" "		99	40	37	" "		59	25	24	" "	
,344	358	302	" "		98	39	37	" "		70	32	26	" "	
,433	335	-	194	257	99	38	-	21	28	73	22	-	14	12
NA	351	-	152	293	NA	35	-	15	21	NA	21	-	8	10
NA	419	346	(Not Separated)		76	20	11	(Not Separated)		194	60	37	(Not Separated)	
"	439	333	" "		74	18	15	" "		189	56	35	" "	
,383	435	331	" "		75	17	16	" "		203	57	35	" "	
,467	397	-	122	213	75	14	-	6	11	213	58	-	19	25
NA	327	-	123	170	NA	18	-	7	12	NA	62	-	17	26
NA	554	420	(Not Separated)		74	21	18	(Not Separated)		38	11	6	(Not Separated)	
"	523	388	" "		72	21	17	" "		35	9	6	" "	
,180	510	367	" "		71	21	16	" "		37	11	7	" "	
,330	453	-	195	144	65	17	-	4	7	38	9	-	4	5
NA	420	-	136	151	NA	13	-	1	8	NA	8	-	1	5
NA	435	356	(Not Separated)		139	48	36	(Not Separated)		17	8	4	(Not Separated)	
"	412	345	" "		132	46	29	" "		15	8	6	" "	
,881	454	341	" "		129	44	25	" "		17	10	5	" "	
,924	404	-	201	241	129	38	-	19	18	21	10	-	1	7
NA	435	-	225	267	NA	38	-	14	18	NA	19	-	3	13
NA	314	400	(Not Separated)		187	105	86	(Not Separated)		13	6	5	(Not Separated)	
"	392	468	" "		185	98	86	" "		13	6	5	" "	
,047	402	480	" "		185	94	82	" "		15	6	5	" "	
,931	316	-	159	211	189	54	-	52	24	14	4	-	1	1
NA	334	-	165	208	NA	71	-	26	35	NA	4	-	0	2
NA	290	219	(Not Separated)		147	40	29	(Not Separated)		12	2	2	(Not Separated)	
"	312	230	" "		142	31	33	" "		12	3	3	" "	
,863	325	227	" "		141	33	24	" "		13	3	3	" "	
,022	256	-	97	118	144	33	-	17	15	13	5	-	2	2
NA	273	-	119	127	NA	33	-	10	12	NA	3	-	1	2
NA	208	156	(Not Separated)		107	49	26	(Not Separated)		25	11	6	(Not Separated)	
"	219	154	" "		106	48	31	" "		26	8	4	" "	
,222	225	168	" "		108	48	26	" "		28	7	7	" "	
,121	412	-	231	279	109	47	-	20	25	24	9	-	2	3
NA	285	-	119	155	NA	49	-	15	20	NA	7	-	1	5
NA	108	91	(Not Separated)		63	41	34	(Not Separated)		55	30	22	(Not Separated)	
"	105	91	" "		63	39	34	" "		57	28	25	" "	
626	133	112	" "		62	40	32	" "		61	31	25	" "	
664	143	-	67	100	62	34	-	22	31	61	24	-	13	14
NA	146	-	59	116	NA	27	-	14	25	NA	25	-	8	15
NA	342	235	(Not Separated)		73	18	14	(Not Separated)		8	1	2	(Not Separated)	
"	424	332	" "		69	14	11	" "		10	1	1	" "	
,266	446	338	" "		69	18	13	" "		9	2	1	" "	
,344	461	-	199	337	69	17	-	6	6	9	4	-	0	2
A	572	-	183	365	NA	11	-	8	10	NA	1	-	1	1
A	337	321	(Not Separated)		40	23	23	(Not Separated)		4	2	2	(Not Separated)	
	336	318	" "		40	16	16	" "		4	2	2	" "	
858	387	329	" "		41	14	14	" "		9	5	5	" "	
883	480	-	322	419	41	17	-	13	15	8	5	-	2	3
A	455	-	268	419	NA	12	-	7	9	NA	2	-	1	2
66	6,026	4,871	(Not Separated)		1,172	469	364	(Not Separated)		664	216	149	(Not Separated)	
63	6,209	4,969	" "		1,128	429	360	" "		652	202	151	" "	
27	6,567	5,052	" "		1,124	429	328	" "		697	217	154	" "	
72	8,424	-	2,601	3,920	1,150	360	-	200	216	711	199	-	76	108
	6,672	-	2,339	3,919	NA	364	-	131	206	NA	200	-	60	103

Note: All figures taken from December reports except Year 1956 taken from June reports.

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JAX 178
Commission Exhibit 117

TOTAL TTCO. DEALERS, CONSIGNEES & DISTRIBUTORS BY DIVISIONS AND NUMBER PURCHASING FIRESTONE TBA

	TTCO. DEALERS						CONSIGNEES					DISTR		
			Number Purchasing Firestone					Number Purchasing Firestone					Number	
	Total TTCo. Dealers	"C" & "D" Dealers	Tires & Tubes	Batteries & Auto Supplies	Batteries	Accessories & Other Misc.	Total Number	Tires & Tubes	Batteries & Auto Supplies	Batteries	Accessories & Other Misc.	Total Number	Tires & Tubes	Batt & Sup
BOSTON														
1952	NA	NA	718	536	(Not Separated)		12	4	2	(Not Separated)		30	8	
1953	"	"	669	496	"	"	12	3	3	"	"	28	7	
1954	2,318	1,980	693	508	"	"	12	4	2	"	"	26	3	
1955	2,278	1,990	611	-	159	286	13	3	-	1	1	29	4	
1956	NA	NA	680	-	130	324	NA	3	-	0	1	NA	5	
BUFFALO														
1952	NA	NA	377	300	(Not Separated)		9	6	6	(Not Separated)		21	4	
1953	"	"	359	279	"	"	9	7	7	"	"	22	4	
1954	2,049	1,481	381	277	"	"	8	5	4	"	"	21	5	
1955	2,025	1,433	292	-	129	190	8	4	-	3	3	20	6	
1956	NA	NA	312	-	80	222	NA	3	-	3	3	NA	6	
NEW YORK														
1952	NA	NA	693	491	(Not Separated)		14	4	3	(Not Separated)		31	1	
1953	"	"	661	460	"	"	10	4	5	"	"	30	2	
1954	3,915	2,928	785	540	"	"	8	5	3	"	"	29	2	
1955	3,938	2,961	957	-	257	527	10	4	-	1	4	29	2	
1956	NA	NA	957	-	257	527	NA	4	-	1	4	NA	2	
NORFOLK														
1952	NA	NA	487	389	(Not Separated)		91	41	33	(Not Separated)		36	13	
1953	"	"	499	388	"	"	88	41	35	"	"	35	13	
1954	5,350	3,454	554	401	"	"	89	44	32	"	"	36	13	
1955	5,510	3,493	539	-	128	363	90	36	-	14	28	36	11	
1956	NA	NA	728	-	210	340	NA	40	-	9	23	NA	10	
OHICAGO														
1952	NA	NA	386	300	(Not Separated)		34	2	2	(Not Separated)		121	33	
1953	"	"	512	394	"	"	27	3	1	"	"	117	30	
1954	3,018	2,014	509	331	"	"	28	3	2	"	"	123	30	
1955	3,169	2,176	398	-	141	235	47	4	-	1	0	123	26	
1956	NA	NA	397	-	113	235	NA	7	-	1	5	NA	25	
DENVER														
1952	NA	NA	358	311	(Not Separated)		106	47	41	(Not Separated)		59	28	
1953	"	"	347	293	"	"	99	40	37	"	"	59	25	
1954	1,437	1,344	358	302	"	"	98	39	37	"	"	70	32	
1955	1,473	1,433	335	-	194	257	99	38	-	21	28	73	22	
1956	NA	NA	351	-	152	293	NA	35	-	15	21	NA	21	
MINNEAPOLIS														
1952	NA	NA	419	346	(Not Separated)		76	20	11	(Not Separated)		194	60	
1953	"	"	439	333	"	"	74	18	15	"	"	189	56	
1954	2,584	1,383	435	331	"	"	75	17	16	"	"	203	57	
1955	2,678	1,467	397	-	122	213	75	14	-	6	11	213	58	
1956	NA	NA	327	-	123	170	NA	18	-	7	12	NA	62	
INDIANAPOLIS														
1952	NA	NA	554	420	(Not Separated)		74	21	18	(Not Separated)		38	11	
1953	"	"	523	388	"	"	72	21	17	"	"	35	9	
1954	2,934	2,180	510	367	"	"	71	21	16	"	"	37	11	
1955	2,835	2,330	453	-	195	144	65	17	-	4	7	38	9	
1956	NA	NA	420	-	136	151	NA	13	-	1	8	NA	8	
ATLANTA														
1952	NA	NA	435	356	(Not Separated)		139	48	36	(Not Separated)		17	8	
1953	"	"	412	345	"	"	132	46	29	"	"	15	8	
1954	3,314	2,881	454	341	"	"	129	44	25	"	"	17	10	
1955	3,330	2,924	404	-	201	241	129	38	-	19	18	21	10	
1956	NA	NA	435	-	225	267	NA	38	-	14	18	NA	19	
DALLAS														
1952	NA	NA	314	400	(Not Separated)		187	105	86	(Not Separated)		13	6	
1953	"	"	392	468	"	"	185	98	86	"	"	13	6	
1954	2,134	2,047	402	480	"	"	185	94	82	"	"	15	6	
1955	2,013	1,931	316	-	159	211	189	54	-	52	24	14	4	
1956	NA	NA	334	-	165	208	NA	71	-	26	35	NA	4	
HOUSTON														
1952	NA	NA	290	219	(Not Separated)		147	40	29	(Not Separated)		12	2	
1953	"	"	312	230	"	"	142	31	33	"	"	12	3	
1954	2,204	1,863	325	227	"	"	141	33	24	"	"	13	3	
1955	2,207	2,022	256	-	97	118	144	33	-	17	15	13	5	
1956	NA	NA	273	-	119	127	NA	33	-	10	12	NA	3	
NEW ORLEANS														
1952	NA	NA	208	156	(Not Separated)		107	49	26	(Not Separated)		25	11	
1953	"	"	219	154	"	"	106	48	31	"	"	26	8	
1954	2,502	2,222	225	168	"	"	108	48	26	"	"	28	7	
1955	2,540	2,121	412	-	231	279	109	47	-	20	25	24	9	
1956	NA	NA	285	-	119	155	NA	49	-	15	20	NA	7	
BUTTE														
1952	NA	NA	108	91	(Not Separated)		63	41	34	(Not Separated)		55	30	
1953	"	"	105	91	"	"	63	39	34	"	"	57	28	
1954	919	626	133	112	"	"	62	40	32	"	"	61	31	
1955	930	664	143	-	67	100	62	34	-	22	31	61	24	
1956	NA	NA	146	-	59	116	NA	27	-	14	25	NA	25	
LOS ANGELES														
1952	NA	NA	342	235	(Not Separated)		73	18	14	(Not Separated)		8	1	
1953	"	"	424	332	"	"	69	14	11	"	"	10	1	
1954	2,315	2,266	446	338	"	"	69	18	13	"	"	9	2	
1955	2,442	2,344	461	-	199	337	69	17	-	6	6	9	4	
1956	NA	NA	572	-	183	365	NA	11	-	8	10	NA	1	
SEATTLE														
1952	NA	NA	337	321	(Not Separated)		40	23	23	(Not Separated)		4	2	
1953	"	"	336	318	"	"	40	16	16	"	"	4	2	
1954	1,021	858	357	329	"	"	41	14	14	"	"	9	5	
1955	1,052	883	480	-	322	419	41	17	-	13	15	8	5	
1956	NA	NA	455	-	268	419	NA	12	-	7	9	NA	2	
SUMMARY - ALL DIVISIONS														
1952	39,045	29,566	6,026	4,871	(Not Separated)		1,172	469	364	(Not Separated)		664	216	
1953	37,385	28,983	6,209	4,969	"	"	1,128	429	360	"	"	652	202	
1954	38,014	29,527	6,567	5,052	"	"	1,124	429	328	"	"	697	217	
1955	38,420	30,172	6,454	-	2,601	3,920	1,150	360	-	200	216	711	199	
1956	NA	NA	6,672	-	2,339	3,919	NA	364	-	131	206	NA	200	

NA - Not Available.

Memo: All figures taken from December reports except Year 1956 taken from June re

JAX 179
Commission's Exhibit 118

STATEMENT SHOWING TOTAL TTCO. DEALERS IN U.S. AND NUMBER OF "C" AND "D" DEALERS PURCHASING GOODRICH PRODUCTS

Year	Total TTCo. Dealers	"C" Dealers	"D" Dealers	Total C & D Dealers	Number Purchasing Goodrich: Tires & Tubes C	D	Total	Batteries & Auto Supplies C	D	Total	Batteries C	D	Total	Accessories & Other Misc. C	D	Total
1952																
Jan	NA	11,565	NA	NA	1,566	522	2,088	1,271	382	1,653	Not Reported Separately during Years 1952 to 1954 inc.					
Feb	NA	11,578	NA	NA	1,598	532	2,130	1,331	387	1,718						
Mar	NA	11,626	NA	NA	1,608	535	2,143	1,309	392	1,701						
Apr	NA	11,610	NA	NA	1,577	528	2,105	1,269	385	1,654	-	-	-	-	-	-
May	NA	11,623	NA	NA	1,597	532	2,129	1,236	386	1,622	-	-	-	-	-	-
Jun	39,303	11,662	NA	NA	1,662	525	2,187	1,272	375	1,647	-	-	-	-	-	-
Jul	NA	11,691	NA	NA	1,712	564	2,276	1,312	409	1,721	-	-	-	-	-	-
Aug	NA	11,722	NA	NA	1,835	605	2,440	1,380	387	1,767	-	-	-	-	-	-
Sep	NA	11,782	NA	NA	1,899	615	2,514	1,426	402	1,828	-	-	-	-	-	-
Oct	NA	11,781	NA	NA	1,926	623	2,549	1,443	396	1,839	-	-	-	-	-	-
Nov	NA	11,791	NA	NA	1,946	609	2,555	1,464	391	1,855	-	-	-	-	-	-
Dec	39,045	11,858	17,708	29,566	1,922	594	2,516	1,460	420	1,880	-	-	-	-	-	-
1953																
Jan	NA	11,871	NA	NA	1,927	610	2,537	1,472	401	1,873	-	-	-	-	-	-
Feb	NA	11,905	NA	NA	1,925	611	2,536	1,478	399	1,877	-	-	-	-	-	-
Mar	NA	11,913	NA	NA	1,944	567	2,511	1,500	375	1,875	-	-	-	-	-	-
Apr	NA	11,946	NA	NA	1,943	563	2,506	1,498	372	1,870	-	-	-	-	-	-
May	NA	11,937	NA	NA	1,954	563	2,517	1,505	374	1,879	-	-	-	-	-	-
Jun	37,449	12,004	NA	NA	2,125	578	2,703	1,618	360	1,978	-	-	-	-	-	-
Jul	NA	12,025	NA	NA	2,125	578	2,703	1,618	360	1,978	-	-	-	-	-	-
Aug	NA	12,024	NA	NA	2,125	578	2,703	1,618	360	1,978	-	-	-	-	-	-
Sep	NA	12,018	NA	NA	2,227	613	2,840	1,801	381	2,182	-	-	-	-	-	-
Oct	NA	NA	NA	NA	2,227	613	2,840	1,801	381	2,182	-	-	-	-	-	-
Nov	NA	NA	NA	NA	2,227	613	2,840	1,801	381	2,182	-	-	-	-	-	-
Dec	37,385	12,070	16,913	28,983	2,346	656	3,002	1,878	426	2,304	-	-	-	-	-	-
1954																
Jan	NA	12,121	NA	NA	2,346	656	3,002	1,878	426	2,304	-	-	-	-	-	-
Feb	NA	12,144	NA	NA	2,346	656	3,002	1,878	426	2,304	-	-	-	-	-	-
Mar	NA	12,167	NA	NA	2,256	622	2,878	1,860	413	2,273	-	-	-	-	-	-
Apr	NA	12,207	NA	NA	2,256	622	2,878	1,860	413	2,273	-	-	-	-	-	-
May	NA	12,272	NA	NA	2,256	622	2,878	1,860	413	2,273	-	-	-	-	-	-
Jun	37,424	12,340	NA	NA	2,435	666	3,101	1,923	400	2,323	-	-	-	-	-	-
Jul	NA	12,390	NA	NA	2,435	666	3,101	1,923	400	2,323	-	-	-	-	-	-
Aug	NA	12,450	NA	NA	2,435	666	3,101	1,923	400	2,323	-	-	-	-	-	-
Sep	NA	12,517	NA	NA	2,527	688	3,215	2,033	404	2,437	-	-	-	-	-	-
Oct	NA	12,571	NA	NA	2,527	688	3,215	2,033	404	2,437	-	-	-	-	-	-
Nov	NA	12,645	NA	NA	2,527	688	3,215	2,033	404	2,437	-	-	-	-	-	-
Dec	38,014	12,674	16,853	29,527	2,597	714	3,311	2,104	455	2,559	-	-	-	-	-	-
1955																
Jan	NA	12,751	NA	NA	2,700	969	3,669	-	-	-	1,640	515	2,155	1,767	582	2,349
Feb	NA	12,786	NA	NA	2,548	655	3,203	-	-	-	1,317	222	1,539	1,711	333	2,044
Mar	NA	12,845	NA	NA	2,517	669	3,186	-	-	-	1,165	196	1,361	1,733	357	2,090
Apr	NA	12,888	NA	NA	2,708	726	3,434	-	-	-	1,234	283	1,517	1,882	367	2,249
May	NA	12,939	NA	NA	2,727	723	3,450	-	-	-	1,226	244	1,470	1,778	361	2,139
Jun	38,318	12,953	NA	NA	2,807	792	3,599	-	-	-	1,269	235	1,504	1,851	391	2,242
Jul	NA	13,023	NA	NA	2,679	785	3,464	-	-	-	1,230	240	1,470	1,756	367	2,123
Aug	NA	13,121	NA	NA	2,856	811	3,667	-	-	-	1,447	277	1,724	1,898	422	2,320
Sep	NA	13,189	NA	NA	2,746	809	3,555	-	-	-	1,519	273	1,792	1,884	425	2,309
Oct	NA	13,242	NA	NA	2,629	814	3,443	-	-	-	1,469	283	1,752	1,758	411	2,169
Nov	NA	13,318	NA	NA	2,683	797	3,480	-	-	-	1,514	294	1,808	1,714	406	2,120
Dec	38,420	13,366	16,806	30,172	2,729	838	3,567	-	-	-	1,453	301	1,754	1,771	411	2,182
1956																
Jan	NA	13,463	NA	NA	2,704	743	3,447	-	-	-	1,455	243	1,698	1,801	374	2,175
Feb	NA	13,506	NA	NA	2,722	761	3,483	-	-	-	1,343	238	1,581	1,722	356	2,078
Mar	NA	13,587	NA	NA	2,779	761	3,540	-	-	-	1,254	194	1,448	1,802	329	2,131
Apr	NA	13,613	NA	NA	2,805	763	3,568	-	-	-	1,228	198	1,426	1,874	348	2,222
May	NA	13,701	NA	NA	2,895	797	3,692	-	-	-	1,261	214	1,475	1,918	376	2,294
Jun	NA	13,764	NA	NA	3,102	872	3,974	-	-	-	1,427	232	1,659	2,014	405	2,419

Apr	NA	11,610	NA	NA	1,577	528	2,105	1,269	385	1,654	-	-	-	-	-	-
May	NA	11,623	NA	NA	1,597	532	2,129	1,236	386	1,622	-	-	-	-	-	-
Jun	39,303	11,662	NA	NA	1,662	525	2,187	1,272	375	1,647	-	-	-	-	-	-
Jul	NA	11,691	NA	NA	1,712	564	2,276	1,312	409	1,721	-	-	-	-	-	-
Aug	NA	11,722	NA	NA	1,835	605	2,440	1,380	387	1,767	-	-	-	-	-	-
Sep	NA	11,782	NA	NA	1,899	615	2,514	1,426	402	1,828	-	-	-	-	-	-
Oct	NA	11,781	NA	NA	1,926	623	2,549	1,443	396	1,839	-	-	-	-	-	-
Nov	NA	11,791	NA	NA	1,946	609	2,555	1,464	391	1,855	-	-	-	-	-	-
Dec	39,045	11,858	17,708	29,566	1,922	594	2,516	1,460	420	1,880	-	-	-	-	-	-
1953																
Jan	NA	11,871	NA	NA	1,927	610	2,537	1,472	401	1,873	-	-	-	-	-	-
Feb	NA	11,905	NA	NA	1,925	611	2,536	1,478	399	1,877	-	-	-	-	-	-
Mar	NA	11,913	NA	NA	1,944	567	2,511	1,500	375	1,875	-	-	-	-	-	-
Apr	NA	11,946	NA	NA	1,943	563	2,506	1,498	372	1,870	-	-	-	-	-	-
May	NA	11,937	NA	NA	1,954	563	2,517	1,505	374	1,879	-	-	-	-	-	-
Jun	37,449	12,004	NA	NA	2,125	578	2,703	1,618	360	1,978	-	-	-	-	-	-
Jul	NA	12,025	NA	NA	2,125	578	2,703	1,618	360	1,978	-	-	-	-	-	-
Aug	NA	12,024	NA	NA	2,125	578	2,703	1,618	360	1,978	-	-	-	-	-	-
Sep	NA	12,018	NA	NA	2,227	613	2,840	1,801	381	2,182	-	-	-	-	-	-
Oct	NA	NA	NA	NA	2,227	613	2,840	1,801	381	2,182	-	-	-	-	-	-
Nov	NA	NA	NA	NA	2,227	613	2,840	1,801	381	2,182	-	-	-	-	-	-
Dec	37,385	12,070	16,913	28,983	2,346	656	3,002	1,878	426	2,304	-	-	-	-	-	-
1954																
Jan	NA	12,121	NA	NA	2,346	656	3,002	1,878	426	2,304	-	-	-	-	-	-
Feb	NA	12,144	NA	NA	2,346	656	3,002	1,878	426	2,304	-	-	-	-	-	-
Mar	NA	12,167	NA	NA	2,256	622	2,878	1,860	413	2,273	-	-	-	-	-	-
Apr	NA	12,207	NA	NA	2,256	622	2,878	1,860	413	2,273	-	-	-	-	-	-
May	NA	12,272	NA	NA	2,256	622	2,878	1,860	413	2,273	-	-	-	-	-	-
Jun	37,424	12,340	NA	NA	2,435	666	3,101	1,923	400	2,323	-	-	-	-	-	-
Jul	NA	12,390	NA	NA	2,435	666	3,101	1,923	400	2,323	-	-	-	-	-	-
Aug	NA	12,450	NA	NA	2,435	666	3,101	1,923	400	2,323	-	-	-	-	-	-
Sep	NA	12,517	NA	NA	2,527	688	3,215	2,033	404	2,437	-	-	-	-	-	-
Oct	NA	12,571	NA	NA	2,527	688	3,215	2,033	404	2,437	-	-	-	-	-	-
Nov	NA	12,645	NA	NA	2,527	688	3,215	2,033	404	2,437	-	-	-	-	-	-
Dec	38,014	12,674	16,853	29,527	2,597	714	3,311	2,104	455	2,559	-	-	-	-	-	-
1955																
Jan	NA	12,751	NA	NA	2,700	969	3,669	-	-	-	1,640	515	2,155	1,767	582	2,349
Feb	NA	12,786	NA	NA	2,548	655	3,203	-	-	-	1,317	222	1,539	1,711	333	2,044
Mar	NA	12,845	NA	NA	2,517	669	3,186	-	-	-	1,165	196	1,361	1,733	357	2,090
Apr	NA	12,888	NA	NA	2,708	726	3,434	-	-	-	1,234	283	1,517	1,882	367	2,249
May	NA	12,939	NA	NA	2,727	723	3,450	-	-	-	1,226	244	1,470	1,778	361	2,139
Jun	38,318	12,953	NA	NA	2,807	792	3,599	-	-	-	1,269	235	1,504	1,851	391	2,242
Jul	NA	13,023	NA	NA	2,679	785	3,464	-	-	-	1,230	240	1,470	1,756	367	2,123
Aug	NA	13,121	NA	NA	2,856	811	3,667	-	-	-	1,447	277	1,724	1,898	422	2,320
Sep	NA	13,189	NA	NA	2,746	809	3,555	-	-	-	1,519	273	1,792	1,884	425	2,309
Oct	NA	13,242	NA	NA	2,629	814	3,443	-	-	-	1,469	283	1,752	1,758	411	2,169
Nov	NA	13,318	NA	NA	2,683	797	3,480	-	-	-	1,514	294	1,808	1,714	406	2,120
Dec	38,420	13,366	16,806	30,172	2,729	838	3,567	-	-	-	1,453	301	1,754	1,771	411	2,182
1956																
Jan	NA	13,463	NA	NA	2,704	743	3,447	-	-	-	1,455	243	1,698	1,801	374	2,175
Feb	NA	13,506	NA	NA	2,722	761	3,483	-	-	-	1,343	238	1,581	1,722	356	2,078
Mar	NA	13,587	NA	NA	2,779	761	3,540	-	-	-	1,254	194	1,448	1,802	329	2,131
Apr	NA	13,613	NA	NA	2,805	763	3,568	-	-	-	1,228	198	1,426	1,874	348	2,222
May	NA	13,701	NA	NA	2,895	797	3,692	-	-	-	1,261	214	1,475	1,918	376	2,294
Jun	NA	13,764	NA	NA	3,102	872	3,974	-	-	-	1,427	232	1,659	2,014	405	2,419

Memo: The number of dealers purchasing TBA in each category arrived at as follows:

Year 1952 to May 1953 inc:
Monthly count; based on number purchasing $1 or more during 3 month period ending with current month.

June 1953 to Dec. 1954 inc:
Quarterly count; based on number purchasing $1 or more during 3 month period ending with June, Sep, Dec & Mar.

Jan. 1955 to Jun. 30, 1956 inc:
Monthly count; based on number purchasing $1 or more during each month.

Grand Total dealers purchasing all TBA items combined is not possible as dealers who purchase in 2 or more categories are duplicated for each category in which they purchase.

NA - Not Available.

JAX 180
Commission's Exhibit 119

STATEMENT SHOWING TOTAL TTCO. DEALERS IN U.S. AND NUMBER OF "C" AND "D" DEALERS PURCHASING FIRESTONE PRODUCTS

Year	Total TTCo. Dealers	"C" Dealers	"D" Dealers	Total C & D Dealers	Number Purchasing Firestone: Tires & Tubes C	D	Total	Batteries & Auto Supplies C	D	Total	Batteries C	D	Total	Accessories & Other Misc. C	D	Total
1952																
Jan	NA	11,565	NA	NA	3,933	1,807	5,740	3,476	1,250	4,726						
Feb	NA	11,578	NA	NA	3,966	1,793	5,759	3,431	1,218	4,649						
Mar	NA	11,626	NA	NA	4,027	1,839	5,866	3,303	1,172	4,475						
Apr	NA	11,610	NA	NA	4,085	1,873	5,958	3,379	1,214	4,593						
May	NA	11,623	NA	NA	4,146	1,922	6,068	3,398	1,271	4,669						
Jun	39,303	11,662	NA	NA	4,151	1,918	6,069	3,393	1,260	4,653						
Jul	NA	11,691	NA	NA	4,198	1,930	6,128	3,427	1,284	4,711						
Aug	NA	11,722	NA	NA	4,254	1,930	6,184	3,417	1,238	4,655						
Sep	NA	11,782	NA	NA	4,335	1,963	6,298	3,496	1,264	4,760						
Oct	NA	11,781	NA	NA	4,313	1,963	6,276	3,492	1,266	4,758						
Nov	NA	11,791	NA	NA	4,247	1,912	6,159	3,496	1,283	4,779						
Dec	39,045	11,858	17,708	29,566	4,250	1,776	6,026	3,595	1,255	4,850						
1953																
Jan	NA	11,871	NA	NA	4,325	1,843	6,168	3,676	1,300	4,976						
Feb	NA	11,905	NA	NA	4,318	1,809	6,127	3,649	1,274	4,923						
Mar	NA	11,913	NA	NA	4,353	1,756	6,109	3,645	1,230	4,875						
Apr	NA	11,946	NA	NA	4,366	1,757	6,123	3,655	1,225	4,880						
May	NA	11,937	NA	NA	4,377	1,762	6,139	3,659	1,212	4,871						
Jun	37,449	12,004	NA	NA	4,467	1,769	6,236	3,718	1,184	4,902						
Jul	NA	12,025	NA	NA	4,467	1,769	6,236	3,718	1,184	4,902						
Aug	NA	12,024	NA	NA	4,467	1,769	6,236	3,718	1,184	4,902						
Sep	NA	12,018	NA	NA	4,536	1,799	6,335	3,818	1,227	5,045						
Oct	NA	NA	NA	NA	4,536	1,799	6,335	3,818	1,227	5,045						
Nov	NA	NA	NA	NA	4,536	1,799	6,335	3,818	1,227	5,045						
Dec	37,385	12,070	16,913	28,983	4,477	1,732	6,209	3,797	1,151	4,948						
1954																
Jan	NA	12,121	NA	NA	4,477	1,732	6,209	3,797	1,151	4,948						
Feb	NA	12,144	NA	NA	4,477	1,732	6,209	3,797	1,151	4,948						
Mar	NA	12,167	NA	NA	4,390	1,741	6,131	3,584	1,089	4,673						
Apr	NA	12,207	NA	NA	4,390	1,741	6,131	3,584	1,089	4,673						
May	NA	12,272	NA	NA	4,390	1,741	6,131	3,584	1,089	4,673						
Jun	37,424	12,340	NA	NA	4,542	1,782	6,324	3,735	1,140	4,875						
Jul	NA	12,390	NA	NA	4,542	1,782	6,324	3,735	1,140	4,875						
Aug	NA	12,450	NA	NA	4,542	1,782	6,324	3,735	1,140	4,875						
Sep	NA	12,517	NA	NA	4,661	1,779	6,440	3,846	1,113	4,959						
Oct	NA	12,571	NA	NA	4,661	1,779	6,440	3,846	1,113	4,959						
Nov	NA	12,645	NA	NA	4,661	1,779	6,440	3,846	1,113	4,959						
Dec	38,014	12,674	16,853	29,527	4,748	1,819	6,567	3,887	1,144	5,031						
1955																
Jan	NA	12,751	NA	NA	4,191	1,445	5,636				1,774	455	2,229	2,595	851	3,446
Feb	NA	12,786	NA	NA	4,345	1,447	5,792				1,754	340	2,094	2,605	670	3,275
Mar	NA	12,845	NA	NA	4,404	1,514	5,918				1,619	402	2,021	2,965	745	3,710
Apr	NA	12,888	NA	NA	4,568	1,566	6,134				1,602	415	2,017	2,101	804	2,905
May	NA	12,937	NA	NA	4,475	1,553	6,028				1,549	338	1,887	2,952	804	3,756
Jun	38,318	12,953	NA	NA	4,685	1,613	6,298				1,560	373	1,933	3,014	790	3,804
Jul	NA	13,023	NA	NA	4,751	1,598	6,349				1,683	347	2,030	2,869	747	3,616
Aug	NA	13,121	NA	NA	4,837	1,609	6,446				1,822	356	2,178	2,909	745	3,654
Sep	NA	13,189	NA	NA	4,681	1,644	6,325				1,941	400	2,341	2,936	734	3,670
Oct	NA	13,242	NA	NA	4,845	1,673	6,518				2,128	421	2,549	3,027	764	3,791
Nov	NA	13,318	NA	NA	4,840	1,678	6,518				2,184	427	2,611	2,970	777	3,747
Dec	38,420	13,366	16,806	30,172	4,774	1,680	6,454				2,164	437	2,601	3,132	788	3,920
1956																
Jan	NA	13,463	NA	NA	4,531	1,572	6,103				1,967	361	2,328	2,712	634	3,346
Feb	NA	13,506	NA	NA	4,324	1,482	5,806				1,821	376	2,197	2,496	680	3,176
Mar	NA	13,587	NA	NA	4,737	1,616	6,353				1,797	328	2,125	2,767	850	3,617
Apr	NA	13,613	NA	NA	4,989	1,669	6,658				1,860	347	2,207	3,119	797	3,916
May	NA	13,701	NA	NA	5,015	1,737	6,752				1,863	371	2,234	3,058	798	3,856

Not Reported Separately during Years 1952 to 1954 inc.

May	NA	11,623	NA	NA	4,146	1,922	6,068	3,398	1,271	4,689	-	-	-	-	-	-	
Jun	39,303	11,662	NA	NA	4,151	1,918	6,069	3,393	1,260	4,653	-	-	-	-	-	-	
Jul	NA	11,691	NA	NA	4,198	1,930	6,128	3,427	1,284	4,711	-	-	-	-	-	-	
Aug	NA	11,722	NA	NA	4,254	1,930	6,184	3,417	1,238	4,655	-	-	-	-	-	-	
Sep	NA	11,782	NA	NA	4,335	1,963	6,298	3,496	1,264	4,760	-	-	-	-	-	-	
Oct	NA	11,781	NA	NA	4,313	1,963	6,276	3,492	1,266	4,758	-	-	-	-	-	-	
Nov	NA	11,791	NA	NA	4,247	1,912	6,159	3,496	1,283	4,779	-	-	-	-	-	-	
Dec	39,045	11,858	17,708	29,566	4,250	1,776	6,026	3,595	1,255	4,850	-	-	-	-	-	-	
1953																	
Jan	NA	11,871	NA	NA	4,325	1,843	6,168	3,676	1,300	4,976	-	-	-	-	-	-	
Feb	NA	11,905	NA	NA	4,318	1,809	6,127	3,649	1,274	4,923	-	-	-	-	-	-	
Mar	NA	11,913	NA	NA	4,353	1,756	6,109	3,645	1,230	4,875	-	-	-	-	-	-	
Apr	NA	11,946	NA	NA	4,366	1,757	6,123	3,655	1,225	4,880	-	-	-	-	-	-	
May	NA	11,937	NA	NA	4,377	1,762	6,139	3,659	1,212	4,871	-	-	-	-	-	-	
Jun	37,449	12,004	NA	NA	4,467	1,769	6,236	3,718	1,184	4,902	-	-	-	-	-	-	
Jul	NA	12,025	NA	NA	4,467	1,769	6,236	3,718	1,184	4,902	-	-	-	-	-	-	
Aug	NA	12,024	NA	NA	4,467	1,769	6,236	3,718	1,184	4,902	-	-	-	-	-	-	
Sep	NA	12,018	NA	NA	4,536	1,799	6,335	3,818	1,227	5,045	-	-	-	-	-	-	
Oct	NA	NA	NA	NA	4,536	1,799	6,335	3,818	1,227	5,045	-	-	-	-	-	-	
Nov	NA	NA	NA	NA	4,536	1,799	6,335	3,818	1,227	5,045	-	-	-	-	-	-	
Dec	37,385	12,070	16,913	28,983	4,477	1,732	6,209	3,797	1,151	4,948	-	-	-	-	-	-	
1954																	
Jan	NA	12,121	NA	NA	4,477	1,732	6,209	3,797	1,151	4,948	-	-	-	-	-	-	
Feb	NA	12,144	NA	NA	4,477	1,732	6,209	3,797	1,151	4,948	-	-	-	-	-	-	
Mar	NA	12,167	NA	NA	4,390	1,741	6,131	3,584	1,089	4,673	-	-	-	-	-	-	
Apr	NA	12,207	NA	NA	4,390	1,741	6,131	3,584	1,089	4,673	-	-	-	-	-	-	
May	NA	12,272	NA	NA	4,390	1,741	6,131	3,584	1,089	4,673	-	-	-	-	-	-	
Jun	37,424	12,340	NA	NA	4,542	1,782	6,324	3,735	1,140	4,875	-	-	-	-	-	-	
Jul	NA	12,390	NA	NA	4,542	1,782	6,324	3,735	1,140	4,875	-	-	-	-	-	-	
Aug	NA	12,450	NA	NA	4,542	1,782	6,324	3,735	1,140	4,875	-	-	-	-	-	-	
Sep	NA	12,517	NA	NA	4,661	1,779	6,440	3,846	1,113	4,959	-	-	-	-	-	-	
Oct	NA	12,571	NA	NA	4,661	1,779	6,440	3,846	1,113	4,959	-	-	-	-	-	-	
Nov	NA	12,645	NA	NA	4,661	1,779	6,440	3,846	1,113	4,959	-	-	-	-	-	-	
Dec	38,014	12,674	16,853	29,527	4,748	1,819	6,567	3,887	1,144	5,031	-	-	-	-	-	-	
1955																	
Jan	NA	12,751	NA	NA	4,191	1,445	5,636	-	-	-	1,774	455	2,229	2,595	851	3,446	
Feb	NA	12,786	NA	NA	4,345	1,447	5,792	-	-	-	1,754	340	2,094	2,605	670	3,275	
Mar	NA	12,845	NA	NA	4,404	1,514	5,918	-	-	-	1,619	402	2,021	2,965	745	3,710	
Apr	NA	12,888	NA	NA	4,568	1,566	6,134	-	-	-	1,602	415	2,017	2,101	804	2,905	
May	NA	12,937	NA	NA	4,475	1,553	6,028	-	-	-	1,549	338	1,887	2,952	804	3,756	
Jun	38,318	12,953	NA	NA	4,685	1,613	6,298	-	-	-	1,560	373	1,933	3,014	790	3,804	
Jul	NA	13,023	NA	NA	4,751	1,598	6,349	-	-	-	1,683	347	2,030	2,869	747	3,616	
Aug	NA	13,121	NA	NA	4,837	1,609	6,446	-	-	-	1,822	356	2,178	2,909	745	3,654	
Sep	NA	13,189	NA	NA	4,681	1,644	6,325	-	-	-	1,941	400	2,341	2,936	734	3,670	
Oct	NA	13,242	NA	NA	4,845	1,673	6,518	-	-	-	2,128	421	2,549	3,027	764	3,791	
Nov	NA	13,318	NA	NA	4,840	1,678	6,518	-	-	-	2,184	427	2,611	2,970	777	3,747	
Dec	38,420	13,366	16,806	30,172	4,774	1,680	6,454	-	-	-	2,164	437	2,601	3,132	788	3,920	
1956																	
Jan	NA	13,463	NA	NA	4,531	1,572	6,103	-	-	-	1,967	361	2,328	2,712	634	3,346	
Feb	NA	13,506	NA	NA	4,324	1,482	5,806	-	-	-	1,821	376	2,197	2,496	680	3,176	
Mar	NA	13,587	NA	NA	4,737	1,616	6,353	-	-	-	1,797	328	2,125	2,767	850	3,617	
Apr	NA	13,613	NA	NA	4,989	1,669	6,658	-	-	-	1,860	347	2,207	3,119	797	3,916	
May	NA	13,701	NA	NA	5,015	1,737	6,752	-	-	-	1,863	371	2,234	3,058	798	3,856	
Jun	NA	13,764	NA	NA	4,990	1,682	6,672	-	-	-	1,969	370	2,339	3,139	780	3,919	

Memo: The number of dealers purchasing TBA in each category arrived at as follows:

Year 1952 to May 1953 inc:
Monthly count; based on number purchasing $1 or more during 3 month period ending with current month.

June 1953 to Dec. 1954 inc:
Quarterly count; based on number purchasing $1 or more during 3 month period ending with June, Sep, Dec & Mar.

Jan. 1955 to Jun. 30, 1956 inc:
Monthly count; based on number purchasing $1 or more during each month.

Grand Total dealers purchasing all TBA items combined is not possible as dealers who purchase in 2 or more categories are duplicated for each category in which they purchase.

NA - Not Available.

Item 11.

FEDERAL TRADE COMMISSION
DOCKET NO. 6435 COMMISSION EXHIBIT NO. Com. 120
IN THE MATTER OF B. F. GOODRICH COMPANY
DATE OCT 17 1956 WITNESS
ACE REPORTING CO., Official Reporter
By MONICK

ANNUAL PURCHASES OF GOODRICH TBA PRODUCTS

BY "C" AND "D" DEALERS, CONSIGNEES AND DISTRIBUTORS
(DOLLARS)

	1951	1952	1953	1954	1955	1956 (through June)
"C" Dealers	4,272,697	5,803,896	6,832,705	7,698,833	9,444,122	4,990,933
"D" Dealers	1,825,918	1,911,638	1,807,688	1,826,738	2,151,778	1,037,088
Consignees	3,651,024	3,425,084	3,480,551	3,571,274	4,334,379	2,176,778
Distributors	1,655,304	1,605,665	1,804,391	1,726,499	2,003,965	902,849
Total	11,404,943	12,746,283	13,925,335	14,823,344	17,934,244	9,109,648

JAX 191
Commission's Exhibit 120

7009

Com. 121

ANNUAL PURCHASES OF FIRESTONE TBA PRODUCTS

BY "C" AND "D" DEALERS, CONSIGNEES AND DISTRIBUTORS
(DOLLARS)

	1951	1952	1953	1954	1955	1956 (thru June)
"C" Dealers	11,050,115	13,838,565	15,843,023	16,441,762	19,464,784	10,056,818
"D" Dealers	5,345,174	6,210,771	5,634,786	5,326,669	6,036,009	2,694,293
Consignees	6,292,060	6,509,406	6,310,907	5,905,508	6,330,072	2,759,813
Distributors	2,948,020	3,030,989	3,210,938	3,070,478	3,731,307	1,407,432
Total	25,635,369	29,589,731	30,999,634	30,744,417	35,562,172	16,918,356

Commission's Exhibit 121

JAX 182

FEDERAL TRADE COMMISSION
DOCKET NO. 6285 EXHIBIT NO. 121
IN THE MATTER OF Goodrich
DATE 1/6/57 WITNESS Glenn
ACE REPORTING CO., Official Reporter
By Glenn

JAX 183

Commission's Exhibit 128A

B. F. Goodrich
Tire Dealer Franchise

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 128-A
IN THE MATTER OF B. F. GOODRICH COMPANY
DATE OCT 18 1956 WITNESS
ACE REPORTING CO., Official Re
By MONICK

AGREEMENT made and entered into, at the place and on the date of acceptance shown below, between the undersigned DEALER and THE B. F. GOODRICH COMPANY, with general business offices at Akron, Ohio, wherein it is mutually agreed as follows:

1. PRODUCTS: B. F. Goodrich agrees to sell and deliver to the Dealer and the Dealer agrees to purchase and receive from B. F. Goodrich, during the term of this Agreement, the following B. F. Goodrich products (strike through any products to be excluded):

Passenger Car Tires	Industrial Tires
Truck & Bus Tires	Batteries
Farm Tires	Accessories & Repair Materials

The Dealer agrees to specialize in and aggressively promote the sale and distribution of such products, to equip his place of business suitably for the sale and service thereof and, if available, to carry a complete line in stock at all times in sufficient quantity to insure prompt service, recommending B. F. Goodrich products at all times and refraining from substituting other merchandise when B. F. Goodrich products are requested by the customer. The Dealer also agrees to encourage the specification of B. F. Goodrich tires as original equipment on commercial, industrial and farm vehicles and to help customers get the best results therefrom.

2. ADVERTISING: The Dealer agrees to properly maintain and to display prominently at its place of business all signs and to use all advertising materials supplied to it by B. F. Goodrich from time to time. The Dealer further agrees to display B. F. Goodrich products prominently in its showrooms and show windows, but not to exhibit such merchandise at any fair, show or other exhibit without first securing B. F. Goodrich's written consent.

3. ORDERS: All orders placed hereunder shall be in writing or, if placed by phone or wire, shall be supported later by written order, setting forth in detail the product, size, type or other description and quantity, and shall be subject to acceptance by B. F. Goodrich at its district office or warehouse, if and to the extent stock is available for delivery therefrom, or by B. F. Goodrich at its factory if delivery is to be made from the factory; provided, however, that no acceptance of any order, which when added to prior orders results in the total dollar amount of the Dealer's accumulated and unfilled purchases on order for any product being in excess of fifty per cent (50%) of the Dealer's purchases of such product during the preceding six months, shall be binding on B. F. Goodrich unless signed in writing at Akron, Ohio, by its General Manager of Tire Merchandising, or the General Manager of B. F. Goodrich Replacement Tire Sales.

4. PRICES: The Dealer agrees to pay, for all products delivered hereunder, the net prices, plus taxes and separate charges, if any, applicable to the Dealer as determined by B. F. Goodrich and in effect on the date of shipment.

5. TERMS: The Dealer will pay for all products delivered hereunder in accordance with the regular terms of payment in effect on the date of shipment. If the Dealer should fail to make any payment when due, or if the Company at any time should become dissatisfied as to the Dealer's financial responsibility, B. F. Goodrich may refuse to make further shipments hereunder except for cash and the payment in full of the Dealer's account or, if B. F. Goodrich so elects, it may terminate the Agreement without advance notice to the Dealer.

6. PRICE PROTECTION: In consideration of the Dealer's agreement to carry an adequate stock of tires, B. F. Goodrich agrees that if at any time during the term of this Agreement it should make any general downward revision in its recommended consumer list prices for tires concurrently with a decline in its net prices to the Dealer therefor (no price protection in case of revision in net prices, discounts, bonus or allowances to Dealers only), B. F. Goodrich will protect the Dealer in accordance with B. F. Goodrich's price protection policy in effect at the time of any such price revision. The Dealer agrees that any merchandise credit granted under such price protection policy shall be used on or before the December 31 next following the date of its allowance, and any portion of any such credit not so used shall be subject to cancellation by B. F. Goodrich. Price protection will not be allowed on any tires delivered to the Dealer in exchange for others returned by it, or on imperfect, discontinued or other tires purchased at special prices. B. F. Goodrich's decision as to what constitutes imperfect, discontinued, or other special priced tires to be final and conclusive.

7. DELIVERIES: All deliveries hereunder shall be made and title shall pass to the Dealer f.o.b. transportation facilities at point of shipment; otherwise, the terms of shipment shall be in accordance with B. F. Goodrich's regular policy in effect at the date of shipment. All orders accepted are subject to, and B. F. Goodrich shall not be liable for, any delay or failure to deliver when caused by fire, flood, accident, labor troubles, consequences of foreign or domestic wars, insurrections or riots, government orders or requirements, interruptions or shortages of fuel, raw materials, or transportation facilities, or other causes beyond its reasonable control, whether similar or dissimilar to those named. In the event B. F. Goodrich is unable, due to any of the foregoing contingencies or otherwise, to fulfill its total commitments to all customers, Dealer agrees to accept, in full and complete performance by B. F. Goodrich of its obligations hereunder, deliveries in accordance with such allocations as B. F. Goodrich may make.

8. ADJUSTMENTS: All first-class B. F. Goodrich products are warranted to be free from defects in workmanship and material, and will be adjusted in accordance with B. F. Goodrich's guarantee and adjustment policy in effect on the date of resale to the consumer. The Dealer agrees to prepay all transportation charges on all products returned to B. F. Goodrich for adjustment. It is understood that this Agreement does not confer on the Dealer any authority to warrant any product sold hereunder, nor any authority to make adjustments on behalf of B. F. Goodrich, except as set forth in B. F. Goodrich's guarantee and adjustment policy.

9. EXCHANGES: The dealer agrees not to return for exchange or credit any product delivered hereunder without B. F. Goodrich's prior written approval. Upon the return of any product with B. F. Goodrich's approval, the Dealer agrees to prepay all transportation charges and accept credit therefor at the net invoiced price or the price in effect at the time such product is received by B. F. Goodrich, whichever is lower, less B. F. Goodrich's regular service charge then in effect to cover its cost of handling.

168 — 7616

Commission's Exhibit 128

B. F. GOODRICH
TIRE DEALER FRANCHISE

Issued to

(Name of Dealer)

(Street Address)

(City) (State)

Dated

ADVANTAGES OF YOUR
B. F. GOODRICH FRANCHISE

Products of high quality.
A complete line of products.
A dependable, wide source of supply.
A sound merchandising program.
A proven time-payment plan.
Consumer demand created by nation-wide equipment use.
Effective advertising.
Premium reserve in back up funds and finished product adjustment.

THE B. F. GOODRICH COMPANY
Akron, Ohio

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 COMMISSION EXHIBIT NO. 128-B

10. IDENTIFICATION: Title to all such signs furnished to the Dealer shall remain in B. F. Goodrich, regardless of whether the Dealer shares in the cost of the erection and maintenance or pays for the sign thereof. On any termination of this Agreement, or upon request by B. F. Goodrich, the Dealer agrees to remove and return to B. F. Goodrich any or all such signs and, in the event of the Dealer's failure to do so, B. F. Goodrich may remove them without liability to the Dealer for trespass or damages to the premises or to the Dealer's business. The Dealer agrees to indemnify and save B. F. Goodrich harmless from any and all liability in connection with any such sign and related equipment, whether arising from its erection, installation, maintenance, use or otherwise.

11. DURATION: This Agreement shall become effective upon the date of B. F. Goodrich's acceptance in the place provided below and shall continue in full force and effect, except as hereinabove provided, until terminated by either party upon five (5) days' written notice to the other. Upon any such termination, B. F. Goodrich may refuse to accept any orders aggregating in excess of the average five (5) days' requirements of the Dealer based on deliveries to the Dealer hereunder during the preceding twelve (12) months or portion thereof in which the Agreement has been in effect. No termination, however, shall relieve the Dealer from its obligation to make payment in accordance with the provisions hereof for any merchandise delivered hereunder.

12. GENERAL: This Agreement, which supersedes and cancels all other contracts referring to the subject matter hereof, except the Dealer's obligation to make full payment for any merchandise purchased thereunder, HAS BEEN ENTERED INTO ONLY UNDER THE INDUCEMENTS AND REPRESENTATIONS HEREIN EXPRESSED AND SETS FORTH THE ENTIRE AGREEMENT BETWEEN THE PARTIES HERETO, with the exception of any applicable written Fair Trade Agreements providing for resale price maintenance under Fair Trade laws. This Agreement is personal to the parties hereto and neither it nor any rights arising out of it can be assigned or transferred by either party, either voluntarily or by operation of law, without the written consent of the other party.

This Agreement may be signed without alteration of printed condition and so terminated in its entirety for B. F. Goodrich by the General Manager of Tire Merchandising, or by the General Manager, any Zone Manager, or any District Manager of B. F. Goodrich Replacement Tire Sales or by any Officer of B. F. Goodrich. Its provisions may be altered, waived or modified only in writing signed by the Dealer and by one of B. F. Goodrich's aforesaid Managers or Officers, but no alteration, waiver or modification shall be effected by the routine acknowledgment or acceptance by B. F. Goodrich of an order containing additional or different conditions.

IN WITNESS WHEREOF, the parties hereto have signed and accepted this Agreement in duplicate, each of which of all to be considered an original, by their respective officers or employees thereunto duly authorized.

Accepted at _____ _____
(Dealer)

this _____ day of _____, 19__ By _____

THE B. F. GOODRICH COMPANY _____
(Title)

By _____
District Manager, B. F. Goodrich Replacement Tire Sales

City _____ County _____ State _____

7617

Form 1143-B 1-53 Printed in U.S.A.

JAX 185

Commission's Exhibit 128C

FEDERAL TRADE COMMISSION

DOCKET NO. 6485 EXHIBIT NO. 128C DISTRICT

RECORD OF B. F. GOODRICH TIRE DEALER FRANCHISE

PRICE CODE 126 Tires Batteries

DEALER OWNER'S NAME

Street Address City Postal Zone County State

Date Accepted No. Years B.F.G. Dealer Terr. Mgr

Check B.F.G. Products Dealer desires to handle at this time		% BFG New	Estimated BFG Annual Volume	Initial Order	Brand Previously Handled
Passenger Tires	☐				
Truck and Bus Tires	☐				
Farm Tires	☐				
Industrial Tires	☐				
Repair Material and Camelback	☐				
Batteries	☐				

Principal Business and Type of Outlet

Reason for Change

Make of Car, Truck or Tractor Handled

Make of Gasoline

MAIL THIS STUB TO SALES OPERATING DEPT. AKRON, OHIO

Type or print plainly — Use reverse side for additional information if needed.

B. F. Goodrich Tire Dealer Franchise

AGREEMENT made and entered into, at the place and on the date of acceptance shown below, between the undersigned DEALER and THE B. F. GOODRICH COMPANY, with general business offices at Akron, Ohio, wherein it is mutually agreed as follows:

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Passenger Car Tires
Truck & Bus Tires
Farm Tires
Industrial Tires
Batteries
Accessories & Repair Materials

The Dealer agrees to specialize in and aggressively promote the sale and distribution of such products, to equip his place of business suitable for the sale and service thereof and, if available, to carry a complete line in stock at all times in sufficient quantity to insure prompt service, recommending B. F. Goodrich products at all times and refraining from substituting other merchandise when B. F. Goodrich products are requested by the customer. The Dealer also agrees to encourage the specification of B. F. Goodrich tires as original equipment on commercial, industrial and farm vehicles and to help customers get the best results therefrom.

2. ADVERTISING: The Dealer agrees to properly maintain and to display prominently at its place of business all signs and to use all advertising materials supplied to it by B. F. Goodrich from time to time. The Dealer further agrees to display B. F. Goodrich products prominently in its salesrooms and show windows, but not to exhibit such merchandise at any fair, show or other exhibit without first securing B. F. Goodrich's written consent.

3. ORDERS: All orders placed hereunder shall be in writing or, if placed by phone or wire, shall be supported later by written order, setting forth in detail the product, size, type or other description and quantity, and shall be subject to acceptance by B. F. Goodrich at its district office or warehouse, if and to the extent stock is available for delivery therefrom, or by B. F. Goodrich at its factory if delivery is to be made from the factory; provided, however, that no acceptance of any order, which when added to prior orders, results in the total dollar amount of the Dealer's accumulated and unfilled purchases on order for any product being in excess of fifty per cent (50%) of the Dealer's purchases of such product during the preceding six months, shall be binding on B. F. Goodrich unless signed in writing at Akron, Ohio, by its General Manager of Tire Merchandising, or the General Manager of B. F. Goodrich Replacement Tire Sales.

4. PRICES: The Dealer agrees to pay, for all products delivered hereunder, the net prices, plus taxes and separate charges, if any, applicable to the Dealer as determined by B. F. Goodrich and in effect on the date of shipment.

5. TERMS: The Dealer will pay for all products delivered hereunder in accordance with the regular terms of payment in effect on the date of shipment. If the Dealer should fail to make any payment when due, or if the Company at any time should become dissatisfied as to the Dealer's financial responsibility, B. F. Goodrich may refuse to make further shipments hereunder except for cash and the payment in full of the Dealer's account or, if B. F. Goodrich so elects, it may terminate the Agreement without advance notice to the Dealer.

PRICE PROTECTION: In consideration of the Dealer's agreement to carry an adequate stock of tires, B. F. Goodrich agrees that if at any time during the term of this Agreement it should make any general downward revision in its recommended consumer list prices for tires concurrently with a decline in its net prices to the Dealer therefor (no price protection in case of revision in net prices, discounts, bonus or allowances to Dealers only), B. F. Goodrich will protect the Dealer in accordance with B. F. Goodrich's price protection policy in effect at the time of any such price revision. The Dealer agrees that any merchandise credit granted under such price protection policy shall be used on or before the December 31 next following the date of its allowance, and any portion of any such credit not so used shall be subject to cancellation by B. F. Goodrich. Price protection will not be allowed on any tires delivered to the Dealer in exchange for others returned by it, or on imperfect, discontinued or other tires purchased at special prices, B. F. Goodrich's decision as to what constitutes imperfect, discontinued, or other special priced tires to be final and conclusive.

7. DELIVERIES: All deliveries hereunder shall be made and title shall pass to the Dealer f.o.b. transportation facilities at point of shipment, otherwise, the terms of shipment shall be in accordance with B. F. Goodrich's regular policy in effect at the date of shipment. All orders accepted are subject to, and B. F. Goodrich shall not be liable for, any delay or failure to deliver when caused by fire, flood, accident, labor troubles, consequences of foreign or domestic wars, insurrections or riots, government orders or requirements, interruptions or shortages of fuel, raw materials, or transportation facilities, or other causes beyond its reasonable control, whether similar or dissimilar to those named. In the event B. F. Goodrich is unable, due to any of the foregoing contingencies or otherwise, to fulfill its total commitments to all customers, Dealer agrees to accept as full and complete performance by B. F. Goodrich of its obligations hereunder, deliveries in accordance with such allocations as B. F. Goodrich may make.

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Commission's Exhibit 128D

FEDERAL TRADE COMMISSION

DOCKET NO. 6485 COMMISSION EXHIBIT NO. 128-D

8. ADJUSTMENTS: All first-class B. F. Goodrich products are warranted to be free from defects in workmanship and material, and will be adjusted in accordance with B. F. Goodrich's guarantee and adjustment policy in effect on the date of resale to the consumer. The Dealer agrees to prepay all transportation charges on all products returned to B. F. Goodrich for adjustment. It is understood that this Agreement does not confer on the Dealer any authority to warrant any product sold hereunder, nor any authority to make adjustments on behalf of B. F. Goodrich except as set forth in B. F. Goodrich's guarantee and adjustment policy.

9. EXCHANGES: The Dealer agrees not to return for exchange or credit any product delivered hereunder without B. F. Goodrich's prior written approval. Upon the return of any product with B. F. Goodrich's approval, the Dealer agrees to prepay all transportation charges and accept credit therefor at the net invoiced price or the price in effect at the time such product is received by B. F. Goodrich, whichever is lower, less B. F. Goodrich's regular service charge then in effect to cover its cost of handling.

10. IDENTIFICATION: Title to all such signs furnished to the Dealer shall remain in B. F. Goodrich, regardless of whether the Dealer shares in the cost of the erection and maintenance or pays for the use thereof. On any termination of this Agreement, or upon request by B. F. Goodrich, the Dealer agrees to remove and return to B. F. Goodrich any or all such signs and, in the event of the Dealer's failure to do so, B. F. Goodrich may remove them without liability to the Dealer for trespass or damages to the premises or to the Dealer's business. The Dealer agrees to indemnify and save B. F. Goodrich harmless from any and all liability in connection with any such sign and related equipment, whether arising from its erection, installation, maintenance, use or otherwise.

11. DURATION: This Agreement shall become effective upon the date of B. F. Goodrich's acceptance in the place provided below and shall continue in full force and effect, except as hereinabove provided, until terminated by either party upon five (5) days' written notice to the other. Upon any such termination, B. F. Goodrich may refuse to accept any orders aggregating in excess of the average five (5) days' requirements of the Dealer based on deliveries to the Dealer hereunder during the preceding twelve (12) months or portion thereof in which the Agreement has been in effect. This termination, however, shall release the Dealer from its obligation to make payment in accordance with the provisions hereof for any merchandise delivered hereunder.

12. GENERAL: This Agreement, which supersedes and cancels all other contracts relating to the subject matter hereof, except the Dealer's obligation to make full payment for any merchandise purchased thereunder, HAS BEEN ENTERED INTO ONLY UNDER THE INDUCEMENTS AND REPRESENTATIONS HEREIN EXPRESSED AND SETS FORTH THE ENTIRE AGREEMENT BETWEEN THE PARTIES HERETO, with the exception of any applicable written Fair Trade Agreements providing for resale price maintenance under Fair Trade laws. This Agreement is personal to the parties hereto and neither it nor any rights arising out of it can be assigned or transferred by either party, either voluntarily or by operation of law, without the written consent of the other party.

This Agreement may be signed without alteration of printed condition under mentioned in its entirety for B. F. Goodrich by the General Manager of Tire Merchandising, or by the General Manager, any Zone Manager, or any District Manager of B. F. Goodrich Replacement Tire Sales or by any Officer of B. F. Goodrich. Its provisions may be altered, waived or modified only in writing signed by the Dealer and by one of B. F. Goodrich's aforesaid Managers or Officers, but no alteration, waiver or modification shall be effected by the routine acknowledgement or acceptance by B. F. Goodrich of an order containing additional or different conditions.

IN WITNESS WHEREOF, the parties hereto have signed and accepted this Agreement in duplicate, each of which shall be considered an original, by their respective officers or employees thereunto duly authorized.

Accepted at _____ _____ (Dealer)

this _____ day of _____ 19__ By _____

THE B. F. GOODRICH COMPANY _____

By _____ _____ City County State

District Manager, B. F. Goodrich Replacement Tire Sales

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Form 1141-B 8-53 Printed in U.S.A.

JAX 187

Commission's Exhibit 128E

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 COMMISSION EXHIBIT NO. 128-E

B. F. Goodrich Associate Dealer Agreement

Date.....

AGREEMENT BETWEEN _____
(Insert Name of Key Dealer)

called "DEALER," and _____
(Insert Name of Associate Dealer)

_____
(Street Address) (City and State)

called "ASSOCIATE DEALER."

Associate Dealer will buy B. F. Goodrich products from Dealer at Dealer's prices and terms to its Associate Dealers generally, subject to change from time to time by Dealer and will specialize in and aggressively promote the sale of such products. Upon failure by Associate Dealer to make payments due, Dealer may at its option cancel this agreement or defer additional shipments hereunder until overdue accounts have been paid. Associate Dealer will refer claims for adjustment to Dealer and will not warrant merchandise purchased hereunder except in accordance with B. F. Goodrich standard warranty in effect at the time of purchase from Dealer.

Associate Dealer will display signs, display devices and advertising material referring to B. F. Goodrich products, and will remove all B. F. Goodrich identification, including all signs and advertising material, upon the termination of this agreement, returning all signs and advertising material to Dealer at that time.

This agreement shall become effective when signed by authorized representative of Dealer, and may be canceled at any time upon five (5) days' written notice by one party to the other. It is personal in character and not subject to assignment, and does not constitute Associate Dealer an agent for Dealer.

_____ _____
(Dealer) (Associate Dealer)

By.....

ASSOCIATE DEALER REC[illegible]

TO BE FILLED IN BY THE KEY DEALER

Date _____

Name of Associate Dealer _____

Town _____ Zone _____ County _____ State _____

Est. yearly volume of Associate Dealer $ _____ Type of Dealer (Car agent, garage, filling station, etc.) _____

Does [illegible]ock B. F. Goodrich? _____ Does he have B. F. Goodrich identification? _____ Is dealer to receive price information direct? _____

Name [illegible]y Dealer _____ Address _____

Town _____ County _____ State _____

TO BE FILLED IN BY B. F. GOODRICH DISTRICT OFFICE

Do we have Contract Dealer in town in addition to this Associate Dealer? _____ No. of other Associate Dealers _____

Cars in town (Associate Dealer) _____ Est. yearly volume of Key Dealer _____ Does this Associate Dealer satisfactorily close this town? _____

Signed—District Manager _____ Name of Territory Manager _____

Mail one copy to Akron Dept. 0804 if dealer is to receive price information direct and retain one copy for district file.

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NOTE. USE REVERSE SIDE FOR REMARKS

[illegible] 9-30-48 LITHO. IN U. S. A.

JAX 188

Commission's Exhibit 129A

FEDERAL TRADE COMMISSION

DOCKET NO. 6485 EXHIBIT NO. 129-A

IN THE MATTER OF B. F. GOODRICH COMPANY July 9, 1956

DATE OCT 18 1956 WITNESS

ACE REPORTING CO., Official Reporter

By MONICK

B. F. GOODRICH COMPANY WAREHOUSES
AS OF JULY 5, 1956

LOCATION	STREET ADDRESS	CITY & STATE
SHIPPING		
Akron, Ohio	500 E. Main Street	Akron 18, Ohio
Los Angeles, Calif.	5400 E. Olympic Blvd	Los Angeles, 22, Calif.
Miami, Okla.	P. O. Box 31	Miami, Oklahoma
Oaks, Pennsylvania	—	Oaks (Montgomery County) Pennsylvania
Tuscaloosa, Alabama	—	Tuscaloosa, Alabama
DISTRICT OFFICES (includes all Supplemental Warehouses)		
Albany, New York	1043 Broadway P. O. Box 1319	Albany 1, New York
Atlanta, Georgia	1721 DeKalb Ave., N.E.	Atlanta 6, Georgia
Birmingham, Alabama	101 South 12th Street	Birmingham 5, Alabama
Boston, Mass.	690 Commonwealth Avenue	Boston 15, Mass.
Buffalo, New York	1050 Main Street (Warehouse located at 79 Perry Street)	Buffalo 9, New York
Charlotte, N.C.	300 E. 7th Street P. O. Box 2755	Charlotte 1, N.C.
Chicago, Illinois	1646 W. Lake Street	Chicago 44, Illinois
Cincinnati, Ohio	5060 Wooster Pike	Cincinnati 27, Ohio
Columbus, Ohio	3770 Indianola Avenue P. O. Box 3507	Columbus 14, Ohio
Dallas, Texas	1400 Turtle Creek Blvd P. O. Box 6125	Dallas, 2, Texas
Denver, Colorado	2500 W. 6th Avenue P. O. Box 417	Denver 4, Colorado
Detroit, Michigan	5200 14th Street	Detroit 8, Michigan
Houston, Texas	3311 Canal Street P. O. Box 1401	Houston 3, Texas
Indianapolis, Indiana	1015 E. Michigan Street	Indianapolis, Indiana
Jacksonville, Florida	2252 Dennis Street P. O. Box 2430	Jacksonville, Florida
Kansas City, Kansas	830 Kindelberger Road	Kansas City 15, Kansas
Los Angeles, Calif.	2514 E. 44th Street ~~obsolete - see below~~ 3525 S. Garfield	Los Angeles, Calif. Los Angeles 22, Calif.
Memphis, Tennessee	960 S. Bellevue Street P. O. Box 5667	Memphis 6, Tennessee
Milwaukee, Wisconsin	647 W. Virginia Street	Milwaukee 4, Wisconsin
Minneapolis, Minn.	411 N. Washington Ave.	Minneapolis, Minn.
New Orleans, La.	1104 S. Moran Street	New Orleans, La.
New York, N. Y.	230 Park Avenue (Warehouse located at 110 East End Avenue)	New York 17, N. Y.
Oklahoma City, Okla.	301 E. Hill Street	Oklahoma City, Okla.
Omaha, Nebraska	4425 N. 16th Street P. O. Box 1214	Omaha 12, Nebraska

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Commission's Exhibit 129B

FEDERAL TRADE COMMISSION

DOCKET NO. 6485 EXHIBIT NO. 129-B

LOCATION	STREET ADDRESS	CITY & STATE
Philadelphia, Pa.	955 E. Erie Avenue P. O. Box 4743	Philadelphia 24, Pa.
Pittsburgh, Pa.	5200 Penn Avenue	Pittsburgh 24, Pa.
St. Louis, Mo.	5051 Southeast Avenue	St. Louis 10, Mo.
Salt Lake City, Utah	651 W. Sixth South P. O. Box 1916	Salt Lake City, Utah
San Francisco, Calif.	1950 Army Street	S/F 24, Calif.
Seattle, Washington	91 Hanford Street	Seattle 4, Washington
Washington, D.C.	1112-18 19th St., N.W.	Washington, D.C.
OTHER WAREHOUSES		
Atlanta, Georgia	1721 DeKalb Ave., NE. P. O. Box 4509	Atlanta, Ga.
Chicago, Illinois	4646 W. Lake Street	Chicago 44, Illinois
Columbus, Ohio	3770 Indianola Avenue P. O. Box 3507	Columbus, 14, Ohio
Dallas, Texas	1400 Turtle Creek Blvd P. O. Box 6185	Dallas 2, Texas
Denver, Colorado	P. O. Box 417 2500 W. 8th Avenue	Denver 4, Colorado
Kansas City, Kansas	630 Kindelberger Road	Kansas City 15, Kansas
L/A., Calif.	3525 Garfield	Los Angeles 22, Calif.
Memphis, Tennessee	960 E. Bellevue St. P. O. Box 5497	Memphis 6, Tennessee
Phila. Pa.	955 E. Erie Ave	Philadelphia 24, Pa.
" "	5700 Tacony Street	" 24, Pa.
Portland, Oregon	3055 N. W. Yeon	Portland 10, Oregon
S/F., Calif.	1950 Army Street	S/F., 24, Calif.
W. Springfield, Mass.	933 Park Street P. O. Box 47	W. Springfield, Mass
SUBTERMINAL WAREHOUSES		
San Antonio, Texas	402 E. Commerce Street P. O. Box 419	San Antonio 5, Texas
Wichita, Kansas	902 E. Indianapolis St.	Wichita, Kansas
Phoenix, Arizona	P. O. Box 6454	Phoenix, Arizona
Billings, Montana	4001 Montana Ave., W.	Billings, Montana
Black Eagle (Great Falls) Montana	1027 Smelter Avenue	Black Eagle (Great Falls) Montana
Sacramento, Calif.	12th & "I" Sts	Sacramento 14, Calif.
Spokane, Wash.	515 W. Fallon Avenue	Spokane 6, Washington
Richmond, Va.	7500 W. Lombardy Street	Richmond, Va.
Grand Junction, Colorado	440 South Avenue	Grand Junction, Colorado
JOBBERS		
Garden City, Kansas	1003 W. Main Street (State Line Oil Co)	Garden City, Kansas
Des Moines, Iowa	207 Court Street (Des Moines Tire Co)	Des Moines, Iowa
Boise, Idaho	509 Bannock Street (Hill's)	Boise, Idaho
Redding, Calif.	2701 S. Market Street (Valley Tire Service)	Redding, Calif.

DEPARTMENT OF JUSTICE 7623

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JAX 190

Commission's Exhibit 190A

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 190-A
IN THE MATTER OF B. F. GOODRICH COMPANY
DATE OCT 18 1956 WITNESS
ACE REPORTING CO., Official Reporter
By

MONTH BY MONTH TABULATION OF B. F. GOODRICH SALES TO TEXACO OUTLETS FOR 1952

	Total	Tires & Tubes	Batteries	A & H Supplies
Jan.	860,836	687,895	84,901	88,040
Feb.	839,601	681,781	62,000	95,820
March	755,927	608,463	54,573	92,891
April	810,279	719,171	49,558	101,550
May	889,238	725,196	47,907	116,135
June	1,168,556	962,405	84,895	121,256
July	1,298,997	1,086,292	110,831	101,874
August	1,631,629	1,383,687	132,724	115,218
Sept.	1,317,902	1,038,867	141,738	137,297
Oct.	1,160,282	885,182	152,546	122,564
Nov.	1,046,263	768,752	134,683	142,828
Dec.	908,141	657,373	109,119	141,649

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Commission's Exhibit 130B

12016

FEDERAL TRADE COMMISSION

DOCKET NO. 6485 COMMISSION EXHIBIT NO. 130-B

MONTH BY MONTH TABULATION OF B. F. GOODRICH
SALES TO TEXACO OUTLETS FOR 1953

	Total	Tires & Tubes	Batteries	A & H Supplies
Jan.	1,234,820	1,068,662	77,905	88,253
Feb.	1,041,410	853,781	74,618	113,011
March	916,069	725,281	67,312	123,476
April	1,046,479	838,699	73,615	134,165
May	1,211,089	1,013,167	66,819	131,103
June	1,339,691	1,106,491	97,263	135,942
July	1,323,616	1,048,761	130,013	144,842
August	1,335,906	1,042,964	134,056	158,886
Sept.	1,472,540	1,168,262	152,879	151,399
Oct.	1,101,957	814,250	141,228	146,479
Nov.	1,010,217	686,004	151,851	172,362
Dec.	889,659	590,381	133,796	165,482

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JAX 192

Commission's Exhibit 130C

130(c)

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 COMMISSION EXHIBIT NO. 130-C

MONTH BY MONTH TABULATION OF B. F. GOODRICH
SALES TO TEXACO OUTLETS FOR 1954

	Total	Tires & Tubes	Batteries	A & H Supplies
Jan.	1,172,882	943,981	103,930	124,971
Feb.	1,103,161	857,201	99,877	146,083
March	946,147	733,600	66,059	146,488
April	1,049,494	837,352	63,344	148,798
May	1,209,071	976,168	79,343	153,560
June	1,482,070	1,200,943	98,455	182,672
July	1,373,366	1,094,096	118,418	160,852
August	1,355,998	1,015,691	152,497	187,810
Sept.	1,494,238	1,153,224	147,089	193,925
Oct.	1,219,178	875,854	156,831	186,493
Nov.	1,210,841	865,299	158,223	187,319
Dec.	1,204,563	851,214	145,445	207,904

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Commission's Exhibit 130D

FEDERAL TRADE COMMISSION 130(d)

DOCKET NO. 6485 130-D

MONTH BY MONTH TABULATION OF B. F. GOODRICH
SALES TO TEXACO OUTLETS FOR 1955

	Total	Tires & Tubes	Batteries	A & H Supplies
Jan.	1,230,460	994,411	101,702	134,347
Feb.	1,207,320	927,200	134,760	145,360
March	1,170,866	926,297	83,791	160,778
April	1,419,428	1,139,215	81,978	198,235
May	1,576,513	1,294,751	92,574	189,188
June	1,657,182	1,351,867	104,704	200,611
July	1,699,380	1,375,563	116,037	207,780
August	1,826,025	1,401,997	202,794	221,225
Sept.	1,587,635	1,164,521	192,043	231,080
Oct.	1,607,430	1,172,582	210,601	224,247
Nov.	1,446,977	992,279	199,270	255,428
Dec.	1,506,907	1,079,315	183,009	244,583

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JAX 194

Commission's Exhibit 130E

FEDERAL TRADE COMMISSION \ 12002
DOCKET NO. 6485 COMMISSION EXHIBIT NO. 130-E

Month by Month Tabulation of B. F. Goodrich
Sales to Texaco Outlets for 1956

	Total	Tires & Tubes	Batteries	A & H Supplies
Jan.	1,297,404	969,403	134,336	193,665
Feb.	1,195,746	888,917	121,354	185,475
March	1,329,621	1,042,598	90,960	196,063
April	1,544,812	1,230,423	82,521	231,868
May	1,693,992	1,378,240	91,141	224,611
June	2,042,188	1,638,570	151,858	251,760

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Commission's Exhibit 132

CX 132

B. F. GOODRICH TIRE CO.

OIL COMPANY, SALES AND COMMISSION PAYMENTS

	Last Half 1953	1954	1955	6 Mos. Accum. 1956
The Texas Co.				
Total Commission Payments	621,921	1,310,738	1,597,800	807,532
Total Sales	7,133,895	24,821,009	17,936,123	9,103,763
Conoco				
Total Commission Payments	259,711	561,815	673,089	317,882
Total Sales	3,081,736	6,745,966	8,218,124	3,895,375
Jenney Mfg. Co.				
Total Commission Payments	17,750	41,423	46,509	22,164
Total Sales	179,149	416,963	475,046	251,900
Shell American				
Total Commission Payments	9,616	18,106	19,216	9,439
Total Sales	96,162	181,068	192,138	94,392
Ohio Oil				
Total Commission Payments	101,147	200,247	247,580	130,170
Total Sales	1,067,198	2,084,522	2,571,451	1,360,315
Esso Co.				
Total Commission Payments	4,151	6,717	6,270	2,875
Total Sales	41,659	67,607	62,918	28,753
Grand Total Commission Payments	1,014,296	2,139,046	2,590,464	1,290,062
Grand Total Sales	11,599,799	24,317,135	29,455,800	14,734,498

Commission Payments taken from Dept. 0607 Summary Sheets
Commission Sales taken from 6145 Report

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 132
IN THE MATTER OF Goodrich
DATE 11/2/54 WITNESS
ACE REPORTING CO., Official Reporter
BY

7030

Commission's Exhibit 134A

1-24-57

B. F. GOODRICH TIRE COMPANY

OIL COMPANY SALES & COMMISSIONS - JANUARY 1955

16 errors

13 errors 13½ errors

Texas Co.					
Sales of	$ 86,412	@ 5%	Commission		$ 4,320
Sales of	336,794	@ 7½%	Commission		25,260
Sales of	807,254	@ 10%	Commission		80,725
Total Sales	$ 1,230,460		Total Commission		$ 110,305
Continental Oil Co.					
Sales of	$ 61,000	@ 5%	Commission		$ 3,050
Sales of	308,156	@ 7½%	Commission		23,112
Sales of	234,793	@ 10%	Commission		23,479
Total Sales	$ 603,949		Total Commission		$ 49,641
Ohio Oil Co.					
Sales of	$ 11,115	@ 5%	Commission		$ 556
Sales of	3,680	@ 7½%	Commission		276
Sales of	168,051	@ 10%	Commission		16,805
Total Sales	$ 182,846		Total Commission		$ 17,637
Jenney Mfg. Co.					
Sales	$ 447	@ 7½%	Commission		$ 33
	42,465	@ 10%	Commission		4,247
Total Sales	$ 42,912		Total Commission		$ 4,280
Shell American					
Sales of	$ 15,847	@ 10%	Commission		$ 1,585
Total Sales	15,847		Total Commission		$ 1,585

FEDERAL TRADE COMMISSION
DOCKET NO. 4485 EXHIBIT NO. 134A
IN THE MATTER OF Goodrich
DATE 11/7/57 WITNESS
ACE REPORTING CO., Official Reporter
By 7632

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JAX 197

Commission's Exhibit 134B

134 (A)

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B. F. GOODRICH TIRE COMPANY

OIL COMPANY SALES & COMMISSIONS - JANUARY 1955

Emblem Co.

Sales of	$ 19	@	5%	Commission	$ 1
Sales of	51	@	7½%	Commission	4
Sales of	2,993	@	10%	Commission	299
Total Sales	$ 3,063			Total Commission	$ 304

Total - All Oil Companies

Sales of	$ 158,546	@	5%	Commission	$ 7,927
Sales of	649,128	@	7½%	Commission	48,685
Sales of	1,271,403	@	10%	Commission	127,140
Total Sales	2,079,077			Total Commission	$ 183,752

FEDERAL TRADE COMMISSION
DOCKET 6455 FILED 1208

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JAX 198

Commission's Exhibit 134C

134(c)

B. F. GOODRICH TIRE COMPANY

OIL COMPANY SALES & COMMISSIONS - JUNE 1955

Texas Co.					
Sales of	$ 126,071	@ 5%	Commission		$ 6,304
Sales of	425,556	@ 7½%	Commission		31,917
Sales of	1,105,555	@ 10%	Commission		110,555
Total Sales	$1,657,182		Total Commission		$148,776
Continental Oil Co.					
Sales of	$ 110,060	@ 5%	Commission		$ 5,503
Sales of	358,542	@ 7½%	Commission		26,891
Sales of	309,509	@ 10%	Commission		30,951
Total Sales	$ 778,111		Total Commission		$ 63,345
Ohio Oil Co.					
Sales of	$ 16,848	@ 5%	Commission		$ 842
Sales of	4,764	@ 7½%	Commission		357
Sales of	231,480	@ 10%	Commission		23,148
Total Sales	$ 253,092		Total Commission		$ 24,347
Jenney Mfg. Co.					
Sales of	$ 236	@ 7½%	Commission		$ 18
Sales of	42,858	@ 10%	Commission		4,286
Total Sales	$ 43,094		Total Commission		$ 4,304
Shell American					
Sales of	$ 19,325	@ 10%	Commission		$ 1,932
Total Sales	$ 19,325		Total Commission		$ 1,932
Emblem Co.					
Sales of	$ 6,833	@ 10%	Commission		$ 683
Total Sales	$ 6,833		Total Commission		$ 683

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 — EXHIBIT NO. 134C
7634

JAX 199

Commission's Exhibit 1349

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B. F. GOODRICH TIRE COMPANY

OIL COMPANY SALES & COMMISSIONS - JUNE 1955

Total - All Oil Companies

Sales of	$ 252,979	@ 5%	Commission	$ 12,649
Sales of	769,098	@ 7½%	Commission	59,183
Sales of	1,715,560	@ 10%	Commission	171,555
Total Sales	$ 2,757,637		Total Commission	$ 243,387

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 1349

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7635

JAX 200

Commission's Exhibit 134E

134

B. F. GOODRICH TIRE COMPANY

OIL COMPANY SALES & COMMISSIONS - DECEMBER 1955

Texas Co.

Sales of	$ 24,830	@	2½% Commission	$ 621
Sales of	93,307	@	5% Commission	4,665
Sales of	404,094	@	7½% Commission	30,307
Sales of	984,676	@	10% Commission	98,468
Total Sales	$ 1,506,907		Total Commission	$ 134,061

Continental Oil Co.

Sales of	$ 23,885	@	2½% Commission	$ 597
Sales of	82,983	@	5% Commission	4,149
Sales of	318,949	@	7½% Commission	23,921
Sales of	243,963	@	10% Commission	24,396
Total Sales	$ 669,780		Total Commission	$ 53,063

Ohio Oil Co.

Sales of	$ 761	@	2½% Commission	$ 19
Sales of	6,980	@	5% Commission	349
Sales of	2,975	@	7½% Commission	223
Sales of	170,878	@	10% Commission	17,088
Total Sales	$ 181,594		Total Commission	$ 17,679

Jenney Mfg. Co.

Sales of	$ 11,628	@	2½% Commission	$ 291
Sales of	655	@	7½% Commission	49
Sales of	32,268	@	10% Commission	3,227
Total Sales	$ 44,551		Total Commission	$ 3,567

Shell American Oil Co.

Sales of	$ 12,323	@	10% Commission	$ 1,232
Total Sales	$ 12,323		Total Commission	$ 1,232

FEDERAL TRADE COMMISSION

MAILED 6/25 ____ 1956

7636

JAX 201

Commission's Exhibit 134F

134 F

- 2 -

B. F. GOODRICH TIRE COMPANY

OIL COMPANY SALES & COMMISSIONS - DECEMBER 1955

Emblem Oil Co.

Sales of	$ 3,106	@	10%	Commission	$ 311
Total Sales	$ 3,106			Total Commission	$ 311

Total - All Oil Companies

Sales of	$ 61,104	@	2½%	Commission	$ 1,528
Sales of	183,270	@	5%	Commission	9,163
Sales of	726,673	@	7½%	Commission	54,500
Sales of	1,447,216	@	10%	Commission	144,722
Total Sales	$ 2,418,263			Total Commission	$ 209,913

FEDERAL TRADE CO... ...ION

DOCKET NO. 6485 ... 1257

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7637

JAX 202

Commission's Exhibit 136

CX 126

B. F. GOODRICH TIRE COMPANY

The number of Oil Company Outlets served by B. F. Goodrich Tire Company on whose purchases commission paid.

	As of 12/31/53	As of 12/31/54	As of 12/31/55	As of 6/30/56
The Texas Co.				
Direct				
Factory or District	872	868	843	838
Through BFGS	653	824	965	1,159
Indirect				
Through Distributors	1,664	2,172	2,636	2,926
Total Outlets	3,189	3,864	4,444	4,923
Continental Oil Co.				
Direct				
Factory or District	404	503	486	491
Through BFGS	132	176	219	258
Indirect				
Through Distributors	525	593	803	700
Total Outlets	1,861	1,272	1,508	1,449
Ohio Oil Co.				
Direct				
Factory or District	100	122	77	71
Through BFGS	302	326	439	431
Indirect				
Through Distributors	192	218	288	336
Total Outlets	594	666	804	838
Jenney Mfg.				
Direct				
Factory or District	20	18	14	12
Through BFGS	40	43	39	45
Indirect				
Through Distributors	78	127	148	123
Total Outlets	138	188	201	180
Shell American				
Direct				
Factory or Direct	22	22	17	10
Through BFGS	27	27	25	35
Indirect				
Through Distributors	4	17	18	21
Total Outlets	53	66	60	66
*Emblem Oil Co.				
Direct				
Factory or District	2	3	-	-
Through BFGS	5	6	10	10
Indirect				
Through Distributors	23	-	15	14
Total Outlets	30	9	25	24

Does not include associate or sub-dealers of our contract oil companies' jobbers or distributors on whose purchases we pay commission.

* Emblem Oil Co. account not established until August 1953.

FEDERAL TRADE COMMISSION
DOCKET NO. 6123 EXHIBIT NO. 126
IN THE MATTER OF Goodrich
FILED 4/2/57 WITNESS
ACE REPORTING CO., Official Reporters
BY Baker

7639.

FEDERAL TRADE COMMISSION
DOCKET 8435 EXHIBIT NO. 137 137
IN THE MATTER OF B. F. GOODRICH COMPANY
DATE OCT 18 1956 WITNESS
ACE REPORTING CO., Official Reporters
By MONICK

THE B. F. GOODRICH COMPANY

The number of Texas Oil Company Outlets served by The B. F. Goodrich Company on whose purchases Commission was paid

The Texas Co.	As of 12/31/46	As of 12/31/47	As of 12/31/48	As of 12/31/49	As of 12/31/50	As of 12/31/51	As of 12/31/52	As of 6/30/53
Direct								
Factory or District	N.A.	N.A.	N.A.	N.A.	840	966	989	1,015
Through BFGS	N.A.	N.A.	N.A.	N.A	479	536	546	595
Indirect								
Through Distributors	N.A.	N.A.	N.A.	N.A.	438	743	1,228	1,390
Total Outlets	N.A.	967	1,508	1,696	*1,974	2,245	2,763	3,000

* Philadelphia Zone failed to furnish data in 1950 relative to number of active outlets served.

JAX 903
Commission's Exhibit 137

JAX 204

Commission's Exhibit 138

FEDERAL TRADE COMMISSION
DOCKET 6735 EXH. NO. 138 138
IN THE MATTER OF B.F. GOODRICH COMPANY
DATE OCT 18 1956 WITNESS
ACE REPORTING CO., Official Reporter
By MONICK

THE B. F. GOODRICH COMPANY

TEXAS OIL COMPANY SALES AND COMMISSION PAYMENTS

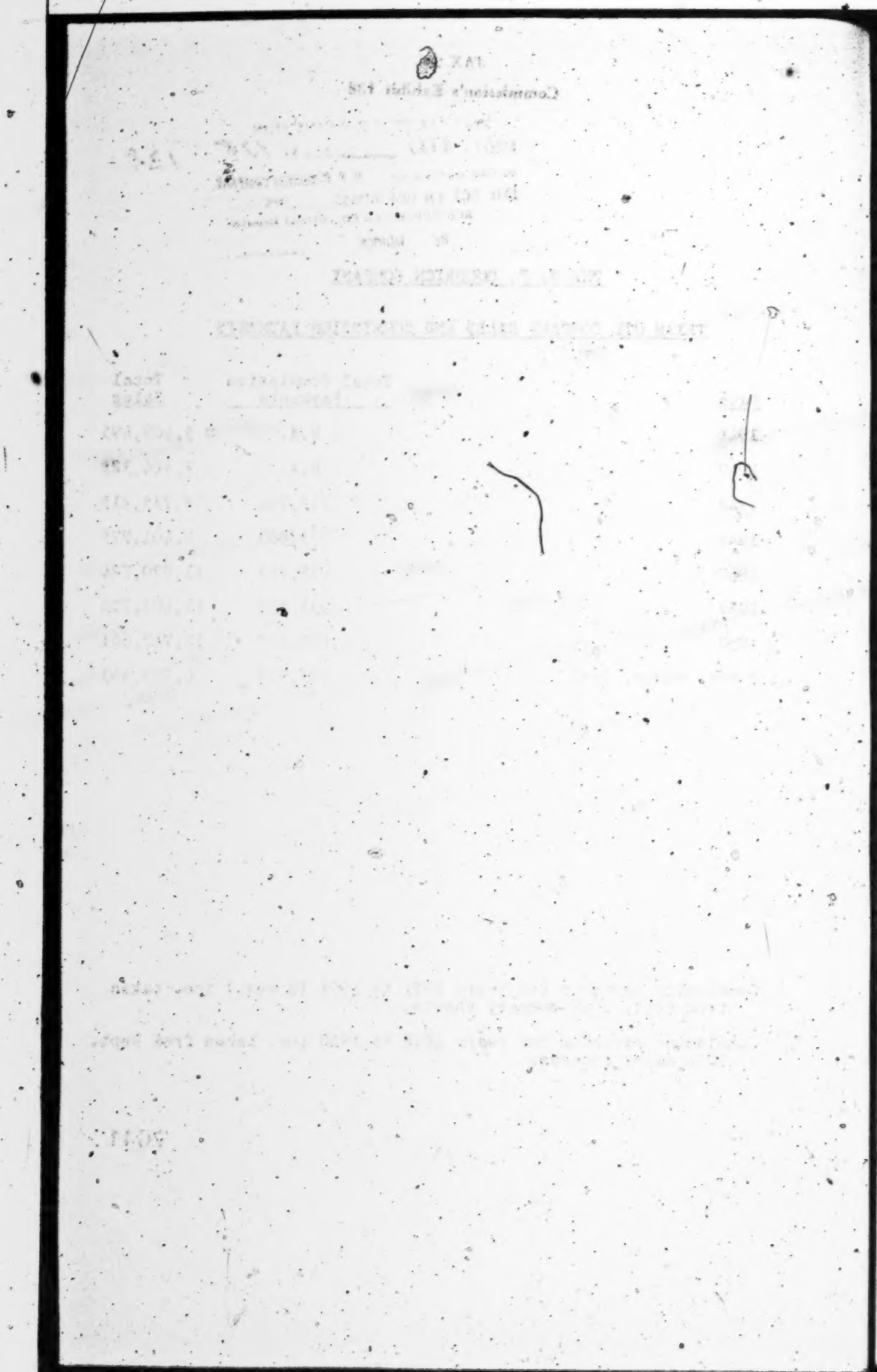
Date	Total Commission Payments	Total Sales
1946	N.A.	$ 5,409,495
1947	N.A.	7,544,325
1948	$ 712,744	8,735,215
1949	673,863	8,401,775
1950	955,753	11,920,724
1951	933,830	11,405,718
1952	1,092,128	12,747,661
6 mos. accum. 1953	583,959	6,789,563

Commission payments for years 1951 to 1953 (6-mos.) inc. taken from Dept, 0607 summary sheets.

Commission payments for years 1946 to 1950 inc. taken from Dept. 9290 sales records.

183

7611



JAX 205

Commission's Exhibit 142A

B. F. GOODRICH T.B.A. DISTRIBUTORS AND SUPPLY POINTS

City of Chicago and Suburbs (Cook County)

Supply Point & Address	Texas	Continental	Ohio	Shell American	Others
Biltmore Tire Company 2011 West Division Chicago, Illinois	X (82)	X (11)			X
Lincoln Petroleum Company 3845 Milwaukee Avenue Chicago, Illinois	X (2)	X (5)			
Gardner & Kienzle 6812 South Ashland Chicago, Illinois	X (91)	X (10)			X
Bohnett Oil Company 8159 Wallace Street Chicago, Illinois	X (1)	X (9)			
W. H. Lamble, Inc. 7925 South Exchange Chicago, Illinois	X (55)	X (10)			X
Kenrose Automotive 120 East 111th Street Chicago, Illinois	X (13)				X
Edlen Automotive & Supply 8 Chicago Avenue Hinsdale, Illinois	X (24)	X (1)			X
Schimming Oil Company Mt. Prospect, Illinois	X (4)	X (1)			
Pavlik Brothers Kenilworth, Illinois	X (1)				X
Niemiec & Grelecki Calumet City, Illinois	X (35)	X (12)			X
General Gas & Oil Company 3114 West Fillmore Chicago, Illinois	X (7)				
Wholesale Oil Company 1220 North Branch Chicago, Illinois		X (19)			

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 142-A
IN THE MATTER OF B. F. GOODRICH COMPANY
DATE JAN 14 1957 REPORTER CARLSON
ACE REPORTING CO., Official Reporter
By MCMICK

(over)

7649

Commission's Exhibit 142B

142 G1

Page 2 continued:
B. F. GOODRICH T.B.A. DISTRIBUTORS AND SUPPLY POINTS
City of Chicago and Suburbs (Cook County)

Supply Point & Address	Texas	Continental	Ohio	Shell American	Others
BFGS 13000 So. Western Ave. Blue Island, Illinois	X (3)	X (1)			X
BFGS 1437 East Emerald Ave. Chicago Heights, Illinois	X (11)	X (1)			X
BFGS 6215 Cottage Grove Ave. Chicago, Illinois		X (1)			
Chicago Tire Company 850 West Washington Blvd. Chicago, Illinois (BFGS)	X (2)	X (1)			X
BFGS 409-411 N. Harlem Avenue Oak Park, Illinois	X (8)				

FEDERAL TRADE COMMISSION
DOCKET 6485 142-B
B. F. GOODRICH COMPANY

7650

Commission's Exhibit 148A

CX 148 a

SURVEY - TEXACO SERVICE STATIONS ONLY

Trade Name Accounts surveyed - 26

Operator's Name Number of these accounts not leasing from Texas - 3

Street Address and Town

Petroleum Products Handled All Texaco Any Other 1- Q. S. oil 1- Pennzoil

Approximately how much business do we get from them per month?

	YES	NO
Do we sell this account spark plugs?	part 3	20
If so, approximate percentage of their requirements?		
Do we sell this account oil filter elements?	part 5	18
If so, approximate percentage of their requirements?		
Do we sell this account batteries?	part 2	22
If so, approximate percentage of their requirements?		
Do we sell this account rubber products, such as fan belts, hose, etc.?	part 4	18
If so, approximate percentage of their requirements?		
Do we sell this account chemicals, such as polish, cleaners, additives, etc.?	part 1	19
If so, approximate percentage of their requirements?		
Do we sell this account anti-freeze?	part 11	13
If so, approximate percentage of their requirements?		

How often do you call on this account? from once to each week to monthly

If you do not sell this account commodities commonly called "TBA" items, such as spark plugs, oil filter elements, batteries, etc., from what source do they obtain their requirements?

Of the total amount of business this account gives to independent wholesalers, such as ourselves, approximately what percentage do we receive?

Remarks, If any:

FEDERAL TRADE COMMISSION
DOCKET NO 6485 EXHIBIT NO 148-A
IN THE MATTER OF B. F. GOODRICH COMPANY
DATE JAN 16 1957 WITNESS TRAUCHT
ACE REPORTING CO., Official Reporter
By MONICA

JAX 208

Commission's Exhibit 148B

(7708)

SURVEY—TEXACO SERVICE STATIONS ONLY

Trade Name—Wilmette Texaco

Operator's Name—Wm. Luby

Street Address and Town—803 Greenbay Rd. Wilmette, Ill.

Petroleum Products Handled—Texaco Any Other—No

Approximately how much business do we get from them per month?—$75.00

	Yes	*No*
Do we sell this account spark plugs?		V
If so, approximate percentage of their requirements?		
Do we sell this account oil filter elements?		V
If so, approximate percentage of their requirements?		
Do we sell this account batteries?		V
If so, approximate percentage of their requirements?		
Do we sell this account rubber products, such as fan belts, hose, etc.?		V
If so, approximate percentage of their requirements?		
Do we sell this account chemicals, such as polish, cleaners, additives, etc.?		V
If so, approximate percentage of their requirements?		
Do we sell this account anti-freeze?		V
If so, approximate percentage of their requirements?		

How often do you call on this account? Weekly

If you do not sell this account commodities commonly called "TBA" items, such as spark plugs, oil filter elements, batteries, etc., from what source do they obtain their requirements? Biltmore Tire & Battery

Of the total amount of business this account gives to independent wholesalers, such as ourselves, approximately what percentage do we receive? 25%

Remarks, if any: Texaco suggest they purchase above from Biltmore Tire. Present operator has lease for approx. six months. Stocks our DR-AL. Holly. Mufflers, Tail Pipes, Dole Stats.

JAX 209

Commission's Exhibit 148C

(7709)

SURVEY—TEXACO SERVICE STATIONS ONLY

Trade Name—Ritts Texaco Service

Operator's Name—Ross Rittenhouse Jr.

Street Address and Town—29th & Sheridan Zion Ill

Petroleum Products Handled—Texaco. Any Other—Quaker State

Approximately how much business do we get from them per month?—$50.00

	Yes	*No*
Do we sell this account spark plugs?	———	V
If so, approximate percentage of their requirements?	———	
Do we sell this account oil filter elements?	———	V
If so, approximate percentage of their requirements?	———	
Do we sell this account batteries?	———	V
If so, approximate percentage of their requirements?	———	
Do we sell this account rubber products, such as fan belts, hose, etc.?	———	V
If so, approximate percentage of their requirements?	———	
Do we sell this account chemicals, such as polish, cleaners, additives, etc.?	———	V
If so, approximate percentage of their requirements?	———	
Do we sell this account anti-freeze?	———	V
If so, approximate percentage of their requirements?	———	
How often do you call on this account?	once a week	
If you do not sell this account commodities commonly called "TBA" items, such as spark plugs, oil filter elements, batteries, etc., from what source do they obtain their requirements?	Firestone T B A for Texaco station	
Of the total amount of business this account gives to independent wholesalers, such as ourselves, approximately what percentage do we receive?	15%	

Remarks, if any: He buys only P.T. Anti-Freese & Firestone Filters etc. He put Quaker State under cover so Texaco Co. men cannot see it.

JAX 210

Commission's Exhibit 148D

(7710)

SURVEY—TEXACO SERVICE STATIONS ONLY

Trade Name—Jims Texaco Service

Operator's Name—James Houlb

Street Address and Town—Grand & 63 Gurnee Ill

Petroleum Products Handled—Texaco. Any Other—None

Approximately how much business do we get from them per month?—$75.00

	Yes	*No*
Do we sell this account spark plugs?	———	√
If so, approximate percentage of their requirements?	———	
Do we sell this account oil filter elements?	———	√
If so, approximate percentage of their requirements?	———	
Do we sell this account batteries?	———	√
If so, approximate percentage of their requirements?	———	
Do we sell this account rubber products, such as fan belts, hose, etc.?	———	√
If so, approximate percentage of their requirements?	———	
Do we sell this account chemicals, such as polish, cleaners, additives, etc.?	———	√
If so, approximate percentage of their requirements?	———	
Do we sell this account anti-freeze?	√	———
If so, approximate percentage of their requirements?	2 cases	
How often do you call on this account?	once a week	
If you do not sell this account commodities commonly called "TBA" items, such as spark plugs, oil filter elements, batteries, etc., from what source do they obtain their requirements?	B F Goodrich T. B. A. on Batt. etc	
Of the total amount of business this account gives to independent wholesalers, such as ourselves, approximately what percentage do we receive?	10%	

Remarks, if any: This is a New Station just Leased by James Houlb

JAX 211

Commission's Exhibit 148E

148-E

SURVEY - TEXACO SERVICE STATIONS ONLY

148-E

FEDERAL TRADE COMMISSION

FACILITY 6485 ITEM NO.

Trade Name Zimmerman Texaco Service

Operator's Name L. Zimmerman

Street Address and Town 2nd and 13th Street Whitehaven, Md

Petroleum Products Handled Texaco City Any Other

Approximately how much business do we get from them per month? $275.00

	YES	NO
Do we sell this account spark plugs?	✓	
If so, approximate percentage of their requirements?	100 for Texaco	
Do we sell this account oil filter elements?		✓
If so, approximate percentage of their requirements?		
Do we sell this account batteries?		✓
If so, approximate percentage of their requirements?		
Do we sell this account rubber products, such as fan belts, hose, etc.?		
If so, approximate percentage of their requirements?		
Do we sell this account chemicals, such as polish, cleaners, additives, etc.?	✓	
If so, approximate percentage of their requirements?	25%	
Do we sell this account anti-freeze?		
If so, approximate percentage of their requirements?		

How often do you call on this account? once a week

If you do not sell this account commodities commonly called "TBA" items, such as spark plugs, oil filter elements, batteries, etc., from what source do they obtain their requirements? Various Distributors

TBA products from Texaco Good Deal

Of the total amount of business this account gives to independent wholesalers, such as ourselves, approximately what percentage do we receive? 30%

Remarks, If any:

7711

JAX 212

Commission's Exhibit 148F

(7712)

SURVEY—TEXACO SERVICE STATIONS ONLY

Trade Name—Steve Texaco Service

Operator's Name—

Street Address and Town—22st &

Petroleum Products Handled—Texaco. Any Other—

Approximately how much business do we get from them per month?—$15.00

	Yes	*No*
Do we sell this account spark plugs?	———	V
If so, approximate percentage of their requirements?	———	
Do we sell this account oil filter elements?	———	V
If so, approximate percentage of their requirements?	———	
Do we sell this account batteries?	———	V
If so, approximate percentage of their requirements?	———	
Do we sell this account rubber products, such as fan belts, hose, etc.?	———	V
If so, approximate percentage of their requirements?	———	
Do we sell this account chemicals, such as polish, cleaners, additives, etc.?	———	V
If so, approximate percentage of their requirements?	———	
Do we sell this account anti-freeze?	V	———
If so, approximate percentage of their requirements?	2%	
How often do you call on this account?	once a week	
If you do not sell this account commodities commonly called "TBA" items, such as spark plugs, oil filter elements, batteries, etc., from what source do they obtain their requirements?	B. F. Goodrich TBA	
Of the total amount of business this account gives to independent wholesalers, such as ourselves, approximately what percentage do we receive?	10%	

Remarks, if any:—He buys from us when nobody else has it.

JAX 213

Commission's Exhibit 148G

(7713)

SURVEY—TEXACO SERVICE STATIONS ONLY

Trade Name—Renick Texaco

Operator's Name—Joe Renick

Street Address and Town—Lewis & Belivdere

Petroleum Products Handled—Texaco. Any Other—None

Approximately how much business do we get from them per month?—100.00

	Yes	*No*
Do we sell this account spark plugs?	———	√
If so, approximate percentage of their requirements?	———	
Do we sell this account oil filter elements?	———	√
If so, approximate percentage of their requirements?	———	
Do we sell this account batteries?	———	√
If so, approximate percentage of their requirements?	———	
Do we sell this account rubber products, such as fan belts, hose, etc.?	———	√
If so, approximate percentage of their requirements?	———	
Do we sell this account chemicals, such as polish, cleaners, additives, etc.?	———	√
If so, approximate percentage of their requirements?	———	
Do we sell this account anti-freeze?	√	———
If so, approximate percentage of their requirements?	10%	
How often do you call on this account?	twice a month	
If you do not sell this account commodities commonly called "TBA" items, such as spark plugs, oil filter elements, batteries, etc., from what source do they obtain their requirements?	B F Goodrich TBA	
Of the total amount of business this account gives to independent wholesalers, such as ourselves, approximately what percentage do we receive?	25%	

Remarks, if any:—We sell him most of small parts, for Mechanic work

J&X 214

Commission's Exhibit 148H

148-H

SURVEY - TEXACO SERVICE STATIONS ONLY

FEDERAL TRADE COMMISSION
DOCKET NO 6485 EXHIBIT NO 148-H

Trade Name SAGE TEXACO SERVICE

Operator's Name LAND SAGE

Street Address and Town GILLETTE & SHERIDAN

Petroleum Products Handled TEXACO Any Other NONE

Approximately how much business do we get from them per month? _____

	YES	NO
Do we sell this account spark plugs?		✓
If so, approximate percentage of their requirements?		
Do we sell this account oil filter elements?		✓
If so, approximate percentage of their requirements?		
Do we sell this account batteries?		✓
If so, approximate percentage of their requirements?		
Do we sell this account rubber products, such as fan belts, hose, etc.?		✓
If so, approximate percentage of their requirements?		
Do we sell this account chemicals, such as polish, cleaners, additives, etc.?		✓
If so, approximate percentage of their requirements?		
Do we sell this account anti-freeze?		✓
If so, approximate percentage of their requirements?		

How often do you call on this account? _____

If you do not sell this account commodities commonly called "TBA" items, such as spark plugs, oil filter elements, batteries, etc., from what source do they obtain their requirements? GF GOODRICH TBA. System

Of the total amount of business this account gives to independent wholesalers, such as ourselves, approximately what percentage do we receive? 3%

Remarks, If any: _____

7714

JAX 215

Commission's Exhibit 1481

(7715)

SURVEY—TEXACO SERVICE STATIONS ONLY

Trade Name—Fuller's Texaco Service

Operator's Name—Art Fuller

Street Address and Town—Grand & McAree Rd

Petroleum Products Handled—Texaco. Any Other—None

Approximately how much business do we get from them per month?—None

	Yes	*No*
Do we sell this account spark plugs?	———	√
If so, approximate percentage of their requirements?	———	
Do we sell this account oil filter elements?	———	√
If so, approximate percentage of their requirements?	———	
Do we sell this account batteries?	———	√
If so, approximate percentage of their requirements?	———	
Do we sell this account rubber products, such as fan belts, hose, etc.?	———	√
If so, approximate percentage of their requirements?	———	
Do we sell this account chemicals, such as polish, cleaners, additives, etc.?	———	√
If so, approximate percentage of their requirements?	———	
Do we sell this account anti-freeze?	———	√
If so, approximate percentage of their requirements?	———	
How often do you call on this account?	once a month	
If you do not sell this account commodities commonly called "TBA" items, such as spark plugs, oil filter elements, batteries, etc., from what source do they obtain their requirements?	B F Goodrich TBA	
Of the total amount of business this account gives to independent wholesalers, such as ourselves, approximately what percentage do we receive?	15%	

Remarks, if any:—He does not like Lake County Auto Parts

JAX 216

Commission's Exhibit 148J

(7716)

SURVEY—TEXACO SERVICE STATIONS ONLY

Trade Name—Polze Bros

Operator's Name—Chas & Ernst Polze

Street Address and Town—Main St Antioch, Ill

Petroleum Products Handled—Texaco. Any Other—Pennzoil

Approximately how much business do we get from them per month?—

	Yes	*No*
Do we sell this account spark plugs?	———	V
If so, approximate percentage of their requirements?	———	
Do we sell this account oil filter elements?	———	V
If so, approximate percentage of their requirements?	———	
Do we sell this account batteries?	———	V
If so, approximate percentage of their requirements?	———	
Do we sell this account rubber products, such as fan belts, hose, etc.?	———	V
If so, approximate percentage of their requirements?	———	
Do we sell this account chemicals, such as polish, cleaners, additives, etc.?	———	V
If so, approximate percentage of their requirements?	———	
Do we sell this account anti-freeze?	———	V
If so, approximate percentage of their requirements?	———	

How often do you call on this account? I haven't called on this acc for 18 months

If you do not sell this account commodities commonly called "TBA" items, such as spark plugs, oil filter elements, batteries, etc., from what source do they obtain their requirements? Firestone TBA

Of the total amount of business this account gives to independent wholesalers, such as ourselves, approximately what percentage do we receive? 10%

Remarks, if any:—The only thing they get from Jobbers, is fast Parts such as Muffler pipes Nothing in the TBA line

JAX 217

Commission's Exhibit 148K

(7717)

SURVEY—TEXACO SERVICE STATIONS ONLY

Trade Name—Wipper Corner's

Operator's Name—C. A. Wipper

Street Address and Town—Route 120 Aarnsville

Petroleum Products Handled—Texaco. Any Other—None

Approximately how much business do we get from them per month?—None

	Yes	*No*
Do we sell this account spark plugs?	———	V
If so, approximate percentage of their requirements?	———	
Do we sell this account oil filter elements?	———	V
If so, approximate percentage of their requirements?	———	
Do we sell this account batteries?	———	V
If so, approximate percentage of their requirements?	———	
Do we sell this account rubber products, such as fan belts, hose, etc.?	———	V
If so, approximate percentage of their requirements?	———	
Do we sell this account chemicals, such as polish, cleaners, additives, etc.?	———	V
If so, approximate percentage of their requirements?	———	
Do we sell this account anti-freeze?	———	V
If so, approximate percentage of their requirements?	———	

How often do you call on this account? Called every week for 1 yer no sales made

If you do not sell this account commodities commonly called "TBA" items, such as spark plugs, oil filter elements, batteries, etc., from what source do they obtain their requirements? Has TBA S & S & Wagon Jobbers

Of the total amount of business this account gives to independent wholesalers, such as ourselves, approximately what percentage do we receive? 5%

Remarks, if any:—He buys though Texaco, BF Goodrich TBA He does no Mechanic Work at All just gas & add Oil.

SURVEY - TEXACO SERVICE STATIONS ONLY

Trade Name DE [illegible] ITED TEXACO

Operator's Name C. W. BAUMANN

Street Address and Town [illegible] DEXTER

FEDERAL TRADE COMMISSION
DOCKET NO. 8485
FTC 148-L

Petroleum Products Handled TEXACO Any Other ✓

Approximately how much business do we get from them per month? 90.00

	YES	NO
Do we sell this account spark plugs?	Part	
If so, approximate percentage of their requirements?		
Do we sell this account oil filter elements?	✓	
If so, approximate percentage of their requirements?		
Do we sell this account batteries?	Part	
If so, approximate percentage of their requirements?	0	
Do we sell this account rubber products, such as fan belts, hose, etc.?		✓
If so, approximate percentage of their requirements?		
Do we sell this account chemicals, such as polish, cleaners, additives, etc.?	✓	
If so, approximate percentage of their requirements?		
Do we sell this account anti-freeze?	✓	
If so, approximate percentage of their requirements?		

How often do you call on this account? 2 WEEKLY

If you do not sell this account commodities commonly called "TBA" items, such as spark plugs, oil filter elements, batteries, etc., from what source do they obtain their requirements? BILTMORE TIRE WAGON PEDDLERS

Of the total amount of business this account gives to independent wholesalers, such as ourselves, approximately what percentage do we receive? 60%

Remarks, if any: _____

7718

Commission's Exhibit 148-M

148-M

SURVEY - TEXACO SERVICE STATIONS ONLY

148

FEDERAL TRADE COMMISSION

Trade Name BILL'S TEXACO SERVICE

Operator's Name BILL VUKOVICH

Street Address and Town 12 1/2 WILKINSON RD Glenview

Petroleum Products Handled TEXACO Any Other

Approximately how much business do we get from them per month? 500

	YES	NO
Do we sell this account spark plugs?		✓
If so, approximate percentage of their requirements?		
Do we sell this account oil filter elements?		✓
If so, approximate percentage of their requirements?		
Do we sell this account batteries?		✓
If so, approximate percentage of their requirements?		
Do we sell this account rubber products, such as fan belts, hose, etc.?		✓
If so, approximate percentage of their requirements?		
Do we sell this account chemicals, such as polish, cleaners, additives, etc.?		✓
If so, approximate percentage of their requirements?		
Do we sell this account anti-freeze?		✓
If so, approximate percentage of their requirements?		

How often do you call on this account? 2 WEEKS

If you do not sell this account commodities commonly called "TBA" items, such as spark plugs, oil filter elements, batteries, etc., from what source do they obtain their requirements? TEXACO COMPANY & JOBBER'S

Of the total amount of business this account gives to independent wholesalers, such as ourselves, approximately what percentage do we receive?

Remarks, if any: GOOD SM. E. AUTO. PHOTOGRAPH

7713

JAX 220

Commission's Exhibit 148N

148-N

SURVEY - TEXACO SERVICE STATIONS ONLY

Trade Name CRAIG'S STATION - TEXACO

Operator's Name MIKE CRAIG

reet Address and Town 1000 CADILLAC RD.

Petroleum Products Handled T. C. U. Any Other

FEDERAL TRADE COMMISSION
DOCKET NO. 8485 EXHIBIT NO. XX
148

Approximately how much business do we get from them per month? 30.00

	YES	NO
Do we sell this account spark plugs?		✓
If so, approximate percentage of their requirements?		
Do we sell this account oil filter elements?	Part	
If so, approximate percentage of their requirements?	10%	
Do we sell this account batteries?		✓
If so, approximate percentage of their requirements?		
Do we sell this account rubber products, such as fan belts, hose, etc.?	Part	
If so, approximate percentage of their requirements?	10%	
Do we sell this account chemicals, such as polish, cleaners, additives, etc.?		✓
If so, approximate percentage of their requirements?		
Do we sell this account anti-freeze?	Part	
If so, approximate percentage of their requirements?	10%	

How often do you call on this account? weekly

If you do not sell this account commodities commonly called "TBA" items, such as spark plugs, oil filter elements, batteries, etc., from what source do they obtain their requirements? TEXACO-SOURCE

Of the total amount of business this account gives to independent wholesalers, such as ourselves, approximately what percentage do we receive? 20%

Remarks, if any:

7720

Commission's Exhibit 1480 SAX 221 148-0

SURVEY - TEXACO SERVICE STATIONS ONLY

Trade Name SWIFTY'S - TEXACO

FEDERAL TRADE COMMISSION
DOCKET NO. 8485 EXHIBIT NO. 148-C

Operator's Name _____

Street Address and Town 1701 N. DIVINITY EVANSTON

Petroleum Products Handled TEXACO Any Other _____

Approximately how much business do we get from them per month? 6500

	YES	NO
Do we sell this account spark plugs?	✓	
If so, approximate percentage of their requirements?		
Do we sell this account oil filter elements?	✓	
If so, approximate percentage of their requirements?		
Do we sell this account batteries?	✓	
If so, approximate percentage of their requirements?		
Do we sell this account rubber products, such as fan belts, hose, etc.?	✓	
If so, approximate percentage of their requirements?		
Do we sell this account chemicals, such as polish, cleaners, additives, etc.?	Part	
If so, approximate percentage of their requirements?		
Do we sell this account anti-freeze?	Part	
If so, approximate percentage of their requirements?		

How often do you call on this account? weekly

If you do not sell this account commodities commonly called "TBA" items, such as spark plugs, oil filter elements, batteries, etc., from what source do they obtain their requirements?

Of the total amount of business this account gives to independent wholesalers, such as ourselves, approximately what percentage do we receive? 80%

Remarks, If any: _____

7721

JAX 223

Commission's Exhibit 148-P 148-P

SURVEY - TEXACO SERVICE STATIONS ONLY

FEDERAL TRADE COMMISSION
DOCKET NO. 8485 EXHIBIT NO. 148-P.

Trade Name PAT'S TEXACO

Operator's Name B

Street Address and Town 300 COLSBILL

Petroleum Products Handled [illegible] Any Other NO

Approximately how much business do we get from them per month? 40.00

	YES	NO
Do we sell this account spark plugs?		✓
If so, approximate percentage of their requirements?		
Do we sell this account oil filter elements?		✓
If so, approximate percentage of their requirements?		
Do we sell this account batteries?	✓	
If so, approximate percentage of their requirements?	50%	
Do we sell this account rubber products, such as fan belts, hose, etc.?	Part	
If so, approximate percentage of their requirements?	5%	
Do we sell this account chemicals, such as polish, cleaners, additives, etc.?	Part	
If so, approximate percentage of their requirements?	5%	
Do we sell this account anti-freeze?	✓	
If so, approximate percentage of their requirements?	10%	

How often do you call on this account? weekly

If you do not sell this account commodities commonly called "TBA" items, such as spark plugs, oil filter elements, batteries, etc., from what source do they obtain their requirements? wagner jobber

Of the total amount of business this account gives to independent wholesalers, such as ourselves, approximately what percentage do we receive? 50%

Remarks, if any: FREE

JAX 223

Commission's Exhibit 1490 JAX 223 148-2

E

SURVEY - TEXACO SERVICE STATIONS ONLY

Trade Name KIRCHER-TEXACO FEDERAL TRADE COMMISSION

Operator's Name JOHN-KIRCHER

Street Address and Town DEMASTER-AUSTIN-MARTIN DRIVE 148-

Petroleum Products Handled TEXACO Any Other _____

Approximately how much business do we get from them per month? small

	YES	NO
Do we sell this account spark plugs?	_____	✓
If so, approximate percentage of their requirements?	_____	
Do we sell this account oil filter elements?	_____	✓
If so, approximate percentage of their requirements?	_____	
Do we sell this account batteries?	_____	✓
If so, approximate percentage of their requirements?	_____	
Do we sell this account rubber products, such as fan belts, hose, etc.?	_____	✓
If so, approximate percentage of their requirements?	_____	
Do we sell this account chemicals, such as polish, cleaners, additives, etc.?	_____	✓
If so, approximate percentage of their requirements?	_____	
Do we sell this account anti-freeze?	_____	✓
If so, approximate percentage of their requirements?	_____	

How often do you call on this account? monthly

If you do not sell this account commodities commonly called "TBA" items, such as spark plugs, oil filter elements, batteries, etc., from what source do they obtain their requirements?

Of the total amount of business this account gives to independent wholesalers, such as ourselves, approximately what percentage do we receive?

Remarks, If any: RUY'S TRANSMISSION AUTO PARTS WHSE - PLANO

7723

SURVEY - TEXACO SERVICE STATIONS ONLY

FEDERAL TRADE COMMISSION
DOCKET NO. 8485 EXHIBIT NO. 148-A

Trade Name Commercial Service Co.

Operator's Name D. Thomas

Street Address and Town 307 S Watkins Lafayette

Petroleum Products Handled Texaco Any Other No

Approximately how much business do we get from them per month? $ 500.00

	YES	NO
Do we sell this account spark plugs?		✓
If so, approximate percentage of their requirements?		
Do we sell this account oil filter elements?	✓	
If so, approximate percentage of their requirements?	10%	
Do we sell this account batteries?		
If so, approximate percentage of their requirements?		
Do we sell this account rubber products, such as fan belts, hose, etc.?		✓
If so, approximate percentage of their requirements?		
Do we sell this account chemicals, such as polish, cleaners, additives, etc.?		✓
If so, approximate percentage of their requirements?		
Do we sell this account anti-freeze?	✓	
If so, approximate percentage of their requirements?	5%	

How often do you call on this account?

If you do not sell this account commodities commonly called "TBA" items, such as spark plugs, oil filter elements, batteries, etc., from what source do they obtain their requirements?

Of the total amount of business this account gives to independent wholesalers, such as ourselves, approximately what percentage do we receive? 40%

Remarks, if any:

7721

JAX 225

Commission's Exhibit 1485

148-5

SURVEY - TEXACO SERVICE STATIONS ONLY

Trade Name Sid's Sou Stat. FEDERAL TRADE COMMISSION

Operator's Name Sid Kiefe DOCKET NO. 6485 EXHIBIT NO.

140-5

Street Address and Town 800 N. Milwaukee Libertyville

Petroleum Products Handled Texaco Any Other No

Approximately how much business do we get from them per month? Cant 50.00

	YES	NO
Do we sell this account spark plugs?		✓
If so, approximate percentage of their requirements?		
Do we sell this account oil filter elements?		✓
If so, approximate percentage of their requirements?		
Do we sell this account batteries?		✓
If so, approximate percentage of their requirements?		
Do we sell this account rubber products, such as fan belts, hose, etc.?	✓	
If so, approximate percentage of their requirements?	5%	
Do we sell this account chemicals, such as polish, cleaners, additives, etc.?		✓
If so, approximate percentage of their requirements?		
Do we sell this account anti-freeze?	✓	
If so, approximate percentage of their requirements?	10%	

How often do you call on this account?

If you do not sell this account commodities commonly called "TBA" items, such as spark plugs, oil filter elements, batteries, etc., from what source do they obtain their requirements?

Of the total amount of business this account gives to independent wholesalers, such as ourselves, approximately what percentage do we receive? 30%

Remarks, if any:

7725

JAX 226

Commission's Exhibit 148T

(7726)

SURVEY—TEXACO SERVICE STATIONS ONLY

Trade Name—Herb's Texaco Service

Operator's Name—H. Bolt

Street Address and Town—825 Noges St.

Petroleum Products Handled—Texaco. Any Other—No.

Approximately how much business do we get from them per month?—30.00.

	Yes	*No*
Do we sell this account spark plugs?	———	√
If so, approximate percentage of their requirements?	———	
Do we sell this account oil filter elements?	———	√
If so, approximate percentage of their requirements?	———	
Do we sell this account batteries?	———	√
If so, approximate percentage of their requirements?	———	
Do we sell this account rubber products, such as fan belts, hose, etc.?	√	———
If so, approximate percentage of their requirements?	90%	
Do we sell this account chemicals, such as polish, cleaners, additives, etc.?	———	√
If so, approximate percentage of their requirements?	———	
Do we sell this account anti-freeze?	———	√
If so, approximate percentage of their requirements?	———	
How often do you call on this account?	Twice monthly	
If you do not sell this account commodities commonly called "TBA" items, such as spark plugs, oil filter elements, batteries, etc., from what source do they obtain their requirements?	Biltmore Tires & other Jobbers	
Of the total amount of business this account gives to independent wholesalers, such as ourselves, approximately what percentage do we receive?	30%	

Remarks, if any:—Leased Station, new operator about 3 months. Stocks our DR-AL—Holly. also above checked yes

JAX 227

Commission's Exhibit 148U

(7727)

SURVEY—TEXACO SERVICE STATIONS ONLY

Trade Name—Maday Bros.

Operator's Name—Loyd—Larry—Maday.

Street Address and Town—1825 Central St.

Petroleum Products Handled—Texaco. Any Other—No.

Approximately how much business do we get from them per month?—575.00

	Yes	*No*
Do we sell this account spark plugs?	√	———
If so, approximate percentage of their requirements?	95%	
Do we sell this account oil filter elements?	√	———
If so, approximate percentage of their requirements?	100%	
Do we sell this account batteries?	√	———
If so, approximate percentage of their requirements?	100%	
Do we sell this account rubber products, such as fan belts, hose, etc.?	√	———
If so, approximate percentage of their requirements?	100%	
Do we sell this account chemicals, such as polish, cleaners, additives, etc.?	√	———
If so, approximate percentage of their requirements?	75%	
Do we sell this account anti-freeze?	√	———
If so, approximate percentage of their requirements?	100%	
How often do you call on this account?	Weekly	
If you do not sell this account commodities commonly called "TBA" items, such as spark plugs, oil filter elements, batteries, etc., from what source do they obtain their requirements?	———	
Of the total amount of business this account gives to independent wholesalers, such as ourselves, approximately what percentage do we receive?	90%	

Remarks, if any:—above operators lease from owner of property & Station, Stock AL-DR Holly. Stat. Bulbs. Above in business at above approx. 5 yrs. Bal of Plugs stocked are AL-Phamd.

Commission's Exhibit 148V

148-V

SURVEY - TEXACO SERVICE STATIONS ONLY

Trade Name Everett Garage

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 ITEM NO. 148-V

Operator's Name Walter Loefler

Street Address and Town Waukegan Rd Lake Forest Ill

Petroleum Products Handled Texaco Any Other

Approximately how much business do we get from them per month? 9400

	YES	NO
Do we sell this account spark plugs?		X
If so, approximate percentage of their requirements?		
Do we sell this account oil filter elements?	X	
If so, approximate percentage of their requirements?	100%	
Do we sell this account batteries?		X
If so, approximate percentage of their requirements?		
Do we sell this account rubber products, such as fan belts, hose, etc.?	X	
If so, approximate percentage of their requirements?	100%	
Do we sell this account chemicals, such as polish, cleaners, additives, etc.?		X
If so, approximate percentage of their requirements?		
Do we sell this account anti-freeze?	X	
If so, approximate percentage of their requirements?	50%	

How often do you call on this account? every week

If you do not sell this account commodities commonly called "TBA" items, such as spark plugs, oil filter elements, batteries, etc., from what source do they obtain their requirements?

Of the total amount of business this account gives to independent wholesalers, such as ourselves, approximately what percentage do we receive? 75%

Remarks, if any: this is an independant Repair Shop with texaco gas

7728

JAX 229

Commission's Exhibit 148W

148-W

SURVEY - TEXACO SERVICE STATIONS ONLY

FEDERAL TRADE COMMISSION
DOCKET NO 6485 COMPLAINT EXHIBIT NO. 148-W

Trade Name Leo's Service Station

Operator's Name Leo Bernardi

Street Address and Town 148 Greenbay Rd.

Petroleum Products Handled Texaco Any Other

Approximately how much business do we get from them per month? 70.00

	YES	NO
Do we sell this account spark plugs?		X
If so, approximate percentage of their requirements?		
Do we sell this account oil filter elements?		X
If so, approximate percentage of their requirements?		
Do we sell this account batteries?		X
If so, approximate percentage of their requirements?		
Do we sell this account rubber products, such as fan belts, hose, etc.?		X
If so, approximate percentage of their requirements?		
Do we sell this account chemicals, such as polish, cleaners, additives, etc.?		X
If so, approximate percentage of their requirements?		
Do we sell this account anti-freeze?		X
If so, approximate percentage of their requirements?		

How often do you call on this account? once a month

If you do not sell this account commodities commonly called "TBA" items, such as spark plugs, oil filter elements, batteries, etc., from what source do they obtain their requirements?

Of the total amount of business this account gives to independent wholesalers, such as ourselves, approximately what percentage do we receive? 10 %

Remarks, if any: This station is now closed

7729

JAX 230

Commission's Exhibit 148X

148-X

SURVEY - TEXACO SERVICE STATIONS ONLY

Trade Name Midges Texaco

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 RD.
148-X

Operator's Name Frank Halyard

Street Address and Town 650 Waukegan Rd

Petroleum Products Handled Texaco Any Other none

Approximately how much business do we get from them per month? $150

	YES	NO
Do we sell this account spark plugs?		X
If so, approximate percentage of their requirements?		
Do we sell this account oil filter elements?	X	
If so, approximate percentage of their requirements?	50%	
Do we sell this account batteries?		X
If so, approximate percentage of their requirements?		
Do we sell this account rubber products, such as fan belts, hose, etc.?	X	
If so, approximate percentage of their requirements?	50%	
Do we sell this account chemicals, such as polish, cleaners, additives, etc.?	X	
If so, approximate percentage of their requirements?	10%	
Do we sell this account anti-freeze?		X
If so, approximate percentage of their requirements?		

How often do you call on this account? every week

If you do not sell this account commodities commonly called "TBA" items, such as spark plugs, oil filter elements, batteries, etc., from what source do they obtain their requirements?

Of the total amount of business this account gives to independent wholesalers, such as ourselves, approximately what percentage do we receive? 30%

Remarks, if any:

P.S.311

Commission's Exhibit 148Y

148-Y

SURVEY - TEXACO SERVICE STATIONS ONLY

148-Y

FEDERAL TRADE COMMISSION
DOCKET NO. 8485 EXHIBIT NO.

Trade Name Scotty's Texaco

Operator's Name Williams Cargill

Street Address and Town Milwaukee and Dundee Rd. Wheeling Ill.

Petroleum Products Handled _____ Any Other _____

Approximately how much business do we get from them per month? $100

	YES	NO
Do we sell this account spark plugs?		X
If so, approximate percentage of their requirements?		
Do we sell this account oil filter elements?	X	
If so, approximate percentage of their requirements?	30%	
Do we sell this account batteries?		X
If so, approximate percentage of their requirements?		
Do we sell this account rubber products, such as fan belts, hose, etc.?		X
If so, approximate percentage of their requirements?		
Do we sell this account chemicals, such as polish, cleaners, additives, etc.?	X	
If so, approximate percentage of their requirements?	10%	
Do we sell this account anti-freeze?	X	
If so, approximate percentage of their requirements?	50%	
How often do you call on this account?	once a week	
If you do not sell this account commodities commonly called "TBA" items, such as spark plugs, oil filter elements, batteries, etc., from what source do they obtain their requirements?	Wagon Peddlers Jobbers + Texaco.	
Of the total amount of business this account gives to independent wholesalers, such as ourselves, approximately what percentage do we receive?	25%	

Remarks, if any: _____

7731

JAX 232

Commission's Exhibit 148Z-1 148-Z.

SURVEY - TEXACO SERVICE STATIONS ONLY

148-Z

FEDERAL TRADE COMMISSION

DOCKET NO 6485

Trade Name Hunters Texaco

Operator's Name Charles P Hunter

Street Address and Town Skokie Hwy & Deerfield Rd. Highland Park Ill.

Petroleum Products Handled Texaco Any Other

Approximately how much business do we get from them per month? 950

	YES	NO
Do we sell this account spark plugs?		X
If so, approximate percentage of their requirements?		
Do we sell this account oil filter elements?		X
If so, approximate percentage of their requirements?		
Do we sell this account batteries?		X
If so, approximate percentage of their requirements?		
Do we sell this account rubber products, such as fan belts, hose, etc.?	X	
If so, approximate percentage of their requirements?	10 %	
Do we sell this account chemicals, such as polish, cleaners, additives, etc.?		X
If so, approximate percentage of their requirements?		
Do we sell this account anti-freeze?		X
If so, approximate percentage of their requirements?		

How often do you call on this account? every other week

If you do not sell this account commodities commonly called "TBA" items, such as spark plugs, oil filter elements, batteries, etc., from what source do they obtain their requirements? Wagon Peddlers Jobbers

Of the total amount of business this account gives to independent wholesalers, such as ourselves, approximately what percentage do we receive? 10 %

Remarks, If any:

7733

JAX 233

Commission's Exhibit 148Z-2

148 Z-1

SURVEY - TEXACO SERVICE STATIONS ONLY

Trade Name W. E. WILKINSON TEXACO

Operator's Name _____

118-Z-1

Street Address and Town 1111 W. COUNTY

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. _____

Petroleum Products Handled TEXACO Any Other _____

Approximately how much business do we get from them per month? 500

	YES	NO
Do we sell this account spark plugs?		✓
If so, approximate percentage of their requirements?		
Do we sell this account oil filter elements?		✓
If so, approximate percentage of their requirements?		
Do we sell this account batteries?		✓
If so, approximate percentage of their requirements?		
Do we sell this account rubber products, such as fan belts, hose, etc.?		✓
If so, approximate percentage of their requirements?		
Do we sell this account chemicals, such as polish, cleaners, additives, etc.?		✓
If so, approximate percentage of their requirements?		
Do we sell this account anti-freeze?		✓
If so, approximate percentage of their requirements?		

How often do you call on this account? monthly

If you do not sell this account commodities commonly called "TBA" items, such as spark plugs, oil filter elements, batteries, etc., from what source do they obtain their requirements? wagner jobber

Of the total amount of business this account gives to independent wholesalers, such as ourselves, approximately what percentage do we receive? 100%

Remarks, If any: _____

7733

JAX 231

Commission's Exhibit 150A

SERVICE STATION LEASE

Lincoln Nebraska
Serv. Station 69
Code: 900-09

THIS LEASE Made this _____ day of _____, 19__, between

CONTINENTAL OIL COMPANY, a Delaware Corporation, hereinafter called Conoco, and _____

Clarence L. Cornell
(If firm or corporation, so state. Strike names of partners, other trade name, name name of proprietor, Lessee.)

of 48th & Randolph Street, State of Nebraska, hereinafter called Lessee (whether one or more):
(Show street or other definite address)

WITNESSETH: Conoco, in consideration of the covenants and agreements of Lessee herein, hereby leases to Lessee the following real and personal property (hereinafter called the "premises"), to be used only for the purpose herein stated, situated at Lincoln, in the County of Lancaster, State of Nebraska, to-wit:

That part of the following described ground occupied by the service station building or buildings hereinafter described, and driveway (so far as the use of such driveways is necessary for the operation of service station) and that part of said ground necessary for the proper operation of a service station, including equipment for dispensing petroleum products attached to building or buildings and premises, and including any other equipment hereinafter described and located on said ground, to-wit:

Lots three (3) four (4) five (5) and six (6), Block two (2) Linwood Addition to Lincoln Nebraska

---

1 29 x 51 Steel Frame Porcelain Enamel SS Bldg.
1 Wayne Model 80-IRT Computer Pumps Ser. #74389; 74500; 74465; 74444
2 2000 Gal. UG Tanks
2 3000 Gal. UG Tanks
8 30 Gal. Bennett Lubsters
1 Kellog American Air Comp. Model B-321000 Ser. #B-239451
1 Peerless 2 HP Single Phase Motor Ser. #MA7611
1 US Drive on Lift Ser. #21217 A 15
1 Rotary Free Wheel Lift Ser. #113593 Model 10-HP-3
1 Bryant Unit Gas Heater 135000 BTU Unit #135US3?? with Wagner 1/2 HP Single Phase Motor Model R3168 K-3457
1 Bryant Winter Air Conditioner Unit #65-304 65000 BTU with Wagner 1/6 HP Single Phase Motor #WRP-39-DX
1 Revelation Water Cooler Model TRH100TC Ser. #17300
3 Bennett Metered Grease Buckets
2 Pyrene Fire Extinguishers #427791 #703255
1 Metal Lockers
1 Metal Chair
1 Steel Table
1 In-A-Floor Safe Model A Ser. #23174
1948 Model Pedestal Signs
Double Floodlight Masts Complete

2 50 Gal. Drums - Trash
1 30 Gal. Drums - Trash
2 15 Gal. Drums - Trash
3 Measures; 1-5 qt. 1-2 qt. 2-1qt.
1 Map Rack
1 50' Water Hose
1 75' Water Hose
4 25' Air Hose
2 10' Radiator Hose with nozzle
1 Profit Booster
2 Towel Dispensers
2 Soap Dispensers
2 Sanitary Tissue Dispensers
1 Bayonet Tissue Dispenser
2 Toilet Paper Holders
1 Super Motor Oil Parking Sign.
1 3 Gal. Radiator Fill Can
4 Waste Buckets
1 Ladies Rest Room equipped with Sanitor Sign
1 Ladies Sign
1 Mens Sign
1 Check Chart
1 Gauge Rod
1 Can Spout
1 Sign - Lessee & Operator
2 Signs 'Notice the Use of Defective Tools is Prohibited'
4 Lead Warning Signs
10 Padlocks
3 Tool Boards
1 1948 Canned Oil Display Rack
2 Hose Tools - Allen

6486 — 150-A

Cornell

from twelve o'clock noon of the 10th day of October, 19 51, to twelve o'clock noon of the 10th day of October, 1952, subject to the conditions hereinafter contained at a rental as follows:

For January	$	For April	$	For July	$	For October	$
For February	$	For May	$	For August	$	For November	$
For March	$	For June	$	For September	$	For December	$

[redacted] CCC 753

Lessee shall pay [redacted] cents (__¢) a gallon on all gasoline and/or other motor fuel delivered into the storage tanks located on the premises described herein, [redacted]

Any gallonage rental reserved to herein unpaid at the end of any calendar month is due the first day of the month following.

Said rentals shall be paid at Lincoln, State of Nebraska, unless otherwise notified in writing by Conoco.

IN CONSIDERATION WHEREOF Lessee Agrees:

1. To use said premises and the equipment hereby leased for no purpose other than service station purposes

Commission's Exhibit 150B

2. To sublet no part of said premises, and that no assignment of or encumbrance upon this lease shall be made or suffered to be placed upon Lessee's interest hereunder, voluntarily or by operation of law, without Conoco's written consent. If any party herein named as a lessee should die during the period specified above, the term hereof shall run only to the time of said death. No consent to one assignment or sublease shall be construed as a consent to any further assignment or sublease, or to permit any assignee or sublessee to make any assignment or sublease, and no assent, express or implied, to any breach of any one or more of the covenants or agreements hereof shall be a waiver of any succeeding or other breach.

3. Not to commit or suffer waste to be committed upon the said premises and to make no alterations in or additions to the premises without the written consent of Conoco first had and obtained, except that Lessee may and agrees to make such alterations in or on the leased equipment as may from time to time be necessary to identify the products being dispensed from such equipment.

4. Lessee shall in case of fire or other damage to premises give immediate notice thereof to Conoco. If the premises shall be partially damaged by fire or other cause without negligence chargeable to Lessee some shall be repaired at Conoco's option and expense as speedily as practicable. During the period needed for such repairs the rent hereunder shall not cease if station can be operated. If certain improvements and/or equipment are totally destroyed by fire, act of God, or other cause, or so damaged thereby that Conoco deems it necessary to rebuild the same, Conoco may terminate this lease by written notice or at its option may rebuild or replace said improvements and/or equipment and the rent in such case shall cease only during the period required for such rebuilding or replacements. If such destruction or damage last referred to shall be caused by the negligence or improper conduct of Lessee, or any agent or servant of Lessee, it shall be optional with Conoco whether the last preceding sentence shall apply or Lessee shall be liable to Conoco for the full amount of rent herein reserved, and, in either case, Lessee shall be liable for all loss to Conoco.

5. To protect Conoco from and indemnify it against all loss sustained and expenses incurred by reason of any liability of any character incurred by Lessee, or arising out of or in connection with the maintenance, use and operation of said premises, as a service station during the term hereof, including any liability for injury to persons or property due to or arising out of the condition of said premises or otherwise.

6. To comply at Lessee's expense with all federal, state, municipal and other governmental and local laws, rules, regulations, and ordinances relating to said premises and/or relating to or arising out of the operation of said service station thereon, and not to use said premises in any way in violation of the laws of the United States, or state laws, or local ordinances or regulations, or any insurance policies thereon. Lessee shall comply with the following provisions, which it is agreed are necessary as safety measures in connection with the operation of said premises:

(a) Not to smoke on said premises or permit smoking on said premises.

(b) Not to permit any intoxicated person to remain on said premises. No intoxicants shall be used thereon by Lessee or kept or allowed to remain or be used thereon, and no intoxicated person shall operate or take part in the operation of said station.

(c) Not to permit the accumulation of oil, grease, or gasoline on the floor of any building covered hereby, or the accumulation of oil, grease, gasoline, ice or snow on any driveway covered hereby.

(d) Not to store, keep, or sell gasoline on said premises in or through any glass containers other than a pump, or store, keep, or sell gasoline on said premises in any container not properly labeled.

(e) Not to use gasoline for cleaning purposes on said premises.

(f) To provide covered metal containers for disposal of waste, empty one and five-quart oil and grease cans, and for oily rags, and to use said containers to help keep down fire hazard.

(g) If any tool or equipment covered by this lease shall become defective, Lessee shall not use or permit the use thereof.

7. To keep said premises and that portion of the streets, alleys, sidewalks and driveways immediately adjacent thereto neat [illegible], and said premises in an orderly and attractive condition. Conoco may inspect premises at any reasonable time.

8. Lessee has received said premises in good order and condition and will keep the same in good order and condition and at the [illegible]ration or other termination of this lease will yield up the same to Conoco in as good order and condition as when same were [illegible]ered upon by said Lessee, loss by fire, act of God, or ordinary wear excepted, and will promptly make all necessary minor re[illegible]irs and replacements such as replacement of gasoline, air, and water hose, window lights, electric light globes, and items of similar nature. If Lessee fails to comply with any agreement of Lessee as to keeping the premises in good condition, Conoco may put the same in the condition as provided for and Lessee shall reimburse Conoco for the expense incurred by it in doing so.

9. If said premises or any part thereof shall be condemned or taken for any public purpose, Conoco may forthwith terminate this lease by written notice to Lessee.

10. If Conoco shall make any payment by reason of the failure of Lessee to keep any agreement herein, all amounts so paid, together with all interest, costs or damages, shall at Conoco's option become a part of the rent becoming due on the rent payment day next succeeding such payments respectively.

11. Conoco and Lessee recognize the deterioration in value of premises permitted to remain idle and agree if the premises hereby leased shall not be used for any period of thirty consecutive days for the purposes for which the same are leased, this lease shall terminate at the expiration of such thirty-day period.

12. The agreements of Lessee herein shall be deemed conditions and if default shall be made in any of them, or if the premises shall become vacant, Conoco at its election may declare this lease ended and re-enter the premises, or any part thereof, with or without process of law and expel, remove and put out Lessee, or any other person or persons occupying, in or upon the same, using such force as necessary, and Lessee agrees to surrender said premises peaceably to Conoco immediately upon the expiration or termination of this lease, however terminated, and that upon the non-payment of the whole or any portion of said rent at the time the same is promised to be paid, or upon the violation or non-fulfillment of any of the covenants of this lease, Conoco may at its election either distrain for said rent due and damages sustained or declare this lease at an end and recover possession as if said premises were held by forcible detainer, said Lessee hereby waiving any notice of such election and any demand for the possession of said premises and any legal rights Lessee may have under the exemption laws of the state in which said premises are located, or in such case Conoco at its option may, without terminating this lease, rent said premises for such rent and upon such conditions as it may think best, making such changes and repairs as may be required, giving credit for the rent so received during such term, less all expense of such changes and repairs and the expense of any proceedings which may have been necessary in order to regain possession of said premises, and the cost of re-letting the same and Lessee shall be liable for the balance of the rent herein reserved and upon the other obligations assumed herein until the expiration of the term hereof; provided Conoco at its option, after re-letting said premises under this paragraph, may, nevertheless, terminate this lease at the end of any such period of re-letting, and if Conoco shall take possession under this paragraph, Lessee may not re-enter without Conoco's consent. Any remedy to Conoco specified herein shall be in addition to any remedy which it would otherwise have.

13. If Lessee, after the expiration or termination hereof, shall remain in possession of said premises with Conoco's consent, and continue to pay rent, without written agreement as to such possession, then Lessee shall be regarded as a tenant from month to month at a monthly rental, the amount of which for each month, shall be the rental above specified for that respective month, and which shall be payable monthly in advance as hereinabove provided subject to the covenants and conditions herein.

14. Conoco shall furnish so far as the same shall be reasonably available, free of cost to Lessee, rest room supplies for use at said station, of such kinds as Conoco shall select; but if Lessee fails to keep a proper amount of said supplies in rest room or rooms, Conoco shall no longer be obliged to furnish the same. Lessee shall pay all license, occupation, excise and other fees, taxes and assessments on the business conducted on said premises or sales made therefrom.

15. In case said real estate or any of the other property leased hereby is held by Conoco under a lease under which lessor in said lease retains [illegible] right to cancel and terminate said lease upon giving certain notice to Conoco, or in case of certain contingency, and said lease or [illegible] by Conoco is so cancelled or terminated by such lessor without default by Conoco, this lease shall also thereupon terminate, and Lessee agrees to comply with the terms and conditions of any such lease so held by Conoco except the payment of rentals thereunder.

16. If Lessee during the existence of this lease shall purchase automotive lubricating oils and/or greases from Conoco at the same prices extended by Conoco to retail dealers generally at the place where said premises are located, at the respective times of purchase by Lessee, in any quantity upon which quantity discount would be allowed by Conoco if purchased by any such retail dealer at the place where said premises are located, under written contract made on the date hereof, Conoco shall allow the same quantity discount to Lessee.

17. It is mutually agreed that none of the provisions of this lease shall be construed as reserving to Conoco any right to exercise any control over the business or operations of Lessee conducted upon the leased premises or to direct in any respect the manner in which any such business and operations shall be conducted. No party or parties employed by Lessee shall in any event be considered as employed by Conoco. Any such party or parties shall be hired by Lessee at Lessee's expense, and shall be paid and discharged by Lessee.

18. This lease constitutes the entire agreement as to the subjects covered hereby. No verbal agreement exists concerning the same. Any and all existing agreements on said subjects, including any existing lease by Conoco to Lessee covering said premises or part of same, are hereby cancelled. Any notice by Conoco to Lessee hereunder may be given by mailing the same by registered mail addressed to Lessee at Lessee's address given above.

19. This lease shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto, subject to the provisions hereof relating to assignment.

IN WITNESS WHEREOF the parties hereto have executed this agreement the day and year first above written.

WITNESS

R A Kugler

WITNESSES:

F. D. Sewell

CONTINENTAL OIL COMPANY
(Conoco)

By N. B. Hyatt

Its [illegible]

Clarence E. Cornell
Lessee

Lessee

By

FEDERAL TRADE COMMISSION

DOCKET No. 6485 — [illegible] 150-B

JAX 236.

Commission's Exhibit 154F

Form G-77-C-10-47 1250

LEASE

CX-154-F

Agreement dated the 18th day of May, 19 48, by and between THE TEXAS COMPANY, a Delaware corporation, having a place of business at Denver, Colorado, (Lessor) and James Zaloudek, 13th & Deer Park Blvd., of Omaha, Nebraska (Lessee) WITNESSETH:

(1)—Premises Leased. Lessor does hereby lease and permit Lessee to enter upon, use and occupy for the purposes and on the conditions herein set forth the following described property situated in the City of Omaha County of Douglas, State of Nebraska, described as follows:

The South 61 feet of the East 95 feet of Lot 8, and the North 19 feet of the North 92 feet of the East 95 feet of Lot 9, all in Okahoma, an addition to the City of Omaha, Douglas County, Nebraska, as surveyed, platted and recorded, and also the West half of vacated old 13th. Street, adjoining said real estate above described on the East, said West half of said vacated old 13th. Street, being more particularly described as follows: beginning at the Southeast corner of Lot 8, Okahoma Addition, and thence running North 61 feet along the East line of said Lot 8, thence East 33 feet, thence south Parallel to the East line of Lots 8 and 9, in Okahoma, a distance of 100 feet, thence West 33 feet, thence North along the East line of Lot 9, Okahoma, a distance of 19 feet, to the place of beginning. The property described herein has a frontage of 100 feet on 13th Street and 128 feet on Deer Park Boulevard.

together with the buildings, improvements, fixtures, equipment and facilities of Lessor now located on said premises as follows:

OWNED BY THE TEXAS COMPANY	OWNED BY OTHERS
1 Air compressor	1-300 gallon tank
1 Banjo sign & floodlight	
2 Island lights & standards	
1 Floodlight & standard	
2 Fire extinguishers	
5 Sumpwater pumps	
[illegible]	
[illegible]	
1 Air and water stand	
1 Auto lift	
2 2000 gallon tanks	
1 4000 gallon tanks	
[illegible]	
1 Car washer	

FEDERAL TRADE COMMISSION
DOCKET NO. 6486 154-F
IN THE MATTER OF B. F. GOODRICH COMPANY
FILED JAN 19 1951 ZALOUDEK
By MONICK

and such other buildings, improvements, tools, fixtures, equipment and facilities owned or leased by Lessor as may now be on said premises or as Lessor may hereafter, during the continuance of this lease, erect or place thereon.

(2)—Term. This lease shall remain in full force and effect for a period of one (1) year beginning July 24, 1948 and ending July 23, 1949 and thereafter from year to year subject to termination by either party at the end of the first year or any subsequent year on ten (10) days' prior written notice.

(3)—Rental. Lessee shall pay to the Lessor, as rent for the use of the above described premises:

Strike out inapplicable Provisions

(a) A sum of $ per month; or,

(b) A sum for each month of the term, as follows:

For January	$	For July	$
For February	$	For August	$
For March	$	For September	$
For April	$	For October	$
For May	$	For November	$
For June	$	For December	$

The aforesaid rental shall be payable in advance, on the first day of each and every month; or

(c) A sum of $ 175.00 per month, plus 888 cents per gallon for each gallon of gasoline delivered to the demised premises for resale in excess of 10,000 gallons per month, such rental to be payable on the 10th day of each month following the month for which the rental is due.

12 114

JAX 237

Commission's Exhibit 1940

FEDERAL TRADE COMMISSION

DOCKET NO. 8489 EXHIBIT NO. FTC-2

IN THE MATTER OF U. S. GOVERNMENT PURCHASE

CX-1572

760 - 237

Still

(12)—Use. Lessee shall use the said premises and the buildings, improvements and facilities thereon primarily for the operation of a gasoline service station and the sale of automobile accessories, but in all events shall use premises for such lawful or otherwise purpose.

(3)—Maintenance. Lessee shall, during the term of this agreement, maintain the said premises, buildings and equipment, in good repair and in a clean, safe and healthful condition, to which end Lessee shall make all repairs to the leased premises and make the necessary repairs for the account of Lessee. Lessee shall make no changes, alterations or additions in the leased premises, buildings or equipment, except such as may be necessary to enable Lessee to continue business on said premises, unless the consent in writing of Lessor be first obtained.

(4)—Licenses, Etc. Lessee shall obtain all necessary licenses or permits to do business on the leased premises, which may be required by any municipal ordinance, state law or regulation, governmental authority, or otherwise, and shall pay all fees in connection therewith as well as fees imposed by reason of occupancy of the leased premises or the equipment situated thereon.

(5)—Re-Delivery. Upon the expiration of this agreement or the termination thereof, Lessee shall right to and return to Lessor the said premises, and all the said buildings, improvements, fixtures, tanks, equipment and facilities in as good condition as when received by Lessee, ordinary wear and tear excepted.

(6)—Hold-over. If, at the expiration or termination of this lease or any extension thereof, Lessee should hold over for any reason, the tenancy of the Lessee thereafter shall be from month to month only and be subject to all of the other terms and conditions of this lease, in the absence of a written agreement to the contrary.

(7)—Gas, Water and Electricity. The Lessee, during occupancy of the leased premises, shall pay all charges accruing for gas, water and electricity. Upon his failure so to do, the Lessor [illegible] such charges and, in this event, such charges shall be added to the rental payable and shall be collectible as rent.

(8)—Lessee's Default. In event of abandonment of the said premises by Lessee, default by Lessee in the payment of rent or breach of any of the terms, covenants and conditions of this lease, or if bankruptcy or insolvency proceedings are instituted by or against Lessee, or if Lessee becomes insolvent, or if Lessee files a petition for a composition or extension under Section 74 or 77B of the Bankruptcy Act, or if any attachment, garnishment, execution, or any other legal process or proceedings is levied or instituted by anyone other than Lessor against the said premises, or any of the equipment thereon, or if Lessee sells, assigns, pledges or mortgages the said premises, or any part thereof, or attempts to do so, or allows any lien to attach thereto, or in event of death of Lessee, Lessor may, without notice, immediately terminate this agreement and all Lessee's rights hereunder, and resume and, in any manner, regain possession of said premises, improvements and facilities, the Lessee hereby waiving all statutory rights theretofore accorded.

(11)—Waiver. It is agreed that the waiver by Lessor of any breach of any covenant, condition or stipulation contained herein shall not be considered to be a waiver of any subsequent breach of the same or any other covenant, condition or stipulation of this lease nor affect or prejudice any of Lessor's rights or remedies hereunder.

(12)—Leases held by Lessee. This lease is subject to the terms and conditions of the lease, if any, between Lessor and the owner or tenant of the demised premises, and also any extension, renewal, or new lease, or the demised premises; and this lease shall automatically terminate upon the termination, cancellation, or expiration of such lease or such extension, renewal, or new lease, as the case may be, depending upon which is the latest.

(13)—Notice. Notices from Lessor to Lessee shall be sufficient if placed in the United States mail, addressed to the leased premises, and any such notice shall take effect at the time of the mailing thereof. Notices from Lessee to Lessor shall also be sufficient if delivered to Lessee or left on the leased premises in any manner. Notices from Lessee to Lessor shall be sufficient if posted in the United States mails, postage prepaid, to the Lessor's principal place of business in Lessor's sales district in which the leased premises are located.

(14)—Assignment. The lease hereby given may not be assigned, transferred or sublet, either in whole or in part, by Lessee without the written consent of Lessor. Lessor's consent, however, shall not be unreasonably withheld.

(15)—Approval and Execution by Lessor. This agreement shall not be binding upon the Lessor until approved and signed on its behalf by the Lessor's Executive Officer, Sales Manager, Assistant Sales Manager, Division Manager or Assistant Division Manager.

IN WITNESS WHEREOF the Lessor and Lessee have hereunto caused their names to be subscribed the day and year first above written.

THE TEXAS COMPANY

Attest: E. P. Pelts

By W. A. Kimple

(LESSOR)

Witness: E. P. Pelts

James B. Zalewski

(LESSEE)

Approved as to Terms Description Form

JAX 238

Commission's Exhibit 155A

CX - 155

THE TEXAS COMPANY

TEXACO PETROLEUM PRODUCTS

SALES DEPARTMENT
DENVER DIVISION
J. M. LaFLUR, ASSISTANT DIVISION MANAGER

P. O. BOX 3109
DENVER 1, COLORADO
July 2, 1954

REAL ESTATE - OMAHA, NEBRASKA
13TH AND DEER PARK BOULEVARD

REGISTERED MAIL
RETURN RECEIPT REQUESTED

Mr. James S. Zalewski
13th and Deer Park Boulevard
Omaha, Nebraska

Part 648b — 155-A

IN THE [illegible] R. F. GOODRICH COMPANY

DATE JA. [illegible] ZALOUDEK

AT [illegible]

MUNCIE

Dear Sir:

This is to advise you that pursuant to the terms of our lease with you, dated May 18, 1948, covering service station site at 13th and Deer Park Boulevard, Omaha, Nebraska. The Texas Company hereby cancels and terminates said lease effective July 23, 1954, and demands that on such date you surrender and give up possession of the premises and facilities covered thereby.

Yours very truly,

THE TEXAS COMPANY

By [signature]
ASSISTANT DIVISION MANAGER

JMLaF:MG

12 7750

JAX 239

Commission's Exhibit 155B

DELIVER TO DEALER

FEDERAL TRADE COMMISSION
DOCKET NO 6485 EXHIBIT NO 155-B

CX-155-B

CANCELLATION OF LEASE

By mutual consent, that certain lease between the Texas Company, as Lessor, and James S. Zalewski ..... as Lessee, dated the 18th day of May, 19 48, covering premises situated at 13th and Deer Park Blvd, ... in the City of Omaha, County of Douglas State of Nebraska, is hereby cancelled and terminated, effective the 8th day of August, 19 54.

Dated August 24, 19 54

THE TEXAS COMPANY

(LESSOR)

James S. Zalewski

(LESSEE)

By .....

13

JAX 240

Commission's Exhibit 161

THE TEXAS COMPANY

TEXACO PETROLEUM PRODUCTS

SALES DEPARTMENT
DALLAS DIVISION

DALLAS 2, TEXAS

October 12, 1955

REGISTERED MAIL
RETURN RECEIPT REQUESTED

Mr. C. Fagg Sanford,
Lee & Wright Streets,
Greenville, Texas.

Dear Sir:

Please take notice that certain G-77 C Lease Agreement between you and The Texas Company, dated November 2, 1953, covering premises located at the intersection of Lee and Wright Streets, Greenville, Hunt County, Texas, is hereby cancelled and terminated effective midnight October 31, 1955.

Yours very truly,

THE TEXAS COMPANY

C. F. Hall,

Assistant Division Manager

CHH-RAS

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 161
IN THE MATTER OF B. F. GOODRICH COMPANY
DATE JAN 21 1957
ACK RECD
R. MUNICK

FEDERAL TRADE COMMISSION
DOCKET NO. 6485
IN THE MATTER OF B. F. GOODRICH COMPANY
DATE JAN 21 1957
ACK RECD

23

7-161

JAX 241

Commission's Exhibit 162

CX-162

Number of TTC Outlets, Dallas Standard Metropolitan Area

	1952	1953	1954	1955	1956
Number of Texaco outlets in the area divided between:					
"C" Accounts	NA	NA	NA	119	124
"D" Accounts	NA	NA	NA	66	66
"B" Accounts	NA	NA	NA	3	4
"E" Accounts	NA	NA	NA	0	0

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 162
IN THE MATTER OF B. F. GOODRICH COMPANY
DATE JAN 22 1957 WITNESS
ACE REPORTING CO. Official Reporter
By MONICA

(3)

JAX 242

Commission's Exhibit 163A

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 163-A
IN THE MATTER OF B. F. GOODRICH COMPANY
DATE JAN 22 1957 WITNESS Roberts
ACE REPORTING CO., Official Reporter
By MONICK

CX 163-A

TBA Data for Federal Trade Commission

Supplied by The Texas Company

Dallas Standard Metropolitan Area

	1952	1953	1954	1955	1956
1. Total number outlets nominated to and approved by:					
Firestone	NA	NA	NA	120	146
Goodrich	NA	NA	NA	71	67
(Number taken as of 12/31 of each year.)					
2-a. Number buying BFG TBA from designated Goodrich supplier and also buying competing items of TBA from any supplier not on either BFG or Firestone list of suppliers	xxx	xxx	xxx	18	22
2-b. Number buying Goodrich TBA from designated BFG suppliers and also buying competing items of TBA from a supply point on either BFG or Firestone list of suppliers on which TTC gets no commission	xxx	xxx	xxx	0	1
3-a. Number buying Firestone TBA from designated Firestone supplier and also buying competing items of TBA from any supplier not on either BFG or Firestone list of suppliers	xxx	xxx	xxx	74	74
3-b. Number buying Firestone TBA from designated Firestone supplier and also buying competing items of TBA from a supply point on either BFG or Firestone list of suppliers on which TTC gets no commission	xxx	xxx	xxx	0	0
4-a. Number buying both BFG and Firestone TBA from designated Firestone or Goodrich supplier and also buying competing items of TBA from any supplier not on the BFG or Firestone list of suppliers	xxx	xxx	xxx	34	30

7763

Commission's Exhibit 163B

163-A

TBA Data for FTC supplied by The Texas Company -- Continuation

Dallas Standard Metropolitan Area

	1952	1953	1954	1955	1956
4-b. Number buying BFG or Firestone TBA from designated BFG or Firestone supplier and also buying competing items of TBA from a supply point of either BFG or Firestone list of suppliers on which TTC gets no commission - - -	xxx	xxx	xxx	2	1
5. Number buying Goodrich only- -	xxx	xxx	xxx	0	0
6. Number buying Firestone only- -	xxx	xxx	xxx	0	0

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 163-B

7764

JAX 244

Commission's Exhibit 166

CX 166

TRA DATA FOR FEDERAL TRADE COMMISSION
SUPPLIED BY THE TEXAS COMPANY

Atlanta, Standard Metropolitan Area

	1952	1953	1954	1955	1956
1. Number of Texaco outlets in area divided between: (as of June 30)					
"C" Accounts	NA	37	44	46	57
"D" Accounts	NA	74	69	66	63
"B" Accounts	NA	2	3	3	3
"L" Accounts	NA	0	0	0	0

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 166
IN THE MATTER OF B. F. GOODRICH COMPANY
DATE JAN 24 1957 Ferguson
ACE REPORTING CO.
By MONICK

7767

INFORMATION FOR TEXACO DEALERS AND SERVICE STATION ATTENDANTS

TEXACO NATIONAL CREDIT CARDS

Dealers handling Texaco Gasolines are authorized to honor UNEXPIRED Texaco National Credit Cards for credit purchases of the merchandise and services described on back of such credit cards. (See specimen hereon.)

Procedure to be followed in honoring Texaco National Credit Cards and preparing Invoices, Form S-199-D

1. Presentation of Texaco National Credit Cards

Credit Card must be presented by customer, at time of purchase, in order to make credit purchase on the authority of such Cards.

2. Expiration Date of Texaco National Credit Cards

The date the Credit Card expires is shown in the lower left corner of the Card. Credit sales must not be made against Credit Cards that have expired.

3. Lost or Cancelled Texaco National Credit Cards

Lists of lost or cancelled Credit Cards will be periodically sent to Dealers. Before making credit deliveries on authority of a Credit Card, Dealer should be certain that the customer's name or Credit Card number does not appear on such lists. Only Credit Cards that are marked DUPLICATE should be honored if listed as lost.

4. Customer's Name, Address and Credit Card Number

Print or legibly write customer's name, address and Credit Card number on Invoice, Form S-199-D, in the identical manner such information is shown on Credit Card.

5. Merchandise Purchased

Show on Invoice, Form S-199-D, a description of authorized merchandise or service purchased, quantity, price, tax, total price and amount. Carefully verify extensions and additions on Invoices. Tires, tubes, batteries, and accessories, of the kind authorized by Item 2 on back of Credit Card (see reproduction above), MUST BE mounted on or attached to motor vehicle operated by holder of Credit Card.

6. Motor Vehicle License Number

It is unnecessary to show motor vehicle license number on invoice, except where purchases are made by persons presenting Credit Cards issued to the United States Government. Invoices covering such purchases must in all cases show the license or tag number of the motor vehicle; also where purchaser specifically requests license number to be shown on invoice, Dealer should oblige.

7. Customer's Signature

Customer should sign Invoice, Form S-199-D, in space marked "RECEIVED BY".

8. Distribution of Invoices

Give customer the duplicate pink copy of Invoice. Retain original.

9. Dealer's Name and Address (Street, City and State)

Name and address of Dealer should be written or [illegible] by rubber stamp, in space provided for the purpose, on all copies of Invoice, Form S-199-D.

Procedure to be Followed in Securing Credit for Invoices, Form S-199-D

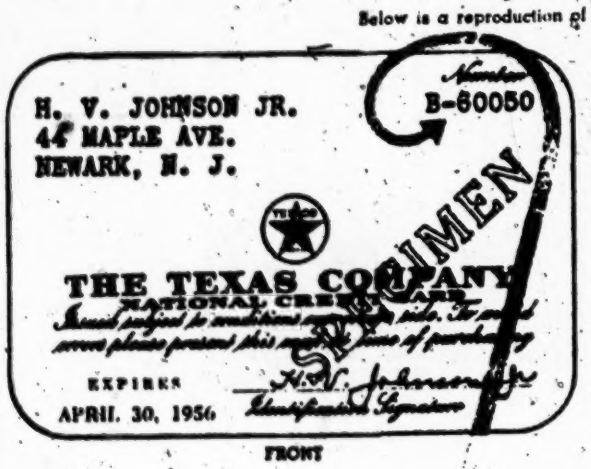
1. Invoices, Form S-199-D, covering credit sales to authorized holders of Texaco National Credit Cards, when prepared and handled in accordance with procedure given above will be accepted by The Texas Company in the manner outlined below.

2. List each Invoice on Form S-98, List of Credit Card Deliveries, showing date of Invoice, Credit Card number and amount of Invoice, with total amount of all Invoices. Prepare Form S-98 in triplicate.

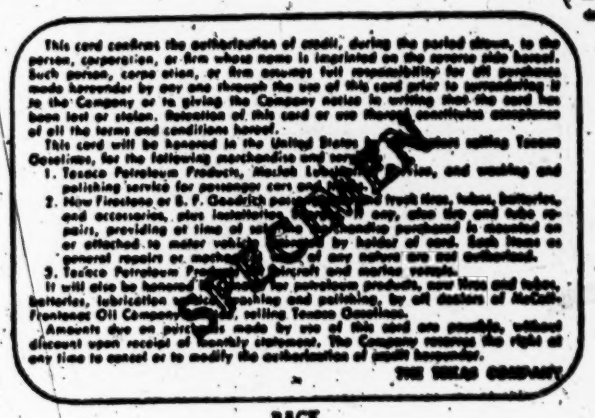
3. Original Invoices, Form S-199-D, supported by original and duplicate of Form S-98, List of Credit Card Deliveries, will be accepted by truck operators as the equivalent of cash for the purchase of Texaco products or towards settlement of Dealer's credit account.

Form S-482 5-56 RPM

Below is a reproduction of a Texaco National Credit Card.



FRONT



BACK

SOLD TO:
CREDIT CARD NO. B-60050
NAME H. V. JOHNSON JR
STREET ADDRESS 44 MAPLE AVE.
CITY NEWARK STATE N.J.

ORIGINAL INVOICE

SOLD BY:
NAME JOHN N. MILLER
STREET ADDRESS 678 9TH ST.
CITY NEWARK STATE N.J.

DATE APR. 1ST 1956
PURCHASER'S ORDER NO.
STATE LICENSE NO.
PURCHASER'S CAR NO.

MERCHANDISE	QUANTITY	PRICE	TAX	TOTAL PRICE	AMOUNT
TEXACO SKY CHIEF GASOLINE	10	.229	.06	.289	2 89
TEXACO FIRE CHIEF GASOLINE					
MOTOR OIL HAV. 30	5	.435	.015	.45	2 25
MARFAK LUBRICATION					1 50
				$	6 64

ALL EXCISE TAXES ON THE PETROLEUM PRODUCTS SHOWN HEREON, IN EFFECT AT THE DATE HEREOF, HAVE BEEN PAID OR WILL BE PAID BY OR BEFORE THE DUE DATE THEREOF.

TERMS
PAYABLE WITHOUT DISCOUNT UPON RECEIPT OF MONTHLY STATEMENT OF PURCHASES.

RECEIVED BY: H. V. Johnson Jr.
PURCHASER'S SIGNATURE

8-53 - 465M Bks. Form S-199-D

The above is a reproduction of an Invoice, Form S-199-D and indicates manner in which all essential information should be recorded on the form.

TEXACO COUPON BOOKS
TEXACO COMMERCIAL ORDER BOOKS
CREDIT CARDS OF McCOLL-FRONTENAC OIL COMPANY LIMITED

Texaco Dealers are authorized to honor the above items for the sale of merchandise and services as described below and The Texas Company will accept the above items when handled in the manner outlined:

Texaco Coupon Books

Texaco Coupon Scrip accepted by Texaco Dealers for purchases of Texaco products may be given to truck operators who will accept same at face value in payment for Texaco products or towards settlement of Dealer's credit account.

Texaco Commercial Order Books

These orders may be accepted for credit deliveries of Texaco Petroleum Products. The order forms will be handled as described below:

1. Request the customer to prepare the order form in triplicate.
2. Dealer will fill in his name and address after checking prices, quantities and amounts.
3. Customer will sign the order form in the space provided.
4. The original and duplicate copies of order form will be removed and retained by Dealer, the customer retaining the triplicate copy only.
5. The original and duplicate copies of order forms may be given to truck operator who will accept them in payment for Texaco products or towards settlement of Dealer's credit account. (Do not list on Form S-98).

McColl-Frontenac Oil Company Limited Credit Cards

Sales of the same merchandise and services as authorized for Texaco National Credit Card customers may be made to authorized holders of unexpired Credit Cards of the McColl-Frontenac Oil Company Limited. Invoices covering the sale of such merchandise and services will be prepared and handled in identically the same manner as outlined for the handling of sales made on Texaco National Credit Cards.

TO TEXACO DEALERS:

The Texas Company reserves the right to cancel at any time, on notice to Dealer, the Dealer's privilege of honoring Texaco National Credit Cards, Texaco Commercial Order Books or McColl-Frontenac Oil Company Limited Credit Cards, on failure of Dealer to handle sales on such Credit Cards or Order Books in the manner outlined on this information card.

Dealers should understand that in making sales to authorized holders of Texaco National Credit Cards, Texaco Commercial Order Books, and Credit Cards of McColl-Frontenac Oil Company Limited, they are not acting as agents for The Texas Company. The sale is made by the Dealer directly to the customer and The Texas Company, in turn, purchases from the Dealer the customer's account receivable. In other words, The Texas Company pays the Dealer on behalf of the customer and assumes the credit risk, provided the procedure for handling as outlined on this information card is observed.

THE TEXAS COMPANY

Issued May 1, 1956

JAX 245
Commission's Exhibit 181B

JAX 246

Commission's Exhibit 183A

1-1-2

THE TEXAS COMPANY — Houston, Texas, October 15, 1953

FORM S-1299 - CREDIT CARD INVOICE
1 - 72 S-199D
2 - 32 - 00

TEXACO DEALERS

Gentlemen:

The poster "INFORMATION FOR TEXACO DEALERS AND SERVICE STATION ATTENDANTS" was recently forwarded to you. It is of the utmost importance that each S-199D invoice be prepared exactly in accordance with instructions so that it will be complete and lawfully correct.

Accounts involved in bankruptcy, probate courts, disputed or delinquent - generally require that the S-199D credit card invoices be presented in court as evidence.

Courts will not accept S-199D invoices which are not complete and legally correct - such invoices being thrown out and disallowed, meaning that The Texas Company takes a loss on such sales.

For this reason it is extremely important that the invoices be prepared in accordance with instructions ... nothing can be left off or incomplete ... nothing can be assumed, abbreviated or left to guess work. The invoice as prepared by the dealer must stand on its own.

Here are some of the deficiences most frequently encountered in the handling of invoices for collection:

(a Presentation of Credit Card - The presentation of a valid (unexpired) credit card by the customer at time of purchase constitutes authority for the credit sale. NO SALE SHOULD BE MADE UNLESS UNEXPIRED CREDIT CARD IS PRESENTED.

(b Signature - Customer's full signature on the S-199D legally proves delivery of the merchandise ... initials are insufficient.

(c Customer's Name and Address - This, plus the correct credit card number must be clearly shown and transcribed on the S-199D invoice - exactly as is shown on the credit card. This, together with the signature appearing on the invoice, leaves no doubt as to who made the purchase and who is responsible for the payment of the account.

(d Dealer's Name and Address - The Dealer should show his complete name, address, city and state, so that - if necessary, it can be proved that he made the delivery and assigned the account to The Texas Company through the medium of the assignment clause as referred to on the Form S-98.

7798

JAX 247

Commission's Exhibit 1838

(e The Date - Date of sale is extremely important, as it is evidence that the products were sold to the customer by the Dealer on an exact date. This may seem technical - but it is a very definite requirement of the courts.

(f Product delivered - The quantity, price, tax, total price and amount must all be shown as indicated on the sample S-1990 invoice on the poster. In some instances, Dealers have listed the word "Accessories" or the abbreviation "acces", without naming in detail the accessory and spelling out what it is. If the customer purchases a wind shield wipper blade - it should be so listed, and not merely as "accessory".

(g Unauthorized Sale - The court will look at the terms and conditions and authorized products sold as shown on the reverse side of the credit card; therefore, only those items authorized are to be sold on the card. Such items as "used tires", "used batteries", "repairs", "labor", "parts", etc., are definitely not acceptable, nor are they a legitimate sale under the terms of the credit card.

(h Customer's Goodwill - To retain the goodwill of our customers, Texaco Dealers should make every effort to protect the customer's interest. If the Dealer is requested to make sales of unusual amounts, or if the sale is made under suspicious circumstances, Dealer should satisfy himself that some unscrupulous person is not mis-using the credit card. If Dealer does not do this, he is not protecting his interest and is not rendering the proper service to a customer.

(i Form S-98 - This form includes an assignment clause, which gives The Texas Company legal title to the account - and, in addition to the Dealer's rubber stamp impression, it is signed by him, or in his name by his authorized representative.

Only those invoices that are complete and in line with existing instructions - and which constitute an instrument which can be used as evidence in court, are acceptable to the company.... all others are subject to the return to the dealer who made the delivery.

Yours very truly,

R. E. Greenwell

R. E. GREENWELL

REG-DCW

JWG-DBH-JBF-WSN-RTS-FNC-JHG-JWH
CHW-RAR-IMI-VLS
Zone Managers
Bulk Station Agents -
Sales Terminal Superintendents -
Dealer Service Representatives -
Representatives (Dealer Training)

File Room (4th Floor)

JAX 248

Commission's Exhibit 183C

248

10-B

IMPORTANT

All records of your credit card account are carried under your CARD NUMBER. Won't you please help us to credit your account quickly and accurately by always attaching a copy of our statement to your check? Thank you.

THE TEXAS COMPANY

JAX 249

Commission's Exhibit 183D

important information

for

TEXACO DEALERS

and

SERVICE STATION ATTENDANTS

The correct preparation of invoice, Form S-199-D, is the foundation of prompt and efficient accounting service for your credit card customer.

The following handling should be observed carefully at the time each invoice is prepared.

Customer's Name, Address and Credit Card Number

Print or write legibly customer's name, address, and Credit Card number on invoice, Form S-199-D, in the identical manner such information is shown on Credit Card.

Merchandise Purchased

Show on invoice, Form S-199-D, a description of authorized merchandise or service purchased, quantity, price, tax, total price and amount. Carefully verify extensions and additions on invoices.

Customer's Signature

Customer should sign invoice, Form S-199-D, in space marked "RECEIVED BY".

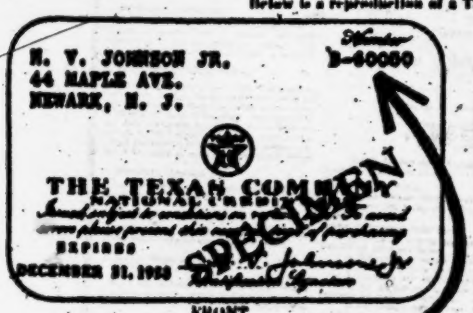
Dealer's Name and Address (Street, City, and State)

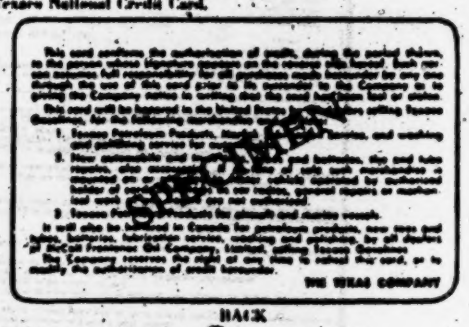
Name and address of dealer should be written or inserted by rubber stamp, in space provided for that purpose, on all copies of invoice, Form S-199-D.

Distribution of Invoices

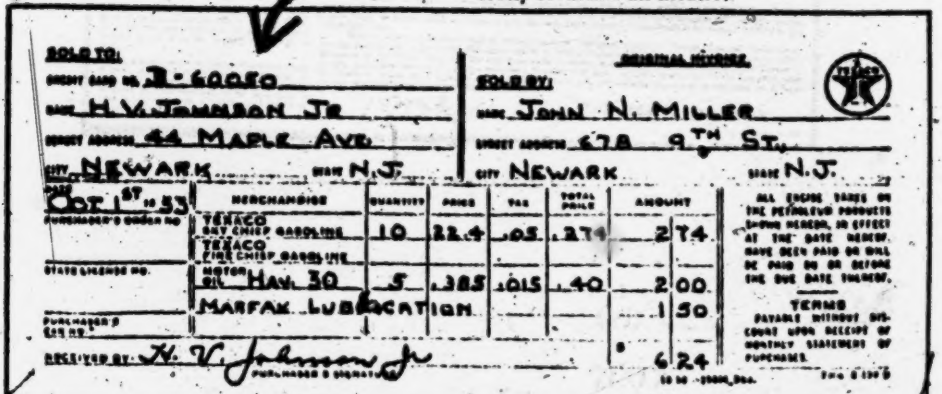
Give customer the triplicate pink copy of invoice. Retain original and duplicate copies.

Below is a reproduction of a Texaco National Credit Card.





It is essential that number and letter prefix as shown on Credit Card be correctly recorded on invoice.



The above is a reproduction of an invoice, Form S-199-D and indicates manner in which all essential information should be recorded on the form.

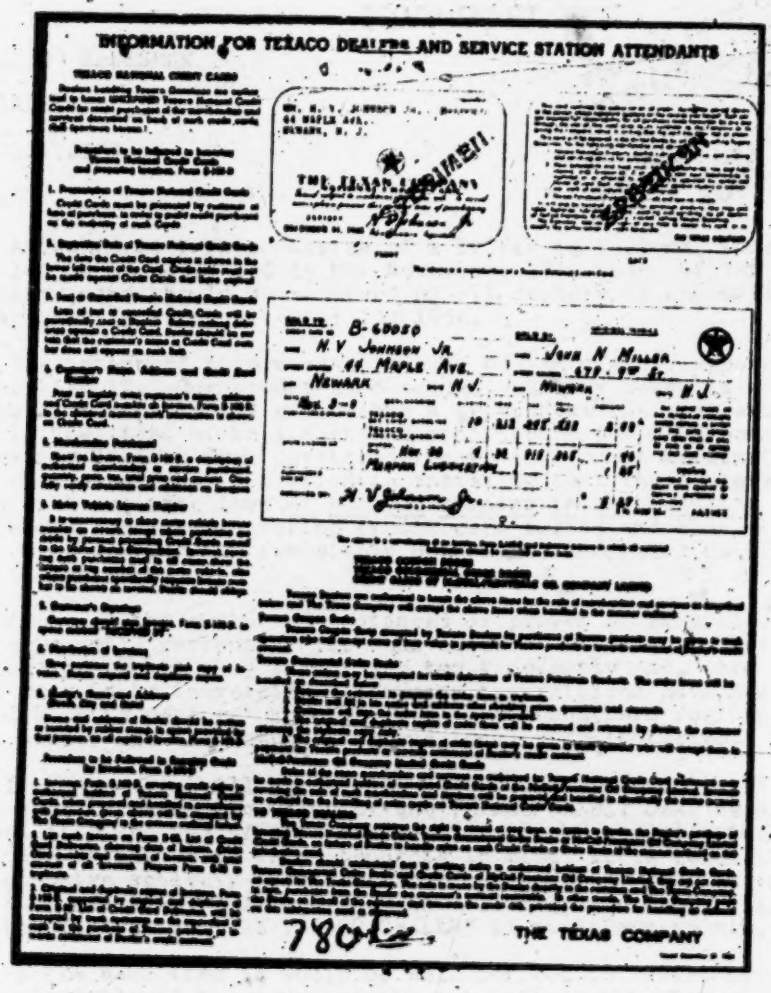
7804

JAX 250

Commission's Exhibit 1835

6834

THE TEXAS COMPANY



INFORMATION FOR TEXACO DEALERS AND SERVICE STATION ATTENDANTS

TEXACO NATIONAL CREDIT CARD

B-60050

N V Johnson Jr.

44 Maple Ave.

Newark N.J.

John N Miller

479 - 9th St.

Newark N.J.

N V Johnson Jr.

THE TEXAS COMPANY

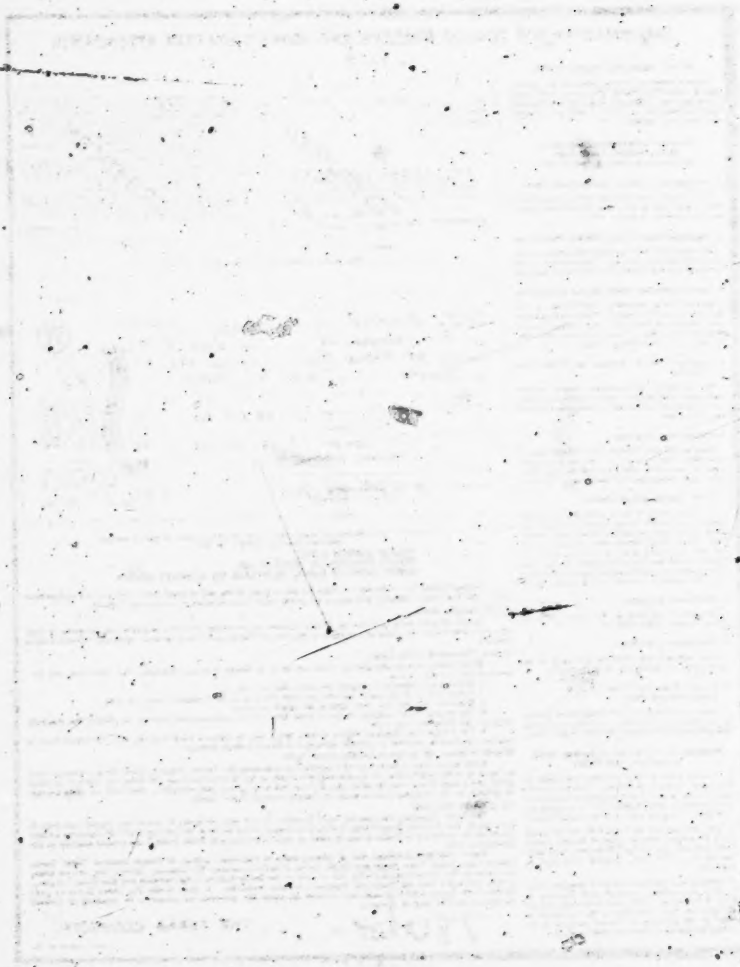
7804

6485

1835

7807

27



JAX 251

Commission's Exhibit 184A

1846

THE TEXAS COMPANY
(C - D)

Boston 17, Mass. November 18, 1954

SALES BY DEALERS ON
TEXACO CREDIT CARDS

FEDERAL TRADE COMMISSION
DOCKET NO. 6145 COMMISSION EXHIBIT NO. 184A
IN THE MATTER OF Goodrich
DATE 11/6/57 TYPED
ALL REPORTING CO., Official Reporters
BY

MERCHANDISING SALESMEN

GENERAL SALESMEN

BOSTON DIVISION

Gentlemen:

Attached is a reproduction of a letter to dealers, which is scheduled to be published in the November, 1954 issue of THE TEXACO DEALER, and should be received by all dealers on the mailing list on or shortly after November 15, 1954.

The intent of this message should be immediately apparent to all who READ IT. Our credit card volume, already huge, is continuing to grow rapidly and represents a tremendous business within itself. In the light of this fact and considering the plus benefits derived by our dealers from participation in the Texaco Credit Card program, we are entirely justified in insisting that the dealers play fair with us; that they do not cut corners in the handling of invoices and other forms covering credit card sales; and that they cooperate by observing the few simple principles and rules outlined in the attached letter.

Although the number of instances of proven or suspected deviations is small percentagewise when compared with the number of transactions per year, they occur much too frequently and, what is worse, seem to be increasing. Too many transactions have had to be charged back to dealers' accounts with resultant hard feelings between the dealer and the Company, or our local representative.

I am sure you will agree that we should NOT condone ANY practices that threaten the value of the TEXACO CREDIT CARD as a promotional item and any efforts expended to check such practices will be WORTH WHILE. With these thoughts in mind, it is requested that you campaign actively for a period of at least 30 DAYS to the end that EACH and EVERY TEXACO DEALER is called upon and the significance of the message in "THE TEXACO DEALER" is explained to him.

At the same time it would be well for you to review and refreshen the dealers' knowledge of the material in the placard "INFORMATION FOR TEXACO DEALERS AND SERVICE STATION ATTENDANTS", a copy of which should be on display or otherwise readily accessible at each resale outlet. A few simple rules that should be given special attention are the following:

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7808

JAX 252

Commission's Exhibit 184B

...ervising Salesman
...ial Salesmen - 2 - 11-18-54

1. Be sure the credit card presented to him is of current issue.

2. Check the cancellation list to determine whether the account number and name are shown thereon.

3. Be sure that the credit card letter prefix and account number are transcribed correctly to the Form 3-1990. Erroneous numbers appear all too frequently and may be the cause of delayed or incorrect billing, thereby aggravating the customer.

4. All Form 3-1990 invoices should be turned over to the truck operator at the time of each delivery. They should not under any circumstances be allowed to accumulate for long periods of time, in fact, if deliveries are made only infrequently, it is important that arrangements be made for more frequent pick-up of credit card invoices.

It is hoped that by means of this concentrated effort to educate or re-educate our dealers and their assistants, there will be a tremendous improvement in the overall handling of credit card transactions and a sharp reduction in the number of apparently irregular sales.

Very truly yours,

JOHN T. BOLGER, JR.

JTB,JR.-F.D

CFG KCB HWL CW TFW JTB,JR.

JJL JHD JTMcH HTn JOC

ZONE MANAGERS

DJD L.S

ACB JTRn PHW

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 184B

7809

47

JAX 253

Commission's Exhibit 184C

1846

253

subject: misuse of credit cards

AN OPEN LETTER TO TEXACO DEALERS

In fairness to you it is thought well to express a word of caution about improper practices engaged in by a few persons who hold Texaco Credit Cards.

It is bound to happen, of course, that with more than a million Credit Cards outstanding, some will come into the hands of unscrupulous persons who deliberately misuse the credit privilege. Although the number of such instances is very small, there have been some cases where individual Dealers have been victimized for relatively large amounts.

We do not have in mind the person who uses the Credit Card for purchases of petroleum products or services, or TBA items that are mounted on or attached to the vehicle, because, as you well know, the credit risk thereby entailed is assumed entirely by The Texas Company. The person to whom we refer is the one who persuades or endeavors to persuade a Dealer to make UNAUTHORIZED sales or transactions of a nature such as the following:

examples of transactions that are not authorized

1. *Delivery of tires, tubes, batteries, etc. that are not mounted on or attached to the vehicle.*

   (There is reason to believe that in some cases the "purchaser" has driven away with the merchandise and sold it to another Dealer to obtain cash.)

2. *The use of credit card invoices to cover UNAUTHORIZED general repairs or maintenance work.*

3. *The exchange of cash for a signed credit card invoice, or the inflation of the amount of such an invoice to cover cash advanced plus products purchased.*

Should any person carrying a Texaco credit card approach you with the request that you make an unauthorized sale, or propose any other kind of transaction that would represent misuse of the credit privilege, it is suggested that you do not comply and that you inform someone at your supplying bulk station of the name, address and account number shown on the credit card. You will, in such cases, be rendering a valuable service to your fellow Texaco Dealers as well as to yourself and the Company.

It is not by any means our intent to restrict the normal credit privileges to which Credit Card holders are entitled, nor to discourage the use of those privileges. Our concern is only with those who seek to abuse the privileges and, unfortunately, have been successful in a few instances at the expense of Dealers who knowingly permitted unauthorized transactions.

The Texas Company

FEDERAL TRADE COMMISSION
DOCKET NO. 6115 EXHIBIT NO. 184C

7810

THE TEXAS COMPANY 50

JAX 254

Commission's Exhibit 185A

THE TEXAS COMPANY

Buffalo, New York, November 22, 1954

SALES BY DEALERS ON
TEXACO CREDIT CARDS

ZONE MANAGERS
GENERAL SALESMEN
MERCHANDISING SALESMEN

Gentlemen:

Attached is a copy of a letter to dealers which is scheduled to be published in the November, 1954 issue of "The Texaco Dealer", and should be received by all dealers on the mailing list on or shortly after November 15, 1954.

The intent of this message should be immediately apparent to all who read it. Our credit card volume, already huge, is continuing to grow rapidly and represents a tremendous business within itself. At this time there are credit cards in the possession of more than one million of our customers, and sales are being made at a rate approaching per year. The direct cost to the Company of this business is estimated, quite conservatively, at a minimum of per year. In the light of those facts, and considering the plus benefits derived by our dealers from participation in the Texaco credit card program, we are entirely justified in insisting that the dealers play fair with us; that they do not cut corners in the handling of invoices and other forms covering credit card sales; and that they cooperate by observing the few simple principles and rules outlined in the attached letter.

Although the number of instances of proven or suspected deviations is small percentagewise, when compared with the approximately 50,000,000 transactions per year, they occur much too frequently, and, what is worse, seem to be increasing. Entirely too many transactions have had to be charged back to dealers' accounts with resultant hard feelings between the dealer and the Company, or our local representative. Innumerable other items have had to be absorbed at the expense of the Company because of lack of sufficient proof of dealers' negligence or culpability.

I am sure you will agree that we should not condone any practices that threaten the value of the Texaco credit card as a promotional item, and any efforts expended to check such practices will be worth while.

With those thoughts in mind, it is requested that you campaign actively for a period of at least thirty days to the end that each and every dealer is called upon and the significance of the message in "The Texaco Dealer" explained to him. Among other things, it should be pointed out to each dealer that, in self-interest, if for no other reason, his active and intelligent cooperation should be given for the proper handling of sales of products and authorized merchandise and services that are made to credit card holders. At the same time it would be well for you to review and refreshen the dealers' knowledge of the material in the placard "INFORMATION FOR TEXACO DEALERS AND SERVICE STATION ATTENDANTS", a copy of which should be on display or otherwise

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7811

Commission's Exhibit 185B

18-B

1255

ZONE MANAGERS
GENERAL SALESMEN
MERCHANDISING SALESMEN

November 22, 1954

readily accessible at each resale outlet. A few simple rules that should be given special attention are the following:

1. Be sure the credit card presented to him is of current issue.
2. Check the cancellation list to determine whether the account number and name are shown thereon.
3. Be sure that the credit card letter prefix and account number are transcribed correctly to the Form S-199D. Erroneous numbers appear all too frequently and may be the cause of delayed or incorrect billing, thereby aggravating the customer.
4. All Form S-199D invoices should be turned over to the Truck Operator at the time of each delivery. They should not under any circumstances be allowed to accumulate for long periods of time; in fact, if deliveries are made only infrequently, it is important that the arrangements be made for more frequent pick-up of credit card invoices.

It is hoped that by means of such a concentrated effort to educate or re-educate our dealers and their assistants, there will be a considerable improvement in the over-all handling of credit card transactions and a sharp reduction in the number of apparently irregular deals. Additional benefits will accrue from reinstilling a knowledge of credit card practices and procedures and a better appreciation of the credit card program in the minds of our own people.

It follows, of course, that the educational work should be continued indefinitely, beyond the expiration of the suggested campaign period, and that your efforts should not be relaxed to obtain the wholehearted cooperation of dealers in the correct handling of this huge volume of credit card business. Henceforth this shall be a primary and continuing responsibility of the Merchandising and General Salesmen.

As there is an equal need for this program throughout Consignee and Distributor areas, they are being asked (by copy of this letter) to cooperate to the same extent as our salaried organization.

Very truly yours,

M. C. Wall (2)

M. C. WALL

MCW/r

State Managers
EMO EAB LMT RKS

This letter is being quoted to Distributors and Consignees.

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JAX 256

Commission's Exhibit 185C

185C

C O P Y

256

SUBJECT: MISUSE OF CREDIT CARDS

A N O P E N L E T T E R T O T E X A C O D E A L E R S

In fairness to you it is thought well to express a word of caution about improper practices engaged in by a few persons who hold Texaco Credit Cards.

It is bound to happen, of course, that with more than a million Credit Cards outstanding, some will come into the hands of unscrupulous persons who deliverately misuse the credit privilege. Although the number of such instances is very small, there have been some cases where individual Dealers have been victimized for relatively large amounts.

We do not have in mind the person who uses the Credit Card for purchases of petroleum products or services, or TBA items that are mounted on or attached to the vehicle, because, as you well know, the credit risk thereby entailed is assumed entirely by The Texas Company. The person to whom we refer is the one who persuades or endeavors to persuade a Dealer to make UNAUTHORIZED sales or transactions of a nature such as the following:

EXAMPLES OF TRANSACTIONS THAT ARE NOT AUTHORIZED

1. Delivery of tires, tubes, batteries, etc., that are not mounted on or attached to the vehicle. (There is reason to believe that in some cases the "purchaser" has driven away with the merchandise and sold it to another Dealer to obtain cash.)

2. The use of credit card invoices to cover UNAUTHORIZED general repairs or maintenance work.

3. The exchange of cash for a signed credit card invoice, or the inflation of the amount of such an invoice, to cover cash advanced plus products purchased.

Should any person carrying a Texaco credit card approach you with the request that you make an unauthorized sale, or propose any other kind of transaction that would represent misuse of the credit privilege, it is suggested that you do not comply and that you inform someone at your supplying bulk station of the name, address and account number shown on the credit card. You will, in such cases, be rendering a valuable service to your fellow Texaco Dealers as well as to yourself and the Company.

It is not by any means our intent to restrict the normal credit privileges to which Credit Card holders are entitled, nor to discourage the use of those privileges. Our concern is only with those who seek to abuse the privileges and, unfortunately, have been successful in a few instances at the expense of Dealers who knowlingly permitted unauthorized transactions.

THE TEXAS COMPANY

7515-1

JAX 257

Commission's Exhibit 186A

THE TEXAS COMPANY

New York, N. Y., December 10, 1954

TBA PROGRAM
CREDIT SALES OF NEW FIRESTONE
& B. F. GOODRICH TIRES, TUBES,
BATTERIES AND ACCESSORIES

FEDERAL TRADE COMMISSION
DOCKET NO. 6385 COMMISSION EXHIBIT NO. 186A
IN THE MATTER OF Goodrich
DATE 11/6/57 WITNESS Glenn
ACE REPORTING CO., Official Reporter
By Glenn

CIRCULAR LETTER NO. 584

Messrs: R. R. Kibbe
J. M. Doss
C. N. Brooks
D. E. Beaton

Gentlemen:

Effective January 1, 1955, dealers handling Texaco gasolines are authorized to honor unexpired and uncancelled Texaco National Credit Cards for purchases of new Firestone and B. F. Goodrich tires, tubes, batteries and accessories on a deferred payment basis, providing the merchandise purchased is mounted on or attached to a motor vehicle operated by the authorized holder of the credit card.

Under this plan, TBA purchases of $30.00 (net after trade-in or other allowances) or more may be paid in equal monthly installments over a 3-month period. Net purchases of $50.00 or more may be paid in equal monthly installments over a period of 6 months.

In the Pacific Coast Territory there will be a service charge of $1.00 for purchases made on 3-month terms, and a charge of $1.50 for 6-month terms. In order to meet major competition there will be no service charge imposed on purchases made in the Southern, Central, and Northern Territories.

While it is not practical to change the wording appearing on our credit card until the next printing, it is a part of this program that only purchases of Firestone and B. F. Goodrich merchandise are authorized since it will be understood that the Company does not wish to underwrite TBA sales on credit terms where it does not receive a commission.

Enclosed is specimen of a letter to be mailed by Division Managers to Texaco Dealers handling Firestone or B. F. Goodrich TBA merchandise. Each Division should arrange for printing their requirements of this letter, using outside letterhead and showing facsimile signature of Division Manager. The letters should be mailed in sufficient time to reach dealers prior to January 1, 1955.

Also enclosed is text of a message to holders of Texaco National Credit Cards, a supply of which is being printed and shipped to each Division. These will be placed in envelopes with statements mailed to active credit card accounts during the monthly billing cycle beginning January 1, 1955.

JAX 258

Commission's Exhibit 186B

RRK-JMD-CNB-DEB - #2

12/10/54

The Department Agent's office has arranged for printing a special invoice form for use by dealers making TBA sales on a deferred payment basis, also a placard giving information to dealers regarding procedures for handling invoices, etc., covering such sales. These forms are scheduled for shipment to reach Division Offices on or before December 20, 1954.

Accounting and credit instructions covering handling of TBA sales on the deferred payment basis are being issued by the Department Agent.

As you well know, the need and advisability of this program has been under consideration for quite some time, and now that it is being authorized, we would like to see it made as productive as possible. In adopting this program, The Texas Company is going to considerable expense and trouble, but we feel that it affords a wonderful opportunity for increasing our TBA sales very materially. I trust that you and your organization will leave nothing undone to make this program highly successful.

Yours very truly,

C. B. Barnett

CBB:CFL
Attachments

RWD-CHD-WFW-JEB-FMH

DWS-WJR-JMG-NB

KK

FEDERAL TRADE COMMISSION
DOCKET NO. 4485 EXHIBIT NO. 186B

5-5-

7818

JAX 259

Commission's Exhibit 186C

186

Message to be sent by Divisions in Northern, Central, and Southern Territories to Credit Card Customers announcing TEXACO DEFERRED PAYMENT PLAN

To Holders of Texaco National Credit Cards:

Your Texaco National Credit Card will hereafter provide an additional useful service. From now on, you can, when desired, take advantage of our new TEXACO DEFERRED PAYMENT PLAN for your purchases of new Firestone or B. F. Goodrich Tires, Tubes, Batteries and Automotive Accessories when purchased from and installed on your motor vehicle by your Texaco Dealer.

If you wish to purchase new Firestone or B. F. Goodrich merchandise for your car or truck through your Texaco credit card, in amounts of $30.00 (net after trade-in or other allowances) or more, payments may be arranged in equal monthly installments over a 3-month period. If your net purchase is $50.00 or more, payments may be made in equal monthly installments over a period of 6 months. There is no down payment - no service charge!

Deferred payment terms do not apply to your purchases of Texaco petroleum products or services.

We believe you will find this new Texaco Deferred Payment Plan a great convenience in fulfilling your needs for top quality Firestone or B. F. Goodrich automotive necessities usually handled by most Texaco Dealers. In addition to your monthly charges for Texaco gasolines, motor oils, and Marfak Lubrication Service, you are simply billed for the current amount due on purchases made under the Deferred Payment Plan - 1/3 or 1/6 of the total amount purchased - on your regular monthly statement.

So the next time you are talking over the needs of your car or truck with your neighborhood Texaco Dealer, remember you can now buy a complete set of new tires - in fact, anything that can be installed on your car by your Texaco Dealer - on easy terms with no down payment and no service charge through your Texaco National Credit Card. This new Texaco Deferred Payment Plan is at your disposal; do not hesitate to use it.

THE TEXAS COMPANY

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 ; COMMISSION EXHIBIT NO. 186C

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JAX 260

Commission's Exhibit 186E

Draft of Announcement to Texaco Dealers now handling Firestone & B. F. Goodrich in Northern, Central, and Southern Territories

Dear Texaco Dealer:

Here is something you have been asking for !

On January 1, 1953, the new Texaco Deferred Payment Plan for holders of Texaco National Credit Cards will become effective. In addition to our customary 30-day terms, our new Plan will authorize Texaco Dealers to honor unexpired and uncanceled Texaco National Credit Cards for purchases of new Firestone or B. F. Goodrich tires, tubes, batteries and accessories on a maximum deferred payment basis up to 6 months. As has always been the case, such sales of TBA merchandise are authorized for Texaco Credit Card accounts providing at time of sale the TBA items sold are mounted on or attached to the vehicle operated by the customer to whom the Credit Card is issued.

The new Texaco Deferred Payment Plan makes it possible for you to sell new Firestone or B. F. Goodrich TBA items totaling $30 or more (net after trade-in or other allowances) with payments to be made in equal monthly installments over a 3-month period. Net sales of $50 or more may be paid in equal monthly installments over a period of 6 months. There is no down payment and no service charge.

We believe our new Texaco Deferred Payment Plan will be of great assistance to you in increasing your sales of all products and services at your station. It should make it easy for you to boost your sales of Firestone or B. F. Goodrich tires in sets of 2 or 4; it will enable you to add on at the same time the sale of a battery plus the other replacement necessities that will assure your customer safer, more economical, and carefree driving. What is more, now since you may take care of your customer's TBA needs on terms that are most convenient to him, it isn't likely that you will have to unnecessarily lessen your profits in order to make the sale. Remember, when a motorist desires extended terms on his TBA purchases, he is less likely to shop around and certainly less likely to quibble about price. Best of all - your sales of B. F. Goodrich or Firestone TBA to credit card accounts is actually a cash sale for you - whether the terms be 30 days, 3 months, or 6 months for your customer.

A book of special invoices, Forms S-450, together with detailed information covering proper preparation and handling will be delivered to you in a few days. It is extremely important that these invoices be prepared carefully so that your customers will be billed on the exact basis on which sales are made.

Many Texaco Dealers have expressed to us the need for a program like this to assist them in their sales of Tires, Batteries, and Accessories. We hope that this plan, which will be nationwide, will be of valuable assistance to you, so talk up the new Texaco Deferred Payment Plan - that can be tailored to your Credit Card customer's desire. Build up your sales and profits on all products and services.

Sincerely yours,

Division Manager

FEDERAL TRADE COMMISSION
DOCKET NO. 6485

186E

58

7821

Commission's Exhibit 188

B.H. 1500 Rec'd 7/2/56

INFORMATION FOR TEXACO DEALERS AND SERVICE STATION ATTENDANTS RELATING TO CREDIT SALES OF NEW FIRESTONE AND GOODRICH TIRES, TUBES, BATTERIES AND ACCESSORIES

CONDITIONS UNDER WHICH THE NET AMOUNT OF FORMS S-450, TEXACO DEFERRED PAYMENT AGREEMENT MAY BE ASSIGNED BY THE DEALER TO THE TEXAS COMPANY

Dealers handling Texaco gasoline are authorized to honor UNEXPIRED and UNCANCELLED Texaco National Credit Cards for credit purchases of new Firestone and Goodrich tires, tubes, batteries and accessories on a deferred payment basis as herein provided when the items purchased are mounted on or attached to a vehicle operated by the authorized holder of the credit card.

The procedure to be followed in honoring Texaco National Credit Cards, preparing Form S-450, Texaco Deferred Payment Agreement and assigning net amount of sales to The Texas Company is as follows:

ORIGINAL

SOLD TO:

CREDIT CARD NO. B-44054

NAME A.C. JENSEN

STREET ADDRESS 122 KILMER AVE.

CITY ALBANY STATE N.Y.

DATE JAN. 2 19 56

LICENSE PLATE NO. 4V7887

STATE NEW YORK

We authorized who hereby certify that the merchandise listed hereon has been received in or shipped to the above named vehicle. The Deferred Payment Agreement is hereby ordered by the Texas Company.

A.C. Jensen
(SIGNATURE OF BUYER)

875 GARDEN ST.
(STREET AND NUMBER)

ALBANY N.Y.
(CITY OR TOWN) (STATE)

TEXACO DEFERRED PAYMENT AGREEMENT
NEW TIRES, TUBES, BATTERIES AND ACCESSORIES

508

UNITS	DESCRIPTION OF MERCHANDISE ☐ FIRESTONE ☑ GOODRICH	UNIT PRICE	TOTAL PRICE
5	670 X 15 TIRES	27 20	136 00
1	BATTERY	17 25	17 25
8	SPARK PLUGS	75	6 00
1	SIDE VIEW MIRROR	3 95	3 95

The undersigned hereby acknowledges receipt of the merchandise listed above and agrees to pay the amount shown below in accordance with the terms checked below:

(CHECK ONE)

☐ 3 equal monthly installments.

☑ 6 equal monthly installments.

In the event of default of any installment, the unpaid balance shall immediately become due and payable.

GROSS SALE	168 20
SALES & EXCISE TAX	6 80
SUB-TOTAL	175 00
LESS TRADE-IN	10 00
NET SALE	165 00

O.C. Jensen
(PURCHASER'S SIGNATURE)

FORM S-450, 11-54 EDITION

1. Presentation of Texaco National Credit Cards

An unexpired and uncancelled Credit Card must be presented by the customer at the time of sale in order to make purchases on an installment basis on the authority of such cards. The expiration date is shown in the lower left corner of the Credit Card.

2. Lost or Cancelled Texaco National Credit Cards

Lists of lost or cancelled Credit Cards will be periodically sent to Dealers. Before making credit deliveries on authority of a Credit Card, Dealer should be certain that the customer's name or Credit Card number does not appear on such lists. Only Credit Cards that are marked DUPLICATE should be honored if listed as lost.

3. Customer's Name, Address and Credit Card Number

Print or legibly write customer's Credit Card number and letter prefix, name and address on Form S-450 in the identical manner such information is shown on Credit Card.

4. Terms

Deferred credit terms are NOT applicable to purchases of less than $20.00.

Deferred credit terms of 3 months, i.e., payable in 3 equal monthly installments are authorized for purchases totaling $20.00 or more.

Deferred credit terms of 6 months, i.e., payable in 6 equal monthly installments are authorized for purchases totaling $50.00 or more.

The payment plan selected by the purchaser in conformance with the foregoing, should be designated by a check mark in the appropriate place on Form S-450.

5. Authorized Merchandise

Purchases on a deferred payment basis must be confined to NEW Firestone or Goodrich tires, tubes, batteries, customable accessories and installation charges. All merchandise listed on Form S-450 must be mounted on or attached to the vehicle operated by the authorized holder of the Credit Card. FORMS S-1980, INVOICE, SHOULD BE USED TO COVER SALES OF TEXACO PETROLEUM PRODUCTS AND SERVICES. ALSO TIRES, TUBES, BATTERIES AND ACCESSORIES THAT ARE NOT SOLD

6. Prices

Prices charged must be the same as those charged cash customers. Sales tax, if applicable, must be added.

7. State and License Number

The LICENSE NUMBER and STATE indicated on plate attached to vehicle on which the items purchased are mounted or installed must be shown in space provided on Form S-450.

8. Purchaser's Signature

The signature of the Credit Card holder must be affixed to each Form S-450 in space provided.

9. Signature of Seller

The personal signature of the Seller (Dealer) should appear on each Form S-450, followed by the complete address (Street and number, City and State) of the Dealer's place of business.

10. Distribution of Forms S-450

The purchaser should be presented with the triplicate (pink) copy of Form S-450. The original (green) and duplicate (yellow) copies should be retained by Dealer for subsequent assignment to The Texas Company.

11. Assignment of Form S-450, Deferred Payment Agreement to The Texas Company

Forms S-450 covering sales made on a deferred payment basis and handled in line with procedures stated herein, may be assigned to The Texas Company as follows:

(a) Prepare Form S-88, List of Credit Card Deliveries, in triplicate by listing each Form S-450 together with Form S-1980, Credit Card Invoice, showing date of sale, Credit Card number with letter prefix and the NET AMOUNT of sale. Show total amount of all sales listed on each Form S-88.

(b) Original and duplicate copies of correctly prepared Forms S-450 and original Forms S-1980 supported by original and duplicate of Form S-88 will be accepted by Truck Operators as the equivalent of cash for the purchase of Texaco products or as a payment

TEXACO DEFERRED PAYMENT AGREEMENT
MAY BE ASSIGNED BY THE DEALER TO THE TEXAS COMPANY

Dealers handling Texaco gasolines are authorized to honor UNEXPIRED and UNCANCELLED Texaco National Credit Cards for credit purchases of new Firestone and Goodrich tires, tubes, batteries and accessories on a deferred payment basis as herein provided when the items purchased are mounted on or attached to a vehicle operated by the authorized holder of the credit card.

The procedure to be followed in honoring Texaco National Credit Cards, preparing Form B-450, Texaco Deferred Payment Agreement and assigning net amount of sales to The Texas Company is as follows:

ORIGINAL

SOLD TO:
CREDIT CARD NO. B-44084
NAME A.C. JENSEN
STREET ADDRESS 122 KILMER AVE.
CITY ALBANY STATE N.Y.
DATE JAN. 2 19 61
LICENSE PLATE NO. 4V7887
STATE NEW YORK

TEXACO DEFERRED PAYMENT AGREEMENT
NEW TIRES, TUBES, BATTERIES AND ACCESSORIES — 508

UNITS	DESCRIPTION OF MERCHANDISE ☐ FIRESTONE ☐ GOODRICH	UNIT PRICE	TOTAL PRICE
5	4.70 x 15 TIRES	27 20	136 00
1	BATTERY	17 25	17 25
8	SPARK PLUGS	75	6 00
1	SIDE VIEW MIRROR	3 98	3 95
		GROSS SALE	163 20
		SALES & EXCISE TAX	6 80
		SUB-TOTAL	170 00
		LESS TRADE-IN	10 00
		NET SALE	160 00

The undersigned hereby acknowledges receipt of the merchandise listed above and agrees to pay the purchase price thereof in (CHECK ONE)
☐ 3 equal monthly installments,
☐ 6 equal monthly installments,
in the event of default of any installment, the unpaid balance shall immediately become due and payable.

R P Jones
(SIGNATURE OF DEALER)
875 GARDEN ST.
(DEALER'S ADDRESS)
ALBANY N.Y.
(CITY OR TOWN) (STATE)

A C Jensen
(PURCHASER'S SIGNATURE)

PRICES EFF. 11-28-60 SUBJ. TO CHANGE

1. Presentation of Texaco National Credit Cards

An unexpired and uncancelled Credit Card must be presented by the customer at the time of sale in order to make purchases on an installment basis on the authority of such cards. The expiration date is shown in the lower left corner of the Credit Card.

2. Lost or Cancelled Texaco National Credit Cards

Lists of lost or cancelled Credit Cards will be periodically sent to Dealers. Before making credit deliveries on authority of a Credit Card, Dealer should be certain that the customer's name or Credit Card number does not appear on such lists. Only Credit Cards that are marked DUPLICATE should be honored if listed as lost.

3. Customer's Name, Address and Credit Card Number

Print or legibly write customer's Credit Card number and letter prefix, name and address on Form B-450 in the identical manner such information is shown on Credit Card.

4. Terms

Deferred credit terms are NOT applicable to purchases of less than $30.00.

Deferred credit terms of 3 months, i.e., payable in 3 equal monthly installments are authorized for purchases totaling $30.00 or more.

Deferred credit terms of 6 months, i.e., payable in 6 equal monthly installments are authorized for purchases totaling $50.00 or more.

The payment plan selected by the purchaser in conformance with the foregoing, should be designated by a check mark in the appropriate place on Form B-450.

5. Authorized Merchandise

Purchases on a deferred payment basis must be confined to NEW Firestone or Goodrich tires, tubes, batteries, automobile accessories and installation charges. All merchandise listed on Form B-450 must be mounted on or attached to the vehicle operated by the authorized holder of the Credit Card. FORMS B-1980, INVOICE, SHOULD BE USED TO COVER SALES OF TEXACO PETROLEUM PRODUCTS AND SERVICES. ALSO TIRES, TUBES, BATTERIES AND ACCESSORIES THAT ARE NOT SOLD ON A DEFERRED PAYMENT BASIS.

6. Merchandise Purchased

Show on Form B-450 number of units purchased, a description of each type of merchandise purchased, unit price and total price of each type. Total the amounts listed in total price column to determine the gross amount of merchandise sold, add sales and excise tax, if applicable, to determine sub total, then deduct trade-in, allowance, if any, to determine the net amount of sale.

7. State and License Number

The LICENSE NUMBER and STATE indicated on plate attached to vehicle on which the items purchased are mounted or installed must be shown in space provided on Form B-450.

8. Purchaser's Signature

The signature of the Credit Card holder must be affixed to each Form B-450 in space provided.

9. Signature of Seller

The personal signature of the Seller (Dealer) should appear on each Form B-450, followed by the complete address (Street and number, City and State) of the Dealer's place of business.

10. Distribution of Forms B-450

The purchaser should be presented with the triplicate (pink) copy of Form B-450. The original (green) and duplicate (yellow) copies should be retained by Dealer for subsequent assignment to The Texas Company.

11. Assignment of Form B-450, Deferred Payment Agreement to The Texas Company

Forms B-450 covering sales made on a deferred payment basis and handled in line with procedures stated herein, may be assigned to The Texas Company as follows:

(a) Prepare Form B-98, List of Credit Card Deliveries, in triplicate by listing each Form B-450 together with Form B-1980, Credit Card Invoice, showing date of sale, Credit Card number with letter prefix and the NET AMOUNT of sale. Show total amount of all sales listed on each Form B-98.

(b) Original and duplicate copies of correctly prepared Forms B-450 and original Forms B-1980 supported by original and duplicate of Form B-98 will be accepted by Truck Operators as the equivalent of cash for the purchase of Texaco products or as a payment on Dealer's credit account.

(c) The Texas Company reserves the right to refuse assignment of any Form B-450 submitted by Dealer more than 15 days after date of purchase by Credit Card customer.

THE TEXAS COMPANY

Form B-450 REVISED

7825

JAX 262

Commission's Exhibit 190

THE TEXAS COMPANY 190

Butte, Montana, December 6, 1956

TEXACO DEFERRED PAYMENT PLAN
T.B.A. MERCHANDISE

TO ALL TEXACO DEALERS

(2 - 44.1)

Gentlemen:

The reverse side of our credit card reads in part as follows:

"This card will be honored for the following merchandise and services:

1. Texaco Petroleum Products, Marfak Lubrication Service, Washing and Polishing Service for Passenger cars and Trucks.

2. New Firestone or B. F. Goodrich Passenger car and Truck tires, tubes, batteries, and accessories, plus installation charges, if any, providing the merchandise is mounted on or attached to motor vehicle operated by holder of card."

In connection with purchases of Firestone or Goodrich merchandise referred to above, we wish to call your attention to the Texaco DEFERRED Payment Plan, which provides:

1. Payments covering net purchases (after trade-in or other allowances) of $30.00 or more may be made in equal monthly installments over a 3 month period. A service charge of $1.00 applies to such a purchase.

2. Payments covering net purchases of $50.00 or more may be made in equal monthly installments over a 6 month period. A service charge of $1.50 applies to such purchases.

The above Plan should greatly assist dealers handling Firestone or Goodrich products, to sell large quantities of T.B.A. merchandise. The handling charges are the lowest we know of.

Despite this, however, sales in October were as follows:

	PER CENT OF DEFERRED PAYMENT SALES TO TOTAL T.B.A. SALES
Butte Division	7.2%
Los Angeles Division	26.6%
Seattle Division	13.9%

We urge you and your employees who may participate in a Bonus Plan, to take full advantage of the Texaco Deferred Payment Plan.

Yours very truly,

IHC:KK

Consignees & Distributors
SPA-Tak Che-Ha-Ed-Ind-Ind-Ind

JAX 263

Commission's Exhibit 202

202

April, 1957

The following items are excluded from our Sales Commission Program:

1. Federal Excise Tax.
2. State or City Sales Tax.
3. Used Tires and Tubes.
4. Camelback and tread stocks not purchased from Firestone.
5. Retreads not purchased from Firestone, except dealer produced retreads covered by our policy.
6. Home and Auto Supply Department #5, (Major Appliances) and #13, (Television).
7. Home and Auto Supplies and Battery Acid not purchased from Firestone.
8. Adjustment sales.
9. Wheels, Rims, Weights.
10. Mechanical goods.
11. Equipment and supplies.
12. Advertising material and supplies.
13. Sales to "O" Dealers.
14. Sales to outlets served by other qualified outlets.
15. Delivery commission.
16. Sales to States, Local Governments and State Institutions that buy under State Purchasing Arrangements. Also sales to national accounts billed by Firestone.

JAX 264

Commission's Exhibit 204A

ITEM 3(a) - 4(a) - 4(d) - 4(c)
CHICAGO STANDARD METROPOLITAN AREA

"C" ACCOUNTS - YEAR 1939

MONTH	* NUMBER OF ACCOUNTS BUYING FIRESTONE			GOODRICH			BOTH FIRES, & B.F.G.			DOLLAR PURCHASES FIRESTONE & GOODRICH			
	T&I	BATT.	ACC.	T&I	BATT.	ACC.	T&I	BATT.	ACC.	T&T	BATT.	ACC.	TOTAL
Jan.	37	29	25	111	87	90	6	0	1	30036	11650	6465	48351
Feb.	48	26	22	140	117	105	4	0	1	51766	15978	7123	74867
Mar.	53	20	32	156	97	98	2	0	2	43886	5791	8629	58306
Apr.	45	13	31	175	94	128	4	0	0	59729	4521	10649	74899
May	54	17	32	189	113	105	4	0	5	69625	5992	8692	84309
June	53	17	31	154	95	100	11	0	3	50458	6073	6100	62631
July	53	23	36	127	99	96	9	0	5	60352	7427	11451	79230
Aug.	54	26	33	172	149	125	9	0	4	61878	17259	9812	88949
Sept.	52	27	33	129	111	100	6	1	3	49311	13713	8024	71048
Oct.	53	36	31	173	169	181	17	3	6	43551	25935	20440	89926
Nov.	53	30	34	168	167	145	11	3	5	41489	27210	14120	82819
Dec.	58	30	30	194	165	123	11	2	4	51687	28723	13252	93662
TOTAL										613768	170472	124757	908997

*Monthly count based on number purchasing $1.00 or more during each month.

FEDERAL TRADE COMMISSION
DOCKET NO. 6213 EXHIBIT NO. 204A

JAX 265

Commission's Exhibit 204B

ITEM 3(a) - 4(a) - 4(d) - 4(e)
CHICAGO STANDARD METROPOLITAN AREA

"D" ACCOUNTS - YEAR 1955

MONTH	* NUMBER OF ACCOUNTS BUYING FIRESTONE T&T	FIRESTONE BATT.	FIRESTONE ACC.	GOODRICH T&T	GOODRICH BATT.	GOODRICH ACC.	BOTH FIRES. & U.F.G. T&T	BOTH FIRES. & U.F.G. BATT.	BOTH FIRES. & U.F.G. ACC.	DOLLAR PURCHASES FIRESTONE & GOODRICH T&T	BATT.	ACC.	TOTAL
Jan.	9	4	5	9	2	2	0	0	0	3935	1096	562	5593
Feb.	9	3	4	9	1	3	0	0	0	3219	596	529	4344
Mar.	9	1	4	6	--	4	0	0	0	51	16	650	717
Apr.	8	3	5	6	4	2	0	0	0	2515	[illegible]	754	3529
May	8	1	6	10	3	3	0	0	0	3120	143	297	3560
June	9	2	5	10	4	5	0	0	0	760	163	326	1249
July	11	2	5	4	3	3	0	0	0	2234	216	884	3334
Aug.	11	3	5	7	2	6	0	0	0	4162	166	481	4809
Sept.	7	3	6	4	2	2	0	0	0	1366	192	317	1875
Oct.	9	3	4	12	9	8	0	0	0	2429	796	863	4188
Nov.	11	5	3	9	8	5	0	0	0	2770	942	693	4305
Dec.	10	5	6	8	7	4	0	0	0	2051	867	589	3507
TOTAL										28612	5453	6955	41020

*Monthly count based on number purchasing $1.00 or more during each month.

FEDERAL TRADE COMMISSION
DOCKET NO. 6385 EXHIBIT NO. 204B

1214

JAX 204

Commission's Exhibit 204C

ITEM 3(a) - 4(a) - 4(d) - 4(e)
CHICAGO STANDARD METROPOLITAN AREA

"E" ACCOUNTS - YEAR 1955

MONTH	*NUMBER OF ACCOUNTS BUYING FIRESTONE I&I	FIRESTONE BATT.	FIRESTONE ACC.	GOODRICH I&I	GOODRICH BATT.	GOODRICH ACC.	BOTH FIRES, &B,F,G. I&T	BOTH FIRES, &B,F,G. BATT.	BOTH FIRES, &B,F,G. ACC.	DOLLAR PURCHASES FIRESTONE & GOODRICH I&T	BATT.	ACC.	TOTAL
Jan.	2	1	1	1	-	-	0	0	0	5292	-230	-31	5023
Feb.	2	1	2	-	-	-	0	0	0	5749	2019	4271	12039
Mar.	1	1	1	-	-	-	0	0	0	2637	60	679	3376
Apr.	1	1	2	-	-	-	0	0	0	10650	-81	3963	14532
May	2	1	1	1	-	-	0	0	0	6306	-41	1457	7722
June	1	2	2	-	-	-	0	0	0	-321	218	373	270
July	2	2	2	-	-	-	0	0	0	31601	762	2357	34720
Aug.	2	2	2	-	-	-	0	0	0	-1410	-1886	2284	-1012
Sept.	2	1	2	1	-	-	0	0	0	4208	1374	1034	6616
Oct.	2	2	2	-	-	-	0	0	0	22521	-24	1437	23934
Nov.	2	1	1	1	-	-	0	0	0	9173	2554	625	12348
Dec.	2	2	2	-	-	-	0	0	0	4853	2287	585	7725
TOTAL										101259	7000	19034	127293

*Monthly count based on number purchasing $1.00 or more during each month.

DOCKET 6483 204 C

87

JAX 267

Commission's Exhibit 204D

ITEM 3(a) - 4(a) - 4(d) - 4(e)
CHICAGO STANDARD METROPOLITAN AREA
"C" ACCOUNTS - YEAR 1956

MONTH	* NUMBER OF ACCOUNTS BUYING FIRESTONE			GOODRICH			BOTH FIRES.&B.F.G.			DOLLAR PURCHASES FIRESTONE & GOODRICH			
	T&I	BATT.	ACC.	T&I	BATT.	ACC.	T&I	BATT.	ACC.	T&I	BATT.	ACC.	TOTAL
n.	50	23	24	143	112	103	4	1	4	30987	8663	7776	47426
Feb.	46	22	31	167	134	131	17	1	5	46645	10068	8484	65197
Mar.	54	23	36	165	93	130	12	1	6	48553	5595	10739	64887
Apr.	52	18	44	169	101	148	16	1	4	59921	5159	11556	76636
May	54	20	33	157	107	152	15	2	5	65227	7233	13311	85871
June	51	27	34	197	127	148	22	2	4	71681	12176	15289	99146
July	51	23	36	199	138	156	10	1	4	70130	13564	17515	*101209
Aug.	52	27	36	168	135	162	16	1	6	62781	10379	11818	84978
Sept.	54	27	35	175	179	166	14	1	4	58306	20430	18460	97196
Oct.	58	35	29	170	170	160	14	0	6	54615	20234	19934	94783
Nov.	69	40	40	166	189	157	9	1	5	53099	30243	22496	105838
Dec.	74	48	50	135	137	108	13	1	3	56066	24452	15455	95973
										678111	168196	172833	1019140

*Monthly count based on number purchasing $1.00 or more during each month.

JAX 268

Commission's Exhibit 204E

ITEM 3(a) - 4(a) - 4(d) - 4(e)
CHICAGO STANDARD METROPOLITAN AREA

"D" ACCOUNTS - YEAR 1956

MONTH	* NUMBER OF ACCOUNTS BUYING FIRESTONE I&I	FIRESTONE BATT.	FIRESTONE ACC.	GOODRICH I&I	GOODRICH BATT.	GOODRICH ACC.	BOTH FIRES. & B.F.G. I&I	BOTH FIRES. & B.F.G. BATT.	BOTH FIRES. & B.F.G. ACC.	DOLLAR PURCHASES FIRESTONE & GOODRICH I&I	FIRESTONE & GOODRICH BATT.	FIRESTONE & GOODRICH ACC.	FIRESTONE & GOODRICH TOTAL
Jan.	7	4	4	6	0	3	0	0	0	3451	325	413	4189
Feb.	7	3	4	7	2	7	0	0	0	1549	195	621	2365
Mar.	9	4	3	5	3	6	0	0	0	2069	197	720	2986
Apr.	12	4	6	6	1	6	0	0	0	3517	118	501	4136
May	11	3	6	5	3	5	0	0	0	3303	205	649	4157
June	13	4	5	5	1	2	0	0	0	4742	127	499	5368
July	8	3	6	6	2	3	0	0	0	4760	183	696	5639
Aug.	9	5	6	6	2	4	0	0	0	4681	917	365	5963
Sept.	10	5	6	6	1	4	0	0	0	3022	1173	1011	5206
Oct.	9	5	5	5	2	4	0	0	0	766	2078	823	3667
NOV.	9	4	3	5	2	4	0	0	0	2800	985	649	4434
Dec.	11	6	4	2	--	-	0	0	0	6987	408	270	7665
TOTAL										41647	6911	7217	55775

*Monthly count based on number purchasing $1.00 or more during each month.

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 204E

89

8217

JAX 269

Commission's Exhibit 204F

ITEM 3(a) - 4(a) - 4(d) - 4(g)
CHICAGO STANDARD METROPOLITAN AREA

"E" ACCOUNTS - YEAR 1956

	* NUMBER OF ACCOUNTS BUYING									DOLLAR PURCHASES			
	FIRESTONE			GOODRICH			BOTH FIRES. & B.F.G.			FIRESTONE & GOODRICH			
1956	T&I	BATT.	ACC.	T&I	BATT.	ACC.	T&I	BATT.	ACC.	T&I	BATT.	ACC.	TOTAL
Jan.	2	2	1	-	-	-	0	0	0	2267	325	56	2648
Feb.	2	1	1	-	-	-	0	0	0	-10303	393	5418	-4492
Mar.	1	1	1	-	-	--	0	0	0	4908	26	984	5918
Apr.	2	1	2	-	-	-	0	0	0	-1601	-338	675	-664
May	2	2	1	-	-	-	0	0	0	6943	103	623	7669
June	2	2	2	-	-	-	0	0	0	7053	3429	1118	11600
July	2	1	1	-	-	--	0	0	0	2975	276	1570	4821
Aug.	2	1	1	1	-	-	0	0	0	8661	-149	1290	9802
Sept.	2	1	1	1	-	-	0	0	0	1544	659	481	2684
Oct.	2	2	1	1	-	-	0	0	0	6898	2788	1058	10744
Nov.	2	1	1	-	-	-	0	0	0	13018	-251	2744	15511
Dec.	2	2	2	1	-	-	0	0	0	13637	3210	1422	18269
TOTAL										56600	10471	17439	84510

*Monthly count based on number purchasing $1.00 or more during each month.

FEDERAL TRADE COMMISSION
DOCKET 7040 COMMISSION EXHIBIT 204-F

FEDERAL TRADE COMMISSION
DOCKET NO. 6413 SERIES SESSION NO. 2654
IN THE MATTER OF Goodyear
DATE 11/4/57 WITNESS
ACE REPORTING CO., Official Reporter
By

Item 7(a) - 4(a) - 4(b) - 3(a)

OMAHA Standard Metropolitan Area
'C' Accounts --- Year 1955

Number of Accounts Having

Month	Firestone Tires	Firestone Batteries	Firestone Accessories	Goodrich Tires	Goodrich Batteries	Goodrich Accessories	Both Firestone & Goodrich Tires	Both Firestone & Goodrich Batteries	Both Firestone & Goodrich Accessories	Dollar Purchases Firestone & Goodrich Tires	Dollar Purchases Firestone & Goodrich Batteries	Dollar Purchases Firestone & Goodrich Accessories	Dollar Purchases Firestone & Goodrich Total
Jan.	24	15	15	5	5	4	-	1	3	[illegible]	[illegible]	[illegible]	[illegible]
Feb.	26	19	21	5	6	5	1	1	4	[illegible]	[illegible]	[illegible]	[illegible]
Mar.	25	11	19	6	4	5	-	-	4	[illegible]	[illegible]	[illegible]	[illegible]
Apr.	26	11	21	6	4	6	-	1	4	[illegible]	[illegible]	[illegible]	[illegible]
May	27	15	20	6	3	5	-	-	4	[illegible]	[illegible]	[illegible]	[illegible]
June	30	16	24	7	3	7	-	-	2	[illegible]	[illegible]	[illegible]	[illegible]
July	27	17	21	6	6	6	1	-	3	[illegible]	[illegible]	[illegible]	[illegible]
Aug.	25	19	20	6	5	4	1	-	4	[illegible]	[illegible]	[illegible]	[illegible]
Sept.	25	22	23	7	5	7	-	1	2	[illegible]	[illegible]	[illegible]	[illegible]
Oct.	26	24	22	6	5	7	1	-	2	[illegible]	[illegible]	[illegible]	[illegible]
Nov.	27	24	25	6	6	7	1	-	2	[illegible]	[illegible]	[illegible]	[illegible]
Dec.	27	24	21	5	4	5	1	-	3	[illegible]	[illegible]	[illegible]	[illegible]
Total										[illegible]	[illegible]	[illegible]	[illegible]

Monthly counts, based on number purchasing $1.00 or [illegible] each month.

270

JAX 270
Commission's Exhibit 2064

FEDERAL TRADE COMMISSION
DOCKET NO. 6486 COMMISSION EXHIBIT NO. 205B

Item 3(a) - 4(a) - 4(d) - 4(e)

OMAHA Standard Metropolitan Area

"D" Accounts --- Year 19 55

Month	Number of Accounts During Month: Firestone — Tires	Firestone — Batteries	Firestone — Accessories	Goodrich — Tires	Goodrich — Batteries	Goodrich — Accessories	Both Firestone & Goodrich — Tires	Both Firestone & Goodrich — Batteries	Both Firestone & Goodrich — Accessories	Dollar Purchases Firestone & Goodrich — Tires	Batteries	Accessories	Total
Jan.	3	1	4	1	1	-	-	-	-	331.	41.	56.	431.
Feb.	5	1	4	4	1	-	-	-	-	174.	39.	4.	174.
Mar.	4	-	3	1	1	-	-	-	-	601.	53.	94.	748.
Apr.	5	-	2	4	1	-	-	-	-	174.	15.	183.	174.
May	4	1	3	2	1	-	-	-	-	374.	53.	174.	
June	5	-	2	3	1	-	-	-	-	164.	50.	174.	
July	5	-	3	1	1	-	-	-	-	342	50.	345.	
Aug.	4	-	3	2	1	-	-	-	-	414	18.	74.	
Sept.	5	1	4	2	1	1	-	-	-	974	111.	84.	
Oct.	5	1	2	1	1	-	-	-	-	354	40.	77.	
Nov.	4	-	2	1	1	-	-	-	-	204.	4.	24.	
Dec.	5	1	3	4	1	-	-	-	-	240.	14.	54.	
Total										4414	494	2 54	

*Monthly count, based on number purchasing $1.00 or more during each month.

JAX 271 Commission's Exhibit 205B

0-36

205(1)

Item 3(a) - 4(a) - 4(d) - 4(e)

FEDERAL TRADE COMMISSION
DOCKET NO. 6185 COMMISSION EXHIBIT NO. 272

OMAHA Standard Metropolitan Area

"C" Accounts - Year 1956

272

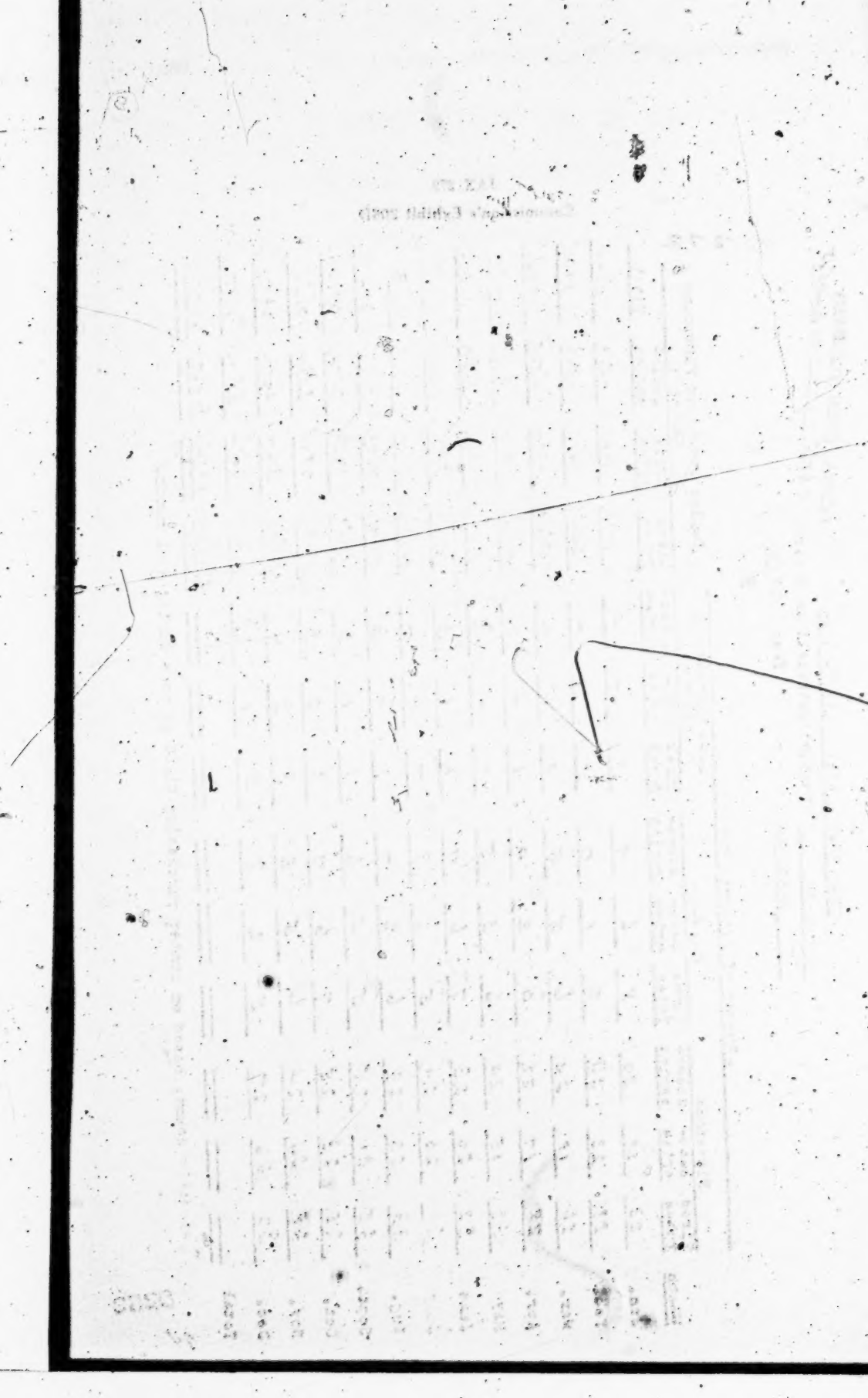
JAX 273
Commission's Exhibit 2060

Month	Number of Accounts Buying*									Dollar Purchases Firestone & Goodrich			
	Firestone			Goodrich			Both Firestone & Goodrich						
	Tires Tubes	Batteries	Accessories	Tires Tubes	Batteries	Accessories	Tires Tubes	Batteries	Accessories	Tires Tubes	Batteries	Accessories	Total
Jan.	23	14	20	8	6	9	-	-	-	2034.	1104.	1664.	4802.
Feb.	21	23	24	0	1	0	-	-	-	6844.	1405.	1574.	9823.
Mar.	26	18	24	6	5	5	1	1	4	9464.	1334.	1616.	12414.
Apr.	28	17	22	9	2	9	1	-	2	1641.	774.	2116.	4531.
May	33	15	20	6	3	5	-	-	2	1153.	94	3683.	4930.
June	32	20	23	7	6	7	1	1	3	4464.	2071.	1464.	7999.
July	31	20	20	5	6	8	-	-	-	1994.	2364.	4744.	9102.
Aug.	32	22	29	6	4	7	1	-	3	1184.	2672.	3274.	7130.
Sept.	25	21	25	5	4	6	1	1	3	1384.	1454.	2274.	5112.
Oct.	25	23	25	7	6	7	2	2	3	1184.	1394.	2674.	5254.
Nov.	25	24	24	6	5	5	3	2	4	1284.	3164.	2574.	7024.
Dec.	30	24	27	5	6	8	3	1	2	1784.	2674.	3814.	8274.
Total										15624.	23214.	27624.	66464.

*Monthly count, based on number purchasing $1.00 or more during each month.

2060

2061



FEDERAL TRADE COMMISSION
DOCKET NO. 6485 COMMISSION EXHIBIT NO. 2052

Item 3(a) - 4(a) - 4(d) - 4(e)

OMAHA Standard Metropolitan Area

"J" Accounts - - - Year 19[illegible]

Month	*Number of Accounts Buying: Firestone Tires Tubes	Firestone Batteries	Firestone Accessories	Goodrich Tires Tubes	Goodrich Batteries	Goodrich Accessories	Both Firestone & Goodrich Tires Tubes	Both Firestone & Goodrich Batteries	Both Firestone & Goodrich Accessories	Dollar Purchases Firestone & Goodrich Tires Tubes	Batteries	Accessories	Total
Jan.	1	-	-	-	-	-	-	-	-	231.	-	-	231
Feb.	4	-	1	-	-	-	-	-	-	499.	-	5	504
Mar.	1	-	2	-	-	-	-	-	-	483.	-	10	493
Apr.	3	2	2	-	-	-	-	-	-	2203.	38	174.	2415
May	3	1	2	-	-	1	-	-	-	1154.	4.	35.	[illegible]
June	3	2	2	1	-	-	-	-	-	1078.	22.	104.	[illegible]
July	5	2	7	1	-	1	-	-	-	1760.	108.	194.	2062.
Aug.	3	2	3	1	-	-	-	-	-	574.	40.	84.	698
Sept.	5	1	3	-	-	-	-	-	-	1341.	11.	10.	1362
Oct.	5	3	4	-	-	-	-	-	-	1633.	44.	52.	1729
Nov.	5	4	3	-	-	-	-	-	-	2411.	34.	34.	2479
Dec.	5	2	4	-	-	-	-	-	-	2424.	40.	34.	2498
Total										14,795.	341.	734.	15,870

*Monthly count, based on number purchasing $1.00 or more during each month.

273

JAX 273
Commission's Exhibit 2052

FED. TRADE COMMISSION
DOCKET No. A [illegible] No. 2061
IN THE MATTER OF Goodrich
DATE 4/14/61 [illegible]
ACC. REPORTING Official Reporter
By [illegible]

JAX 274
Commission's Exhibit 206A

Item 3(a) - 4(a) - 4(d) - 4(e)

LINCOLN Standard Metropolitan Area
"C" Accounts - - - Year 1955

Number of Accounts Paying

Month	Firestone: Tires Tubes	Firestone: Auto Acces.	Firestone: Acces. Acces.	Goodrich: Tires Tubes	Goodrich: Auto Acces.	Goodrich: Acces. Acces.	Both Firestone & Goodrich: Tires Tubes	Both Firestone & Goodrich: Auto Acces.	Both Firestone & Goodrich: Acces. Acces.	Dollar Purchases Firestone & Goodrich: Tires Tubes	Dollar Purchases Firestone & Goodrich: Auto Acces.	Dollar Purchases Firestone & Goodrich: Acces. Acces.	Dollar Purchases Firestone & Goodrich: Total
Jan.	13	8	9	-	-	1	-	-	-	[illegible]	[illegible]	[illegible]	[illegible]
Feb.	13	12	12	1	-	2	-	-	-	3763.	[illegible]	[illegible]	[illegible]
Mar.	12	9	15	1	-	2	-	-	-	[illegible]	[illegible]	[illegible]	[illegible]
Apr.	13	5	13	-	-	2	-	-	-	[illegible]	[illegible]	[illegible]	[illegible]
May	15	8	13	-	-	2	-	-	-	[illegible]	[illegible]	[illegible]	[illegible]
June	16	10	16	1	-	-	-	-	-	[illegible]	[illegible]	[illegible]	[illegible]
July	14	9	13	1	-	1	-	-	-	[illegible]	[illegible]	[illegible]	[illegible]
Aug.	15	11	10	1	-	2	-	-	-	[illegible]	[illegible]	[illegible]	[illegible]
Sept.	15	13	14	1	-	1	-	-	-	[illegible]	[illegible]	[illegible]	[illegible]
Oct.	14	12	9	-	-	1	-	-	-	[illegible]	[illegible]	[illegible]	[illegible]
Nov.	15	14	12	1	-	-	-	-	-	[illegible]	[illegible]	[illegible]	[illegible]
Dec.	14	12	12	1	-	1	-	-	-	[illegible]	[illegible]	[illegible]	[illegible]
Total	___	___	___	___	___	___	___	___	___	[illegible]	[illegible]	[illegible]	[illegible]

Monthly count, based on dollar purchases of $5.00 or more during each month.

274

FEDERAL TRADE COMMISSION
DOCKET NO. 6176 COMMISSION EXHIBIT NO. 275

LINCOLN Standard Auto Association Area

D Accounts Year 1935

Number of Accounts Polled

Month	Firestone Tires	Firestone Batteries	Firestone Accessories	Goodrich Tires	Goodrich Batteries	Goodrich Accessories	Soph Firestone & Goodrich Tires	Soph Firestone & Goodrich Batteries	Soph Firestone & Goodrich Accessories	Dollar Purchases Firestone & Goodrich Tires	Dollar Purchases Firestone & Goodrich Batteries	Dollar Purchases Firestone & Goodrich Accessories	Total
Jan.	—	—	—	—	—	1	—	—	—	—	—	22.	22.
Feb.	—	—	—	—	—	1	—	—	—	—	—	41.	41.
Mar.	—	—	—	—	—	1	—	—	—	—	—	7.	7.
Apr.	—	—	—	—	—	2	—	—	—	—	—	56.	56.
May	—	—	—	—	—	2	—	—	—	—	—	16.	16.
June	—	—	—	—	—	2	—	—	—	—	—	31.	31.
July	—	—	—	—	—	1	—	—	—	—	—	1.	1.
Aug.	—	—	—	—	—	2	—	—	—	—	—	57.	57.
Sept.	—	—	—	—	—	1	—	—	—	—	—	18.	18.
Oct.	—	—	—	—	—	1	—	—	—	—	—	11.	11.
Nov.	—	—	—	—	—	1	—	—	—	—	—	17.	17.
Dec.	—	—	—	—	—	1	—	—	—	—	—	55.	55.
Total	—	—	—	—	—	—	—	—	—	—	—	375.	375.

*Monthly count, based on number purchasing $1.00 or more during each month.

JAX 275 Commission's Exhibit 2068

95238

272

206 (6)

FEDERAL TRADE COMMISSION
DOCKET NO. 6446 EXHIBIT NO. 2460

Item 3(a) - 4(a) - 4(d) - 4(e)

LINCOLN Standard Metropolitan Area

"C" Accounts - - - Year 1954

Month	Number of Accounts Buying*									Dollar Purchases Firestone & Goodrich			
	Firestone			Goodrich			Both Firestone & Goodrich						
	Tires Tubes	Batteries	Accessories	Tires Tubes	Batteries	Accessories	Tires Tubes	Batteries	Accessories	Tires Tubes	Batteries	Accessories	Total
Jan.	16	17	13	-	-	-	-	-	-	3206.	1990.	438.	6634.
Feb.	17	14	13	-	-	-	-	-	-	1779.	1[illegible].	481.	3771.
Mar.	17	11	14	-	-	-	-	-	-	5[illegible].	1[illegible].	1[illegible].	7[illegible].
Apr.	14	9	15	-	-	-	-	-	-	1[illegible].	110.	1[illegible].	[illegible]
May	11	10	10	-	-	-	-	-	-	3[illegible].	331.	1[illegible].	5[illegible]
June	20	9	14	-	-	-	-	-	-	[illegible]	[illegible]	[illegible]	[illegible]
July	14	8	17	-	1	-	-	1	-	6[illegible]	5[illegible]	13[illegible]	[illegible]
Aug.	15	10	12	-	-	-	-	-	-	1[illegible].	5[illegible].	1[illegible].	9[illegible].
Sept.	3	3	2	-	-	-	-	-	-	[illegible]	1[illegible].	[illegible]	[illegible]
Oct.	13	12	4	-	-	-	1	1	2	1[illegible]	6[illegible].	7[illegible].	1[illegible]
Nov.	17	10	6	-	-	-	-	-	6	[illegible]	[illegible]	[illegible]	[illegible]
Dec.	17	12	2	-	-	-	-	-	5	[illegible]	[illegible]	[illegible]	[illegible]
Total										[illegible]	[illegible]	[illegible]	[illegible]

*Monthly count, based on number purchasing $1.00 or more [illegible]

JAX 276
Commission's Exhibit 2460

762

FEDERAL TR. COMMISSION
DOCKET NO. 6411 EXHIBIT NO. 206E

Item 3(a) - 4(a) - 4(d) - 4(e)

LINCOLN Standard Metropolitan Area

"D-2-B" Accounts - - - Year 1956

	Number of Accounts Buying												
	Firestone			Goodrich			Both Firestone & Goodrich			Dollar Purchases Firestone & Goodrich			
Month	Tires Tubes	Batteries	Accessories	Tires Tubes	Batteries	Accessories	Tires Tubes	Batteries	Accessories	Tires Tubes	Batteries	Accessories	Total
Jan.													
Feb.													
Mar.													
Apr.													
May													
June													
July													
Aug.													
Sept.													
Oct.													
Nov.													
Dec.													
Total													

*Monthly count, based on number purchasing $1.00 or more during each month.

NOTHING TO REPORT.

JAX 277 Commission's Exhibit 206E

LLL 306(2)

FEDERAL TRADE COMMISSION
DOCKET NO. [illegible] EXHIBIT NO. 2922
IN THE MATTER OF
DATE 5/5/57 WITNESS
ACE REPORTING CO., Official Reporter
By

Item 3(a) - 4(a) - 4(d) - 4(e)

Dallas Standard Metropolitan Area

"g" Accounts - Year [illegible] 1955

Month	Firestone Tires & Tubes	Firestone Batteries	Firestone Accessories	Goodrich Tires & Tubes	Goodrich Batteries	Goodrich Accessories	Firestone & Goodrich Tires & Tubes	Firestone & Goodrich Batteries	Firestone & Goodrich Accessories	DOLLAR PURCHASES FIRESTONE & GOODRICH Tires & Tubes	Batteries	Accessories	Total
Jan.	49	35	41	15	17	21	8	2	9	17905	3436	5843	27182
Feb.	48	33	41	19	15	18	7	3	11	18078	3096	9178	31352
Mar.	53	38	38	19	14	17	5	2	11	21967	3470	9768	35205
Apr.	55	44	41	25	15	18	5	2	14	22439	4723	9656	36818
May	52	48	42	22	17	20	5	4	15	20870	4859	9965	35357
June	55	47	45	28	18	19	10	2	16	27008	2761	7897	37666
July	66	55	36	1	0	1	4	0	6	28054	5154	6046	39254
Aug.	60	51	48	25	18	25	8	1	11	24863	10652	8743	44258
Sept.	59	54	50	29	18	23	7	1	10	24138	11888	6363	42389
Oct.	61	52	47	31	16	20	11	3	14	24777	11889	6020	42686
Nov.	63	56	58	30	19	29	6	5	8	24115	6904	10878	41897
Dec.	64	57	56	36	17	28	8	3	19	25852	6208	10911	42971
Total										281187	70699	102225	454662

*Monthly count based on number purchasing $1.00 or more during each month.

JAX 278
Commission's Exhibit [illegible]

10 3

8561

107(c) 27

FEDERAL TRADE COMMISSION
DOCKET NO. 6411 EXHIBIT NO. 2616

Item 3(a) - 4(a) - 4(c) - 4(e)

Dallas Standard Metropolitan Area

"B" Accounts - Year ~~XXXX~~ 1955

* NUMBER OF ACCOUNTS BUYING

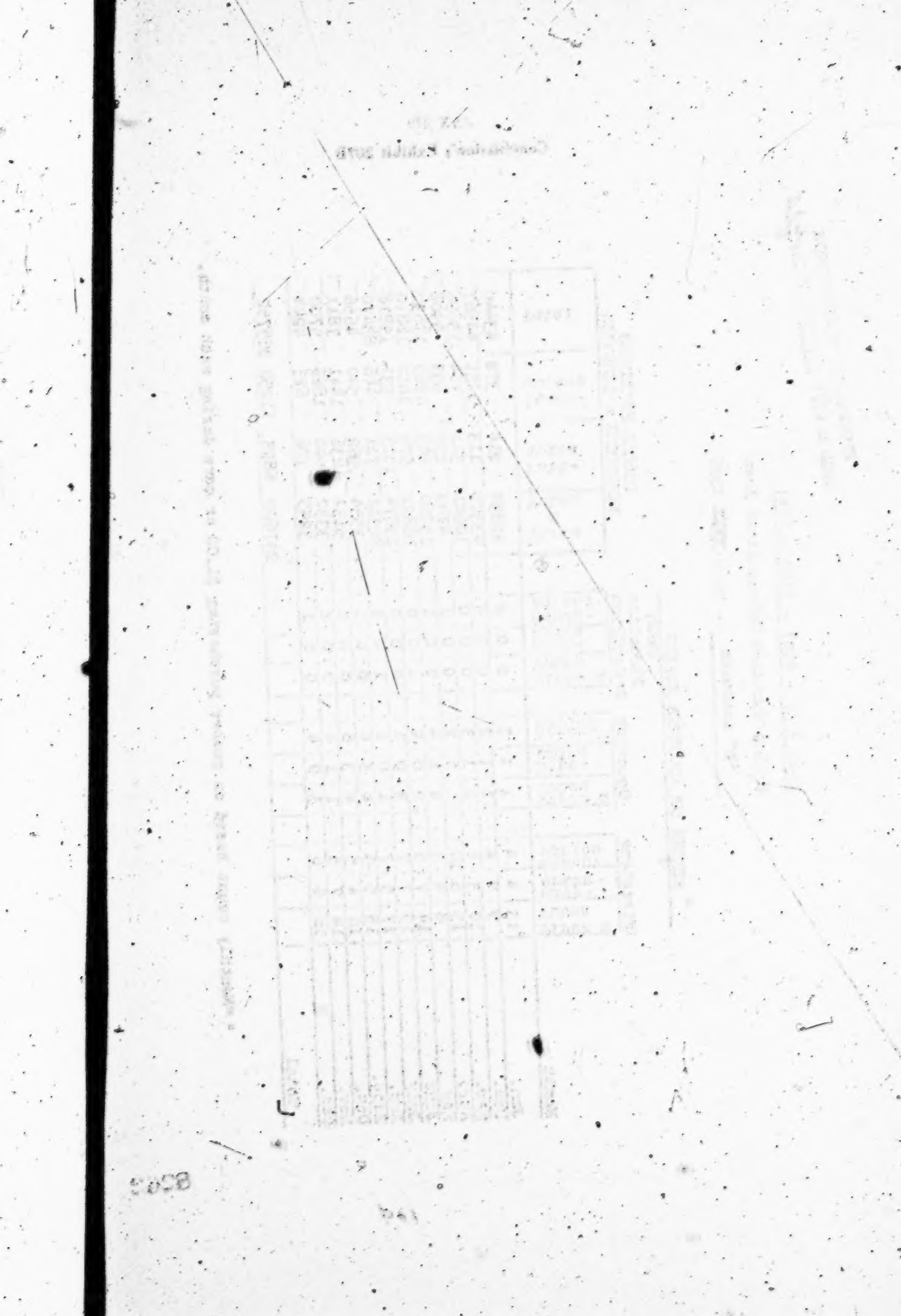
Month	Firestone			Goodrich			Both Firestone & Goodrich			DOLLAR PURCHASES FIRESTONE & GOODRICH			
	Tires & Tubes	Batteries	Accessories	Tires & Tubes	Batteries	Accessories	Tires & Tubes	Batteries	Accessories	Tires & Tubes	Batteries	Accessories	Total
Jan.	13	4	4	1	1	3	0	0	0	42854	214	372	43440
Feb.	9	4	4	1	1	2	0	0	0	43303	113	1151	44567
Mar.	10	3	6	2	1	3	0	0	0	12681	311	704	13696
Apr.	15	6	10	1	1	2	0	0	1	4740	235	933	5908
May	6	4	3	2	1	4	0	0	1	15760	603	1269	17632
June	14	7	5	2	0	4	1	0	0	16821	979	1010	18810
July	19	7	7	3	0	1	0	0	0	13874	1013	931	15818
Aug.	17	5	7	1	0	1	1	0	2	82311	711	448	83470
Sept.	15	5	3	4	3	4	0	0	1	3554	698	540	4656
Oct.	16	4	5	4	3	6	0	0	0	5134	1236	1441	7811
Nov.	14	7	5	1	1	4	0	0	1	3332	540	1828	5700
Dec.	16	6	6	3	0	4	0	0	1	3245	376	623	4244
Total										247609	6893	11250	265752

*Monthly count based on number purchasing $1.00 or more during each month.

JAX 270
Commission's Exhibit 2678

3928

2726



FEDERAL TRADE COMMISSION
DOCKET NO. 6466 - SCOPE - EXHIBIT NO. 207

JAX 200
Commission's Exhibit 207D

Item 3(a) - 4(a) - 4(d) - 4(e)

Dallas Standard Metropolitan Area

"C" Accounts - Year 1956

Month	NUMBER OF ACCOUNTS BUYING* Firestone			Goodrich			Both Firestone & Goodrich			DOLLAR PURCHASES FIRESTONE & GOODRICH Tires & Tubes	Bat-teries	Acces-sories	Total
	Tires & Tubes	Bat-teries	Acces-sories	Tires & Tubes	Bat-teries	Acces-sories	Tires & Tubes	Bat-teries	Acces-sories				
Jan.	58	50	50	21	18	20	2	2	7	[illegible]	5618	8440	39237
Feb.	[illegible]	[illegible]	47	10	15	17	3	1	10	[illegible]	6393	[illegible]	[illegible]
Mar.	60	53	56	16	14	21	3	1	8	[illegible]	[illegible]	[illegible]	36051
Apr.	[illegible]	[illegible]	58	13	9	23	[illegible]	0	8	[illegible]	4082	8709	48698
May	[illegible]	[illegible]	58	20	19	18	[illegible]	1	8	43940	5871	7027	37839
June	[illegible]	[illegible]	56	19	20	22	[illegible]	0	8	[illegible]	11500	[illegible]	[illegible]
July	[illegible]	[illegible]	55	17	20	21	[illegible]	0	7	34330	11709	7961	53802
Aug.	[illegible]	[illegible]	55	22	17	24	[illegible]	1	7	[illegible]	11654	6891	[illegible]
Sept.	[illegible]	[illegible]	63	17	15	17	[illegible]	1	7	[illegible]	6985	7013	49720
Oct.	[illegible]	[illegible]	61	2	5	1	[illegible]	0	0	[illegible]	6224	[illegible]	[illegible]
Nov.	66	62	58	15	17	15	4	[illegible]	[illegible]	37639	7904	[illegible]	48839
Dec.	60	51	51	16	15	14	4	2	5	[illegible]	6317	[illegible]	[illegible]
Total										[illegible]	89533	[illegible]	[illegible]

*Monthly count, based on number purchasing $1.00 or more during each month.

1928

JC 7(4)

JAX 281

Commission's Exhibit 207E

FEDERAL AVIATION COMMISSION

8265

107

FEDERAL TRADE COMMISSION
DOCKET NO. 6[illegible])
IN THE MATTER OF Goodyear
DATE 11/[illegible]/[illegible]
FOR THE FEDERAL TRADE COMMISSION
By

Item No. - [illegible] - [illegible] - [illegible]

[illegible] Dealers Questionnaire [illegible]

5. Accounts - [illegible]

Commission's Exhibit 1004A

JAX 282

Number of Accounts During

Month	Firestone			Goodrich			Both Firestone & Goodrich			Dollar Purchases Firestone & Goodrich			
	Tires Tubes	Batteries	Accessories	Tires Tubes	Batteries	Accessories	Tires Tubes	Batteries	Accessories	Tires Tubes	Batteries	Accessories	Total
Jan.	25	12	15	13	10	13	4	—	—	1537.0	876.	1734.	1647.
Feb.	25	12	17	13	9	12	1	—	1	1398.	1176.	1584.	1058.
Mar.	25	11	24	14	12	13	—	—	1	1453.	1658.	3781.	2022.
Apr.	24	11	20	16	12	12	2	—	2	1261.	1175.	4275	2411.
May	22	15	20	13	14	15	1	—	1	[illegible]	2413	3933	2681
June	21	17	20	15	14	16	1	—	—	2423.	1242	3[illegible]	3011
July	20	19	24	15	14	15	1	—	1	[illegible]	[illegible]	4[illegible]	[illegible]
Aug.	20	18	22	14	15	13	2	—	—	[illegible]	2[illegible]	2[illegible]	[illegible]
Sept.	20	23	24	14	16	16	2	—	—	1[illegible]	1[illegible]	3[illegible]	2[illegible]
Oct.	21	21	24	13	13	14	3	1	—	[illegible]	[illegible]	[illegible]	[illegible]
Nov.	20	18	26	13	13	14	3	1	—	[illegible]	[illegible]	[illegible]	[illegible]
Dec.	21	22	24	14	12	14	3	1	—	[illegible]	[illegible]	[illegible]	[illegible]
Total	—	—	—	—	—	—	—	—	—	[illegible]	[illegible]	[illegible]	[illegible]

[illegible] Count, based on number [illegible] or one [illegible]

[illegible]

282

FEDERAL TRADE COMMISSION
DOCKET NO. 645 EXHIBIT NO. 2068

Item 3(a) - 4(c) - 4(d) - 4(e)

ATLANTA Standard Metropolitan Area

"D" Accounts - - - Year 1955

Month	Number of Accounts Buying*									Dollar Purchases Firestone & Goodrich			
	Firestone			Goodrich			Both Firestone & Goodrich						
	Tires Tubes	Batteries	Accessories	Tires Tubes	Batteries	Accessories	Tires Tubes	Batteries	Accessories	Tires Tubes	Batteries	Accessories	Total
Jan.	10	1	2	5	-	2	-	-	-	2[illegible]	77.	78.	2073.
Feb.	11	1	5	4	-	3	1	-	-	2031.	64.	383.	2378.
Mar.	10	2	4	5	1	4	-	-	-	3163.	31.	199.	3393.
Apr.	14	1	2	3	-	3	-	-	1	5767.	167.	393.	6457.
May	14	2	3	3	-	2	-	-	-	7193.	73.	549.	7815.
June	9	3	4	5	1	5	1	-	-	6573.	262.	203.	8948.
July	10	1	3	4	1	4	1	-	-	7344.	164.	318.	7826.
Aug.	11	2	2	3	1	4	[illegible]	-	-	4[illegible].	245.	370.	5051.
Sept.	11	3	2	2	1	2	1	-	-	7[illegible].	248.	181.	8[illegible]
Oct.	12	3	3	3	1	4	-	-	-	4770.	517.	433.	5[illegible]
Nov.	10	3	4	2	-	1	-	-	-	8110.	34[illegible]	83.	1[illegible]
Dec.	9	3	5	2	-	-	-	-	-	8[illegible]	40[illegible]	146.	1[illegible]
Total					0					6[illegible]	4[illegible]	4[illegible]	1[illegible]

*Monthly count, based on number purchasing $1.00 or more during each month.

JAX 283
Commission's Exhibit 2068

FEDERAL TRADE COMMISSION
DOCKET NO. 6785 EXHIBIT NO. 294D

Item 3(a) - 4(a) - 4(d) - 4(e)

ATLANTA Standard Metropolitan Area

'C' Accounts - - - Year 1956

	Number of Accounts Buying									Dollar Purchases Firestone & Goodrich			
	Firestone			Goodrich			Both Firestone & Goodrich						
Month	Tires Tubes	Batteries	Accessories	Tires Tubes	Batteries	Accessories	Tires Tubes	Batteries	Accessories	Tires Tubes	Batteries	Accessories	Total
Jan.	29	19	24	12	14	15	5	1	1	12501.	7592.	3346.	19[illegible].
Feb.	27	22	23	14	15	14	5	1	4	15905.	3485.	3523.	2[illegible].
Mar.	30	20	24	17	13	16	4	1	1	13156.	1894.	4508.	2[illegible].
Apr.	33	22	27	15	14	13	1	1	2	23343.	1[illegible].	[illegible]	[illegible]
May	33	23	31	13	13	15	4	4	4	[illegible]	[illegible]	[illegible]	[illegible]
June	37	27	30	16	13	14	3	1	3	[illegible]	[illegible]	[illegible]	[illegible]
July	36	30	33	15	12	19	4	1	2	[illegible]	[illegible]	[illegible]	[illegible]
Aug.	36	30	32	18	16	15	2	1	2	[illegible]	[illegible]	[illegible]	[illegible]
Sept.	37	31	37	19	17	18	3	1	3	[illegible]	[illegible]	[illegible]	[illegible]
Oct.	42	35	31	18	18	19	3	4	4	16[illegible].	6316.	[illegible]	[illegible]
Nov.	41	35	36	15	17	19	2	1	1	[illegible]	[illegible]	[illegible]	[illegible]
Dec.	50	36	30	19	18	20	2	-	3	19139.	[illegible]	[illegible]	[illegible]
Total										[illegible]	[illegible]	[illegible]	[illegible]

Monthly count, based on number purchasing 1.00 or more during each month.

JAX 294
Commission's Exhibit 294D

FEDERAL TRADE COMMISSION
DOCKET NO. 6486 EXHIBIT NO. 285

Item 3(a) - 4(a) - 4(d) - 4(e)

ATLANTA Standard Metropolitan Area

4 Accounts - - - Year 1956

	Number of Accounts Buying									Dollar Purchases Firestone & Goodrich			
	Firestone			Goodrich			Both Firestone & Goodrich						
Month	Tires Tubes	Batteries	Accessories	Tires Tubes	Batteries	Accessories	Tires Tubes	Batteries	Accessories	Tires Tubes	Batteries	Accessories	Total
Jan.	9	1	4	2	-	1	-	-	-	1119.	60.	731.	1910.
Feb.	8	1	3	2	-	2	-	-	-	1495.	72.	150.	1717.
Mar.	8	2	1	2	-	-	-	-	-	1979.	41.	1.	2021.
Apr.	9	2	4	2	-	-	-	-	-	3891.	102.	152.	4145.
May	9	2	2	2	-	2	1	-	-	12[illegible].	[illegible].	[illegible].	13767.
June	10	1	3	3	-	1	-	-	-	5064.	150.	135.	5349.
July	10	2	5	3	-	1	-	-	-	4[illegible].	[illegible].	195.	5[illegible].
Aug.	10	2	5	3	-	-	-	-	-	6456.	206.	150.	6812.
Sept.	2	3	3	1	1	2	-	-	-	7354.	105.	157.	7616.
Oct.	10	2	7	3	-	2	-	-	-	(2[illegible])	31.	[illegible].	7[illegible].
Nov.	9	2	[illegible]	2	1	2	-	-	-	5[illegible]	128.	727.	6[illegible].
Dec.	10	2	6	1	-	2	-	-	1	[illegible]	3[illegible]	[illegible]	[illegible]
Total	___	___	___	___	___	___	___	___	___	[illegible]	[illegible]	[illegible]	[illegible]

Monthly count, based on number purchasing $1.00 or more during each month.

JAX 285
Commission's Exhibit 285E

EXHIBIT 285

Commission's Exhibit 21-A

P (A-B) - GOODRICH

9

DOLLAR VOLUME OF SALES - DIVISIONS 1956

Division	Tires and Tubes	Batteries	Accessories and other merchandise	Total
Boston	898,551.	62046.	54736.	715,356.
Buffalo	350,164.	76,124.	46041.	892,932.
New York	1,191,229.	234,443.	218,738.	1,644,411.
Norfolk	810,980.	75,461.	160,555.	1,047,996.
Chicago	1,711,479.	274,858.	309,804.	2,296,142.
Detroit	451,254.	52,118.	174,492.	677,864.
Indianapolis	664,998.	51,884.	90,193.	811,075.
Minneapolis	641,281.	52,832.	56,624.	750,737.
Atlanta	1,211,623.	136,899.	228,538.	1,577,112.
Dallas	724,917.	118,466.	211,477.	1,054,860.
Houston	1,136,451.	184,453.	202,061.	1,522,965.
New Orleans	1,311,396.	109,476.	130,964.	1,552,836.
Seattle	236,729.	22,951.	44,973.	304,653.
Los Angeles	2,412,847.	246,801.	477,247.	3,216,895.
San Francisco	447,200.	37,076.	125,648.	609,924.
Total	14,324,729.	1,790,044.	2,891,878.	18,926,651.

DOLLAR VOLUME OF SALES - TERRITORIES 1955 - 1956 INC.

Territory	Year	Tires and Tubes	Batteries and Supplies	Total
Northern	1952	2,390,979.	622,362.	3,013,341.
Central	1952	2,734,238.	587,471.	3,321,709.
Southern	1952	3,070,003.	528,052.	3,598,055.
Pacific Coast	1952	1,776,584.	588,581.	2,365,065.
Total	1952	10,209,804.	2,541,417.	12,746,221.
Northern	1953	2,741,532.	789,860.	3,531,392.
Central	1953	3,150,091.	572,488.	3,722,579.
Southern	1953	3,211,570.	810,251.	4,021,821.
Pacific Coast	1953	1,854,639.	734,104.	2,588,743.
Total	1953	10,957,832.	2,967,703.	13,925,535.
Northern	1954	2,964,665.	776,075.	3,740,740.
Central	1954	2,904,210.	768,550.	3,672,760.
Southern	1954	3,226,841.	1029,251.	4,256,119.
Pacific Coast	1954	1,842,226.	691,866.	2,534,092.
Total	1954	11,028,938.	3,026,554.	14,055,492.
Northern	1955	3,275,564.	968,096.	4,243,660.
Central	1955	3,498,604.	1,041,075.	4,539,679.
Southern	1955	3,837,830.	1,115,613.	4,953,443.
Pacific Coast	1955	2,418,623.	2,368,001.	4,786,624.
Total	1955	13,211,740.	1,703,132.	14,914,872.
Northern	1956	3,650,922.	1,154,101.	4,805,023.
Central	1956	3,977,539.	1,130,618.	5,108,157.
Southern	1956	4,389,147.	1,118,494.	5,507,641.
Pacific Coast	1956	2,226,114.	1,154,788.	3,380,902.
Total	1956	14,243,729.	4,390,001.	18,633,730.

DOLLAR VOLUME OF SALES BY TIRE GROUPS - 1955-1956

Type	Year	Tires and Tubes	Batteries	Accessories and other merchandise	Total
C	1955	6,824,413.	2,117,870.	2,500,000	
D	1955	1,797,774.	1,228,598.	1,200,000	
E	1955	1,661,972.	1,186,807.	1,800,000	
B	1955	2,926,611.	2,000,000.	2,000,000	
Total	1955	13,211,740.	1,703,132.	2,412,372.	17,327,244.
C	1956	7,456,284.	2,200,338.	1,850,121.	
D	1956	1,821,602.	1,115,276.	2,200,000	
E	1956	1,506,238.	1,041,376.	2,000,000	
B	1956	3,360,254.	2,000,000.	2,000,000	
Total	1956	14,243,729.	1,390,001.	2,891,878.	18,933,608.

FEDERAL TRADE COMMISSION
DOCKET NO. [illegible]
IN THE MATTER OF Goodrich
DATE 11/6/57

Commission's Exhibit 2138

F(ROB) FINE TIMES

DOLLAR VOLUME OF SALES - DIVISIONS 1956

Division	Tires and Tubes	Batteries	Accessories and Other Merchandise	Total
Eastern	2,582,681.	178,607.	294,858.	3,056,146.
Appalach	1,610,098.	118,808.	196,203.	1,925,109.
New York	2,072,904.	212,852.	258,150.	2,543,906.
Mid-Penn	2,900,018.	189,593.	350,963.	3,440,574.
Chicago	1,907,986.	167,192.	255,191.	2,330,369.
Denver	1,218,825.	118,012.	121,915.	1,458,752.
Colorado Pacific	1,258,935.	104,779.	140,309.	1,504,023.
Northern Pacific	1,532,692.	134,412.	205,497.	1,872,601.
Atlanta	2,362,102.	221,798.	346,277.	2,930,177.
Dallas	2,210,668.	242,252.	340,575.	2,793,493.
Houston	1,650,294.	163,681.	160,806.	1,974,783.
New Orleans	1,201,125.	104,563.	150,612.	1,456,300
Rocky	1,392,921.	106,200.	213,649.	1,712,769.
Los Angeles	2,110,841.	205,232.	414,211.	2,730,892.
Central	1,528,618.	123,082.	309,752.	1,961,340.
Total	32,008,219.	2,660,836.	4,810,046.	39,479,225.

DOLLAR VOLUME OF SALES - TERRITORIES INCLUDED IN...

Territory	Year	Tires and Tubes	Batteries	Accessories and Other Merchandise	Total
Boston	1952	6,605,213.	1,050,964.	2,958,379.	
Central	1952	6,081,123.	2,056,351.	2,137,979.	
Southern	1952	6,913,268.	2,116,105.	2,049,692.	
Pacific Coast	1952	4,171,816.	844,414.	1,164,822.	
Total	1952	22,771,345.	6,117,906.	29,289,721.	
Northern	1953	6,917,006.	1,101,820.	2,788,916.	
Central	1953	6,756,367.	2,170,965.	2,915,302.	
Southern	1953	6,631,669.	2,217,200.	3,151,863.	
Pacific Coast	1953	3,113,161.	1,830,701.	2,133,803.	
Total	1953	23,418,204.	7,318,686.	30,990,884.	
Northern	1954	7,050,219.	1,146,320.	2,844,278.	
Central	1954	6,901,836.	1,748,706.	2,704,042.	
Southern	1954	7,043,317.	1,767,211.	2,811,149.	
Pacific Coast	1954	3,255,070.	1,610,888.	1,459,168.	
Total	1954	24,701,182.	6,273,225.	9,819,637.	
Northern	1955	8,257,248.	1,344,248.	3,034,818.	12,636,314.
Central	1955	7,854,734.	1,847,201.	4,021,232.	13,723,167.
Southern	1955	8,178,253.	1,996,273.	4,118,311.	14,292,837.
Pacific Coast	1955	4,950,560.	1,304,273.	2,151,209.	8,406,042.
Total	1955	29,230,795.	6,119,995.	13,325,572.	48,676,362.
Northern	1956	9,647,678.	1,972,695.	3,193,990.	14,814,363.
Central	1956	9,285,250.	2,304,193.	4,022,912.	15,612,355.
Southern	1956	8,610,610.	1,902,320.	3,325,270.	13,838,200.
Pacific Coast	1956	4,464,833.	1,230,761.	3,154,344.	8,849,938.
Total	1956	32,008,219.	7,660,832.	13,710,204.	53,379,256.

DOLLAR VOLUME OF SALES BY TYPE PERCENT INCREASE

Type	Year	Tires and Tubes	Batteries	Accessories and Other Merchandise	Total
A	1952	10,155,120.	3,850,000.		13,738,569.
B	1952	4,907,098.	1,303,892.		6,210,990.
C	1952	2,332,000.	463,370.		3,030,000.
D	1952	5,377,228.	500,244.		6,877,472.
Total	1952	22,771,345.	6,117,906.		29,289,721.
A	1953	11,342,200.	4,100,809.		15,501,009.
B	1953	4,946,700.	1,185,044.		6,131,744.
C	1953	2,538,376.	670,502.		3,208,878.
D	1953	4,591,128.	1,362,429.		5,953,557.
Total	1953	23,418,204.	7,318,686.		30,990,884.
A	1954	12,225,002.	3,716,700.		15,941,702.
B	1954	4,630,277.	806,302.		5,436,579.
C	1954	2,562,751.	677,783.		3,240,534.
D	1954	5,283,152.	1,072,440.		6,355,592.
Total	1954	24,701,182.	6,273,225.		30,974,407.
				Accessories and Other	
		Tires and Tubes	Batteries	Merchandise	Total
A	1955	15,246,013.	1,907,841.	2,851,320.	19,005,174.
B	1955	5,132,413.	2,128,150.	6,911,212.	14,171,775.
C	1955	3,378,238.	1,304,200.	3,181,000.	7,863,438.
D	1955	5,474,107.	285,800.	1,177,040.	6,936,947.
Total	1955	29,230,763.	6,119,991.	13,325,572.	48,676,326.
A	1956	17,021,301.	1,335,679.	3,230,000.	21,586,980.
B	1956	5,653,637.	2,522,212.	6,422,000.	14,597,849.
C	1956	2,284,363.	902,411.	3,145,000.	6,331,774.
D	1956	6,948,918.	1,900,530.	1,913,204.	10,762,652.
Total	1956	32,008,219.	7,660,832.	13,710,204.	53,379,256.

JAX 288

Commission's Exhibit 215

In the Matter of
The B.F. Goodrich
Company, Et Al
FTC Docket #6485

RESPONSE OF CONTINENTAL OIL COMPANY
TO
ITEM 1(a) OF SPECIFICATION 1 OF SUBPOENA

The number of Continental lessees are set out as follows:

Year	Number
1952*	1138
1953*	1295
1954*	1548
1955*	1765
1956 (June 30)	1856

* As of December 1.

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 215
IN THE MATTER OF B.F. Goodrich, et al
DATE 11/2/57 ... WITNESS —
ACE REPORTING CO., Official Reporter
By Gam

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JAX 289

Commission's Exhibit 216

289

In the Matter of
The B.F. Goodrich
Company, Et Al
FTC Docket #6485

RESPONSE OF CONTINENTAL OIL COMPANY
TO
ITEM 1(b) OF SPECIFICATION 1 OF SUBPOENA

The number of Continental branded gasoline contract dealers are set out as follows:

Year	Number
1952*	4561
1953*	4393
1954*	4388
1955*	4154
1956 (June 30)**	4039

* As of December 1.

** Dealer count made only on December 1 of each year. Figures shown as of June 30, 1956, arrived at by averaging figures for December 1, 1955, and December 1, 1956.

NOTE: This classification includes motels, garages, country stores, drive-in restaurants or any other type of dealer account that handles Conoco branded gasoline under contract with Continental.

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 COMMISSION EXHIBIT NO. 216
IN THE MATTER OF B. F. Goodrich Co., et al
DATE 4/5/57 WITNESS
ACE REPORTING CO., Official Reporters
By Gam

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JAX 290

Commission's Exhibit 217

In the Matter of
The B.F. Goodrich
Company, Et Al
FTC Docket #6485

RESPONSE OF CONTINENTAL OIL COMPANY
TO
ITEM 1(c) OF SPECIFICATION 1 OF SUBPOENA

The number of Continental trademark gasoline jobbers are set out as follows:

Year	Number
1952*	546
1953*	563
1954*	601
1955*	618
1956 (June 30)**	646

* As of December 1.

** Jobber count made only on December 1 of each year. Figures shown as of June 30, 1956, arrived at by averaging figures for December 1, 1955, and December 1, 1956.

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 217
IN THE MATTER OF B.F. Goodrich Co., et al
DATE 11/2/57 WITNESS —
ACE REPORTING CO., Official Reporter
By Gene

8226

217

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JAX 291

Commission's Exhibit 218

In the Matter of
The B.F. Goodrich
Company, Et Al
FTC Docket #6485

RESPONSE OF CONTINENTAL OIL COMPANY
TO
ITEM 1(d) OF SPECIFICATION 1 OF SUBPOENA

The number of commission agents** of Continental Oil Company are set out as follows:

Year	Number
1952*	887
1953*	875
1954*	872
1955*	869
1956 (June 30)	889

* As of December 1.

** Conoco commission agents operate wholesale bulk plants that are owned or held under lease by Conoco. Said agents make sales (and deliveries) of Conoco products at prices established by Conoco and are compensated upon a commission basis.

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 COMM'N EXHIBIT NO. 218
IN THE MATTER OF B.F. Goodrich Co. et al
DATE 11/5/57 WITNESS —
ACE REPORTING CO., Official Reporter
By Glenn

8287

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SAX 292

Commission's Exhibit 219

In the Matter of
The B.F. Goodrich
Company, Et Al
FTC Docket #6485

RESPONSE OF CONTINENTAL OIL COMPANY
TO
ITEM 2(a) OF SPECIFICATION 1 of SUBPOENA

The number of each type of Conoco outlet specified in Item 1 of the subpoena which were approved by Goodrich are set out as follows:

Year	("L" Accounts)	("D" Accounts)	("J" and "JW" Accounts)	("CR" and "CRW" Accounts)
1952*	1026	2263	205	162
1953*	1241	2518	308	241
1954*	1481	2599	329	266
1955*	1729	2667	371	303
1956 (June 30)	1805	2720	377	302

* As of December 31.

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 219
IN THE MATTER OF B. F. Goodrich Co. et al 6288
DATE 11/2/57 WITNESS
Official Reporter
By

121 5

Commission's Exhibit 220A

In the Matter of
The B.F. Goodrich
Company, Et Al
FTC Docket #6485

RESPONSE OF CONTINENTAL OIL COMPANY
TO
ITEM 2(b) OF SPECIFICATION 1 OF SUBPOENA

The Headquarters Office of the Marketing Department has never maintained records which would permit a breakdown of the number of Conoco accounts by outlet classification purchasing Goodrich TBA. The credit memos received monthly from Goodrich containing a breakdown of the sales and commissions are by rate of commission only and do not separate or distinguish between outlets subject to the same rate of commission (i.e., "L" and "D" accounts are grouped together because the rate of commission is 10 per cent as to both types of outlet). Any records which would permit a breakdown as requested under this item are maintained by our various marketing division offices. A survey of these offices indicated that only fragmentary records are available for the years 1952 and 1953. By agreement of counsel, the records of the marketing divisions, insofar as they are available, were used to obtain information for the years 1954 and 1955 only. The information in question was obtained from postings which had been done currently at the time of receipt of the forms 381 every month from Goodrich. The actual forms 381 for the years 1954 and 1955 have been deleted in almost every instance by the marketing divisions, pursuant to our routine file deletion programs; however, even if the forms 381 were still a part of our records, the assembling of the requested information from these forms would be an almost insurmountable task.

Subject to the above comments, the number of accounts by outlet classification purchasing $1.00 or more TBA during the last quarter of 1954 and 1955, respectively, upon whose purchases commissions were paid by Goodrich are hereinafter set out insofar as our available records permit:

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 COMMISSION EXHIBIT NO. 220A
IN THE MATTER OF B.F. Goodrich Co., et al
DATE 11/1/57 WITNESS
Official Reporter
By

8299

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JAX 294

Commission's Exhibit 220B

4227

"L" ACCOUNTS*

Number of ** Conoco Lessees	Number Approved by Goodrich ***	Number Purchasing
742	704	372

"D" ACCOUNTS*

Number of ** Conoco Dealers	Number approved by Goodrich ***	Number Purchasing
2010	1064	202

"J" AND "JW" ACCOUNTS*

Number of ** Conoco Jobbers	Number Approved by Goodrich ***	Number Purchasing
341	178	107

"CR" AND "CRW" ACCOUNTS*

Number of Conoco ** Commission Agents	Number Approved by Goodrich ***	Number Purchasing
421	119	107

* Based upon the records of the following Marketing Divisions: Albuquerque Division, Butte Division (including area which was Spokane Division in 1954), Houston Division (including area which is now New Orleans Division), Kansas City Division, and Lincoln Division. No records available for Chicago Division, Denver Division, Fort Worth Division, Oklahoma City Division, (including area which is now Memphis Division), Minneapolis Division and Salt Lake City Division.

** As of December 1.

*** As of December 31.

8220

FEDERAL TRADE COMMISSION
DOCKET NO. 6785 220B

220 (4)

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JAX 295

Commission's Exhibit 220C

"L" ACCOUNTS*

Number of ** Conoco Lessees	Number Approved by Goodrich ***	Number Purchasing
1196	1135	608

"D" ACCOUNTS*

Number of ** Conoco Dealers	Number Approved by Goodrich ***	Number Purchasing
2647	1656	224

"J" AND "JW" ACCOUNTS

Number of ** Conoco Jobbers	Number Approved by Goodrich ***	Number Purchasing
429	235	133

"CR" AND "CRW" ACCOUNTS*

Number of Conoco ** Commission Agents	Number Approved by Goodrich ***	Number Purchasing
593	211	170

* Based upon the records of the following Marketing Divisions: Albuquerque Division, Butte Division (including area which was Spokane Division in 1955), Houston Division (including area which was the Corpus Christi Division in 1955), New Orleans Division, Kansas City Division, Lincoln Division, Memphis Division, Oklahoma City Division and Salt Lake City Division. No records available for Chicago Division, Denver Division, Fort Worth Division, and Minneapolis Division.

** As of December 1.

*** As of December 31.

FEDERAL TRADE COMMISSION

DOCKET NO. 6485 COMPLAINT EXHIBIT NO. 220C

8281

124 8

JAX 296

Commission's Exhibit 221

In the Matter of
The B.F. Goodrich
Company, Et Al
FTC Docket #6485

RESPONSE OF CONTINENTAL OIL COMPANY
TO
ITEM 3(a) OF SPECIFICATION 1 OF SUBPOENA

The dollar volume of purchases by Conoco outlets of Goodrich (1) tires and tubes, (2) batteries, (3) accessories are set out as follows:

Year	Tires & Tubes	Batteries	Accessories
1952	$ 2,391,290	$ 269,664	$ 258,561
1953	4,799,755	528,668	652,030
1954	5,215,275	661,946	868,745
1955	6,273,823	809,461	1,134,840
1956*	3,045,902	289,330	560,143

* First 6 months.

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 COMMISSION EXHIBIT NO. 221
IN THE MATTER OF B.F. Goodrich Co, et al
DATE 7/3/57 WITNESS —
ACE REPORTING CO., Official Reporter
By [illegible]

(123-9)

8292 221

JAX 297

Commission's Exhibit 222

In the Matter of
The B. F. Goodrich
Company, Et Al
FTC Docket #6485

RESPONSE OF CONTINENTAL OIL COMPANY

ITEM 3(b) OF SPECIFICATION 1 OF SUBPOENA

Reference is made to our response under item 2(b) of Specification 1 for a detailed explanation of the extent of our available records. Based upon the records of the same marketing divisions as detailed in item 2(b) of Specification 1, the dollar volume of purchases upon which commissions were paid by Goodrich of Goodrich (1) tires and tubes, (2) batteries, (3) accessories, by type of Conoco outlet, is hereinafter set out. By agreement of counsel, the figures are for the years 1954 and 1955 only.

1954

Type of Outlet	Tires and Tubes	Batteries	Accessories
"L" Accounts	$ 768,640	$116,176	$159,796
"D" Accounts	476,180	36,829	40,624
"J" and "JW" Accounts	564,751	59,660	133,001
"CR" and "CRW" Accounts	811,364	100,896	114,090

1955

Type of Outlet	Tires and Tubes	Batteries	Accessories
"L" Accounts	$1,133,586	$192,166	$269,974
"D" Accounts	570,544	47,746	53,832
"J" and "JW" Accounts	935,408	92,977	224,627
"CR" and "CRW" Accounts	1,500,792	172,816	214,227

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 222
IN THE MATTER OF B. F. Goodrich Co. et al
DATE 11/2/57 WITNESS
ACME REPORTING CO., Official Reporter
By

8293 222

126

JAX 298

Commission's Exhibit 223

298

In the Matter of
The B.F. Goodrich
Company, Et Al
FTC Docket #6485

RESPONSE OF CONTINENTAL OIL COMPANY
TO
ITEM 3(c) OF SPECIFICATION 1 OF SUBPOENA

The total dollar volume of commissions received by Continental Oil Company from B. F. Goodrich on the purchases of Goodrich TBA by Conoco outlets is set out as follows:

Year	Total T.B.A.
1952	$ 247,728
1953	502,155
1954	561,625
1955	673,094
1956*	318,877

* First 6 months.

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EX. NO. 223
B.F. Goodrich Co. et al
DATE 11/3/57
[illegible] Official Reporter
By [illegible]

8234 223

127 11

JAX 299

Commission's Exhibit 226

299

In the Matter of
The B. F. Goodrich
Company, Et Al
FTC Docket #6485

RESPONSE OF CONTINENTAL OIL COMPANY
TO
ITEM 5(d) OF SPECIFICATION 1 OF SUBPOENA

The number of Conoco outlets in Lincoln, Nebraska, by classification set forth in Item 1 of Specification 1 are set out as follows:

Year	"L" Accounts	"D" Accounts	"J" & "JW" Accounts	"CR" & "CRW" Accounts
1952*	12	6	2	None
1953*	13	6	2	None
1954*	15	7	2	None
1955*	16	7	2	None
1956**	18	6	2	None

* As of December 31.

** As of June 30.

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 COMMISSION EXHIBIT NO. 226
IN THE MATTER OF B.F. Goodrich Co., et al
DATE 10/15/57 WITNESS
ACE REPORTING CO., Official Reporter
By

8297 226

12 - 13

JAX 300

Commission's Exhibit 230A

In the Matter of
The B.F. Goodrich
Company, Et Al
FTC Docket #6485

RESPONSE OF CONTINENTAL OIL COMPANY
TO
ITEM 1(a) OF SPECIFICATION II OF SUBPOENA

Two forms are used by Continental in leasing service stations which it owns or holds under lease. One, a long form, is annexed hereto as EXHIBIT A; and the other, a short form, is annexed as EXHIBIT A-1.

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 230A
IN THE MATTER OF B.F. Goodrich Co., et al
DATE 11/7/51 WITNESS
ACE REPORTING CO., Official Reporter
By

230(A)

8302

133 17

JAX 301

Commission's Exhibit 230B

301

In the Matter of
The B. F. Goodrich
Company Et Al
FTC Docket #6485

ADDENDUM TO RESPONSE OF CONTINENTAL OIL COMPANY
TO
ITEM 1(a) OF SPECIFICATION II OF SUBPOENA

(a) Exhibit A is always used by Continental in leasing service station properties which it owns or holds under firm long-term lease and which bears a company designated number. Exhibit A-1 is normally used in leasing service stations which Continental holds under a short-term lease. In many instances the owner of the service station property is the lessee under Exhibit A-1.

(b) The majority of leases on Exhibit A are for one year, although a number of such leases are for periods up to three years. The average term of the leases on Exhibit A-1 are from two to five years, and in many instances the term coincides with the term of the lease under which Continental holds the property.

(c) It is impossible to make a categorical statement as to the rental basis under Exhibits A and A-1, since the rental under such leases is a matter of negotiation between the appropriate Continental field office and the respective lessee. The rental payable under Exhibit A-1 is sometimes a flat cash rental and sometimes a gallonage rental. Although the rental clause of Exhibit A is worded so as to permit a flat cash rental together with a gallonage rental, many of our leases on Exhibit A are on gallonage rental only.

(d) Generally, in the lease of a service station property, certain equipment is included and listed, such as underground tanks, pumps and oil dispensing equipment and many times other equipment such as hoists and air compressors are included, together with other miscellaneous dispensing equipment used in connection with the operation of a service station.

COMMISSION EXHIBIT 230B
D. T. 445
8303 230 (R)

134 18

JAX 302

Commission's Exhibit 230C-1

EXHIBIT A

SERVICE STATION LEASE

THIS LEASE, Made this _____ day of _____, 19____, between CONTINENTAL OIL COMPANY, a Delaware Corporation, hereinafter called Grantor, and _____

(If firm or corporation, so state; if partners, give full name and residence of each partner.)

of _____, State of _____, hereinafter called Lessee (whether one or more):

WITNESSETH: Grantor, in consideration of the covenants and agreements of Lessee herein, hereby leases to Lessee the following real and personal property (hereinafter called the "premises"), to be used only for the purpose herein stated, situated at _____, in the County of _____, State of _____, to-wit:

That part of the following described ground occupied by the service station building or buildings hereinafter described, and so much thereof (if less than the whole) as Grantor determines is necessary for the operation of said service station and that part of said ground reasonably necessary for the proper operation of a service station, including but not limited to the

Commission's Exhibit 230C-2

3. Not to commit or suffer waste to be committed upon the said premises and to make no alterations in or additions to the premises without the written consent of Conoco first had and obtained, except that Lessee may and agrees to make such alterations in or on the leased equipment as may from time to time be necessary to identify the products being dispensed from such equipment.

4. Lessee shall in case of fire or other damage to premises give immediate notice thereof to Conoco. If the premises shall be partially damaged by fire or other cause without negligence chargeable to Lessee same shall be repaired at Conoco's option and expense as speedily as practicable. During the period needed for such repairs the rent hereunder shall not cease if station can be operated. If certain improvements and/or equipment are totally destroyed by fire, act of God, or other cause, or so damaged thereby that Conoco deems it necessary to rebuild the same, Conoco may terminate this lease by written notice or at its option may rebuild or replace said improvements and/or equipment and the rent in such case shall cease only during the period required for such rebuilding or replacements. If such destruction or damage has referred to above be caused by the negligence or improper conduct of Lessee, or any agent or servant of Lessee, it shall be optional with Conoco whether the last preceding sentence shall apply or Lessee shall be liable to Conoco for the full amount of rent herein reserved, and, in either case, Lessee shall be liable for all loss to Conoco.

5. Conoco, its agents and employees, shall not be liable for any loss, damage, injuries, or other casualty of whatsoever kind or by whomsoever caused, to the person or property of anyone (including the Lessee) on or off the premises, arising out of or resulting from the Lessee's use, possession, or operation thereof, or from the installation, existence, use, maintenance, condition, repair, alteration, or removal of any equipment thereon, whether due in whole or in part to negligent acts or omissions of Conoco, its agents or employees; and the Lessee, for himself, his heirs, executors, administrators, successors, and assigns, hereby agrees to indemnify and hold Conoco, its agents and employees harmless from and against all claims for such loss, damage, injury, or other casualty.

6. To comply at Lessee's expense with all federal, state, municipal and other governmental and local laws, rules, regulations, and ordinances relating to said premises and/or relating to or arising out of the operation of said service station thereon, and not to use said premises in any way in violation of the laws of the United States, or state laws, or local ordinances or regulations, or any insurance policies thereon. Lessee shall comply with the following provisions, which it is agreed are necessary or safety measures in connection with the operation of said premises:

(a) Not to smoke on said premises or permit smoking on said premises.

(b) Not to permit any intoxicated person to remain on said premises. No intoxicants shall be used thereon by Lessee or kept or allowed to remain, or be used thereon, and no intoxicated person shall operate or take part in the operation of said station.

(c) Not to permit the accumulation of oil, grease, or gasoline on the floor of any building covered thereby, or the accumulation of oil, grease, gasoline, ice or snow on any driveway covered thereby.

(d) Not to store, keep, or sell gasoline on said premises in or through any glass containers other than a pump, or store, keep, or sell gasoline on said premises in any container not properly labeled.

(e) Not to use gasoline for cleaning purposes on said premises.

(f) To provide covered metal containers for disposal of waste, empty one- and five-quart oil and grease cans, and for oily rags, and to use said containers to help keep down fire hazard.

(g) If any tool or equipment covered by this lease shall become defective, Lessee shall not use or permit the use thereof.

7. To keep said premises and that portion of the streets, alleys, sidewalks and driveways immediately adjacent thereto neat and clean, and said premises in an orderly and attractive condition. Conoco may inspect premises at any reasonable time.

8. Lessee has received said premises in good order and condition and will keep the same in good order and condition and at the expiration or other termination of this lease will yield up the same to Conoco in as good order and condition as when same were entered upon by said Lessee, fire by fire, act of God, or ordinary wear excepted, and will promptly make all necessary minor repairs and replacements such as replacement of gaskets, air, and water hose, window lights, electric light globes, and items of similar nature. If Lessee fails to comply with any agreement of Lessee as to keeping the premises in good condition, Conoco may put the same in condition as provided for and Lessee shall reimburse Conoco for the expense incurred by it in doing so.

9. If said premises or any part thereof shall be condemned or taken for any public purpose, Conoco may forthwith terminate this lease by written notice to Lessee.

10. If Conoco shall make any payment by reason of the failure of Lessee to keep any agreement herein, all amounts so paid, together with all interest, costs or damages, shall at Conoco's option become a part of the rent becoming due on the rent payment day next succeeding such payments respectively.

11. Conoco and Lessee recognize the determination in value of premises permitted to remain idle and agree if the premises hereby leased shall not be used for any period of thirty consecutive days for the purposes for which the same are leased, this lease shall terminate at the expiration of such thirty-day period.

12. The agreements of Lessee herein shall be deemed conditions and if default shall be made in any of them, or if the premises shall become vacant, Conoco at its election may declare this lease ended and re-enter the premises, or any part thereof, with or without process of law and expel, remove and put out Lessee, or any other person or persons occupying, in or upon the same, using such force as necessary, and Lessee agrees to surrender said premises peaceably to Conoco immediately upon the expiration or termination of this lease, however terminated, and that upon the non-payment of the whole or any portion of said rent at the time the same is promised to be paid, or upon the violation or non-fulfillment of any of the covenants of this lease, Conoco may at its option either distrain for said rent due and damages sustained or declare this lease at an end and forever prevention as if said premises were held by forcible detainer, said Lessee hereby waiving any notice of such election and any demand for the prosecution of said premises and any legal rights Lessee may have under the exemption laws of the state in which said premises are located, or in such case Conoco at its option may, without terminating this lease, rent said premises for such rent and upon such conditions as it may think best, making such changes and repairs as may be required, giving credit for the rent so received during such term, less all expense of such changes and repairs and the expense of any proceedings which may have been necessary in order to regain possession of said premises, and the cost of re-letting the same and Lessee shall be liable for the balance of the rent herein reserved and upon the other obligations assumed herein until the expiration of the term hereof; provided Conoco at its option, after re-letting said premises under this paragraph, may, nevertheless, terminate this lease at the end of any such period of re-letting, and if Conoco shall take possession under this paragraph, Lessee may not re-enter without Conoco's consent. Any remedy to Conoco specified herein shall be in addition to any remedy which it would otherwise have.

13. If Lessee, after the expiration or termination hereof, shall remain in possession of said premises with Conoco's consent, and continue to pay rent, without written agreement as to such possession, then Lessee shall be regarded as a tenant from month to month at a monthly rental, the amount of which for each month, shall be the rental above specified for that respective month, and which shall be payable monthly in advance on hereinabove provided subject to the covenants and conditions herein.

14. Conoco shall furnish so far as the same shall be reasonably available, free of cost to Lessee, rest room supplies for use at said station, of such kinds as Conoco shall select; but if Lessee fails to keep a proper amount of said supplies in rest room or rooms, Conoco shall no longer be obliged to furnish the same. Lessee shall pay all license, occupation, excise and other fees, taxes and assessments on the business conducted on said premises or sales made therefrom.

15. In case said real estate or any of the other property leased hereby is held by Conoco under a lease under which lessor in said lease retains the right to cancel and terminate said lease upon giving certain notice to Conoco, or in case of certain contingency, and said lease so held by Conoco is so cancelled or terminated by such lessor without default by Conoco, this lease shall also thereupon terminate, and Lessee agrees to comply with the terms and conditions of any such lease as held by Conoco except the payment of rentals thereunder.

16. If Lessee during the existence of this lease shall purchase automotive lubrication oils and/or greases from Conoco at the same prices extended by Conoco to retail dealers generally at the place where said premises are located at the respective times of purchase by Lessee, in any quantity upon which quantity discount would be allowed by Conoco if purchased by any such retail dealer at the place where said premises are located, under written contract made on the date hereof, Conoco shall allow the same quantity discount to Lessee.

17. It is mutually agreed that none of the provisions of this lease shall be considered as reserving to Conoco any right to exercise any control over the business or operations of Lessee conducted upon the leased premises or to direct in any manner the management thereof, the hours and conditions that be observed by Lessee in the operation of the same, or the prices to be charged by Lessee for any merchandise handled by Conoco. Any such party or parties shall be hired by Lessee at Lessee's expense, and shall be paid and discharged by Lessee.

18. This lease constitutes the entire agreement as to the subjects covered hereby. No verbal agreement exists connecting the same. Any and all previous agreements as to said premises are hereby cancelled. Conoco is hereby authorized to place upon said premises or any part thereof any signs Conoco may desire, and Lessee hereby agrees that the same may remain thereon. Notice which may be given by Conoco to Lessee hereunder may be given by mailing the same by registered mail addressed to Lessee at Lessee's address given above.

19. This lease shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto with respect to the premises and subject to agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

WITNESS

CONTINENTAL OIL COMPANY
(Conoco)

By _____

WITNESSES:

_____ By _____

_____ _____
Lessee

_____ _____
Lessee

_____ By _____

JAX 304

Commission's Exhibit 230D-1

EXHIBIT A-1

SERVICE STATION LEASE

THIS LEASE, Made this _____ day of _____, 19____, between CONTINENTAL OIL COMPANY, a Delaware Corporation, hereinafter called Conoco, and _____

(If firm or corporation, so state, giving names of partners, where such exist, and type of organization, Lessee.)

of _____, State of _____, hereinafter called Lessee (whether one or more):

(Show street or other definite address)

WITNESSETH: Conoco, in consideration of the covenants and agreements of Lessee herein, hereby leases to Lessee the following real and personal property (hereinafter called the "premises"), to be used only for the purpose herein stated, situated at _____, in the County of _____, State of _____, to-wit:

That part of the following described property owned by the service station building or buildings hereinafter described, and driveways (as far as the use of such driveways is necessary for the operation of service station) and that part of the said ground necessary for the proper operation of a service station, including equipment for dispensing petroleum products situated in building or buildings and premises, and including any other equipment hereinafter described and located on said ground, to-wit:

FEDERAL TRADE COMMISSION
DOCKET NO. 6907 COMM'N EXHIBIT NO. 230D

230 (1)

from twelve o'clock noon of the _____ day of _____, 19____, to twelve o'clock noon of the _____ day of _____, 19____. If this lease is for more than one year it shall be subject to termination by Conoco at the end of the first year or any subsequent year prior to said stated term upon thirty (30) days' written notice from Conoco to Lessee. This lease is made subject to the conditions hereinafter contained and at a rental as follows:

IN CONSIDERATION WHEREOF Lessee Agrees:

1. To use said premises and the equipment hereby leased for service station purposes.

2. To subject no part of said premises, and that no assignment of or encumbrance upon this lease shall be made or suffered to be placed upon Lessee's interest hereunder, voluntarily or by operation of law, without Conoco's written consent. No consent to one assignment or sublease shall be construed as a consent to any further assignment or sublease, or to permit any assignee or lessee to make any assignment or sublease, and no consent, express or implied, to any breach of any one or more of the covenants or agreements herein shall be a waiver of any succeeding or other breach.

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Commission's Exhibit 230D-2

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3. Conoco, its agents and employees, shall not be liable for any loss, damage, injuries, or other casualty of whatsoever kind or by whomsoever caused, to the person or property of anyone (including the Lessee) on or off the premises, arising out of or resulting from the Lessee's use, possession, or operation thereof, or from the installation, existence, use, maintenance, condition, repair, alteration, or removal of any equipment thereon, whether due in whole or in part to negligent acts or omissions of Conoco, its agents or employees; and the Lessee, for himself, his heirs, executors, administrators, successors, and assigns, hereby agrees to indemnify and hold Conoco, its agents and employees, harmless from and against all claims for such loss, damage, injury, or other casualty.

4. To comply at Lessee's expense with all federal, state, municipal and other governmental and local laws, rules, regulations, and ordinances relating to said premises and/or relating to or arising out of the operation of said service station thereon, and not to use said premises in any way in violation of the laws of the United States, or state laws, or local ordinances or regulations, or any insurance policies thereon. Lessee shall pay all license, occupation, excise and other fees, taxes and assessments on the business conducted on said premises or sales made therefrom.

5. To keep said premises and that portion of the streets, alleys, sidewalks and driveways immediately adjacent thereto neat and clean, and said premises in an orderly and attractive condition. Conoco may inspect premises at any reasonable time.

6. Lessee has received said premises in good order and condition and will keep same in good order and condition and at the expiration or other termination of this lease will yield up the same to Conoco in as good order and condition as when same were entered upon by said Lessee, loss by fire, act of God, or ordinary wear excepted, and will promptly make all necessary minor repairs and replacements such as replacement of gasoline, air, and water hose, window lights, electric light globes, and items of similar nature. If Lessee fails to comply with any agreement of Lessee as to keeping the premises in good condition, Conoco may put the same in the condition so provided for and Lessee shall reimburse Conoco for the expense incurred by it in doing so.

7. The agreements of Lessee herein shall be deemed conditions and if default shall be made in any of them, or if the premises shall become vacant, Conoco at its election may declare this lease ended and re-enter the premises, or any part thereof, with or without process of law, and Lessee agrees to surrender said premises peaceably to Conoco immediately upon the expiration or termination of this lease, however terminated, and that upon the non-payment of the whole or any portion of said rent at the time the same is promised to be paid, or upon the violation or non-fulfillment of any of the covenants of this lease, Conoco may at its election either distrain for said rent due and damages sustained or declare this lease at an end and recover possession as if said premises were held by forcible detainer, said Lessee hereby waiving any notice of such election and any demand for the possession of said premises and any legal rights Lessee may have under the exemption laws of the state in which said premises are located; and if Conoco shall take possession under this paragraph, Lessee may not re-enter without Conoco's consent. Any remedy to Conoco specified herein shall be in addition to any remedy which it would otherwise have.

8. If Lessee, after the expiration or termination hereof, shall remain in possession of said premises with Conoco's consent, without written agreement as to such possession, then Lessee shall be regarded as a tenant from month to month at the rental hereinabove provided subject to the covenants and conditions herein.

9. In case said real estate or any of the other property leased hereby is held by Conoco under a lease under which lessor in said lease retains the right to cancel and terminate said lease upon giving certain notice to Conoco, or in case of certain contingency, and said lease so held by Conoco is so cancelled or terminated by such lessor without default by Conoco, this lease shall also thereupon terminate, and Lessee agrees to comply with the terms and conditions of any such lease so held by Conoco except the payment of rentals thereunder.

10. It is mutually agreed that none of the provisions of this lease shall be construed as reserving to Conoco any right to exercise any control over the business or operations of Lessee conducted upon the leased premises or to direct in any respect the manner in which any such business and operations shall be conducted. No party or parties employed by Lessee shall in any event be considered as employed by Conoco. Any such party or parties shall be hired by Lessee at Lessee's expense, and shall be paid and discharged by Lessee.

11. Any notice by Conoco to Lessee hereunder may be given by mailing the same by registered mail addressed to Lessee at Lessee's address given above.

12. This lease shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto, subject to the provision hereof relating to assignment.

IN WITNESS WHEREOF the parties hereto have executed this agreement the day and year first above written.

WITNESS:

CONTINENTAL OIL COMPANY
(Conoco)

By_____

WITNESSES:

Its_____

_____
Lessee

_____
Lessee

By_____

JAX 306

Commission's Exhibit 231A

In the Matter of
The B.F. Goodrich
Company, Et Al
FTC Docket #6485

RESPONSE OF CONTINENTAL OIL COMPANY
TO
ITEM 1(b) OF SPECIFICATION II OF SUBPOENA

(1) Lessee Operators

Where the long form (Exhibit A) is used, and the lessee wishes to handle Conoco petroleum products, no sales contract is entered into; the lessee operator simply buys his Conoco gasoline at the established tank wagon price, and any purchases he may make of Conoco lubricating oils or greases are covered by Paragraph 16 of his lease.

Similarly, where the short form of lease (Exhibit A-1) is used, the lessee may buy Conoco gasoline at the posted tank wagon price; however, if such a lessee wishes to handle Conoco lubricating oils or greases, he enters into a separate contract covering these products in the form annexed hereto as EXHIBIT B.

(2) Sales Contract Dealers

Other independent retail dealers (except those supplied by jobbers) wishing to handle Conoco gasoline sign contracts in the form annexed hereto as EXHIBIT C. If they wish to carry Conoco lubricating oils or greases, they sign the aforementioned contract form EXHIBIT B.

(3) Jobbers

Our trademark gasoline jobber signs a gasoline and kerosene contract in the form annexed hereto as EXHIBIT D. If he wishes to handle Conoco oils or greases, he signs a separate contract covering these products in the form annexed hereto as EXHIBIT E. If he wishes to also handle Conoco heating and burning oils, he signs another separate contract covering these products in the form annexed hereto as EXHIBIT F.

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 COMMISSION NO. 2318
IN THE MATTER OF B.F. Goodrich Co., et al
DATE 4/2/57 TYPE
ACE REPORTING CO., Official Reporter
By Glen

231(R)
2310

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JAX 307

Commission's Exhibit 231B-1

EXHIBIT B

12-01-64
REV. 6-1-67

CONTINENTAL OIL COMPANY

DEALER SALES AGREEMENT

AGREEMENT, Made by and between CONTINENTAL OIL COMPANY, a corporation (hereinafter called Conoco), and

_____
Name

_____ (hereinafter called Buyer):
Post Office Address

PRODUCTS AND TERM OF AGREEMENT:

Conoco agrees to sell and deliver to Buyer and Buyer agrees to buy from Conoco, subject to the conditions hereinafter stated, Buyer's requirements of Conoco Automotive Oils, Greases, and Anti-freezes for a period of one (1) year commencing on _____, 19____. This agreement shall be automatically renewed from year to year upon the same terms and conditions, unless either party hereto shall give to the other written notice of cancellation at least thirty (30) days prior to the expiration date of the initial term or any subsequent renewal period, as the case may be.

PRICE:

Buyer shall pay Conoco for any products purchased hereunder Conoco's WHOLESALE PRICE in effect on date of delivery from Conoco's bulk station at _____, provided, however, that as to any increase by Conoco in its WHOLESALE PRICES for Automotive Oils or Greases, said price increase to Buyer shall not become effective until thirty (30) days after the date of such increase in Conoco's WHOLESALE PRICES.

In the event Conoco reduces its WHOLESALE PRICE, Buyer shall be entitled to such lower prices on goods delivered under this contract during time such reductions are in effect.

TERMS OF PAYMENT: Cash (unless in this paragraph otherwise provided) _____

In the event payment for goods is not made promptly as stipulated, this agreement may be canceled at any time upon notice from Conoco, and no liability shall exist for any undelivered commodities hereunder. If, in the opinion of Conoco during the life of this agreement the financial responsibility of Buyer becomes impaired or unsatisfactory, cash payment or satisfactory security may be required by Conoco before any further deliveries are made hereunder.

CONTRACT DISCOUNTS:

In consideration of the execution of this agreement, and if Buyer shall purchase and accept delivery of Conoco automotive oils, greases and anti-freeze, a contract discount will be allowed off Conoco's wholesale price of two (2) cents per gallon on automotive oils and anti-freeze and one-fourth (¼) cent per pound on automotive grease and lubricants. These deductions will be made on the invoice at time of delivery.

QUANTITY DELIVERY DISCOUNTS:

For single delivery of one or more Conoco automotive oils and/or anti-freeze delivered at one time and billed on one invoice, or for single delivery of one or more Conoco automotive greases delivered at one time and billed on one invoice, the following quantity delivery discounts will be allowed:

Conoco Automotive Oils and/or Anti-freeze

Quantity	Discount Per Gal.
5 to 49 gallons	none
50 to 99 gallons	2¢
100 to 149 gallons	3¢
150 to 349 gallons	4¢
350 to 449 gallons	5¢
450 gallons and over	6¢

Conoco Automotive Greases

Quantity	Discount Per Pound
Less than 120 lbs.	none
120 to 360 Pounds	¼¢
361 pounds and over	½¢

FEDERAL T... C...
... 64R ... 231B

2 3/3/64
C.D.11

Commission's Exhibit 231B-2

308

GENERAL CONDITIONS:

Neither Conoco nor Buyer shall be liable for any losses resulting if performance of any provision hereof is delayed or prevented by war or national emergency, now or hereafter existing, or by reason of compliance with any order of, contract with, or request of the United States or any agency thereof, or of any state or political subdivision thereof, or inability with reasonable diligence to obtain in the area in which deliveries are to be made hereunder, equipment, material or supplies, or action of an enemy, revolution or other disorder, embargo, import or export restriction, strike, lockout, fire, flood, windstorm, accident or act of God, disruption or breakdown of transportation, failure of or interference with supply from Conoco's present sources or sources, perils of the sea, accidents of navigation, breakdown of or injury to any ship, loss of tanker bottoms or reduction thereof by reason of compliance with any order or request of any governmental authority, or if performance is delayed or prevented by any cause not within the control of the party in default, or which with reasonable diligence such party is unable to prevent, whether of any class of causes hereinbefore enumerated or not.

In any such case the operation of this agreement so far as necessary shall be suspended. The cause of interruption shall be remedied, if reasonably possible, with all dispatch, and performance resumed at the earliest practicable time after cessation of such interruption.

If by reason of any of said causes Conoco shall be unable to supply the requirements of all of its customers of any product covered hereby in the area in which deliveries are to be made hereunder, Conoco's obligation while such inability exists shall at its option be reduced to the extent necessary in its judgment to apportion fairly among its customers the amount which it is able to supply.

Conoco shall have the right at any time during the life of this agreement to change, alter or amend any of the trade names or brands under which products covered by this agreement are now or may hereafter be sold. If Conoco shall at any time during the term of this agreement discontinue the marketing of any or all of the brands of products covered by the agreement, Conoco shall be relieved of all obligation to sell or deliver such discontinued brands to Buyer, and if Conoco shall market any other brand or brands of products in lieu of the discontinued brand or brands, this agreement shall embrace such new brand or brands of products.

If any tax or other charge collectible from Conoco is now or hereafter imposed by any federal government authority, state or municipal authority upon any of the goods herein described, or the production, manufacture, storage, or withdrawal from storage, sale, transportation, delivery, or use thereof, the price to be paid by Buyer may, unless such tax or charge is included in the price payable by Buyer, as herein elsewhere provided, be increased to the extent of such tax or charge, unless such tax or charge is collectible by Conoco from Buyer as a tax, in which case Buyer shall reimburse Conoco for same as a tax.

This agreement is not transferable without Conoco's written consent and upon its execution cancels and is in lieu of any and all existing contracts or agreements between the parties hereto relating to the sale and purchase of AUTOMOTIVE OILS, GREASES, and ANTI-FREEZES, and is the entire agreement between the parties, on that subject.

IN WITNESS WHEREOF, the parties hereto have executed this agreement, this _____ day of _____, 19____.

_____
(Buyer)

By _____

CONTINENTAL OIL COMPANY (Conoco)

Negotiated by _____

By _____

8312

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JAX 309

Commission's Exhibit 231C

309

EXHIBIT C

F 19-018-PA
REV. 11-12-59

DEALER GASOLINE CONTRACT

CONTRACT, made this day of , 19

by and between CONTINENTAL OIL COMPANY, a Delaware corporation, hereinafter called "Conoco," and , of State of , hereinafter called "Buyer" (whether one or more),

WITNESSETH:

The parties hereto, each in consideration of the agreements herein on the part of the other, agree as follows:

(1) Conoco agrees to sell and deliver by tank wagon and Buyer agrees to purchase and receive from Conoco, Buyer's requirements of Conoco Regular Gasoline, Conoco Hi-Octane Gasoline, and Demand Gasoline, for use and sale at

from , 19 to , 19 , inclusive, and thereafter from year to year, provided that Buyer may cancel this contract on last-mentioned date, or at the end of any such yearly period, by giving Conoco at least thirty (30) days' prior written notice of Buyer's intention to cancel same; provided Conoco may cancel this contract at any time by giving Buyer ten (10) days' written notice which may be given by mailing same by registered mail to Buyer at Buyer's address above given.

Conoco shall have the right at any time during the life of this contract to change, alter or amend any of the trade names or brands under which products covered by this contract are now or may hereafter be sold. If Conoco shall at any time during the term of this contract discontinue the marketing of any or all of the brands of products covered by the contract, Conoco shall be relieved of all obligation to sell or deliver such discontinued brands to Buyer; and if Conoco shall market any other brand or brands of products in lieu of the discontinued brand or brands, this contract shall embrace such new brand or brands of products.

(2) For gasoline delivered hereunder Buyer shall pay to Conoco Conoco's price to dealers of Buyer's class for the grade delivered in effect at time and for said place of delivery as posted at Conoco's bulk plant from which deliveries are made, less any discount to dealers of Buyer's class so posted.

If any tax or other charge is now or hereafter imposed by any Federal government authority, state or municipal authority, or other governmental subdivision, upon or in connection with any of the goods herein described, or the production, manufacture, storage or withdrawal from storage, sale, transportation or delivery thereof, and if Conoco is required to pay or collect same, the price to be paid by Buyer may, at Conoco's option, unless such tax or charge is included in the price payable by Buyer, as herein elsewhere provided, be increased to the extent of such tax or charge.

(3) Conoco shall deliver said gasoline during business hours to said place of business in approximately equal monthly quantities, and in minimum amounts of fifty (50) gallons at any one time.

This contract shall apply only to such of the above-mentioned brands of gasoline which Conoco at any time during the term hereof shall be regularly marketing in the territory in which said place of business is located.

Buyer agrees to use, handle, and sell Conoco's gasoline at said place of business during the term of this contract.

If Buyer shall fail for any continuous 90-day period to purchase gasoline hereunder, this contract at Conoco's option shall terminate without notice.

(4) Terms: net cash.

(5) All orders will be filled with reasonable promptness, but Conoco shall not be held responsible when deliveries are delayed or prevented by fire, storm, flood, strike, differences with or refusal of any employees of Conoco or of its agent or distributor to deliver, disruption or breakdown of transportation, or any cause beyond Conoco's control, whether of any class of causes referred to or not.

(6) This agreement shall not be assigned or transferred by Buyer directly or indirectly without the written consent of Conoco.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed the day and year first above written.

CONTINENTAL OIL COMPANY
(Conoco)

By 231(C)

NEGOTIATED BY:

(Buyer)

By 871-1

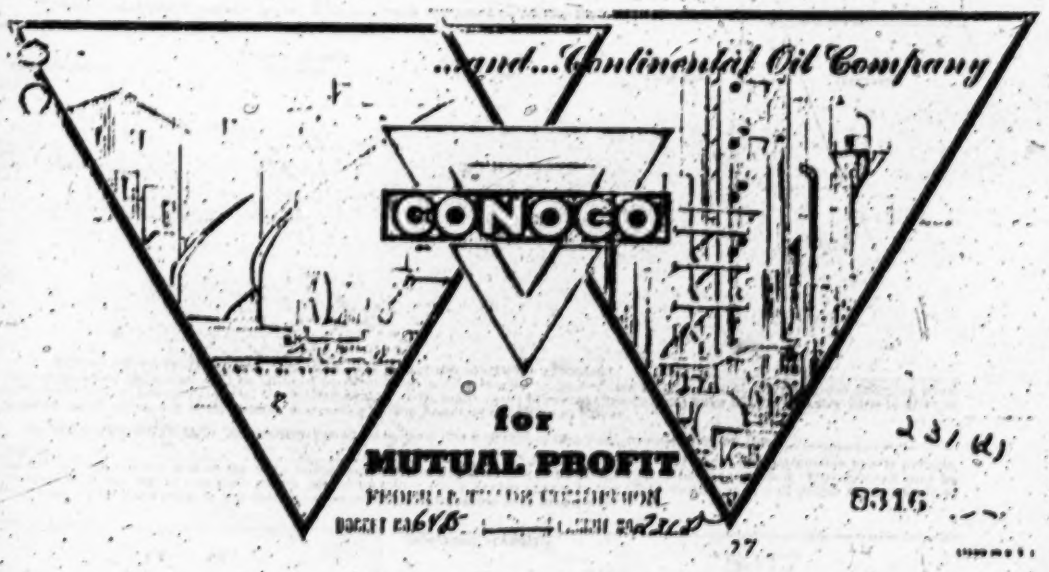
2L

JAX 310

Commission's Exhibit 231D

JOBBER SALES AGREEMENT

between



231(d)

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Commission's Exhibit 231D

P 10-477-B
REV. 9-11-59

CONTINUED PAGE 2

at _____ (Street) _____ (City) _____ (State), hereinafter called "Buyer," agrees to buy from Continental Oil Company, a corporation, hereinafter called "Conoco," and Conoco agrees to sell to Buyer, the following goods and petroleum products, subject to the terms and conditions herein stated.

1. **PRODUCTS:** Conoco H-tane Gasoline, Conoco Inar Gasoline, Demand Gasoline, Conoco Kerosene of the same quality as marketed by Conoco through its own stations.

2. **QUANTITY (gallons):** _____ Conoco H-tane Gasoline, _____ Conoco Inar Gasoline, _____ Demand Gasoline, _____ Conoco Kerosene, shipment in tank cars or transport trucks (at Conoco's option) to be furnished by Conoco, in the following quantities for each month, to-wit: (thousands of gallons)

PRODUCT	JAN.	FEB.	MAR.	APR.	MAY	JUNE	JULY	AUG.	SEPT.	OCT.	NOV.	DEC.
CONOCO H-TANE GASOLINE												
CONOCO INAR GASOLINE												
DEMAND GASOLINE												
CONOCO KEROSENE												

Buyer shall furnish Conoco shipping instructions not less than five days prior to date of shipment, all shipments to be invoiced as of date shown on Bill of Lading. Invoices to be rendered on basis of normal temperature 60° Fahrenheit with gallonage adjustment as provided for in the abridged Volume Correction Table for Petroleum Oils.

3. **PRICE:** The price per gallon Buyer shall pay Conoco, subject to the conditions hereinafter stated for each shipment of Conoco H-tane Gasoline, Conoco Inar Gasoline, Demand Gasoline, and Conoco Kerosene f.o.b. Buyer's destination(s) shown herein shall be Conoco's established contract jobber tank car/truck transport price in effect on date of shipment for said products at such destination (s).

Conoco may deliver products in either transport trucks or tank cars from such shipping points as it may elect. Provided that if shipment is made freight collect and payable by Buyer, Conoco shall credit Buyer with amount of freight so paid by Buyer. Provided further that Conoco may at its option agree to deliver to Buyer such products, as Conoco may elect, into Buyer's truck transports at shipping points designated by Conoco, in which case Conoco shall credit Buyer with an amount mutually agreed upon in advance in writing. Delivery into Buyer's motor transport equipment shall constitute delivery to Buyer and Buyer shall assume ownership and full responsibility for such products at time of delivery.

Conoco's established contract jobber tank car/truck transport prices for the products covered by this contract on _____, 19____, are as follows:

Destination(s)	Conoco H-tane Gasoline	Conoco Inar Gasoline	Demand Gasoline	Conoco Kerosene

4. **TERMS OF PAYMENT:** Cash (unless in this paragraph otherwise provided) _____ (discount, when applicable will be allowed on amount of invoice less all taxes and less freight paid or allowed from shipping point to destination) in lawful money of the United States, or its equivalent; provided Conoco shall have the right at any time to alter or suspend credit whenever in its opinion warranted by the financial condition of Buyer.

5. **TERM OF CONTRACT:** This contract shall be in force for a period of one year, commencing on the _____ day of _____, 19____, and thereafter from year to year for successive yearly periods, for the same quantities and on the same terms and conditions, unless and until terminated as herein provided. This contract may be terminated at the end of any such yearly period by either party hereto giving to the other written notice of desire to terminate at least thirty (30) days prior to the date upon which such termination is to take effect.

BINDING MARGIN

8317

Commission's Exhibit 231D

CONTINUED PAGE 3

BINDING MARGIN

6. TETRAETHYL LEAD TREATED GASOLINE: Some or all of the brands of gasoline covered hereby have contained and are expected to contain an anti-knock compound, of which tetraethyl lead is an ingredient. Buyer agrees to comply with the health rules and regulations now in existence and which may be hereafter issued from time to time by the office of the Surgeon General of the United States Public Health Service and any governmental agency having jurisdiction in the premises with respect to the handling, distribution, and sale of gasoline containing tetraethyl lead and to require such subsequent purchaser for resale from Buyer to assume a similar obligation.

7. THE CONOCO TRADE-MARK: Subject to other provisions hereof and unless Conoco consents otherwise in writing, the products purchased hereunder will be sold to the public under the respective applicable brand names of Conoco; and Buyer shall display the same on all containers in which such products are handled and in all advertisements thereof and at all stations and other places of distribution from which sales or deliveries may be made by Buyer. Buyer will properly display and make proper use of all advertising matter furnished by Conoco to help stimulate Buyer's sales of products covered hereby.

Conoco shall have the right at any time during the life of this contract to change, alter or amend any of the trade names or brands under which products covered by this contract are now or may hereafter be sold. If Conoco shall at any time during the term of this contract discontinue the marketing of any or all of the brands of products covered by the contract, Conoco shall be relieved of all obligations to sell or deliver such discontinued brands to Buyer; and if Conoco shall market any other brand or brands of products in lieu of the discontinued brand or brands, this contract shall embrace such new brand or brands of products.

8. RIGHT OF TERMINATION: If Buyer at any time during the life of this contract shall sell gasoline or kerosene other than the gasoline or kerosene purchased hereunder, or shall violate any code of practice which may be established, or proposed by any governmental authority relative to the marketing of petroleum products, or any amendment thereof, or shall violate any provision of this contract, Conoco shall have the option to withdraw any rights of Buyer, and any purchaser for resale from Buyer, to sell any product covered hereby under Conoco's brand names, or to display any signs, insignia, or other advertising matter furnished by Conoco; and in such case, and also in the expiration or other termination of this contract, all signs, insignia, and other advertising matter furnished by Conoco to Buyer shall be returned to Conoco on request.

The products covered hereby are purchased by Buyer for distribution through Buyer's bulk stations or stations and filling stations supplied therefrom. If Buyer, at any time during the life of this contract, shall sell under Conoco's trade-mark or brand names any petroleum product purchased by Buyer from any party or parties other than Conoco, or shall resell any of the petroleum products purchased hereunder to carriers or transport truck operators, or if any one or more of Conoco's obligated monthly installments shall be diverted by Buyer from the destination as shown on the original bill of lading, then, in the event of Conoco in writing first obtained, Conoco shall have the right and option to terminate this contract.

No waiver by Conoco of any right to terminate this contract or to exercise option herein given to revoke any right to sell any product under Conoco's brand names, or display trade-mark or other advertising matter, shall prevent it from exercising such right or option in case of any subsequent occurrence which would have otherwise given it such right or option.

9. CONTRACT DIVISIBILITY: This is a divisible contract as to each monthly installment, shipments during each month to be equally apportioned therein, and a failure to take out and accept the quantity of respective products called for in any such installment period, except as may be prevented by the variation of capacity of available tank cars or transport trucks shall constitute a material breach of this contract and said contract may be cancelled at the option of Conoco by giving written notice to Buyer, or by refusal to accept further deliveries without any obligation on Conoco to tender the balance of such installments not theretofore ordered. Acceptance by Conoco of any order for shipment in any subsequent month shall not prevent Conoco from cancelling this contract in the same manner for failure of Buyer to order, take out, and accept the quantity of products herein provided for in said last mentioned monthly period or any subsequent monthly period. Failure of Buyer to order, take out, and accept in any monthly period the quantity of products to be delivered hereunder shall be the event entitle Buyer to order and take out in any subsequent monthly period the quantity Buyer shall have so previously failed to take out.

10. Any notice which may be given by Conoco to Buyer hereunder may be given by registered mail addressed to Buyer at Buyer's address above given.

Conoco shall not be liable for any shortages in loading, outage, or other loss due to defective equipment, unless before unloading Buyer shall notify Conoco by wire of any evidence thereof and no claims for any such loss shall be made by Buyer or considered by Conoco unless made within five (5) days following placement of car or transport truck for unloading, supported by freight bills properly endorsed by railroad agent or transport truck agent certifying condition of equipment, and seven statement of party unloading shipment showing seal numbers, condition of seals, average temperature of contents, number of inches of outage and any evidence of leakage.

Buyer agrees to promptly unload, upon arrival at destination, all shipments made hereunder and to reimburse Conoco for any demurrage paid by Conoco resulting from Buyer's failure to do so.

Gasoline excise taxes and any sales, license and excise taxes payable under existing and any future laws and measured on gasoline sold hereunder, shall be paid by Buyer, provided, however, that if any tax or other charge is now or hereafter imposed by any Federal, state, municipal or other governmental authority or subdivision, upon or in connection with any of the goods herein described, or the production, manufacture, storage or withdrawal from storage, sale, transportation, delivery or use thereof, and if Conoco is required to pay or collect the same, the price to be paid by Buyer shall, unless such tax or charge is included in the price payable by Buyer, as herein elsewhere provided, be increased to the extent of such tax or charge.

Neither Conoco nor Buyer shall be liable for any losses resulting if performance of any provision hereof is delayed or prevented by war or national emergency, now or hereafter existing, or by reason of compliance with any order of, contract with, recommendation, or request of the United States or any agency thereof, or of any state or political subdivision thereof, or inability with reasonable diligence to obtain in the area in which deliveries are to be made hereunder, equipment, materials or supplies, or action of the enemy, revolution or other disorder, sabotage, insurrection or export restrictions, strikes, lockouts, fire, flood, windstorm, accident or act of God, disruption or breakdown of transportation, failure of or interference with supply from Conoco's principal sources, perils of the sea, accidents of navigation, breakdown of or injury to ship, loss of tanker tonnage or refraction thereof by reason of compliance with any order or request of governmental authority, or if performance is delayed or prevented by any cause not within the control of the party in default, or which with reasonable diligence such party is unable to prevent, whether of any class of causes hereinbefore enumerated or not.

In any such case the operation of this contract so far as necessary shall be suspended. The cause of interruption shall be remedied, if reasonably possible, with all dispatch, and performance resumed at the earliest practicable time after cessation of such interruption. Conoco shall not be required to make up deliveries omitted on account of any such cause or causes.

If by reason of any of said causes Conoco shall be unable to supply the requirements of all of its customers of any product covered hereby to the area in which deliveries are to be made hereunder, Conoco's obligations to the such liability alone shall at its option be reduced to the extent necessary to its judgment to apportion fairly among its customers the amount which it is able to supply.

In case at any time hereof, Buyer agrees that if at any time during the term of this contract Buyer shall desire to sell all or a major part of Buyer's interest, all or a major part of the properties then used by Buyer in the distribution and sale of petroleum products or in any corporation or organization having such interest, or if Buyer desires to lease all or any portion of such properties, Conoco shall have the continuing first option to purchase such interest of Buyer or lease such property or properties, as the case may be, at the same price and on the same terms offered in good faith by Buyer to any other responsible party or parties; provided Conoco shall, within thirty (30) days after written notice by Buyer to Conoco of any such offer, and the attached terms thereof, give notice of Conoco's desire to exercise such option in writing. If Conoco shall so notify Buyer in the case of an exercise of option to purchase, then Buyer shall within ten (10) days after receipt of such notice furnish Conoco an abstract or abstracts and/or other good and sufficient evidence of the title or such interest of Buyer proposed to be sold, and Conoco shall thereupon have a reasonable time in which to examine the title and tender or purchase price therefor. In the event Conoco exercises option to lease, then Conoco shall submit with such notice a written lease providing such term, rent, and other conditions and considerations for the execution of the parties.

This contract constitutes the entire agreement between the parties as to the subjects covered hereby and terminates any and all existing contracts between the parties heretofore made in that any or transport truck operations of petroleum products covered hereby and any other subject matter herein, and no agent shall have authority to vary the terms hereof, by verbal or conditional or otherwise, unless such variation is approved by an executive officer of Conoco. This contract is executed in triplicate, the counterparts hereof each of which is to be considered the original and shall be the binding agreement in the event of any variation between such counterpart and the one held by Buyer.

This contract shall inure to the benefit of and be binding upon the heirs, successors, administrators, successors and assigns of the respective parties hereto, but no assignment thereof by Buyer shall be valid without the written consent of Conoco.

IN WITNESS WHEREOF, the parties hereto have executed this contract, this _____ day of _____, 19____

CONTINENTAL OIL COMPANY
(Conoco)

By _____

_____
(Buyer)

By _____ 8318

28

Commission's Exhibit 231D

CONTINUED PAGE 4

831P

JAX 311

Commission's Exhibit 231E-1

JOBBER SALES AGREEMENT

LUBRICATING OIL — GREASE — ANTI-FREEZE

AGREEMENT, Made by and between CONTINENTAL OIL COMPANY, a corporation (hereinafter called Conoco), and

_____
Name

_____
Post Office Address (hereinafter called Buyer);

PRODUCTS AND TERM OF AGREEMENT:

Conoco agrees to sell and deliver to Buyer and Buyer agrees to buy from Conoco, Buyer's requirements of Conoco Lubricating Oils, Greases, and Anti-Freeze, subject to the conditions hereinafter stated, for a period of one (1) year commencing on _____, 19____. This agreement shall be automatically renewed from year to year upon the same terms and conditions, unless either party hereto shall give to the other written notice of cancellation at least thirty (30) days prior to the expiration date of the initial term or any subsequent renewal period, as the case may be.

QUANTITY:

Buyer's requirements referred to herein are estimated as follows:

ESTIMATED
ANNUAL REQUIREMENTS

Conoco Lubricating Oils _____ Gallons

Conoco Greases . . . . . _____ Pounds

Conoco Anti-Freeze . . _____ Gallons

Conoco shall not be obligated to sell and deliver to Buyer during said yearly period any quantity of the products named above in excess of Buyer's Estimated Annual Requirements plus ten per cent.

DELIVERY:

The products covered hereunder shall be shipped to Buyer's bulk station(s) located at _____

_____

Buyer represents that the products covered hereby are purchased by Buyer for distribution through Buyer's bulk station (s) and service stations supplied therefrom. Notwithstanding any other provisions hereof, Conoco shall not be obligated to furnish hereunder any quantity of said products in excess of Buyer's requirements for distribution through Buyer's bulk station(s) named herein. If any shipment hereunder shall be diverted by Buyer from destination as shown on original bill of lading, to a point at which no bulk station of Buyer is located, without Conoco's written consent first obtained, or in case Buyer shall violate any provision hereof, Conoco shall have the right and option to terminate this agreement. No waiver by Conoco of any right of termination hereof shall prevent it from exercising such right in case of any subsequent occurrence which would otherwise have given it such right.

PRICE:

The price to Buyer for any of the products purchased hereunder shall be the price as stated in CONOCO'S JOBBER PRICE SCHEDULE in effect on date of shipment and subject to all conditions therein; provided, however, that as to any increase to Buyer in the prices for lubricating oils or greases, said increase shall not become effective until thirty (30) days after the effective date shown on CONOCO'S JOBBER PRICE SCHEDULE. The quantity Buyer may purchase at prices in effect during said thirty (30) day period shall not exceed, except at Conoco's option, more than Buyer's maximum purchases during any calendar month of the preceding twelve-month period of the product or products so affected by such increase in price.

TERMS: _____

Payment for goods shipped on this agreement is to be made in lawful money of the United States, or equivalent, at the office of Conoco.

If this agreement provides for sale on credit, Conoco reserves the right, even after partial deliveries on account of this agreement, to require cash payment for all goods delivered, or satisfactory security for performance of Buyer's obligation in case of failure of Buyer to fulfill terms of payment or other terms of this or any other agreement between Buyer and Conoco, or in case of any reasonable doubt as to Buyer's responsibility. Refusal to submit to such requirement will entitle Conoco to suspend deliveries pending such refusal or to terminate this agreement. The termination of this agreement, under any of these conditions shall not prejudice any claims for damages Conoco may be entitled to make. Claims for errors, deficiencies or imperfections will not be entertained by Conoco unless prompt notice is given by Buyer and inspection accepted previous to acceptance of goods.

FEDERAL TRADE COMMISSION
DOCKET NO. 6715 EXHIBIT NO. 231E 29, 231 E 8331

Commission's Exhibit 231E-2

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QUANTITY DISCOUNTS

In consideration of the execution of this agreement, Buyer shall receive the following discounts on the total dollar value of Buyer's purchases hereunder (exclusive of excise taxes included therein) of products designated by Conoco as Automotive Oils and Anti-Freeze during each yearly period.

Quantities Per Year	Discounts	Quantities Per Year	Discounts
1 to 2,499 gallons	None	50,000 to 74,999 gallons	6%
2,500 to 4,999 gallons	1%	75,000 to 100,000 gallons	7%
5,000 to 9,999 gallons	2%	110,000 to 149,999 gallons	8%
10,000 to 19,999 gallons	3%	150,000 to 199,999 gallons	9%
20,000 to 34,999 gallons	4%	200,000 gallons or over	10%
35,000 to 49,999 gallons	5%		

Said discounts shall be paid or allowed at the end of each yearly period (or at Conoco's option at the end of any quarterly period) that this agreement shall continue in force, in computing discounts, said together all grades of Conoco branded motor oils, greases, and anti-freeze purchased to determine the quantity per year. Right reserved to adjust with be computed on net gallons of oil. Discounts paid or allowed at the end of any quarterly period shall be computed on all purchases made during quarterly purchases during the then current yearly period, less any previous discounts paid or allowed Buyer during said yearly period.

OTHER CONDITIONS If any tax or other charge collectible from Conoco is now or hereafter imposed by any federal government authority, state, or municipal authority upon any of the goods herein described, or the production, storage, or withdrawal from storage, sale, transportation, delivery, or use thereof, the price to be paid by Buyer may, unless such tax or charge is included in the price payable by Buyer, as herein elsewhere provided, be increased in the amount of such tax or charge, unless such tax or charge is collectible by Conoco from Buyer as a tax, in which case Buyer shall reimburse Conoco for same as a tax.

Neither Conoco nor Buyer shall be liable for any losses resulting if performance of any provision hereof is delayed or prevented by war or national emergency, army or navy or martial existing, or by reason of complying with any order of, contract with, or request of the United States or any agency thereof, or of any state or political subdivision thereof, or municipality, with reasonable diligence to obtain in the area in which deliveries are to be made hereunder, equipment, materials or supplies, or unless of an enemy, revolution or other disaster, embargo, import or export restriction, strike, lockout, fire, flood, windstorm, accident or act of God, disruption or breakdown of transportation, failure of or interference with supply from Conoco's present source or sources, perils of the sea, accidents of navigation, breakdown of or injury to any ship, loss of timber tonnage or reduction thereof by reason of compliance with any order or request of any governmental authority, or if performance is delayed or prevented by any cause not within the control of the party in default, or which with reasonable diligence such party is unable to prevent, whether of any class of causes hereinbefore enumerated or not.

In any such case the operation of this agreement so far as necessary shall be suspended. The cause of interruption shall be remedied, if reasonably possible, with all dispatch, and performance resumed at the earliest practicable time after cessation of such interruption. Conoco shall not be required to make up deliveries omitted on account of any such cause or causes.

If by reason of any of said causes Conoco shall be unable to supply the requirements of all of its customers of any product covered hereby in the area in which deliveries are to be made hereunder, Conoco's obligation while such inability exists shall at its option be reduced to the extent necessary in its judgment to apportion fairly among its customers the amount which it is able to supply.

Conoco shall have the right at any time during the life of this agreement to change, alter or amend any of the trade names or brands under which products covered by this agreement are now or may hereafter be sold. If Conoco shall at any time during the term of this agreement discontinue the marketing of any or all of the brands of products covered by this agreement, Conoco shall be relieved of all obligation to sell or deliver such discontinued brands to Buyer, and if Conoco shall market any other brand or brands of products in lieu of the discontinued brand or brands, this agreement shall embrace such new brand or brands of products.

Any notice which may be given by Conoco to Buyer hereunder may be given by depositing same in the United States registered mail addressed to Buyer at his post office address above given.

Conoco shall not be liable for any shortage in loading, outage, or other loss due to defective equipment unless, before unloading, Buyer notifies Conoco and receives Conoco's approval of such action. Claim for said shortage to be made by Buyer to Conoco within five (5) days following placement of car for unloading and substantiated by properly noted freight bills and carrier affidavit of party unloading shipment.

This agreement is not transferable without Conoco's written consent and upon its execution cancels and is in lieu of any and all existing contracts or agreements between the parties hereto relating to the sale and purchase of LUBRICATING OILS, GREASES, and ANTI-FREEZES, and is the entire agreement between the parties, on that subject.

IN WITNESS WHEREOF, the parties hereto have executed this agreement, this _____ day of _____, 19__.

_____
(Buyer)

By _____

CONTINENTAL OIL COMPANY (Conoco)

Negotiated by _____

By _____

8322

30

JAX 313

Commission's Exhibit 231F-1

JOBBER SALES AGREEMENT

313

at _____, _____, _____, hereinafter called "Buyer,"
(Street) (City) (State)

agrees to buy from Continental Oil Company, a corporation, hereinafter called "Conoco," and Conoco agrees to sell to Buyer, the following goods and petroleum products, subject to the terms and conditions herein stated.

TERM OF CONTRACT: This contract shall be in force for a period of one year, commencing on the _____ day of _____, 19____, and thereafter from year to year for successive yearly periods, for the same quantities and on the same terms and conditions, unless and until terminated as herein provided. This contract may be terminated at the end of any such yearly period by either party hereto giving to the other written notice of desire to terminate at least thirty (30) days prior to the date upon which such termination is to take effect.

PRODUCTS and QUANTITIES (gallons): _____

_____, shipment in tank cars or transport trucks (at Conoco's option) to be furnished by Conoco, in the following quantities for each month, to-wit: (Thousands of gallons)

PRODUCT	JAN.	FEB.	MAR.	APR.	MAY	JUNE	JULY	AUG.	SEPT.	OCT.	NOV.	DEC.

Buyer shall furnish Conoco shipping instructions not less than five days prior to date of shipment, all shipments to be invoiced as of date shown on Bill of Lading. Invoices to be rendered on basis of normal temperature of 60° Fahrenheit with gallonage adjustment as provided for in the abridged Volume Correction Table for Petroleum Oils.

Conoco shall have the right at any time during the life of this contract to change, alter or amend any of the trade names or brands under which products covered by this contract are now or may hereafter be sold. If Conoco shall at any time during the term of this contract discontinue the marketing of any or all of the brands of products covered by the contract, Conoco shall be relieved of all obligation to sell or deliver such discontinued brands to Buyer; and if Conoco shall market any other brand or brands of products in lieu of the discontinued brand or brands, this contract shall embrace such new brand or brands of products.

PRICE: The price per gallon Buyer shall pay Conoco, subject to the conditions hereinafter stated, for each shipment of

Conoco _____, Conoco _____

Conoco _____ and Conoco _____

f.o.b. Buyer's destination (s) shown herein shall be Conoco's established contract jobber tank car/truck transport price in effect on date of shipment for said products at such destination (s).

Conoco may deliver products in either transport trucks or tank cars from such shipping points as it may elect. Provided that if shipment is made freight collect and payable by Buyer, Conoco shall credit Buyer with amount of freight so paid by Buyer. Provided further that Conoco may at its option agree to deliver to Buyer such products, as Conoco may elect, into Buyer's truck transports at shipping points designated by Conoco, in which case Conoco shall credit Buyer with an amount mutually agreed upon in advance in writing. Delivery into Buyer's motor transport equipment shall constitute delivery to Buyer and Buyer shall assume ownership and full responsibility for such products at time of delivery.

Conoco's established contract jobber tank car/truck transport prices for the products covered by this contract on _____, 19____, are as follows:

Destination (s)

_____ _____ _____ _____ _____

6415 2307

TERMS OF PAYMENT:

Payment for goods shipped on this contract is to be made in lawful money of the United States, or equivalent, at the office of Conoco. (Discount, when applicable will be allowed on amount of invoice less all taxes and less freight paid or allowed from shipping point to destination.)

This contract is subject to the stipulations endorsed hereon and made a part hereof.

31 8324 J 31 (1)

JAX 314

Commission's Exhibit 231F-2

ADDITIONAL STIPULATIONS:

If the application of any provision hereof relating to increase of price would result in a total price for any product covered hereby in excess of such price or maximum price as has been or may be fixed thereon by valid regulation of any governmental agency, the price of such product shipped while such regulation is in effect shall not exceed the price fixed thereby.

Shipments hereunder shall be made in approximately equal monthly quantities upon order from Buyer. It is agreed that no shipments will be made in tank cars unless Buyer has provided sufficient available tank storage and facilities to unload from tank car direct into such storage.

If Buyer at any time shall resell in unlawful quantities any of the products contracted to be sold hereunder, or if any car shipped under this contract shall be diverted by Buyer from the destination as shown on the original bill of lading without first obtaining Conoco's written consent, or in case Buyer shall violate any of the provisions hereof, Conoco shall have the right and option to cancel and terminate this contract.

This contract shall be construed as a divisible contract as to each and every monthly installment, shipments during each month to be apportioned approximately thereto, and a failure to order, take out and accept the quantity of products called for in any such installment period, except as may be prevented by the variation of capacity of available tank cars, shall constitute a material breach of this contract and said contract may be canceled at the option of Conoco by giving written notice to Buyer without any obligation on Conoco to tender the balance of such installment not theretofore ordered. If said contract is not canceled, it shall, except at Conoco's option, continue in kind Buyer as to the remainder of the period covered thereby according to its terms, but Conoco shall not be obligated to accept any further orders hereunder; or if in such case Conoco shall accept orders hereunder from Buyer for shipments in any subsequent month, Conoco shall, nevertheless, after making any such subsequent shipments, have the right and option to cancel and terminate this contract as to any and all further shipments which might be called for thereunder, by giving written notice to Buyer. Failure of Buyer to order, take out and accept in any month the quantity of products to be delivered hereunder shall in no event entitle Buyer to order and take out in any subsequent month the quantity Buyer shall have so previously failed to take out.

Any notice which may be given by Conoco to Buyer hereunder may be given by registered mail addressed to Buyer at the address above given.

Conoco shall not be liable for any shortage in loading, outage, or other loss due to defective equipment unless before unloading Buyer notifies Conoco and receives Conoco's approval of such action. Claim for said shortage to be made by Buyer to Conoco within five (5) days following placement of car for unloading and substantiated by properly noted freight bills and sworn affidavit of party unloading shipment.

Buyer agrees to promptly unload, upon arrival at destination, all shipments made hereunder and to reimburse Conoco for any demurrage paid by Conoco resulting from Buyer's failure to do so.

Conoco reserves the right, even after partial deliveries on account of this contract, to require cash payment for all goods delivered, or satisfactory security for performance of Buyer's obligation in case of failure of Buyer to fulfill terms of payment or other terms of this or any other contract between Buyer and Conoco, or in case of any reasonable doubt as to Buyer's responsibility. Refusal to submit to such requirements will entitle Conoco to suspend deliveries pending such refusal or to terminate this contract. The termination of the contract under any of these conditions, shall not prejudice any claims for damages Conoco may be entitled to make. Claims for errors, deficiencies, or imperfections will not be entertained by Conoco unless prompt notice is given by Buyer and instructions received previous to acceptance of goods.

If any tax or other charge collectible from Conoco is now or hereafter imposed by any federal government authority, state, or municipal authority upon any of the goods herein described, or the production, manufacture, storage, or withdrawal from storage, sale, transportation, delivery, or use thereof, the price to be paid by Buyer may, unless such tax or charge is included in the price payable by Buyer, as herein elsewhere provided, be increased to the extent of such tax or charge, unless such tax or charge is collectible by Conoco from Buyer as a tax, in which case Buyer shall reimburse Conoco for same as a tax.

Neither Conoco nor Buyer shall be liable for any losses resulting if performance of any provision hereof is delayed or prevented by war or national emergency, now or hereafter existing, or by reason of compliance with any order of, contract with, or request of the United States or any agency thereof, or of any state or political subdivision thereof, or inability with reasonable diligence to obtain in the area in which deliveries are to be made hereunder, equipment, materials, or supplies, or action of an enemy, revolution or other disorder, embargo, import or export restriction, strike, lockout, fire, flood, windstorm, accident or act of God, disruption or breakdown of transportation, failure of or interference with supply from Conoco's present source or sources, perils of the sea, accidents of navigation, breakdown of or injury to any ship, loss of tanker tonnage or reduction thereof by reason of compliance with any order or request of any governmental authority, or if performance is delayed or prevented by any cause not within the control of the party in default, or which with reasonable diligence such party is unable to prevent, whether of any class of causes hereinbefore enumerated or not.

In any such case the operation of this contract so far as necessary shall be suspended. The cause of interruption shall be remedied, if reasonably possible, with all dispatch, and performance resumed at the earliest practicable time after cessation of such interruption. Conoco shall not be required to make up deliveries omitted on account of any such cause or causes.

If by reason of any of said causes Conoco shall be unable to supply the requirements of all of its customers of any product covered hereby in the area in which deliveries are to be made hereunder, Conoco's obligation while such inability exists shall at its option be reduced to the extent necessary in its judgment to apportion fairly among its customers the amount which it is able to supply.

This contract constitutes the entire agreement between the parties, as to the subjects covered herein, and is in lieu of any and all existing contracts between the parties involving products of the description of those sold hereunder, and no agent shall have authority to vary the terms hereof. No variation or amendment hereof shall be effective unless and until approved by an authorized representative of Conoco. This contract is executed in triplicate; the counterpart hereof held by Conoco is to be considered the original and shall be the binding agreement in the event of any variation between such counterpart and the one held by Buyer.

This contract shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto, but no assignment thereof by Buyer shall be valid without the written consent of Conoco.

IN WITNESS WHEREOF, the parties hereto have executed this contract this _____ day of _____, 19____.

CONTINENTAL OIL COMPANY

By _____
(CONOCO)

_____
(BUYER)

By _____

JAX 315

Commission's Exhibit 232A-1

In the Matter of
The B.F. Goodrich
Company, Et Al
FTC Docket #6485

RESPONSE OF CONTINENTAL OIL COMPANY
TO
ITEM 1(c) OF SPECIFICATION II OF SUBPOENA

The only type of commission agreement executed by Continental and its commission agents (commission representatives) is the form annexed hereto as EXHIBIT C.

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 232A
IN THE MATTER OF B.F. Goodrich Co., et al
DATE 11/3/67 WITNESS
ACE REPORTING CO., Official Reporter
By

137 33

8327

JAX 316

Commission's Exhibit 232A-2

EXHIBIT G

BULK PLANT COMMISSION AGREEMENT

Printing and Stock Control, Continental Area

Assigned Number as to Duplicates

THIS AGREEMENT is made by and between CONTINENTAL OIL COMPANY, a Delaware corporation, (hereinafter called "Continental") and _____ a _____ (hereinafter, solely for brevity, called "Agent").

1. Agent, for the consideration hereinafter stated, agrees to take charge of bulk plant and stock of Continental located at _____ and in connection with the sale, storage, and transfer of petroleum products from said bulk plant and in territory tributary thereto and, in connection therewith, to:

A. Keep said bulk plant in good condition, free from weeds and rubbish, and look after all other property held by Continental in said area in connection with the sale of petroleum products and see that all insurance of such property and policies of equipment insured by it comply with their agreements with respect to maintenance of its said property.

B. Unload tank cars and other cars and transport trucks, and promptly report the arrival, unloading and return of all cars and transport trucks employed in said bulk plant. Any demurrage or storage charges accruing because of negligence of Agent or violation by Agent of any provision of this agreement shall be paid by Agent.

C. Collect orders and make sales (including deliveries) in the trade, at prices established by Continental from time to time, take receipts from all parties to whom deliveries are made, reporting the receipt, delivery and disposal of stock on hand furnished by Continental, and satisfactorily account for all stocks entrusted to Agent.

D. Fill barrels and other packages from bulk stock, hand empty containers, make such shipments and transfers as are requested, and take proper care of said stock.

E. Faithfully comply herewith, and make reports in accordance with this agreement and general instructions from Continental's Division or District Manager at _____.

F. Collect and remit promptly for all sales made. Any credit sales made by Agent not duly authorized by Continental's Credit Division shall be at Agent's sole risk, and Agent shall be liable to Continental for the payment of the purchase price of any and all such accounts arising out of any such sales. Continental also hereby expressly reserves the right to withhold from payment to be paid Agent for commissions any amount equal to the amount of any such unauthorized account or accounts. If it shall do so, Continental shall not be required in any event to assign any such account to Agent unless said Agent shall make written request therefor to Continental's said Division or District Manager. All accounts due under this contract shall be payable at Continental's division office at the last mentioned place.

2. COMMISSIONS. Continental, in consideration of the performance of this agreement by Agent, and added to the provisions hereof, will pay Agent commissions:

A. (1) ON SALES (except as noted in sentences at points shown below) at no rate as shown or if rate is made to a point not listed, the rate shown for the next preceding zone for which a rate is shown shall apply):

SALES (INCLUDING DELIVERY) TO TOWNS OR TOWN(S) LISTED BELOW	Sales Price Paid Bulk Plant	CENTS A GALLON							
		Gasoline	Gasoline (Ethyl Gasoline)			Diesel Kerosene		Tractor Fuel	

Commission's Exhibit 232B

(f) ON TRANSFERS which, when approved and directed by Continental, shall be made at Agent's expense to above bulk plant, of purchase goods or the grocery owned light oils from another bulk plant and light oils from refineries or terminals, unless otherwise herein provided, the amount to be paid as commissions will be an amount equal to the railroad freight rate or truck rate, whichever is lower, without regard to any established minimum charge, unless a different amount is fixed in separate written agreement.

G. No payment for commissions shall be made on commodities not listed above, nor for handling from railroad depot to bulk plant, on stock received or sales of any product or products shipped directly to customer and not handled through or from above bulk plant, nor products returned to stock, nor products purchased by Agent from any competitor, except as may be specifically authorized. Said commissions shall be paid promptly upon adjustment of monthly accounts, except as may be otherwise herein provided. Items specified herein for commissions cover only reimbursement to Agent for performance hereof by Agent and for furnishing equipment and furnishing services of any employees of Agent as herein provided.

5. It is mutually agreed:

A. Continental will furnish all items which in its opinion are necessary in connection with the performance hereof by Agent, and such operating supplies only as shall be agreed upon prior to the execution hereof, and will keep its bulk plant and equipment in good repair, except as noted below, and will furnish insurance on buildings and its equipment at said bulk plant and merchandise stocks, and will pay exchange on remittances.
Agent shall keep a complete record of all sales made by Agent in any manner, and all transactions by Agent in connection with performance hereof, which records, together with all bulk plant records entrusted by Continental to Agent or made while this agreement is in effect, shall be delivered to Continental upon the termination of this agreement. Continental shall have the right at any time or times to audit, inventory or otherwise check its products and equipment in the hands of Agent, and all records pertaining thereto.

B. Continental will furnish the necessary paint and materials, and Agent shall, at Agent's expense, furnish the necessary labor to keep leased equipment and bulk plant equipment (except storage tanks and bulkhead) painted and in good condition, and to make minor repairs to same, and promptly report to said Division or District Manager any major work or repairs necessary to keep Continental's property in good condition.

C. In consideration of above commissions, Agent agrees to pay all expenses which may be incurred in the ordinary operation of said bulk plant and the performance hereof by Agent, and shall furnish at Agent's expense suitable automotive equipment with which to perform this agreement, and shall pay all maintenance of same (including gasoline and oil), and shall pay for light, power, water, ice, heat, telephone, telegrams and postage where necessary to the proper conduct of said bulk plant. Continental will at its option furnish the truck tank or tanks.

D. No passenger other than an employee of Agent or of Continental shall be carried in such automotive equipment while engaged in and about performance hereof. Agent will keep displayed in such equipment a conspicuous notice to that effect and will protect Continental against all loss, fees, and expenses incurred by reason of violation of this or the next preceding sentence.

E. Agent accepts and assumes full and exclusive liability for, and agrees to indemnify Continental against, all contributions and taxes for unemployment insurance or compensation, old age pensions, annuities, income and earnings taxes, workmen's compensation, and otherwise, now or hereafter imposed by any law or enactment of the United States or any state or political subdivision, measured by the wages, salaries, or other compensation paid to any persons employed by Agent in connection with the performance hereof, required to be paid by the employer of, or collected from such person or persons so employed. Agent further agrees to enter into any agreement which has been or may be prescribed by any such governmental authority, or requested by Continental, to carry out the purpose in connection with, Agent's agreement in this paragraph. If at any time Agent employs anyone to assist Agent in connection with performance hereof, Agent shall comply with such laws and ordinances as an employer of such assistant, and furnish Continental evidence of such compliance and any other evidence which may reasonably be required by Continental in connection with compliance therewith.

6. Agent hereby releases Continental from all responsibility for damage in case of fire or any accident which may occur while any tank wagons, motor tank trucks, demountable tanks, or packages containing any of Continental's products handled by Agent are stored on premises of Agent.

7. Agent agrees to give such bond as is required by Continental to secure performance of all or any of Agent's agreements herein, with a surety company designated by Continental as surety, and to procure public liability insurance and property damage insurance covering all automotive equipment used by Agent in performance hereof, in the amount of not less than $50,000.00 for each accident for injury or death of one person injured or killed, and the amount of not less than $100,000.00 where more than one person is injured or killed in the same accident, and said property damage insurance to be in the amount of not less than $5,000.00 for each accident. Such insurance policy or policies shall be in a company or companies approved by Continental, and in form approved by Continental, and shall be delivered to Continental.
Agent agrees to protect Continental from and hold it harmless from and indemnify it against all claims, expenses, loss and damage, including damages for injury, death and damage to employees and members of the public, arising from any cause whatsoever out of or in connection with the performance hereof by Agent, regardless of whether such performance is directly by Agent or any employees of Agent, or any other parties under Agent, or any employees of such other party, or all or any of them.

8. A. Agent shall not have the right to conduct any business at or from said bulk plant other than as hereinabove mentioned, without Continental's written consent. Agent shall make no alterations in or additions or improvements to said bulk plant property without Continental's written consent, and shall not, without Continental's written approval, place any sign on said premises or in front of or adjacent thereto except to show that Conoco trade-marked products are being sold at or from said bulk plant.
Continental reserves the right to contract with any third parties for the placing, erection, and maintenance of commercial advertising signs, billboards, or other similar advertising structures or equipment on said bulk plant premises, and to receive all income derived therefrom, provided, however, that such billboards, signs, structures, or equipment shall be so placed as to not unreasonably interfere with the use of said premises by Agent for the purposes hereinabove described.

B. Agent shall comply at Agent's expense with all federal, state, municipal, and other governmental and local laws, rules, regulations and ordinances relating to said bulk plant property and/or activity in or arising out of the operation of said bulk plant, and not violate the same or any insurance policies on said bulk plant property.

C. Any and all parties employed by Agent to assist Agent in connection with performance hereof by Agent shall be employees of Agent, and shall in no event be considered employees of Continental, and shall be hired, paid, and discharged by Agent, and entirely under Agent's direction and control, and their duties and the manner of performance thereof defined by Agent. Agent shall adhere to all laws, ordinances and regulations relating to safety or otherwise with respect to the employment of any such assistants.

9. Agent agrees during the term hereof not to sell, or act as representative or agent for the sale of, any product competitive to those products furnished by Continental, of said bulk plant or in territory tributary thereto.

10. This agreement shall take effect on the _____ day of _____, 19____, and continue until canceled by ten days' written notice by either party to the other, provided that if Agent fails in any respect to comply with this agreement, Continental may immediately terminate it without notice to Agent, or if Agent leases or sells any equipment for the storage or handling of gasoline or other petroleum products in said area to any customer, or replaces such equipment owned by any other party in said area, without the written consent of Continental's Division or District Manager, it may immediately terminate this agreement. Upon the termination hereof, Agent shall forthwith deliver to Continental said bulk plant, and all equipment, property, products, moneys and credits not previously conveyed to, and all other items of whatever kind entrusted by Continental to Agent.
In case of the termination of this agreement, Continental shall have the right at any time within thirty days after such termination to purchase any or all such equipment leased by Agent at the same price for each item involved as Continental shall then be paying to any third party for similar leased equipment in said area and within the time allowed for such purchase may deliver any petroleum product which it may sell into such equipment without charge.
No variation or amendment hereof shall be effective unless in writing, signed by Continental's said Division or District Manager. No waiver of any breach hereof by Agent shall be a waiver of any succeeding or other breach hereof.
Any notice hereunder may be given by Continental by depositing the same in the United States registered mail addressed to Agent at said bulk plant, and by Agent to Continental by depositing the same in the United States registered mail addressed to Continental at said division office.
This agreement constitutes the entire agreement between the parties as to the subjects covered herein, and, as of the effective date hereof, shall be in lieu of any and all existing contracts between the parties involving or relating to the subject matter hereof.

Executed in triplicate at _____, this _____ day of _____, 19____.

CONTINENTAL OIL COMPANY

_____
(Agent Sign Here)

By _____

Title _____

(9) C 5 5

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JAX 318

Commission's Exhibit 233A

318

In the Matter of
The B.F. Goodrich
Company, Et Al
FTC Docket #6485

RESPONSE OF CONTINENTAL OIL COMPANY
TO
ITEM 2(a) OF SPECIFICATION II OF SUBPOENA

(1) During 1951, the credit card issued by Conoco was the so-called "President's Courtesy Card" in the form annexed hereto as EXHIBIT H. Prior to 1951, and possibly during a portion of that year, Conoco also issued a "regular" credit card and the "Touraide" credit card (issued to users of Conoco "Touraide" Road Map Service). The "regular" and "Touraider" credit cards were discontinued and no copies of these cards are available, but they differed from the "President's Courtesy Card" only in name, color and period of validity.

(2) On or about April 1, 1952, Conoco revised its "President's Courtesy Card" to the form which is annexed hereto as EXHIBIT I.

In March, 1953, Conoco installed its credit check system, which was supplementary to the "President's Courtesy Card". The "check" is, in reality, an invoice and is punched so that it can be run through IBM bookkeeping equipment. Credit checks come in pads which are clipped in leatherette or paper containers. The top sheet of the pad constitutes, in effect, a credit card. The top sheet of the credit checkbook is annexed hereto as EXHIBIT J, and a credit "check" is annexed hereto as EXHIBIT J-1. Since the introduction of the credit checkbook system, a minor change in color and arrangement of the credit checkbook has been made, but no substantive change has been made in the conditions of the top sheet or credit checks.

(3) The "President's Courtesy Card" as revised on April 1, 1952 (Exhibit I) and the top sheet of the credit checkbook (Exhibit J) are now, and have been since their effective dates, the forms of credit identification used by Conoco.

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 233A
IN THE MATTER OF B.F. Goodrich Co., et al
DATE 4/1/57 WITNESS
ACE REPORTING CO., Official Reporter
By Gann

8331 2336

112- 36

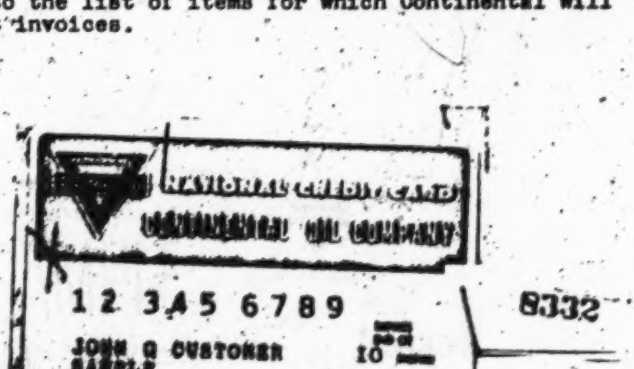
JAX 319

Commission's Exhibit 233B

In the Matter of
The B. F. Goodrich
Company Et Al
FTC Docket #6485

ADDENDUM TO RESPONSE OF CONTINENTAL OIL COMPANY
TO
ITEM 2(a) OF SPECIFICATION II OF SUBPOENA

Since the preparation of the original response to the Subpoena, Continental Oil Company issued a new credit card in the latter part of October, 1957. This credit card is attached hereto and is the authorized credit card of the company effective November 1, 1957. This card is the "charge-a-plate" type and represents a departure from our credit check book system. The only material change in the conditions of the card is the inclusion of Firestone tires, batteries and accessories to the list of items for which Continental will accept credit invoices.



FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 233B
8332 33 (B)

143 37

EXHIBIT H

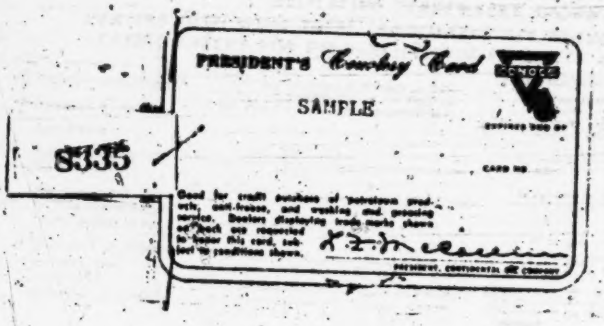


EXHIBIT I

233(c)

8339

FEDERAL TRADE COMMISSION
DOCKET NO. 6885 EXHIBIT NO. 233C

JAX 321

Commission's Exhibit 233D

EXHIBIT J

CONOCO CREDIT CHECKS MAY BE USED FOR RETAIL PURCHASES FROM DEALERS DISPLAYING TRADEMARKS SHOWN BELOW

DEALERS DISPLAYING THESE TRADEMARKS ARE REQUESTED TO HONOR CONOCO CREDIT CHECKS FOR THE PURCHASE OF PRODUCTS AND SERVICES AS LISTED

RETAIL QUANTITIES OF:

Petroleum Products

Anti-freeze

Washing and Greasing Service

The following if mounted or installed on vehicle at time of sale:

Goodrich Tires, Tubes, Batteries, and Accessories authorized by Conoco.

SIGNATURE:

Deliveries of Products or Services on This Book are to be made only on my Signature and Their Signatures covering ABOVE lines.

1. _____

2. _____

3. _____

4. _____

Note: If holder of credit check book advises deliveries made only to himself, sign on signature line 1. Otherwise sign on line immediately following signatures of others authorized to purchase.

CONDITIONS COVERING USE OF CONOCO CREDIT CHECKS

1. By acceptance of these Credit Checks customer agrees to pay all charges made thereby unless they are lost or stolen and customer has given written notice to the effect to Conoco.

2. Payment due within 15 days from date of monthly statement.

3. Customer or those authorized by Customer to use Conoco Credit Checks shall present said Credit Check Book and sign a check for each purchase made.

4. This Credit Check Book may be cancelled and delivery refused at any time without notice and after receipt of cancellation notice, the holder shall surrender this Credit Check Book.

YOU Are Invited To Use Your Conoco Credit Checks at Stations Displaying These Trademarks in the United States and Canada.

8340

EXHIBIT J-1

DATE 1 1 | 62 | 02 | 34 1 170 8 24 | JOHN DOE

SIGNATURE

CONOCO GASOLINE

CONOCO SUPER GASOLINE

CONOCO SUPER MOTOR OIL

CHASSIS LUBRICATION

SALES TAX

TOTAL

TOTAL

PLEASE DO NOT FOLD, STAPLE OR MUTILATE

NOT GOOD FOR PURCHASES

CREDIT CHECK

ORIGINAL INVOICE O DEALER OF CONTINENTAL OIL C MPANY

ALL APPLICABLE FEDERAL, STATE AND LOCAL TAXES INCLUDED IN PRICES UNLESS OTHERWISE STATED

PLEASE DO NOT FOLD, STAPLE OR MUTILATE

8342

233 (J)

FEDERAL TRADE COMMISSION

DOCKET NO. 6760 EXHIBIT NO. 233D

8343

14.5

37

JAX 322

Commission's Exhibit 234A

FEDERAL TRADE COMMISSION
Exhibit No. 234-A
B. F. Goodrich Co. et al
6485
WITNESS
Official Reporter
11/3/53

In the Matter of
The B.F. Goodrich
Company, Et Al
FTC Docket #6485

RESPONSE OF CONTINENTAL OIL COMPANY
TO
ITEM 2(b) OF SPECIFICATION II OF SUBPOENA

Conoco has never issued "instructions" to Conoco outlets relative to the use of credit cards or credit checks. Conoco has, at various times, "requested" or "recommended" that retail dealers of its branded products honor the identification cards specified and extend retail credit to the holders thereof (see the aforementioned Exhibits H, I and J). No dealer is compelled to honor such cards (or credit checkbooks) if he does not wish to do so. If the dealer does elect to honor the Conoco credit identification cards (or the credit identification cards of those companies with which Conoco has reciprocal exchange agreements), he may assign to Conoco, without recourse, all invoices representing sales made in compliance with the conditions printed on the cards. Conoco accepts such invoices at their face amount, which amount is thereupon either credited to the dealer's account with Conoco or else paid to the dealer in cash.

Prior to April, 1952, dealers handling Conoco branded gasoline had been furnished a so-called "Mileage Merchants' Guide" in the form annexed hereto as EXHIBIT K, which furnished them certain information as to the handling of credit card sales. In April, 1952, at the time of the revision of the "President's Courtesy Card", a so-called "gummed sticker" was furnished to each dealer for attachment to the Mileage Merchants' Guide. This gummed sticker advised the dealers that Conoco would accept invoices for Goodrich tires, tubes, batteries and accessories under certain specified conditions. A copy of this gummed sticker is annexed hereto to Exhibit K and is identified as EXHIBIT K-1.

On August 1, 1952, competitive considerations caused Conoco to liberalize its retail credit policy by offering 30-, 60- and 90-day extended payment terms on credit card sales of tires, tubes and batteries. This change was announced to all "Conoco Mileage Merchants" (i.e., retailers of Conoco branded gasoline) by mailing or delivering to all of said dealers a detailed notice of Conoco's new policy as to extended terms. A copy of this notice is annexed hereto as EXHIBIT L.

In 1953, when Conoco installed its credit check system, the so-called "Mileage Merchants' Guide" was revised and a copy

146 /c 8311 234(a)

of the revised Guide furnished to all branded gasoline dealers. A copy of this revised "Mileage Merchants' Guide" is annexed hereto as EXHIBIT M. At approximately the same time, a booklet dealing only with the new credit checkbook system was furnished to each branded gasoline dealer, and a copy of this booklet is annexed hereto as EXHIBIT N.

On March 15, 1955, competitive considerations also caused Conoco to further liberalize its retail credit policy by offering three-month and six-month extended payment terms on credit card sales of tires, tubes, batteries, and certain accessories. This change was announced to branded gasoline dealers by furnishing them a detailed notice of such new extended payment terms. A copy of this notice is annexed hereto as EXHIBIT O.

In the latter part of 1955, another revision of the "Conoco Dealers Guide" was made and a copy of the revised Guide was furnished to all branded gasoline dealers. A copy of this revised "Conoco Dealers Guide" is annexed hereto as EXHIBIT P.

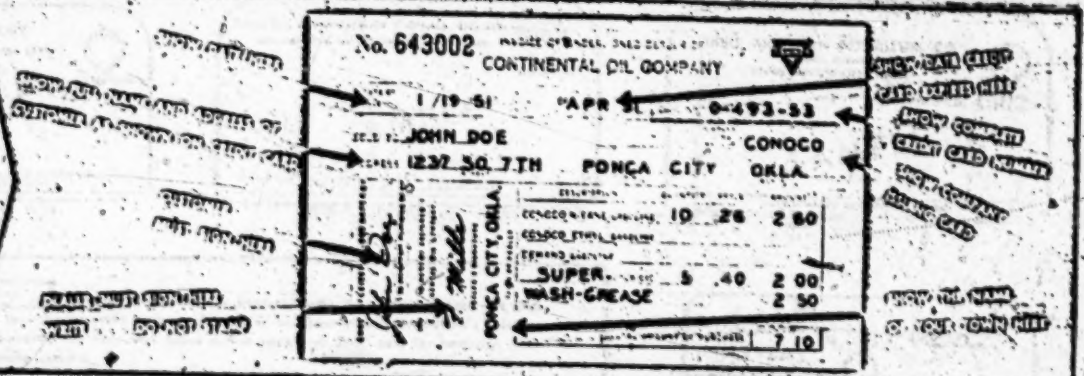
On July 24, 1956, Conoco's Marketing field offices were advised by Mr. E. B. Peterson, General Credit Manager, that they were authorized to accept assignment of invoices from lessees and dealers covering sales of Firestone tires, tubes, batteries and certain accessories to holders of valid credit identification. A copy of this letter is annexed hereto as EXHIBIT Q. Unlike previous procedure, there was no uniform printed form of notice to Conoco branded gasoline dealers furnished to the field offices by the General Credit Manager for distribution by those offices to the dealers. As a result thereof, there was no uniformity in the time or in the manner of notification by Conoco's various field offices to Conoco branded gasoline dealers that they were authorized to make sales of Firestone TBA on valid credit identification cards. In many instances, this notice was verbally communicated to Conoco's lessees and direct contract dealers by Conoco's commission agents and field personnel, and Conoco's jobbers were notified in writing. These jobbers, in turn, verbally notified their dealers who sold Conoco branded gasoline. Illustrative of this procedure are copies of two notification letters issued by the Credit Manager of the Chicago Division, which are annexed hereto as EXHIBITS Q-1 and Q-2.

645 234B
8315 234(A)

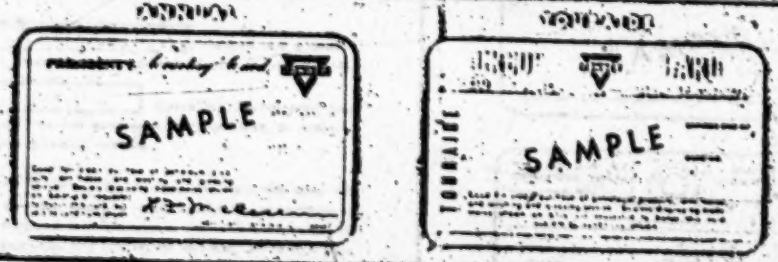
MILEAGE MERCHANTS' GUIDE

How to Handle Credit Card Sales

USE THIS INVOICE FORM FOR SALES TO HOLDERS OF CONOCO CREDIT CARDS



THESE ARE THE CONOCO CREDIT CARDS



IMPORTANT!

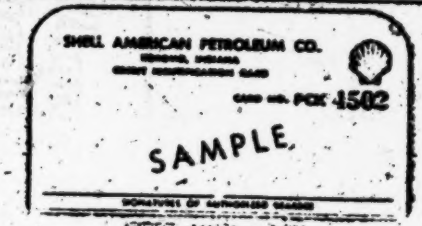
1. Watch expiration dates on credit cards
2. Read cover on invoice book
3. Invoices must show complete credit card numbers
4. Invoices must be prepared legibly and completely
5. Invoices must be signed by customers

Commission's Exhibit 2340-1

JAX 124

8316

USE THE CONOCO INVOICE FORM FOR SALES TO HOLDERS OF THE CREDIT CARDS SHOWN BELOW



Shell Oil Company Annual cards may be honored only for petroleum products and anti-freeze delivered into the gasoline tank, crankcase, or radiator of the cardholder's vehicle. They may also be honored for tires and tubes not in excess of $150 and for batteries, and lubricating and washing service.

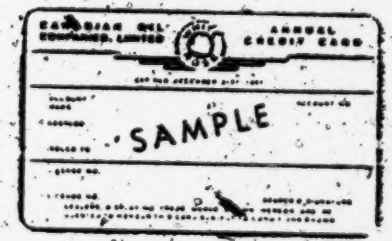
Quarterly cards may be honored for the same merchandise as annual cards except tires and tubes shall not exceed $75.

Shell Oil Annual and quarterly cards may be honored in the same manner as Shell Oil Company annual and quarterly cards.

Shell Cards may be honored only for petroleum products and anti-freeze delivered into the gasoline tank, crankcase, or radiator of the cardholder's vehicle and for washing and greasing service.

Union Oil Company of California Cards may be honored only for petroleum products and anti-freeze delivered into the gasoline tank, crankcase, or radiator of the cardholder's vehicle. They may also be honored for automobile accessories necessary to the operation of an automobile, lubricating, washing, and tire repair services, up to four tires and tubes, and batteries.

Canadian Oil Companies, Limited Cards may be honored only for petroleum products and anti-freeze delivered into the gasoline tank, crankcase, or radiator of the cardholder's vehicle. They may also be honored for lubricating and washing service, and for tires, tubes, and batteries.



Commission's Exhibit 2382-2

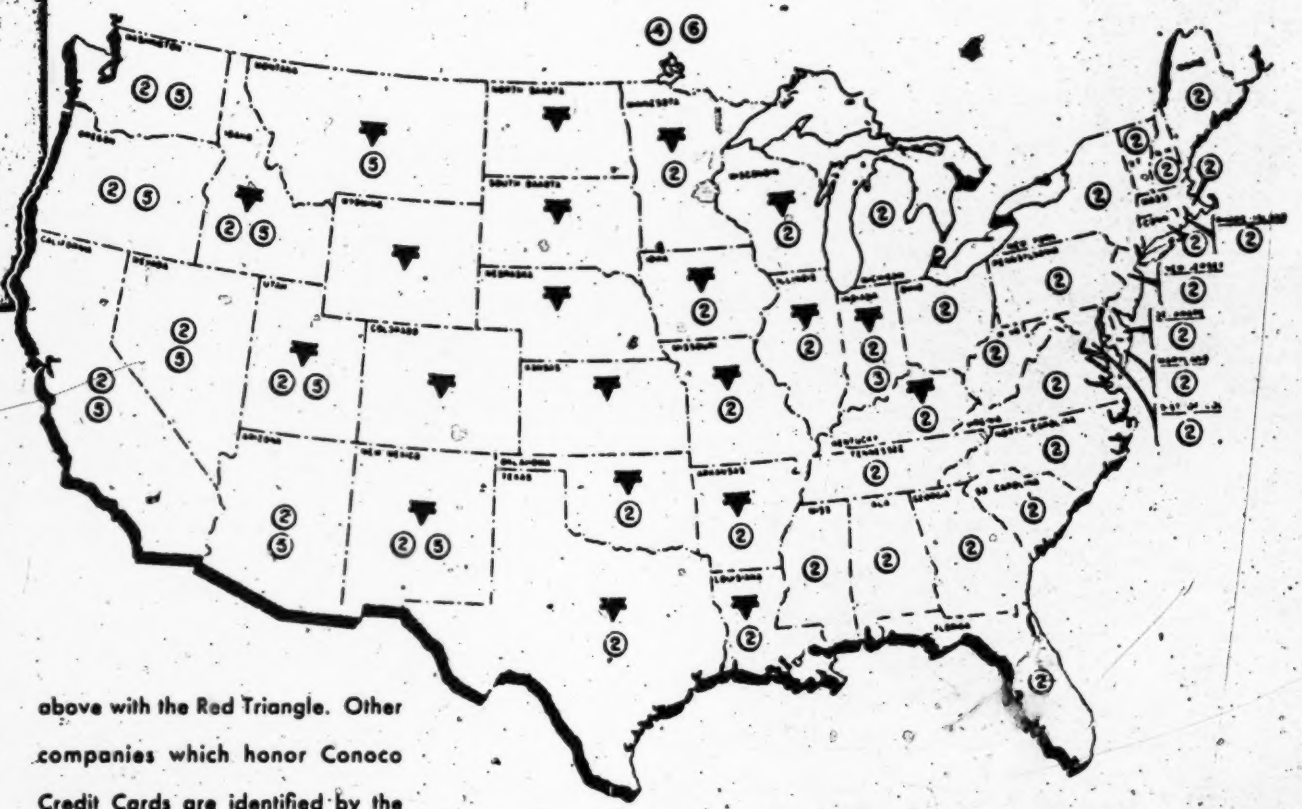
8719

JAX 326

Commission's Exhibit 234C-3

EXHIBIT K and EXHIBIT K-1

Where Conoco Credit Cards Are Honored And By Whom



Continental Oil Company has distribution in 21 states, although more complete in some states than in others. The above map is presented to show not only those states in which Conoco service is available, but also those states in which other companies honoring the Conoco Credit Card have distribution. States in which Continental has substantial distribution are marked above with the Red Triangle. Other companies which honor Conoco Credit Cards are identified by the following numbered symbols:

Limited Conoco Service in Some States Not Marked Above With Red Triangle

In Arizona, California, Nevada, Oregon, Washington, and at scattered points in some North Atlantic States and southeastern states, Conoco Super Motor Oil can frequently be purchased from dealers selling other brands of gasoline.

② SHELL OIL COMPANY

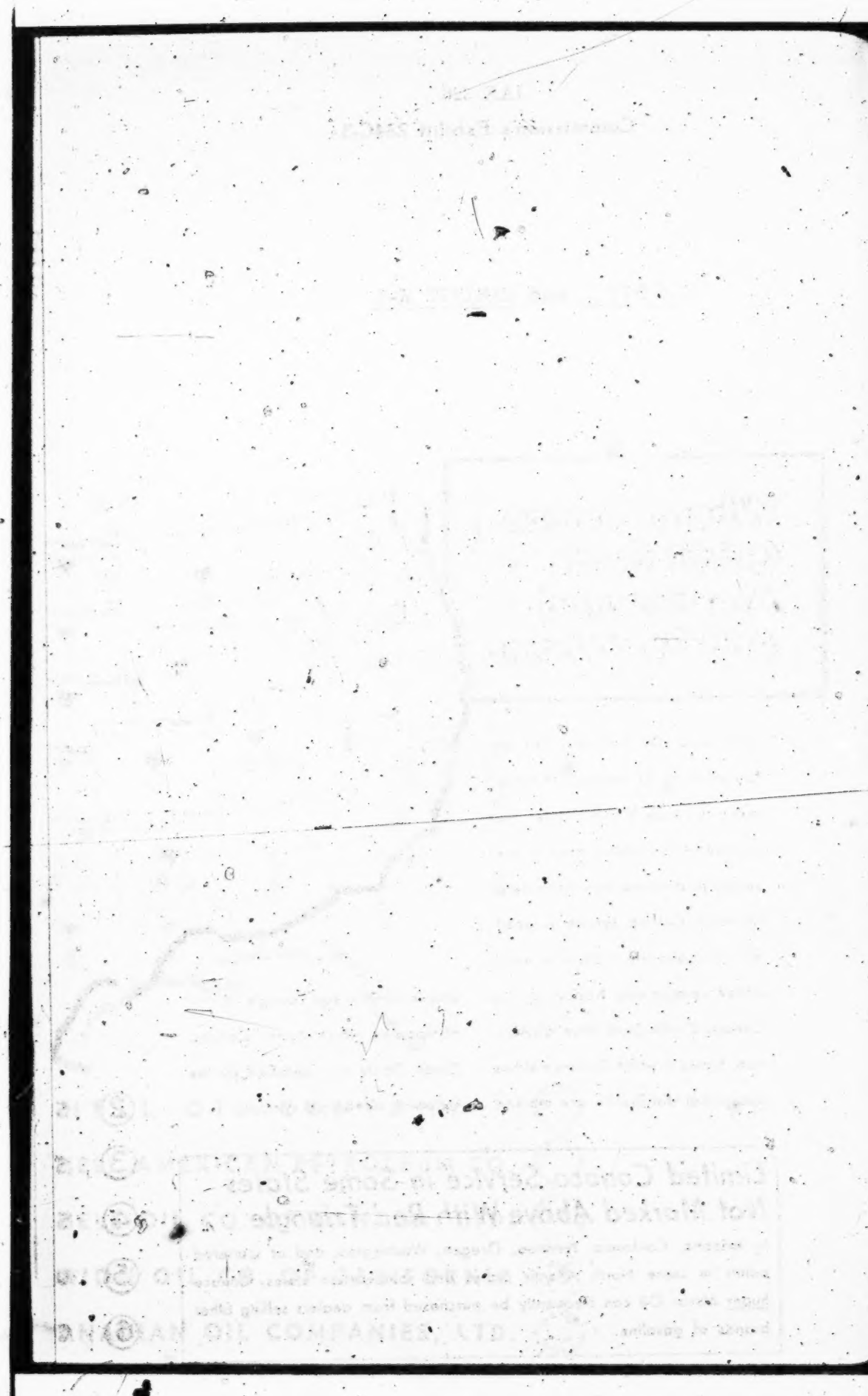
③ SHELL AMERICAN PETROLEUM CO.

④ SHELL OIL CO. OF CANADA, LTD.

⑤ UNION OIL CO. OF CALIFORNIA

⑥ CANADIAN OIL COMPANIES, LTD.

157



THIS IS

THE NEW CONOCO

CREDIT CARD

It will be issued in replacing all expiring credit cards in 1952.

FEDERAL TRADE COMMISSION

DOCKET NO. 4415 COMPLAINT EXHIBIT NO. 234-D

(President's Courtesy Card Pictured Here)

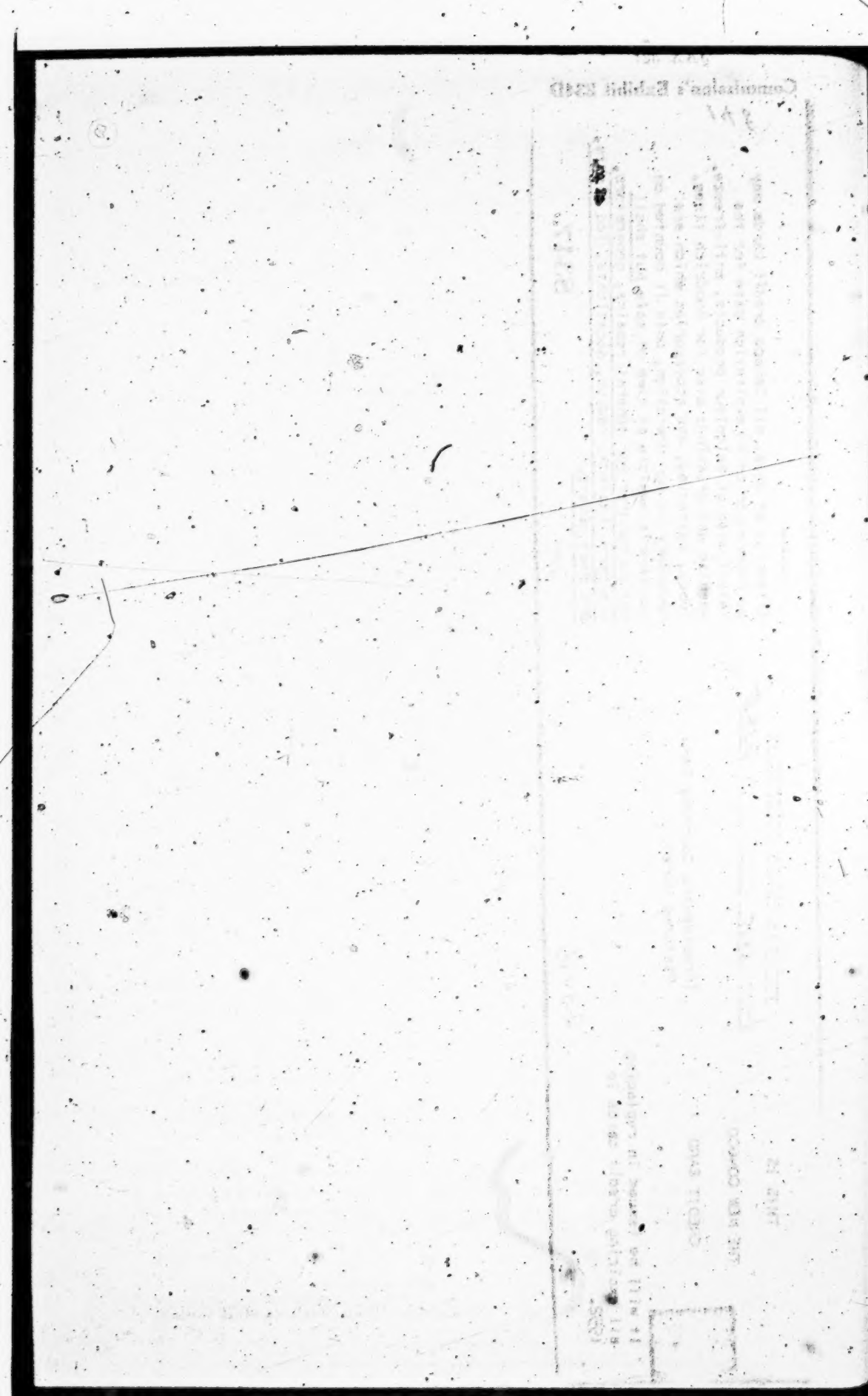
234(d)

Effective at once, all Conoco credit cards may be honored prior to expiration date for the retail sale of petroleum products, anti-freeze, washing and greasing; also for Goodrich tires, tubes, batteries, and accessories which are necessary to car operation, only if mounted on customer's vehicle at time of sale but shall not be honored for general repairs, generators, starters, heaters, radios, spotlights, fog lights, and seat covers.

8347

Commission's Exhibit 234D

JAX 327



JAX 388

Commission's Exhibit 234E-1

EXHIBIT L

IMPORTANT NOTICE

TO

CONOCO MILEAGE MERCHANTS

WHO SELL

GOODRICH TIRES, TUBES, AND BATTERIES

Extended Payment Terms on Sales of Goodrich Tires, Tubes, and Batteries

Effective August 1, 1952, Continental Oil Company will accept assignment of invoices from Conoco Mileage Merchants covering the sale of B. F. Goodrich tires, tubes, and batteries to holders of valid unexpired Conoco President's Courtesy cards, subject to the conditions outlined below

NOTE. These extended terms do not apply to other customers and do not apply to sales of petroleum products, services, or any items other than Goodrich tires, Goodrich tubes, and Goodrich batteries.

CONDITIONS

(1) Applicable only on sales to holders of valid Conoco President's Courtesy Cards. Does not apply to holders of other companies' credit cards.

(2) Applicable only on sales by Conoco dealers of B. F. Goodrich tires, tubes, and batteries. Not good on petroleum products or other accessories.

(3) Extended payment terms for one, two, three or more items which must be installed on customer's car at time of sale, are as follows:

Number of Items Purchased at One Time	Due and Payable from Date of Statement as:
One item	All in 30 days
Two items	½ in 30 days ½ in 60 days
Three or more items	⅓ in 30 days ⅓ in 60 days ⅓ in 90 days

One tire is one item; one tire and one tube is one item; one battery is one item.

(4) Items sold on extended terms must be listed on one invoice (Form 16-304-BBX 3) and no other products or accessories may be listed on the invoice. Write diagonally across the face of the invoice the words "Extended terms" in large letters.

Upon receipt in the division office, "extended terms" invoices will be processed to provide extended terms billings to your customers applicable to the number of items on the invoice. At the time of sale be sure to explain these terms to your customer. In no case should the extended payment terms be made for more than ninety (90) days. See paragraph (3) above.

16

8352

FEDERAL TRADE COMMISSION

DOCKET NO. [illegible] EXHIBIT NO. 234E

16

JAX 329

Commission's Exhibit 234Z-2

EXHIBIT M

329

MILFARE MERCHANTS' GUIDE

HOW TO HANDLE CREDIT SALES

Conoco Credit Checks and Credit Cards may be honored [illegible] for sale, in retail quantities only, of petroleum products, anti-freeze, washing and greasing; also for B. F. Goodrich tires, tubes, batteries, and accessories which are necessary to car operation, but only if mounted on customer's vehicle at time of sale, but shall not be honored for general repairs, [illegible], starters, heaters, radios, spotlights or [illegible].

Extended payment terms may be given only to holders of valid Conoco Petroleum Company Cards and Conoco Credit Checks, and only for the sale of B. F. Goodrich tires, tubes, and batteries. Extended terms are not good on other companies' credit cards.

Extended payment terms for one, two, three, or more items, which must be installed on customer's car at time of sale, are as follows:

Number of Items Purchased at One Time	Due and Payable from Date of Statement by
One Item	All in 30 days
Two Items	½ in 30 days, ½ in 60 days
Three or more Items	⅓ in 30 days, ⅓ in 60 days, ⅓ in 90 days

One tire & any item; one tire and one tube is one item; one battery is one item.

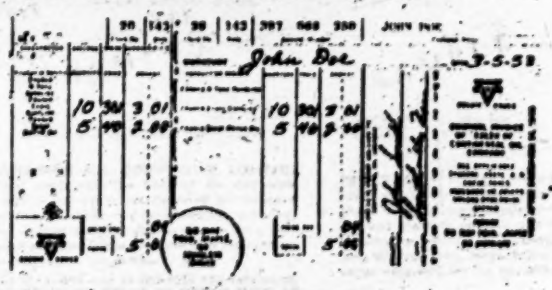
[illegible] BASIS OF B. F. GOODRICH TIRES, TUBES, OR BATTERIES ARE MADE ON [illegible] PAYMENT TERMS, UNLESS [illegible] "PREFERRED TERMS" AS LISTED ABOVE NOTWITHSTANDING ANYONE THE FACE OF INVOICE OR CREDIT SLIPS.

CONOCO CREDIT CHECKS

when credit check is used no other invoice is required

1. ENTER DATE AND DETAILS OF PURCHASE ON CHECK AND STUB.
2. OBTAIN AND VERIFY CUSTOMER'S AUTHORIZED SIGNATURE ON CHECK.
3. DETACH AND RETAIN CHECK.
4. RETURN BOOK TO CUSTOMER.
5. WRITE OR STAMP NAME OF STATION AND ADDRESS IN SPACE PROVIDED ON CHECK.

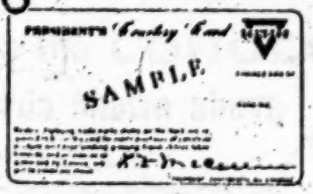
[illegible] SAME EXPENSES WITH THE USE OF THE BOOKS OF PURCHASE AND ITEM CHECK WHEN SUCH CAN BE OBTAINED. BE QUICK CARE IS NOT BE NECESSARY ONLY TO CHECK THE PERSON FOR ACCURACY, VERIFY THE AUTHORIZED SIGNATURE, AND RETAIN CHECK

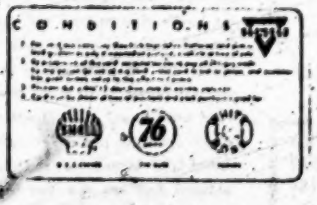


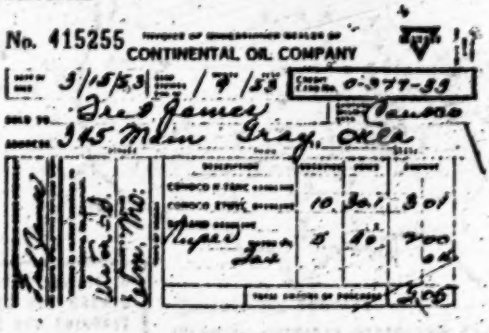
CONOCO CREDIT CARDS

which expiration dated as credit cards

When credit cards are used, make invoice, being sure to fill out completely the following information in spaces provided.







you are requested to honor credit cards issued by

SHELL OIL COMPANY
SHELL OIL COMPANY OF CANADA, LIMITED
SHELL CHEMICAL PETROLEUM COMPANY

UNION OIL COMPANY OF CALIFORNIA
CANADIAN OIL COMPANIES, LIMITED
WESTCOTT OIL CORPORATION

153

8353

JAX 330

Commission's Exhibit 234F

credit cards shown below may be honored for the sale of the products and services listed under each card

SHELL OIL COMPANY

SAMPLE

SHELL OIL COMPANY and SHELL OIL COMPANY OF CANADA, LIMITED, credit cards may be honored for petroleum products delivered into the cardholder's motor vehicle; lubrication service, tire and battery service, car washing and polishing; tires, tubes, batteries, and automotive accessories, as authorized, when mounted on or attached to bearer's PASSENGER car.

SHELL OIL COMPANY OF CANADA, LIMITED

SAMPLE

SHELL AMERICAN PETROLEUM CO.

PCX 4562

SAMPLE

SHELL AMERICAN PETROLEUM COMPANY credit cards may be honored for the purchase of petroleum products only and when delivered into the bearer's vehicle.

UNION OIL COMPANY OF CALIFORNIA

SAMPLE

UNION OIL COMPANY OF CALIFORNIA credit cards may be honored for petroleum products delivered into the gasoline tank or crankcase of the cardholder's motor vehicle; up to four tires (passenger size), battery, lubrication and battery service, and tire repairs. Tires must be mounted on and battery attached to vehicle at time of sale.

Canadian Oil Companies

1953

SAMPLE

CANADIAN OIL COMPANIES, LIMITED, credit cards may be honored for petroleum products and anti-freeze delivered into bearer's automotive vehicle, and for lubrication, greasing, car washing and tire repairs; also for tires, batteries and automobile accessories, if mounted on or attached to car at time of sale.

THIS CARD MAY NOT BE HONORED FOR REPAIRS OR ANY SERVICE OR STORAGE OR SERVICES EXCEPT AS SPECIFIED ABOVE.

WESTCOTT OIL CORPORATION

SAMPLE

WESTCOTT OIL CORPORATION credit cards may be honored for the retail purchase of petroleum products, anti-freeze, washing and greasing services, and the following if delivered or installed on cardholder's vehicle: tires, tubes, batteries, and accessories necessary for the operation of the vehicle.

IMPORTANT NOTICE

Sales on budget forms or extended payments are NOT to be made on cards issued by other companies.

Government Identification Cards issued by other companies should NOT be honored, as invoices against the U. S. Government cannot be assigned for collection.

use the CONOCO invoice form for sales to holders of cards shown above

Continental Oil Company has distribution in 24 states, although more complete in some states than in others. The map at right shows not only those states in which Conoco service is available, but also those states in which other companies honoring the Conoco Credit Card have distribution. States in which Continental has substantial distribution are marked with the Red Triangle. Other companies which honor Conoco Credit Cards and Credit Checks are identified by the numbered symbols shown on the map.

LIMITED CONOCO SERVICE IN SOME STATES NOT MARKED ABOVE WITH RED TRIANGLE

In Arizona, California, Nevada, Oregon, Washington, and in scattered points in some North Atlantic States and southeastern states, Conoco Super Motor Oil can be purchased from many dealers selling other brands of gasoline.

② SHELL OIL COMPANY

③ SHELL AMERICAN PETROLEUM CO.

④ SHELL OIL CO. OF CANADA, LTD.

⑤ UNION OIL CO. OF CALIFORNIA

⑥ CANADIAN OIL COMPANIES, LTD.

8354

JAX 331

Commission's Exhibit 234H

EXHIBIT O

IMPORTANT NOTICE TO CONOCO RETAILERS OF B. F. GOODRICH PRODUCTS
NEW EXTENDED PAYMENT TERMS

Effective March 15, 1955, Continental Oil Company will accept credit checks or invoices from Conoco dealers covering sales of tires, tubes, batteries, and accessories necessary to car operation on new extended payment terms subject to the following conditions:

1. Applicable only on sales to holders of valid Conoco Credit Checks and Conoco President's Courtesy Cards, where desired and requested by customers.

2. Applicable only on sales by Conoco dealers of new B. F. Goodrich tires, tubes, batteries, and accessories which are necessary to car operation and only if mounted on the customer's vehicle at time of sale.

3. Extended payment terms will not apply on generators, starters, heaters, radios, spot lights, fog lights, or general car repairs.

4. Extended payment terms will not be applicable on gasoline motor oil, car service work, or other petroleum products.

5. The minimum sale for extended payment terms is $30.

6. Sales from $30 to $50 (net after trade-in or other allowances) are to be paid in three equal monthly installments.

7. Net purchases of $50 or more are to be paid in six equal monthly installments. Both the 3-month and 6-month plans may be paid in shorter periods if the customer desires.

8. There is no down payment or service charge for the extended payment plan.

9. To facilitate invoicing and accounting, all B. F. Goodrich tires, tubes, batteries, and accessories sold on extended payment terms shall be listed on one invoice and nothing else listed thereon.

10. Write in large letters across the face of the credit check or invoice either "EXTENDED TERMS - 3 MONTHS" or "EXTENDED TERMS - 6 MONTHS."

These extended term credit checks and invoices will be processed to provide for extended term billing applicable to the number of months involved in payment. At the time of the sale, be sure to explain these terms to your customer. In no case should the extended payment terms be made for more than 6 months (see paragraph 7 above).

These extended payment terms, when desired or requested by customer, may be granted to holders of valid Westcott Oil Corporation and Shell Oil Company credit cards under same conditions outlined above. (Note: This arrangement does not apply on credit card exchanges with Shell American Petroleum Company, Shell Oil Company of Canada, Union Oil Company, or Canadian Oil Companies.)

FEDERAL TRADE COMMISSION
DOCKET NO. 6985 — EXHIBIT NO. 234-H

CONTINENTAL OIL COMPANY

127 8369 234 (h)

JAX 332

Commission's Exhibit 2341-1

CONOCO DEALERS' GUIDE

HOW TO HANDLE CREDIT SALES

Conoco Credit Checks and Credit Cards may be honored prior to expiration date for sale, in retail quantities only, of petroleum products, anti-freeze, washing and greasing as by E. F. Goodrich Tires, tubes, batteries, and accessories which are necessary to our operation, but only if issued as customer's vehicle at time of sale, but shall not be honored for ground repairs, guarantees, chassis, bumpers, radios, spotlights or foglights.

Extended payment terms may be given only to holders of the following cards or checks:

1. Conoco Credit Checks.
2. Conoco President's Courtesy Cards.
3. Shell Oil Company Credit Cards.*
4. Wisconsin Oil Corporation President's Courtesy Cards.

Extended Payment Terms Conditions

1. Applicable only on sales by Conoco dealers of new E. F. Goodrich tires, tubes, batteries, and accessories which are necessary to our operation and only if recommended on the customer's vehicle at time of sale.

2. The minimum sale for extended payment terms is $20.

3. When authorized by customer the following terms may be granted:

A. Sales from $20 to $50 may either be billed in or after 60 days and may be paid in three (3) equal monthly installments.

B. Any purchase of $50 or more may be so paid or on 90 days' monthly installments. Both the 3 month and 6 months plans may be paid by regular payment or discount.

4. There is no down payment or service charge for the extended payment plan.

SALES OF E. F. GOODRICH TIRES, TUBES, BATTERIES, AND ACCESSORIES ARE MADE ON EXTENDED PAYMENT TERMS, PLEASE CHART WHETHER SALES "INTENDED TERMS — 3 MONTHS" OR "INTENDED TERMS — 6 MONTHS" OR LARGE LETTERS DIAGONALLY

ACROSS THE FACE OF THE REVERSE OR CREDIT CHECK. THIS INFORMATION ON CREDIT CHECK IS USED FOR "EXTENDED PAYMENT" SALES. CREDIT SALES ON SERVICES SHOULD NOT BE SHOWN ON THE SAME INVOICE OR CHECK.

*Extended payment plans are also to be made on sales issued by Shell Oil Company of Canada, and Shell American Petroleum Company.

CONOCO CREDIT CHECKS

when credit check is used no other invoice is required

- ENTER DATE AND DETAILS OF PURCHASE ON CHECK AND STUB.
- OBTAIN AND VERIFY CUSTOMER'S AUTHORIZED SIGNATURE ON CHECK.
- DETACH AND RETAIN CHECK.
- RETURN BOOK TO CUSTOMER.
- WRITE OR STAMP NAME OF STATION AND ADDRESS IN SPACE PROVIDED ON CHECK.

20 143 20 143 397 060 250 JOHN DOE

John Doe 7/6/51

10 Mil 301 10 Mil 301

5 45 995 5 45 995

John Smith
Anytown, Texas

95 95

5 81 5 81

SOME SALES OVERSIGHTS ARE THE OUT THE DETAILS OF PURCHASE AND SIGN CHECK WHEN YOUR CAR IS GIVEN SERVICE. IN SUCH CASES IT WILL BE NECESSARY ONLY TO CHECK THE ENTRIES FOR ACCURACY, VERIFY THE AUTHORIZED SIGNATURE, AND RETAIN STUB.

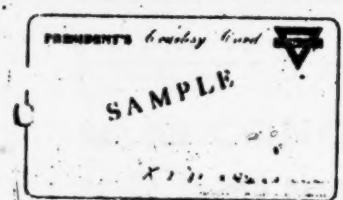
DO NOT PUNCH, STAPLE OR MUTILATE

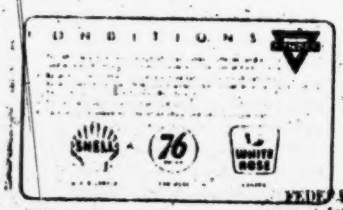
CONOCO CREDIT CARDS

watch expiration dates on credit cards

When credit cards are used, make invoice, being sure to fill out completely the following information in spaces provided.

- ENTER DATE.
- ENTER CAR CARD NUMBER.
- ENTER DUPLICATE CREDIT CARD NUMBER.
- ENTER COMPANY ISSUED CARD.
- ENTER FULL NAME AND ADDRESS OF CUSTOMER, AS SHOWN ON CARD.
- ENTER DETAILS OF PURCHASE — QUANTITIES, ITEMS, AMOUNTS AND TOTAL.
- BE SURE TO HAVE CUSTOMER SIGN INVOICE.
- WRITE OR STAMP DEALER'S NAME AND LOCATION.
- GIVE CUSTOMER PAPER COPY OF INVOICE.





CREDIT CARD NUMBER 310 — 377 — 390

DEALER INVOICE

Conoco

DATE 7-5-51

ITEMS OF SALE	QUANTITY	PRICE	AMOUNT
MOTOR GASOLINE	10	301	3 01
MOTOR OIL	5	45	995
		SALES TAX	45
		TOTAL	5 81

SOLD TO Fred Jones

ADDRESS 840 Main

CITY AND STATE Anytown, Texas

X Fred Jones

DEALER'S NAME AND LOCATION Smith Conoco U.S.

AND TOWN Anytown, Texas

AS SAY PAID GOODS OR SERVICES

FEDERAL TRADE COMMISSION

DOCKET NO. 5477 FILED MAY 2 1951

DO NOT PUNCH, STAPLE OR MUTILATE

You are requested to honor credit cards issued by

SHELL OIL COMPANY
SHELL OIL COMPANY OF CANADA, LIMITED
SHELL AMERICAN PETROLEUM COMPANY

UNION OIL COMPANY OF CALIFORNIA
CANADIAN OIL COMPANIES, LIMITED
WESTCOTT OIL CORPORATION

Exhibit P 168 8371

JAX [illegible]

Commission's Exhibit 2341-2

credit cards shown below may be honored for the sale of the products and services listed under each card

SHELL OIL COMPANY

SAMPLE

SHELL OIL COMPANY and SHELL OIL COMPANY OF CANADA, LIMITED, credit cards may be honored for petroleum products delivered into the cardholder's motor vehicle, lubrication service, tire and battery service, car washing and polishing; tires, tubes, batteries, and automotive accessories, as authorized, when mounted on or attached to bearer's PASSENGER car.

SHELL OIL COMPANY OF CANADA, LIMITED

SAMPLE

SHELL AMERICAN PETROLEUM CO.

SAMPLE

SHELL AMERICAN PETROLEUM COMPANY credit cards may be honored for the purchase of petroleum products only and when delivered into the bearer's vehicle.

Union Oil Company of California

SAMPLE

UNION OIL COMPANY OF CALIFORNIA credit cards may be honored for petroleum products delivered into the gasoline tank or crankcase of the cardholder's motor vehicle; up to four test (passenger steel, battery, lubrication and battery service, and tire repairs. Tires must be mounted on and battery attached to vehicle at time of sale.

CANADIAN OIL COMPANIES, LIMITED Charge-O-Plates may be honored for petroleum products and anti-freeze delivered into bearer's automotive vehicle, and for lubrication, greasing, car washing and tire repairs; also for tires, batteries and automobile accessories, if mounted on or attached to car at time of sale.

THIS CHARGE-O-PLATE MAY NOT BE HONORED FOR REPAIRS OF ANY NATURE OR STORAGE OR SERVICES EXCEPT AS SPECIFIED ABOVE.

PRESIDENT'S COURTESY CARD

SAMPLE

Westcott Oil Company

WESTCOTT OIL CORPORATION credit cards may be honored for the retail purchase of petroleum products, chassis lubrication, car washing and greasing services, and the following if mounted or installed on cardholder's vehicle at time of sale: Tires, tubes, batteries, and accessories necessary for the operation of the car.

IMPORTANT NOTICE

Extended payment terms are NOT to be made on cards or checks issued by Shell Oil Company of Canada, Shell American Petroleum Company, Union Oil Company, or Charge-O-Plates issued by Canadian Oil Companies.

Government Identification Cards issued by other companies should NOT be honored, as invoices against the U. S. Government cannot be assigned for collection.

use the CONOCO invoice form for sales to holders of cards shown above

Continental Oil Company has distribution in 27 states, although more complete in some states than in others. The map at right shows not only those states in which Conoco service is available, but also those states in which other companies honoring Conoco Credit Checks and Cards have distribution. States in which Continental has substantial distribution are marked with the Red Triangle. Other companies which honor Conoco Credit Checks and Cards are identified by the numbered symbols shown on the map.

WHERE CONOCO CREDIT CHECKS AND CREDIT CARDS ARE HONORED AND BY WHOM

LIMITED CONOCO SERVICE IN SOME STATES NOT MARKED ABOVE WITH RED TRIANGLE

In Arizona, California, Nevada, and at scattered points in some North Atlantic States and southeastern states, Conoco Credit Checks and Cards are honored by many dealers selling other brands of gasoline.

② SHELL OIL COMPANY

③ SHELL AMERICAN PETROLEUM CO.

④ SHELL OIL CO. OF CANADA, LTD.

⑤ UNION OIL CO. OF CALIFORNIA

⑥ CANADIAN OIL COMPANIES, LTD.

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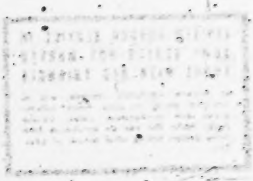


JAX 334

Commission's Exhibit 234J

EXHIBIT Q

COPY

Houston, Texas
July 24, 1956

TO: Regional Managers of Marketing
Division Managers
Division Credit Managers

SUBJECT: SALES COMMISSION ARRANGEMENT - FIRESTONE TIRE AND RUBBER COMPANY

As you have been advised the Firestone Tire and Rubber Company has become an additional endorsed supplier of T. B. A. to Conoco accounts.

Effective at once you are authorized to accept by assignment from lessees and dealers invoices covering sales of Firestone tires, tubes, batteries, and accessories which are necessary to car operation, to holders of valid credit identification.

The regular extended terms outlined in the Conoco Dealers' Guide will apply also to Firestone tires, tubes, batteries and accessories.

The Conoco Dealers' Guide, credit check book covers and credit cards will be revised at an early date to include reference to Firestone T. B. A. items.

E. B. Peterson
General Credit Manager

EBP-SD

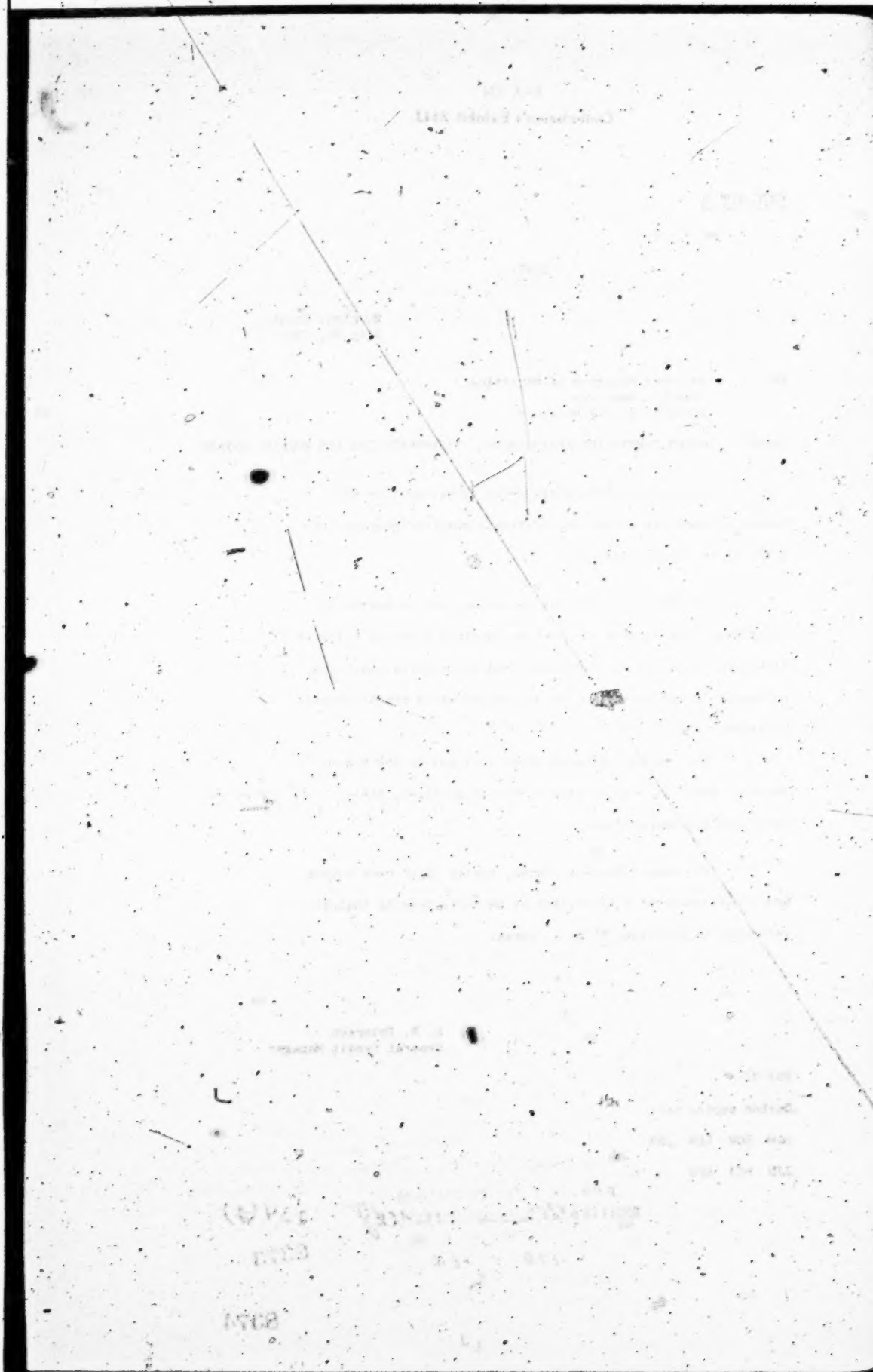
Carbon copies to:

EAV ECV LES JHS

JJD RES EPS

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 234(J)
170 64
8373

8374



JAX 335

Commission's Exhibit 238A

CONTINENTAL OIL COMPANY

Continental Tire

Ponca City, Oklahoma
January 31, 1952

TO: All Division Managers

SUBJECT: THE MARKETING OF TIRES, BATTERIES, AND ACCESSORIES THROUGH CONTINENTAL'S SALES OUTLETS

After five months of investigating the activities and preferences of our dealers in the selling of T.B.A. merchandise and exploring the relative merits of what the different suppliers had to offer, it has been decided that Continental will enter the marketing of T.B.A. merchandise on a commission-override basis with The B. F. Goodrich Company as their supplier.

There are several good reasons for adopting the commission-override basis instead of selling Conoco branded items:

1. It will give us an opportunity to have our field selling force, now inexperienced in the marketing of T.B.A. items, educated by a supplier well qualified to perform that function.

2. It will avoid the necessity of setting up warehousing and distribution facilities and, of course, detailed accounting procedures.

3. We would have no investment in stocks of tires, batteries, or accessories.

The reasons for selecting The B. F. Goodrich Company as our supplier are largely as follows:

1. They are one of the oldest and best established companies in the rubber industry, and their operations are international in scope.

2. Their products are second to none in the industry in quality and workmanship.

FEDERAL TRADE COMMISSION
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JAX 336

Commission's Exhibit 238B

3. They have had a wealth of experience in working with petroleum companies.

4. If some time in the future we should decide it would be to our advantage to market our own Conoco brand tire, we could have Goodrich manufacture it for us without having to change suppliers.

Our T.B.A. Headquarters staff and field organization will be set up as quickly as possible and, when that is accomplished, the entire T.B.A. sales program will be brought to you through a series of field meetings. However, you should inform all your field representatives of this decision as soon as possible so that when new lessees are selected or new dealers secured, every possible effort may be made to start them off on the Goodrich line of tires, batteries, and accessories.

As the selection of The B. F. Goodrich Company as a supplier was the recommendation of the Marketing Department staff, including all regional managers, and as the top management of the company approved this recommendation, we are looking forward to an enthusiastic, hard-hitting, and profitable sales program for the Continental Oil Company.

J. H. SNYDER
Assistant General
Sales Manager

JHS-MB
Copies to:
MJK-JLW-OBL-CRA-CHS-JUL
AWT-CAP-JRC-HAB-JAL-SJL
EAW-EFS-GJW-JWF-LRK-SDB
FCV-GHL-WAM-CFW-RF -CLB
File

EXHIBIT
6415 238B
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Commission's Exhibit 239A

CONTINENTAL OIL COMPANY

FEDERAL TRADE COMMISSION
DOCKET 6485 FILED 2/5
IN THE MATTER OF B. F. Goodrich Co., etal
DATE 4/2/52 WITNESS —
ASSIGNED TO [illegible] Co., Official Reporter
BY [illegible]

Ponca City, Oklahoma
March 12, 1952

TO: All Division Managers

SUBJECT: T.B.A. PROGRAM PLANS

As you know, the Continental Oil Company made an agreement with The B. F. Goodrich Company as of February 1st for the selling of Goodrich tires, batteries, and accessories through Continental Oil Company's outlets on a commission basis. Since that time, a lot has been accomplished toward the launching of the program. We feel it would be helpful for you to know its present status and our plans for carrying it through.

(1) Approval has been given to the organization setup consisting of a T.B.A. Manager, two assistants, two clerks, and a secretary for the Ponca City headquarters staff and one T.B.A. man for each of the ten divisions with the status of an ADM.

Mr. J. J. Nemeth who has been the Oklahoma City Division Manager has been appointed as the manager of T.B.A. Sales, headquartering in Ponca City.

He would like to have your nominations for the ADM assignments as quickly as possible. Please weigh these selections carefully, as in some cases it may be desirable to assign to the T.B.A. promotional activity a man who is already an ADM and who would then be replaced in his present assignment. In others, the T.B.A. man would be one promoted to that position. It goes without saying that the success of this activity will depend on the type of personnel selected.

(2) As soon as the ten field T.B.A. men and the Ponca City staff are selected, it is planned to give the entire group an intensive week's training, partially at the B.F.G. factory at Miami, Oklahoma, and partially at Ponca City where training facilities will be set up.

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Commission's Exhibit 239B

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All Division Managers
Page 2

(3) Following this training program, a team composed of B.F.G. sales executives plus Continental T.B.A. staff members will proceed on a series of one-day meetings in each of our divisions. All division sales personnel will be included in these meetings. The meetings will serve:

(a) To acquaint all Conoco divisional sales and operating personnel with The B. F. Goodrich Company and its products, the plan of procedure, and product information.

(b) To provide an opportunity for the Continental selling personnel to meet informally and get acquainted with the local Goodrich people in each division.

(4) A request to all division managers for a list of Conoco accounts that are now handling B.F.G. products or who may be considefed as good immediate prospects was sent some time ago. So far we have received lists from seven divisions and are awaiting responses from the others. These will be submitted to the B. F. G. Company and commissions will be paid on the business now passing through them, effective with the date of our contract.

(5) Consideration will be given to various alternatives on station identification which Goodrich provides, no charge. Regional and division managers will have a voice in determining what is adequate and proper identification for our various types of company-owned stations. We have provided B.F.G. with pictures of the various types now in operation. It is not believed that a uniform plan of identification is essential for all regions.

As soon as this is decided in general terms, the B.F.G. Company will start their station identification crews on the assignment. It is the B.F.G. Company's policy to have Continental make the decision as to the extent and types of identification desired for each station.

Standardization of dealer identification is not contemplated in view of the fact that those Conoco dealers that are presently selling B.F.G. products are probably identified adequately, and those that take on the line will have their own ideas as to what identification they desire.

As of the present, B.F.G. sales personnel has been encouraged to solicit Conoco accounts. However, no arrangements

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Commission's Exhibit 230C

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All Division Managers
Page 3

for the training of Continental field personnel should be made until our initial meeting has been held in each division launching the whole T.B.A. project.

(6) As soon as possible, we plan to launch our intercompany publicity and announcement covering products, personnel, station identification, and other pertinent information regarding the program in the Conoco Triangle and The Conocoan.

(7) Steps are being taken to revise our present credit card to include the purchase of Goodrich tires, batteries, and accessories as a regular Conoco service; and an envelope stuffer is being prepared to be included in statements to all present credit card holders acquainting them with this new service.

(8) An outline of the procedures to be followed in the handling of different types of accounts such as lessees, dealers, jobbers, wholesale distributors, and commission agents is being prepared. The last mentioned category will require careful consideration before we can outline a policy to cover commission agents and their outlets. In the meantime, we have asked the B.F.G. Company not to approach or solicit any of our commission agents until our policy is crystallized.

(9) The B.F.G. Company is instituting a Pre-Memorial Day merchandising campaign which will be available to all Conoco dealers handling the Goodrich line. It will be promoted entirely by the B.F.G. local sales force and will not involve our own men at this early date. Several appropriate "leaders" have been designated as "customer getters" to stimulate tire (as well as petroleum product) sales prior to the holiday. Also, there will be included an opportunity for the dealer to partake in a local direct mail campaign, the details of which will be furnished by the B.F.G. Company.

They have been authorized to proceed with this campaign, and our Advertising Department will contribute appropriate Conoco copy to be included in the various pieces.

(10) We are all quite pleased in the appointment of Mr. H. A. (Hack) Cunningham of The B. F. Goodrich Company as the special representative for the Continental Oil Company account. Hack to date has been handling the Texas Company account, was born in Roxton, Texas, literally "grew up" in the rubber industry, and was a fighter pilot in the Air Force of the U. S. Navy with the rank of Lieut. Commander. He will devote 100 per cent of

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Commission's Exhibit 239D

his time to Continental. He knows the rubber industry, many of Continental's people, and we know he will be most helpful in our new venture.

J. H. SNYDER
Assistant General
Sales Manager

JHS-NB

FEDERAL TRADE COMMISSION
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JAX 341

Commission's Exhibit 240A

CONTINENTAL OIL COMPANY

FEDERAL TRADE COMMISSION
DOCKET NO. 6175 COMMISSION EXHIBIT NO. 240A
LETTER OF B. F. Goodrich Co., et al
10/3/57 WITNESS
ACE REPORTING CO., Official Reporter
By

Ponca City, Oklahoma
April 15, 1952

TO: Regional Managers of Marketing
Division Managers of Marketing

SUBJECT: MARKETING DIVISION OFFICE T.B.A. PROCEDURES

The following list of forms and reports will be required in the handling of T.B.A. business.

1. Goodrich Form 1325 - Notification of Oil Company Dealer Change
2. Continental Form 15-380-PA - Notification of Dealer Change
3. Continental Form 15-381X7 - Report of T.B.A. Sales
4. Report No. R-1-Var-459 - List of Inactive Accounts
5. Report No. R-1-Var-460 - Report of T.B.A. Income

Form 1325. This form will be furnished by the B. F. Goodrich Company and is to be distributed to each district sales representative. The form will be prepared in duplicate by the district sales representative, the original copy to be forwarded to the division office and the copy retained by him until his copy of form 15-380-PA

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Commission's Exhibit 240B

is received from the division office which shows acceptance or rejection by the B. F. Goodrich Company.

Form 15-380-PA. Upon receipt of form 1325 in the division office, they shall transcribe the information to form 15-380-PA which shall be prepared in five copies. All five copies of this form shall be forwarded to the B. F. Goodrich Company office designated by them. After approval or rejection, the number one and number two copies shall be returned to the division office. Upon receipt of these copies in the division office, the original, if approved, will become the ledger copy; and the duplicate shall be forwarded to the district sales representative. At this time the division office shall destroy the original copy of form 1325 received from the district sales representative, and the district sales representative shall destroy his copy of form 1325 upon receipt of the approved copy of form 15-380.

If the notification form shows rejection by the B. F. Goodrich Company, the original shall be filed in a "rejection file" and the copy forwarded to the district sales representative as notification of the rejection.

The division office shall file their approved copies in a binder, divided by the B. F. Goodrich Company district offices and then further subdivided by district

FEDERAL TRADE COMMISSION
DOCKET NO. 6185 240(b)
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sales representatives' districts.

On the reverse side of the number one and number two copies, provision has been made for posting, to the nearest dollar value (no cents), the amount of purchases under four headings, i.e., "Tires and Tubes, Batteries, Accessories, and Total," for the current month and cumulative for the current year. Space is provided for two full years of postings.

Form 15-381-X-7. This form is provided for the purpose of furnishing the B. F. Goodrich Company's designated district offices a listing of approved accounts and shall be prepared from the ledger copies of form 15-380. A separate listing shall be prepared for each district sales representative's territory within each B. F. Goodrich Company's designated district office area and further separated by B. F. Goodrich's T.B.A. supply points. When an account is listed for the first time, it should be identified with an asterisk. This form is to be prepared in seven copies, the first six of which will be forwarded to the B. F. Goodrich Company division operating points on or before the 25th of each month. The B. F. Goodrich Company will fill in the money value of their sales for each account listed under each column provided on the form namely, "Tires and Tubes, Batteries, and Accessories." The B. F. Goodrich Company

FEDERAL TRADE COMMISSION
DOCKET NO. 6115 EXHIBIT NO. 240(C)
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will retain the second and third copies and will then return the other four copies to the division office with their credit memorandums and check by the 12th of the following month.

The disposition of the four copies returned by the B. F. Goodrich Company shall be as follows:

Original - Division Office
Fourth Copy - Manager, T.B.A. Sales
Fifth Copy - Regional Manager of Marketing
Sixth Copy - District Sales Representative

The seventh copy, which was retained by the division office, shall be destroyed, as it will be replaced by the original.

When the reverse side of form 15-380 ledger copies have been completely filled in showing two years' postings, it will be necessary to replace them with another form. This shall be done by typing another set, the original being placed in the ledger and a copy forwarded to the district sales representative. The approved copy which was removed from the ledger shall be placed in a special file of approved accounts and retained for as long as the dealer is an approved B. F. Goodrich Company account. The district sales representative shall place his new copy in his active accounts file and shall retain the old copy only for so long as the purchase information is of value to him.

FEDERAL TRADE COMMISSION
DOCKET NO. 6615 ... 190

Report 1-Ver-459. A monthly report in letter form to the manager, T.B.A. sales, No. R-1-Ver-459, shall be prepared and furnished immediately following the receipt of form 15-381 from the B. F. Goodrich Company, listing the accounts which have been inactive for a period of three months or longer and showing the letters D, L, J, or C for each account. Copies of this report shall be furnished to the regional manager of marketing and the assistant division manager of T.B.A. sales. The listing shall be prepared by district sales representatives' territories and shall show the name and location of each inactive account.

Report 1-Ver-460, Report of T.B.A. Income. The B. F. Goodrich Company shall prepare a credit memorandum each month for each B. F. Goodrich Company district having territory falling within each of our divisions. Credit memorandums shall show the commissions separately between "Tires and Tubes, Batteries, and Accessories;" and a B. F. Goodrich Company check will accompany the credit memorandums to each division office. The B. F. Goodrich Company is being requested to send a copy of each credit memorandum to the Marketing Accounting Division at Ponca City.

Accounting instructions will be issued in a letter by the Marketing Accounting Division, Controller's Department.

The district sales representative shall promptly

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JAX 346

Commission's Exhibit 2407

issue and forward to the division office without delay form 1325 in all cases where a new account is opened, an account is canceled, or a change in the dealer is made. The division office should handle promptly the preparation of form 15-380 and forward it to the B. F. Goodrich Company's office in order to secure their approval or to adjust their records as soon as possible.

Each division office should secure and keep an up-to-date description of the B. F. Goodrich Company's district areas in order that new accounts can be placed on the proper listings, form 15-381.

J. J. Kenneth
Manager, T.B.A. Sales

JJK-CG
Copies to:
GTE-LET-RES

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JAX 347

Commission's Exhibit 242A

CONTINENTAL OIL COMPANY

Ponca City, Oklahoma
July 22, 1952

TO: Regional Managers of Marketing
Division Managers of Marketing

SUBJECT: EXTENDED PAYMENT TERMS FOR TIRES AND BATTERIES

On August 1, 1952, Continental Oil Company will put into effect extended payment terms applicable to credit sales of B. F. Goodrich tires, tubes, and batteries made to holders of valid unexpired President's Courtesy Cards. Each Conoco dealer who sells B. F. Goodrich tires will be informed of this plan by a notice giving him conditions and procedures to be followed in making extended payment term sales. As soon as this notice can be printed, copies will be sent to each division for mailing to those dealers who are eligible to participate. Extra copies will be supplied to take care of those Conoco dealers who start selling the B. F. Goodrich line after August 1, 1952.

Holders of President's Courtesy Cards will be informed by envelope stuffer, to be included with their first statement after receipt of the stuffers. A supply will be sent you as soon as they are printed.

Mr. R. F. Simmons will advise each division on accounting procedures.

Conditions under which extended payment terms may be given are as follows:

(1) Applicable only on sales to holders of valid Conoco President's Cards. Does not apply to holders of other companies' credit cards.

(2) Applicable only on sales by Conoco dealers of B. F. Goodrich tires, tubes, and batteries. Not good on petroleum products or other accessories.

FEDERAL TRADE COMMISSION
DOCKET NO. 4485 EXHIBIT 242A
IN THE MATTER OF B. F. Goodrich Co., et al
DATE 4/3/57 VS.
A.L.J.

242 (4) 8443/

JAX 348

Commission's Exhibit 2428

Circular Letter
Page 2

(3) Extended payment terms for one, two, three or more items, which must be installed on customer's car at time of sale, are as follows:

Number of Items Purchased at One Time	Due and Payable from Date of Statement in:
One item	All in 30 days
Two items	1/2 in 30 days 1/2 in 60 days
Three or more items	1/3 in 30 days 1/3 in 60 days 1/3 in 90 days

One tire is one item; one tire and one tube is one item; one battery is one item.

To facilitate accounting and invoicing, all B. F. Goodrich tires, tubes, and batteries sold at extended terms shall be listed on one invoice (Form 15-334 BBX 3) and nothing else listed thereon.

Dealer must write "Extended terms" in large letters diagonally across face of invoice. Upon receipt in division office, "extended term" invoices will be processed to provide for extended term billing applicable to the number of items on the invoice.

Petroleum products, greasing, and other services, and all T.B.A. items sold at regular terms (but not extended payment terms) may be listed together on one invoice, but no items on which extended terms are given should be included on that invoice.

These extended payment terms have been recommended by Mr. Nemeth and Mr. Snyder to put our dealers in a competitive position with those of other companies who have similar plans for deferred payment on tires and batteries.

J. J. Flynn
Director
Sales Administration

JJF-HW
Copies to
HJK JLW OBL JAL OLF CRA
CHS AMT HHH GJW SDB ECW
LRK JHS GHL WAK HPB CPW
JJN RLB EBP GTB RES LET
CLB File

8115

JAX 349

Commission's Exhibit 243

FEDERAL TRADE COMMISSION
DOCKET NO. 6148 EXHIBIT NO. 243
IN THE MATTER OF Goodrich & Co.
DATE 4/1/57 WITNESS
ACE REPORTING CO., Official Reporters
By

IMPORTANT NOTICE

TO

CONOCO MILEAGE MERCHANTS

WHO SELL

GOODRICH TIRES, TUBES, AND BATTERIES

Extended Payment Terms on Sales of Goodrich Tires, Tubes, and Batteries

Effective August 1, 1952, Continental Oil Company will accept assignment of invoices from Conoco Mileage Merchants covering the sale of B. F. Goodrich tires, tubes, and batteries to holders of valid unexpired Conoco President's Courtesy cards, subject to the conditions outlined below.

NOTE: These extended terms do not apply to other customers and do not apply to sales of petroleum products, services, or any items other than Goodrich tires, Goodrich tubes, and Goodrich batteries.

CONDITIONS

(1) Applicable only on sales to holders of valid Conoco President's Courtesy Cards. Does not apply to holders of other companies' credit cards.

(2) Applicable only on sales by Conoco dealers of B. F. Goodrich tires, tubes, and batteries. Not good on petroleum products or other accessories.

(3) Extended payment terms for one, two, three or more items, which must be installed on customer's car at time of sale, are as follows:

Number of Items Purchased at One Time	Due and Payable from Date of Statement in:
One item	All in 30 days
Two items	½ in 30 days ½ in 60 days
Three or more items	⅓ in 30 days ⅓ in 60 days ⅓ in 90 days

One tire is one item; one tire and one tube is one item; one battery is one item.

(4) Items sold on extended terms must be listed on one invoice (Form 15-334-BBX 3) and no other products or accessories may be listed on the invoice. Write diagonally across the face of the invoice the words *"Extended Terms"* in large letters.

Upon receipt in the division office, "extended terms" invoices will be processed to provide extended terms billings to your customers applicable to the number of items on the invoice. At the time of sale be sure to explain these terms to your customer. In no case should the extended payment terms be made for more than ninety (90) days. See paragraph (3) above.

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JAX 350

Commission's Exhibit 244

Enclosed with Daily Statements

IMPORTANT NOTICE

TO

HOLDERS OF CONOCO PRESIDENT'S COURTESY CARDS

On and after August 1, 1952, Conoco President's Courtesy cards may be used to purchase from Conoco Mileage Merchants B. F. Goodrich tires, tubes, and batteries on extended payment terms.

We invite you to see your Conoco Mileage Merchant before you buy tires, tubes, or batteries. Let him make your driving safe with B. F. Goodrich tires, tubes, and batteries. If you wish to take advantage of our convenient terms for extended payments, he will be glad to arrange this for you.

CONTINENTAL OIL COMPANY

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FEDERAL TRADE COMMISSION

DOCKET NO. 6485 EXHIBIT NO. 244

IN THE MATTER OF B.F. Goodrich Co., et al.

DATE 11/5-7 KIND OF —

AGE REPORTING CO., Official Reporters

By Jam

JAX 351

Commission's Exhibit 245

CONTINENTAL OIL COMPANY

Ponca City, Oklahoma
September 22, 1952

TO: Regional Managers of Marketing

SUBJECT: T.B.A. SALES

During August our sights were set on a volume of $500,000. We missed, but this job will be done in 1952.

There is a wide difference between regions on sales of T.B.A. per 1,000 gallons gasoline sold.

If there are any points in your region where you believe the division and BMO are not functioning as they should, please call it to our attention so that we can attempt to work out some solution.

J. J. Nemeth
Manager, T.B.A. Sales

JJN-NB
Enc

FEDERAL TRADE COMMISSION
DOCKET NO. 6182 EXHIBIT NO. 245
IN THE MATTER OF B. F. Goodrich Co., et al
DATE 4/2/57 WITNESS
ACE REPORTING CO., Official Reporter
By

245 8122/6

JAX 352.

Commission's Exhibit 246

B. F. GOODRICH APPROVED ACCOUNTS

AUGUST 1952

Division	Number of Company Stations	Lessees	Dealers	Agents	Jobbers	Total
Albuquerque	54	43	135	12	5	195
Butte	68	52	43	4	3	102
Chicago	92	46	33	-	16	95
Denver	192	182	62	8	3	255
Fort Worth	62	58	253	14	2	327
Houston	74	63	197	10	10	280
Kansas City	178	125	53	3	22	203
Lincoln	139	137	124	2	50	313
Oklahoma City	133	92	213	17	19	341
Salt Lake	89	83	59	6	1	149
As of August 31, 1952	1,081	881	1,172	76	131	2,260
As of July 31, 1952		789	759	61	106	1,715
August Net Gain		92	413	15	25	545

FEDERAL TRADE COMMISSION

DOCKET NO. 6485 COMMISSION'S EXHIBIT NO. 246

IN THE MATTER OF B. F. Goodrich Co., et al

DATE 4/3/53 WITNESS

..... Co., Official Reporter

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9-18-52

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T.B.A. SALES

REGIONAL SALES FOR AUGUST 1952 AND CUMULATIVE

	TIRES AND TUBES		BATTERIES		ACCESSORIES		TOTAL			
	Sales	Comm.	Sales	Comm.	Sales	Comm.	Sales	Comm.	%	Sales Per 1,000 Gallons Gasoline
AUGUST										
Central	$ 91,674	$ 7,384	$ 10,653	$ 894	$ 9,685	$ 890	$ 112,012	$ 9,168	8.2	$ 7.15
Southern	43,175	3,329	4,248	341	1,576	127	48,999	3,797	7.7	8.44
Southwestern	63,309	5,510	6,389	526	4,795	395	74,493	6,431	8.6	7.58
Northern	70,272	5,542	3,055	276	4,255	373	77,582	6,191	8.0	3.98
Rocky Mountain	113,787	9,617	8,918	745	10,678	849	133,383	11,211	8.4	6.57
Total	$ 382,217	$ 31,382	$ 33,263	$ 2,782	$ 30,989	$ 2,634	$ 446,469	$ 36,798	8.2	$ 6.28
CUMULATIVE										
Central	292,314	23,738	26,066	2,298	42,977	3,962	361,357	29,998	8.3	3.04
Southern	99,702	7,913	10,049	824	6,930	557	116,681	9,294	8.0	2.52
Southwestern	163,475	14,226	17,124	1,411	12,518	1,055	193,117	16,692	8.6	2.43
Northern	233,984	19,215	8,544	743	11,721	1,060	253,649	21,018	8.3	1.84
Rocky Mountain	291,036	25,424	22,854	1,934	24,541	2,057	338,431	29,415	8.7	2.97
Total	$ 1,079,911	$ 90,516	$ 84,637	$ 7,210	$ 98,687	$ 8,691	$ 1,263,235	$ 106,417	8.4	$ 2.55

FEDERAL TRADE COMMISSION
DOCKET NO. 6715 — EXHIBIT NO. 247
IN THE MATTER OF B. F. Goodrich Co., et al
DATE 11/3/53 — ——
ACE REPORTING CO., Official Reporter
By

JAX 383
Commission's Exhibit 247

BCH-CS
9-19-52

T.B.A. SALES

REGIONAL SALES FOR SEPTEMBER 1952 AND CUMULATIVE

	TIRES AND TUBES		BATTERIES		ACCESSORIES		TOTAL			
	Sales	Comm.	Sales	Comm.	Sales	Comm.	Sales	Comm.	Per Cent	Sales Per 1,000 Gallons Gasoline
SEPTEMBER										
Central	$ 74,062	$ 6,174	$ 3,588	$ 771	$ 15,742	$ 1,480	$ 98,392	$ 8,425	8.6	$ 6.12
Southern	56,518	4,381	5,359	423	2,053	156	63,930	4,960	7.8	10.22
Southwestern	40,961	3,468	8,971	724	6,369	511	56,291	4,703	8.4	5.88
Northern	87,919	7,177	6,420	582	4,156	368	98,495	8,127	8.3	5.15
Rocky Mountain	115,116	10,523	16,351	1,391	10,765	868	142,232	12,812	9.0	8.29
Total	$ 374,566	$ 31,733	$ 45,689	$ 3,891	$ 39,085	$ 3,403	$ 459,340	$ 39,027	8.5	$ 6.66
CUMULATIVE										
Central	366,376	29,911	34,654	3,069	58,719	5,443	459,749	38,423	8.4	3.40
Southern	156,220	12,294	15,408	1,247	8,983	713	180,611	14,254	7.9	3.43
Southwestern	204,426	17,695	26,095	2,133	18,887	1,567	249,408	21,395	8.6	2.80
Northern	321,303	26,393	14,964	1,323	15,877	1,429	352,144	29,145	8.3	2.25
Rocky Mountain	406,352	35,958	39,205	3,325	35,306	2,943	480,663	42,226	8.8	3.67
Total	$ 1,454,477	$ 122,251	$ 130,326	$ 11,097	$ 137,772	$ 12,095	$ 1,722,575	$ 145,443	8.4	$ 3.05

RCM-CS
10-21-52

FEDERAL TRADE COMMISSION
DOCKET NO. 6415
DATE 11/5/52

JAX 354
Commission's Exhibit 250

FEDERAL TRADE COMMISSION

DOCKET NO. 4415 EXHIBIT NO. 251

IN THE MATTER OF B. F. Goodrich Co. et al

DATE 11/4/57

ACE REPORTING CO., Official Reporter

By Jean

JAX 353

Commission's Exhibit 251

T.B.A. DIVISION SALES FOR SEPTEMBER 1952 AND CUMULATIVE

	TIRES AND TUBES		BATTERIES		ACCESSORIES		TOTAL			Sales Per 1,000 Gallons
	Sales	Commission	Sales	Commission	Sales	Commission	Sales	Com. mission	Per Cent	Gasoline
Albuquerque	$ 19,325	$ 1,740	$ 2,446	$ 224	$ 1,769	$ 153	$ 23,540	$ 2,117	9.0	$ 4.54
Butte	46,501	4,539	4,385	391	881	82	51,767	5,012	9.7	15.02
Chicago	39,200	2,923	1,948	166	762	68	41,910	3,157	7.5	4.11
Denver	44,375	3,877	9,946	830	6,946	568	61,267	5,275	6.6	6.42
Fort Worth	21,626	1,728	6,525	500	4,600	358	32,751	2,586	7.9	7.46
Houston	56,518	4,381	5,359	423	2,053	156	63,930	4,960	7.8	10.22
Kansas City	39,005	3,114	5,104	446	13,319	1,239	57,428	4,799	8.4	6.52
Lincoln	48,719	4,254	4,472	416	3,394	300	56,585	4,970	8.8	6.34
Okla. City	35,057	3,060	3,484	325	2,423	241	40,964	3,626	8.9	5.64
Salt Lake	24,240	2,117	2,020	170	2,938	238	29,198	2,525	8.6	7.01
Total	$ 374,566	$ 31,732	$ 45,689	$ 3,891	$ 39,085	$ 3,403	$ 459,340	$ 39,026	8.5	$ 6.66
Albuquerque	117,493	10,736	7,858	716	5,378	488	130,729	11,962	9.2	2.67
Butte	93,460	8,[illegible]	5,213	463	1,402	127	100,075	9,536	9.5	3.67
Chicago	132,271	9,[illegible]	5,427	436	3,911	347	141,609	10,725	7.6	1.71
Denver	224,323	19,[illegible]	27,471	2,289	24,685	2,060	276,479	23,594	8.5	3.80
Fort Worth	86,933	6,937	18,237	1,417	13,509	1,079	118,679	9,433	7.9	2.97
Houston	156,220	12,294	15,408	1,247	8,983	713	180,611	14,254	7.9	3.43
Kansas City	240,146	18,613	22,854	1,971	52,316	4,831	315,316	25,415	8.1	4.33
Lincoln	189,032	16,451	9,537	887	11,966	1,082	210,535	18,420	8.7	2.85
Okla. City	126,230	11,298	11,800	1,098	6,403	612	144,433	13,008	9.0	2.32
Salt Lake	88,369	7,767	6,521	573	9,219	756	104,109	9,096	8.7	3.36
Total	$ 1,454,477	$ 122,251	$ 130,326	$ 11,097	$ 137,772	$ 12,095	$ 1,722,575	$ 145,442	8.4	$ 3.05

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[illegible]-52

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JAX 356

Commission's Exhibit 252A

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 252-A
IN THE MATTER OF B. F. Goodrich
DATE 11-26-57 WITNESS
ACE REPORTING CO., Official Reporters
BY

CONTINENTAL OIL COMPANY

Ponca City, Oklahoma
November 25, 1952

TO: Regional Managers of Marketing
Division Managers of Marketing

SUBJECT: T.B.A. SALES - OCTOBER AND CUMULATIVE

Two new faces forced their way into the number two and three positions during October. We welcome Oklahoma City and Chicago divisions and hope for repeat performances. Denver regained number one position and keeps crowding Kansas City for the lead for the cumulative period.

T.B.A. Sales 1952

October		Cumulative	
Denver	$78,325	Kansas City	$367,287
Oklahoma City	55,676	Denver	354,804
Chicago	53,229	Lincoln	265,607

Sales Per 1,000 Gallons Gasoline

Denver with $9.77 and Oklahoma City with $8.14 are getting in the big league class. Those boys talk in terms of $10 per 1,000 gallons of gasoline and like to refer to their volume of dollar sales as 1 cent of T.B.A. for every gallon of gasoline sold. This ratio is for total division gasoline sales and includes all classes of buyers.

Sales Per 1,000 Gallons Gasoline

October 1952		Cumulative	
Denver	$9.77	Kansas City	$4.51
Oklahoma City	8.14	Denver	4.39
Salt Lake	7.58	Houston	3.83

For years all of us have had the ratio yardstick applied to our work. We suggest this method of comparison be used by our field forces. The T.B.A. Division is proud of the

8136

252 (a)

job the divisions have done each month as a quick glance shows a combined increase in dollars per 1,000 gallons of gasoline.

Month	Sales per 1,000 gallons of gasoline
June	$2.84
July	5.15
August	6.28
September	6.66
October	6.75

Battery sales in October established a new high and helps boost an extremely weak spot.

Battery Sales

June	$14,038
July	28,002
August	33,263
September	45,689
October	51,395

We still have too many dealers that think they are in the battery business because they have two or three in stock or on order. The successful battery retailer claims he never got in the battery business until he carried at least a 60-day inventory.

The battery industry furnishes the following sales flow which shows the last 60 days of the year produces 22 per cent of the annual sales volume:

January	7.2%	July	8.2%
February	5.4	August	10.6
March	4.5	September	13.0
April	4.2	October	13.6
May	5.1	November	11.9
June	6.1	December	10.2

J. J. Nemeth
Manager, T.B.A. Sales

JJN-NB

202- D... 6445 ____ 252B 2-2 16 8-13-56

JAX 358

Commission's Exhibit 253

358

B. F. GOODRICH APPROVED ACCOUNTS

OCTOBER 1952

Division	Number of Company Stations	Lessees	Dealers	Agents	Jobbers	Jobbers Dealers	Total
Albuquerque	55	56	332	20	6	17	431
Butte	68	60	51	6	3	0	120
Chicago	91	59	48	0	38	275	420
Denver	192	192	529	13	23	21	778
Fort Worth	62	65	367	27	2	0	461
Houston	74	67	184	15	14	65	345
Kansas City	178	119	47	4	22	0	192
Lincoln	139	130	116	8	44	8	306
Oklahoma City	133	119	310	28	22	133	612
Salt Lake	88	86	84	7	1	3	181
As of October 24, 1952	1,080	953	2,068	128	175	522	3,846
As of September 24, 1952		898	1,687	112	140	407	3,244
October Net Gain		55	381	16	35	115	602

FEDERAL TRADE COMMISSION
DOCKET 4995 FILE NO. 8553
IN THE MATTER OF B.F. Goodrich Co. et al.
DATE 4/28/53
A. L. BELL, Official Reporter
BY Sam

BCH-KEB
11-17-52

206 253 84-10-1

T.B.A. DIVISION SALES FOR OCTOBER 1972 AND CUMULATIVE

	TIRES AND TUBES		BATTERIES		ACCESSORIES		TOTAL			Sales Per 1,000 Gallons of Gasoline
	Sales	Commission	Sales	Commission	Sales	Commission	Sales	Commission	Per Cent	
Albuquerque	$ 25,687	$ 2,425	$ 2,541	$ 241	$ 1,874	$ 172	$ 30,102	$ 2,838	9.4	$ 5.76
Boise	11,277	986	1,623	137	567	53	13,387	1,176	8.8	5.14
Chicago	46,706	3,835	5,734	499	789	71	53,229	4,405	8.3	5.26
Denver	61,308	5,320	7,999	663	9,018	727	78,325	6,710	8.6	9.77
Fort Worth	14,899	1,245	5,749	452	2,420	193	23,068	1,890	8.2	5.33
Houston	37,985	2,890	4,256	341	2,409	186	44,648	3,377	7.6	07.16
Kansas City	36,530	2,766	8,131	712	9,310	724	51,971	4,202	8.1	6.16
Lincoln	46,298	4,035	5,964	551	2,818	257	55,072	4,843	8.8	6.29
Oklahoma City	48,958	4,309	4,516	394	2,608	225	55,676	4,928	8.9	8.14
Salt Lake	19,357	1,662	4,882	413	2,559	205	26,798	2,280	8.5	7.98
Total	$ 346,989	$ 29,433	$ 51,395	$ 4,403	$ 34,362	$ 2,813	$ 432,296	$ 36,649	8.5	$ 6.75
Albuquerque	143,380	13,189	10,399	957	7,258	660	160,891	14,800	9.2	2.97
Boise	104,667	9,952	6,896	658	1,959	189	113,468	10,712	9.4	3.79
Chicago	138,999	13,774	11,161	915	4,731	423	154,892	15,130	7.8	2.10
Denver	285,491	24,565	35,438	2,992	33,793	2,787	355,884	30,304	8.5	4.49
Fort Worth	104,852	8,181	25,986	1,870	15,989	1,272	144,747	11,323	8.0	3.10
Houston	168,895	15,144	19,660	1,588	11,398	898	225,259	17,630	7.8	3.83
Kansas City	274,676	22,379	30,986	2,685	61,496	5,995	367,207	29,417	8.1	4.51
Lincoln	235,282	20,487	15,384	1,438	14,784	1,338	265,607	23,863	8.8	3.81
Okla. City	174,782	15,607	16,346	1,492	9,011	837	200,109	17,936	9.0	2.28
Salt Lake	107,726	9,459	11,483	989	11,778	962	130,987	11,376	8.7	3.79
Total	$ 1,880,969	$ 151,681	$ 181,721	$ 15,980	$ 172,465	$ 14,940	$ 2,194,875	$ 182,098	8.5	$ 3.43

JAX 359
Commission's Exhibit 284

FEDERAL TRADE COMMISSION
DOCKET NO. 6VA EXHIBIT NO. 284
IN THE MATTER OF Atlantic Richfield
DATE 9/5/73

T.B.A. SALES

REGIONAL SALES FOR OCTOBER 1952 AND CUMULATIVE

	TIRES AND TUBES		BATTERIES		ACCESSORIES		TOTAL			
	Sales	Comm.	Sales	Comm.	Sales	Comm.	Sales	Comm.	Per Cent	Sales Per 1,000 Gallons of Gasoline
OCTOBER										
Central	$ 83,082	$ 7,075	$ 12,647	$ 1,106	$ 11,918	$ 949	$ 107,647	$ 9,130	8.5	$ 7.05
Southern	37,983	2,850	4,256	341	2,409	186	44,648	3,377	7.6	7.16
Southwestern	40,586	3,670	8,290	693	4,294	365	53,170	4,728	8.9	5.57
Northern	92,996	7,870	21,698	1,050	3,607	328	108,301	9,248	8.5	5.74
Rocky Mountain	91,872	7,968	14,504	1,213	12,134	985	118,510	10,166	8.6	8.37
Total	$ 346,519	$ 29,433	$ 51,395	$ 4,403	$ 34,362	$ 2,813	$ 432,276	$ 36,649	8.5	$ 6.75
CUMULATIVE										
Central	449,458	36,986	47,301	4,175	70,637	6,392	567,396	47,553	8.4	3.77
Southern	194,203	15,144	19,664	1,588	11,392	898	225,259	17,630	7.8	3.83
Southwestern	245,012	21,364	34,385	2,827	23,181	1,932	302,578	26,123	8.6	3.07
Northern	414,272	34,261	26,662	2,373	19,515	1,759	460,449	38,393	8.3	2.62
Rocky Mountain	498,024	43,936	53,709	4,537	47,440	3,929	599,173	52,392	8.7	4.13
Total	$ 1,800,969	$ 151,681	$ 181,721	$ 15,500	$ 172,165	$ 14,910	$ 2,154,855	$ 182,091	8.5	$ 3.43

RCH-BHR
11-24-52

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO. 255
IN THE MATTER B.F. Goodrich Co., et al
DATE 11/7/57 FILED
ACT Reporting Co., Official Reporter
BY Gam

JAX 300
Commission's Exhibit 255

JAX 361

Commission's Exhibit 256A

364

CONTINENTAL OIL COMPANY

FEDERAL TRADE COMMISSION
DOCKETED 6485 256A
IN THE MATTER OF B. F. Goodrich Co., et al
DATE 11/7/57 WITNESS —
ACE REPORTING CO., Official Reporter
By [illegible]

Ponca City, Oklahoma
December 19, 1952

TO: Regional Managers of Marketing
Division Managers of Marketing

SUBJECT: T.B.A. SALES NOVEMBER AND CUMULATIVE

Congratulations to Joe Dickey and his Kansas Citians for top T.B.A. volume in November. Also, congratulations to the Lincoln Division for second place and to Denver Division for third position.

T.B.A. SALES

November 1952		Cumulative	
Kansas City	$66,941	Kansas City	$434,228
Lincoln	54,859	Denver	406,884
Denver	52,836	Lincoln	321,222

Butte Division did a most outstanding job by selling $17.51 worth of T.B.A. for each 1,000 gallons of gasoline. This also goes for Salt Lake with $11.82 worth of T.B.A. for each 1,000 gallons of gasoline. Kansas City almost came in with a penny's worth of T.B.A. for each gallon of gasoline.

SALES PER 1,000 GALLONS GASOLINE

Include some back reports

November 1952		Cumulative	
Butte	$17.51	Kansas City	$4.92
Salt Lake	11.82	Butte	4.75
Kansas City	9.64	Denver	4.66

In all ten divisions you sold $8.07 worth of T.B.A. per 1,000 gallons of gasoline. Looks like we might be averaging $10 per thousand gallons in another couple of months.

Total tire sales fell $2,400, and battery sales fell $5,000 under October, but accessory sales gained $10,000.

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JAX 362

Commission's Exhibit 256B

Joint Letter
Page 2

The 1-2-3 positions on November sales of tires, batteries, and accessories were occupied by the following:

Position	Tires And Tubes	Batteries	Accessories
1	Kansas City	Kansas City	Kansas City
2	Lincoln	Denver	Denver
3	Chicago	Lincoln	Oklahoma City

On tire sales Denver almost pushed Chicago out of third position, Fort Worth ran a close fourth on battery sales, and Lincoln was only .26 behind Oklahoma City on accessory sales. It is a very healthy sign to observe the competitive spirit that exists; and with each division trying to outsell the others, our T.B.A. sales are certain to continue to grow by leaps and bounds.

With the splendid support you, your assistants, and your field men are giving the program, you are bound to enjoy a successful 1953 on T.B.A. sales.

November sales results by divisions and regions and November statement of BFG approved accounts are attached.

D. A. Ellis
Assistant Manager
T.B.A. Sales

DAE-NB
Enc
Copies to:
Assistant Division Managers

8419

FEDERAL TRADE COMMISSION

256 (E)

JAX 363

Commission's Exhibit 257

363

B. F. GOODRICH APPROVED ACCOUNTS

NOVEMBER 1952

Division	Number of Company Stations	Lessees	Dealers	Agents	Jobbers	Jobbers Dealers	Total
Albuquerque	96	96	211	23	6	16	312
Butte	68	66	78	7	3	-	194
Chicago	93	99	48	0	38	275	420
Denver	189	189	382	16	24	101	912
Fort Worth	66	66	476	32	2	-	576
Houston	75	68	185	15	14	66	348
Kansas City	180	133	51	6	27	2	219
Lincoln	139	131	121	8	46	14	320
Oklahoma City	136	124	330	33	26	138	651
Salt Lake	92	91	88	7	1	3	190
As of November 24, 1952	1,094	983	2,170	187	187	615	4,102
As of October 24, 1952		953	2,068	188	175	522	3,846
November Net Gain		30	102	19	12	93	256

Slowing down but still growing

FEDERAL TRADE COMMISSION

DATE 2/2/53 WITNESS

ACE REPORTING CO., Official Reporter

BY

BCN-KEB
12-16-52

257

211

105

T.B.A. SALES

REGIONAL SALES FOR NOVEMBER 1952 AND CUMULATIVE

	TIRES AND TUBES		BATTERIES		ACCESSORIES		TOTAL		Per Cent	Sales Per 1,000 Gallons of Gasoline
	Sales	Commission	Sales	Commission	Sales	Commission	Sales	Commission		
NOVEMBER										
Central	$ 79,983	$ 6,388	$ 10,267	$ 1,196	$ 15,881	$ 1,263	$ 105,661	$ 8,847	8.4	$ 8.38
Southern	34,737	2,635	4,217	351	6,379	334	43,353	3,300	7.6	7.73
Southwestern	51,568	4,682	7,847	696	7,252	625	66,367	5,903	8.9	7.61
Northern	83,889	7,036	7,602	682	5,473	473	96,964	8,191	8.4	6.34
Rocky Mountain	99,010	8,807	12,986	1,118	11,976	988	123,972	10,914	8.8	10.72
Total	$ 344,127	$ 29,488	$ 46,709	$ 3,983	$ 44,861	$ 3,682	$ 435,697	$ 37,153	8.5	$ 8.07
CUMULATIVE										
Central	569,371	43,374	61,568	5,371	86,318	7,695	672,457	56,440	8.4	4.12
Southern	228,966	17,779	23,881	1,919	15,771	1,232	268,642	20,930	7.8	4.17
Southwestern	296,340	25,985	42,032	3,488	30,373	2,596	368,945	32,069	8.7	3.44
Northern	498,498	44,326	34,610	3,098	25,109	2,245	558,169	46,699	8.4	2.92
Rocky Mountain	736,611	57,882	66,149	5,631	33,332	2,988	836,368	63,231	8.8	4.61
Total	$ 2,144,984	$ 188,151	$ 268,995	$ 19,496	$ 217,843	$ 16,597	$ 2,900,992	$ 229,264	8.5	$ 3.80

Liddell - Lentz

PEDERAL TRADE COMMISSION
DOCKET NO. 6486 FILED FEBRUARY NO. 2552
IN THE MATTER OF Goodyear Tire & Rubber Co., et al.
DATE 12/5/57 WITNESS —
ACE REPORTING CO., Official Reporter
BY

JAX 364
Commission's Exhibit 364

364

2513

T.B.A. DIVISION SALES FOR NOVEMBER 1952 AND CUMULATIVE

	TIRES AND TUBES		BATTERIES		ACCESSORIES		TOTAL		Per Cent	Sales Per 1,000 Gallons of Gasoline
	Sales	Commission	Sales	Commission	Sales	Commission	Sales	Commission		
Albuquerque	$ 34,901	$ 3,290	$ 3,227	$ 312	$ 2,878	$ 275	$ 41,006	$ 3,877	9.5	$ 8.60
Butte	34,289	3,273	2,533	236	2,180	215	39,002	3,724	9.5	17.51
Chicago	38,462	3,072	2,847	253	796	73	42,105	3,398	8.1	5.03
Denver	38,231	3,314	7,625	620	6,980	553	52,836	4,487	8.5	8.07
Fort Worth	16,627	1,332	4,420	344	4,314	348	25,361	2,024	8.0	6.42
Houston	38,757	2,635	4,217	331	4,379	334	43,353	3,300	7.6	7.75
Kansas City	45,596	3,895	10,167	831	11,178	856	66,941	5,582	8.3	9.84
Lincoln	45,427	3,964	4,755	429	4,677	400	54,859	4,793	8.7	7.90
Oklahoma City	29,317	2,533	4,100	365	4,703	407	38,120	3,305	8.7	6.40
Salt Lake	26,520	2,220	2,818	262	2,776	221	32,114	2,703	8.4	11.82
Total	$ 344,127	$ 29,488	$ 46,709	$ 3,983	$ 44,861	$ 3,682	$ 435,697	$ 37,153	8.5	$ 8.07
Albuquerque	178,081	16,473	13,626	1,269	10,130	935	201,837	18,677	9.3	3.42
Butte	138,956	13,206	9,369	836	4,139	394	152,464	14,436	9.5	4.75
Chicago	217,290	16,829	14,133	1,201	5,564	498	236,947	18,528	7.8	2.34
Denver	325,411	27,833	42,874	3,550	40,599	3,332	406,884	34,715	8.5	4.66
Fort Worth	118,459	9,512	28,406	2,214	20,243	1,621	167,108	13,347	8.0	3.47
Houston	228,960	17,779	23,881	1,919	15,771	1,232	268,612	20,930	7.8	4.17
Kansas City	320,272	25,234	41,152	3,514	72,804	6,411	434,228	35,159	8.1	4.92
Lincoln	281,200	24,495	20,477	1,889	19,545	1,747	321,222	28,131	8.8	3.58
Oklahoma City	204,099	16,140	20,416	1,897	13,714	1,244	238,229	21,241	8.9	3.18
Salt Lake	136,266	11,650	14,221	1,247	14,554	1,183	163,021	14,080	8.6	4.38
Total	$ 2,144,994	$ 188,151	$ 226,555	$ 19,496	$ 217,063	$ 18,597	$ 2,590,552	$ 219,244	8.5	$ 3.80

JAX 365
Commission's Exhibit 359

FEDERAL TRADE COMMISSION
DOCKET NO. 4945 FILED NO. 257
IN THE MATTER OF A. G. Spalding & Bro.
DATE 9/7/54 PRINTED
A. B. Dick Co., Official Reporter
By

BCH-KEB
(7-12-16-52)

JAX 366

Commission's Exhibit 261

STATEMENT OF PROGRESS

APRIL 1953

	Number of Company Stations	Lessees	Dealers	Agents	Jobbers	Jobbers Dealers	Total
Albuquerque	55	55	246	23	6	50	380
Butte	70	68	99	9	6	0	182
Chicago	108	90	119	2	66	353	630
Denver	194	194	595	27	24	101	941
Fort Worth	75	75	479	40	2	0	592
Houston	81	75	228	86	17	81	421
Kansas City	187	165	81	13	39	106	404
Lincoln	154	153	134	14	65	28	394
Oklahoma City	143	141	371	41	33	156	742
Salt Lake	108	107	105	11	1	3	227
As of April 24, 1953	1,175	1,123	2,447	286	259	878	4,913
As of March 24, 1953		1,108	2,361	199	250	847	4,765
April Net Gain		15	86	7	9	31	148

FEDERAL TRADE COMMISSION
DOCKET NO. 4115 EXHIBIT NO. 261
IN THE MATTER OF B. F. Goodrich Co., et al
DATE 11/2/57 WITNESS
K... REPORTING CO., Official Reporter
By

DCH-FB
5-18-53

CX 261 8159

JAX 367
Commission's Exhibit 262

T.B.A. DIVISION SALES FOR APRIL 1953 AND CUMULATIVE

	TIRES AND TUBES		BATTERIES		ACCESSORIES		TOTAL		Per Cent	Sales Per 1,000 Gallons of Gasoline
	Sales	Commission	Sales	Commission	Sales	Commission	Sales	Commission		
Albuquerque	$ 31,750	$ 2,902	$ 2,374	$ 217	$ 3,593	$ 335	$ 37,722	$ 3,454	9.2	$ 7.47
Butte	32,073	3,066	1,926	173	1,683	165	35,982	3,404	9.5	13.28
Chicago	40,493	3,059	3,301	284	2,405	210	46,199	3,553	7.7	4.80
Denver	32,984	2,942	3,678	303	9,219	751	45,881	3,996	8.8	6.25
Fort Worth	19,447	1,544	3,391	262	3,825	301	26,663	2,107	7.9	5.45
Houston	39,271	2,893	5,504	427	5,257	402	50,032	3,722	7.4	7.34
Kansas City	33,853	2,962	2,979	275	6,251	582	43,083	3,819	8.9	5.15
Lincoln	42,690	3,881	3,019	267	8,811	818	54,520	4,966	9.1	6.39
Oklahoma City	31,016	2,510	2,738	230	5,046	432	38,800	3,172	8.2	5.65
Salt Lake	27,901	2,337	2,692	232	5,099	468	35,692	3,037	8.5	11.09
Total	$ 331,478	$ 28,096	$ 31,602	$ 2,670	$ 51,494	$ 4,464	$ 414,574	$ 35,230	8.5	$ 6.54
Albuquerque	99,906	9,284	8,066	757	13,598	1,284	121,570	11,325	9.3	6.13
Butte	109,738	10,336	4,770	432	6,050	558	120,578	11,326	9.4	14.65
Chicago	140,950	10,964	11,858	1,023	6,185	545	158,993	12,532	7.9	4.81
Denver	210,600	17,539	15,444	1,286	24,700	1,997	250,744	20,822	8.3	9.87
Fort Worth	86,050	6,804	9,795	768	15,547	1,245	111,392	8,817	7.9	6.29
Houston	190,439	14,103	11,425	889	13,570	1,048	215,434	16,040	7.4	8.60
Kansas City	184,131	15,201	11,996	1,117	28,320	2,441	224,447	18,759	8.4	7.57
Lincoln	210,030	18,591	11,937	1,102	20,428	1,915	242,395	21,608	8.9	8.83
Oklahoma City	149,182	12,210	12,975	1,096	19,015	1,607	181,172	14,913	8.2	7.03
Salt Lake	122,742	10,290	10,668	969	16,957	1,412	150,367	12,671	8.4	14.58
Total	$ 1,503,768	$ 125,322	$ 108,954	$ 9,439	$ 164,370	$ 14,052	$ 1,777,092	$ 148,813	8.4	$ 7.99

BCH-KEB
3-25-53

FEDERAL TRADE COMMISSION
FILE 6115 EXHIBIT NO. 262
DATE 4/1/57 WITNESS
B. O., Official Reporter

262

JAX 388

Commission's Exhibit 283A

368

In the Matter of
The B.F. Goodrich
Company, Et Al
FTC Docket #6485

RESPONSE OF CONTINENTAL OIL COMPANY
TO
ITEM 1 of SPECIFICATION IV OF SUBPOENA

The monthly report "TBA Sales, Regional Sales" similar to Items 10, 13, 18 and 21 of Specification III was discontinued in the early part of 1953, and a search of our records reveals only one copy of such report, same being styled "TBA Regional Sales for February, 1953, and Cumulative". A copy of this tabulation or report is annexed hereto as EXHIBIT T.

Conoco has at all times issued another form of monthly report of TBA Sales by Divisions (similar to the report set out in Item 22 of Specification III). The so-called "Regional Sales Report" was merely a duplicative report of the Divisional Sales Report which codified the same information by Conoco's five Marketing Regions. In lieu of the discontinued reports requested by the Subpoena, copies of the regular so-called "Divisional TBA Sales Report", together with special cumulative reports covering the period from December, 1952, through June, 1956, are annexed hereto as EXHIBITS T-1 thru T-45.

FEDERAL TRADE COMMISSION
DOCKET 6485 263A
B. F. Goodrich Co. et al
DATE 10/3/57
ACE REPORTING CO., Official Reporter
By

263 (a)(8)(B)(2)

317 111

JAX 369

Commission's Exhibit 2613

369

In the Matter of
The B. F. Goodrich
Company Et Al
FTC Docket #6485

ADDENDUM TO RESPONSE OF CONTINENTAL OIL COMPANY
TO
ITEM 1 OF SPECIFICATION IV OF SUBPOENA

The original response and the Exhibits T through T-45, inclusive, have reference only to the sale of TBA by B. F. Goodrich to Conoco outlets and the payment of commissions by Goodrich to Continental under the sales commission agreement in effect between those companies.

218

FEDERAL TRADE COMMISSION EXHIBIT NO. 6485 263 (6)

112

8163

T.B.A. REGIONAL SALES FOR FEBRUARY 1953 AND CUMULATIVE

	TIRES AND TUBES		BATTERIES		ACCESSORIES		TOTAL		Per Cent	Sales Per 1,000 Gallons of Gasoline
	Sales	Commission	Sales	Commission	Sales	Commission	Sales	Commission		
Central	$ 97,087	$ 8,073	$ 6,287	$ 567	$ 10,926	$ 988	$ 114,280	$ 9,628	8.4	$ 8.72
Southern	51,564	3,809	2,010	157	2,902	227	56,476	4,213	7.5	9.84
Southwestern	55,443	4,779	5,617	500	9,699	840	70,759	6,119	8.6	7.92
Northern	101,288	8,590	5,064	451	6,248	590	112,600	9,631	8.6	8.51
Rocky Mountain	96,487	8,284	7,636	659	8,810	714	112,873	9,657	8.6	11.76
Total	$ 401,789	$ 33,555	$ 26,614	$ 2,334	$ 38,585	$ 3,359	$ 466,988	$ 39,248	8.4	$ 9.23
Central	203,160	16,458	14,215	1,259	24,187	2,034	241,562	19,751	8.2	9.27
Southern	115,969	8,438	3,443	268	5,050	392	124,462	9,098	7.3	10.72
Southwestern	107,092	9,298	9,178	803	14,730	1,294	131,000	11,395	8.7	7.29
Northern	187,058	15,985	12,210	1,120	10,311	960	209,579	18,065	8.6	7.92
Rocky Mountain	257,640	21,656	14,969	1,294	20,747	1,692	293,356	24,642	8.4	15.21
Total	$ 870,919	$ 71,835	$ 54,015	$ 4,744	$ 75,025	$ 6,372	$ 999,959	$ 82,951	8.3	$ 9.86

JAX 370
Commission's Exhibit 262C
Entered

2633 (C)

2612

262C

370

B26-CS
3-18-53

T.B.A. DIVISION SALES FOR DECEMBER AND YEAR 1952

	TIRES AND TUBES		BATTERIES		ACCESSORIES		TOTAL		Per Cent	Sales Per 1,000 Gallons of Gasoline
	Sales	Commission	Sales	Commission	Sales	Commission	Sales	Commission		
Albuquerque	$ 22,485	$ 2,051	$ 2,546	$ 283	$ 4,117	$ 390	$ 28,748	$ 2,684	9.3	$ 5.75
Butte	19,850	1,853	1,818	168	1,949	190	23,017	2,211	9.6	11.54
Chicago	38,333	2,945	2,898	241	1,445	123	42,896	3,309	7.7	5.11
Denver	29,890	2,610	11,801	968	7,141	599	48,832	4,177	8.6	7.69
Fort Worth	9,080	750	3,727	289	5,183	419	17,910	1,458	8.1	4.02
Houston	26,501	2,047	2,836	230	3,420	261	32,757	2,538	7.7	5.39
Kansas City	19,585	1,866	3,705	343	5,921	487	29,211	2,696	9.2	3.99
Lincoln	46,172	4,192	5,686	544	5,777	547	57,635	5,283	9.2	8.83
Oklahoma City	24,747	2,145	2,816	253	4,214	379	31,777	2,777	8.7	4.56
Salt Lake	11,391	969	2,437	199	2,352	185	16,180	1,353	8.4	6.29
Total	$ 247,174	$ 21,428	$ 40,270	$ 3,478	$ 41,519	$ 3,580	$ 328,963	$ 28,486	8.7	$ 5.91
Albuquerque	200,166	18,525	16,172	1,512	14,247	1,324	230,585	21,361	9.3	3.60
Butte	158,206	15,059	11,187	1,004	6,088	584	175,481	16,647	9.5	5.14
Chicago	255,965	19,791	16,927	1,429	6,951	617	279,843	21,837	7.8	2.55
Denver	352,483	30,362	55,493	4,599	47,740	3,931	455,716	38,892	8.5	4.86
Fort Worth	127,459	10,263	32,133	2,503	25,426	2,039	185,018	14,805	8.0	3.51
Houston	255,461	19,826	26,717	2,148	19,191	1,494	301,369	23,468	7.8	4.27
Kansas City	339,857	27,101	44,857	3,857	78,725	6,897	463,439	37,855	8.2	4.85
Lincoln	327,210	28,671	26,288	2,446	25,359	2,297	378,857	33,414	8.8	3.94
Oklahoma City	228,846	20,284	23,232	2,110	17,928	1,623	270,006	24,017	8.9	3.29
Salt Lake	145,637	12,618	16,658	1,446	16,906	1,368	179,201	15,432	8.6	4.50
Total	$ 2,391,290	$ 202,500	$ 269,664	$ 23,054	$ 258,561	$ 22,174	$ 2,919,515	$ 247,728	8.5	$ 3.95

JAX 371
Commission's Exhibit 2030

RCM-MD
6-53

263 (4)

JAX 373

Commission's Exhibit 263E

T.B.A. DIVISION SALES FOR JANUARY 1953

	TIRES AND TUBES		BATTERIES		ACCESSORIES		TOTAL		Per Cent	Sales Per 1,000 Gallons of Gasoline
	Sales	Commission	Sales	Commission	Sales	Commission	Sales	Commission		
Albuquerque	$ 27,311	$ 2,586	$ 1,685	$ 153	$ 2,686	$ 256	$ 31,682	$ 2,995	9.5	$ 6.43
Butte	17,281	1,659	1,162	99	1,476	144	19,919	1,902	9.5	11.61
Chicago	32,691	2,611	3,027	275	1,357	119	37,075	3,005	8.1	4.98
Denver	91,545	7,438	4,071	339	4,989	411	100,605	8,188	8.1	17.24
Fort Worth	24,338	1,934	1,876	151	2,345	196	28,559	2,281	8.0	6.95
Houston	64,405	4,608	1,433	112	2,148	165	67,986	4,885	7.2	11.55
Kansas City	63,430	4,863	3,251	299	7,406	565	74,087	5,727	7.7	10.93
Lincoln	53,079	4,784	4,119	393	2,706	252	59,904	5,429	9.1	10.36
Oklahoma City	42,663	3,522	4,677	393	5,855	481	53,195	4,396	8.3	8.56
Salt Lake	52,387	4,275	2,100	196	5,472	424	59,959	4,895	8.2	22.22
Total	$ 469,130	$ 38,280	$ 27,401	$ 2,410	$ 36,440	$ 3,013	$ 532,971	$ 43,703	8.2	$ 10.37

-511-

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2-18-53

FEDERAL TRADE COMMISSION
EXHIBIT NO. 263E

8466

JAX 373

Commission's Exhibit 283F

FTC 2-17-53

2-22

T.B.A. DIVISION SALES FOR FEBRUARY 1953 AND CUMULATIVE

	TIRES AND TUBES		BATTERIES		ACCESSORIES		TOTAL		Per Cent	Sales Per 1,000 Gallons of Gasoline
	Sales	Commission	Sales	Commission	Sales	Commission	Sales	Commission		
Albuquerque	$ 28,849	$ 2,689	$ 2,865	$ 284	$ 4,302	$ 412	$ 36,016	$ 3,385	9.4	$ 7.47
Butte	16,205	1,593	710	71	1,123	106	18,038	1,770	9.8	10.53
Chicago	33,208	2,787	2,435	205	1,383	128	37,026	3,120	8.4	4.92
Denver	59,726	4,903	3,819	309	5,422	428	68,967	5,640	8.2	12.18
Fort Worth	26,594	2,090	2,732	216	5,397	428	34,743	2,734	7.9	8.45
Houston	51,564	3,829	2,010	157	2,902	227	56,476	4,213	7.5	9.84
Kansas City	48,202	4,119	3,398	324	7,570	708	59,170	5,150	8.7	8.47
Lincoln	68,080	5,893	2,629	246	4,865	462	75,574	6,511	8.6	13.21
Oklahoma City	48,865	3,954	2,889	243	3,356	280	55,110	4,478	8.1	9.00
Salt Lake	20,496	1,788	3,107	297	2,265	180	25,868	2,247	8.7	11.61
Total	$ 401,789	$ 33,555	$ 26,614	$ 2,334	$ 38,585	$ 3,359	$ 466,988	$ 39,248	8.4	$ 9.23
Albuquerque	56,160	5,275	4,550	436	6,988	669	67,698	6,380	9.4	6.94
Butte	33,486	3,252	1,872	170	2,599	250	37,957	3,672	9.7	11.08
Chicago	65,899	5,398	5,462	481	2,740	246	74,101	6,125	8.3	4.95
Denver	151,271	12,341	7,890	649	10,411	838	169,572	13,828	8.2	14.81
Fort Worth	50,932	4,023	4,628	367	7,742	625	63,302	5,015	7.9	7.70
Houston	115,969	8,433	3,443	253	5,050	392	124,462	9,078	7.3	10.71
Kansas City	111,632	8,982	6,649	622	14,976	1,273	133,257	10,877	8.2	9.69
Lincoln	121,159	10,587	6,748	639	7,571	714	135,478	11,940	8.8	11.78
Oklahoma City	91,528	7,476	7,566	637	9,211	761	108,305	8,874	8.2	8.80
Salt Lake	72,883	6,063	5,207	475	7,737	604	85,827	7,142	8.3	19.47
Total	$ 870,919	$ 71,835	$ 54,015	$ 4,744	$ 75,025	$ 6,372	$ 999,959	$ 82,951	8.3	$ 9.06

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8167

T.B.A. DIVISION SALES FOR MARCH 1953 AND CUMULATIVE

	TIRES AND TUBES		BATTERIES		ACCESSORIES		TOTAL		Per Cent	Sales Per 1,000 Gallons of Gasoline
	Sales	Commission	Sales	Commission	Sales	Commission	Sales	Commission		
Albuquerque	$ 11,996	$ 1,107	$ 1,142	$ 102	$ 3,012	$ 281	$ 16,150	$ 1,490	9.2	$ 3.21
Butte	44,179	4,017	992	89	1,468	144	46,639	4,250	9.1	22.27
Chicago	34,558	2,506	3,095	259	1,040	89	38,693	2,854	7.4	4.56
Denver	26,345	2,256	3,876	334	5,070	408	35,291	2,998	8.5	5.33
Fort Worth	15,671	1,237	1,776	138	3,980	319	21,427	1,694	7.9	4.67
Houston	35,199	2,772	2,478	194	3,263	254	40,940	3,220	7.9	6.19
Kansas City	38,646	3,257	2,368	219	7,093	587	48,107	4,063	8.4	6.38
Lincoln	46,181	4,123	2,170	196	4,046	383	52,397	4,702	9.0	7.06
Oklahoma City	26,638	2,224	2,671	229	4,758	413	34,067	2,866	8.4	5.19
Salt Lake	21,958	1,891	2,769	262	4,121	340	28,848	2,493	8.6	10.55
Total	$ 301,371	$ 25,390	$ 23,337	$ 2,022	$ 37,851	$ 3,218	$ 362,559	$ 30,630	8.4	$ 6.28
Albuquerque	68,156	6,381	5,692	539	10,000	950	83,848	7,870	9.4	5.67
Butte	77,665	7,270	2,864	259	4,067	393	84,596	7,922	9.4	15.33
Chicago	100,457	7,904	8,557	739	3,780	336	112,794	8,979	8.0	4.81
Denver	177,616	14,597	11,766	982	15,481	1,247	204,863	16,826	8.2	11.34
Fort Worth	66,603	5,260	6,404	506	11,722	943	84,729	6,709	7.9	6.61
Houston	151,168	11,209	5,921	463	8,313	646	165,402	12,318	7.4	9.07
Kansas City	150,278	12,239	9,017	841	22,069	1,860	181,364	14,940	8.2	8.52
Lincoln	167,340	14,710	8,918	836	11,617	1,097	187,875	16,643	8.9	9.93
Oklahoma City	118,166	9,700	10,237	866	13,969	1,174	142,372	11,740	8.2	7.54
Salt Lake	94,841	7,953	7,976	737	11,858	944	114,675	9,634	8.4	16.05
Total	$ 1,172,290	$ 97,223	$ 77,352	$ 6,768	$ 112,876	$ 9,590	$ 1,362,518	$ 113,581	8.3	$ 8.56

Commission's Exhibit 7-4

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JAX 274

BCH-KEB
4-20-53

T.B.A. DIVISION SALES FOR APRIL 1953 AND CUMULATIVE

	TIRES AND TUBES		BATTERIES		ACCESSORIES		TOTAL		Per Cent	Sales Per 1,000 Gallons of Gasoline
	Sales	Commission	Sales	Commission	Sales	Commission	Sales	Commission		
Albuquerque	$ 31,750	$ 2,902	$ 2,374	$ 217	$ 3,598	$ 335	$ 37,722	$ 3,454	9.2	$ 7.47
Butte	32,073	3,066	1,926	173	1,983	165	35,982	3,404	9.5	13.28
Chicago	40,493	3,059	3,301	284	2,405	210	46,199	3,553	7.7	4.80
Denver	32,984	2,942	3,678	303	9,219	751	45,881	3,996	8.8	6.25
Fort Worth	19,447	1,544	3,391	262	3,825	301	26,663	2,107	7.9	5.45
Houston	39,271	2,893	5,504	427	5,257	402	50,032	3,722	7.4	7.34
Kansas City	33,853	2,962	2,979	275	6,251	502	43,083	3,819	8.9	5.15
Lincoln	42,690	3,881	3,019	267	8,811	818	54,520	4,966	9.1	6.39
Oklahoma City	31,016	2,510	2,738	230	5,046	432	38,800	3,172	8.2	5.65
Salt Lake	27,001	2,337	2,692	232	5,929	468	35,622	3,037	8.5	11.09
Total	$ 331,478	$ 28,096	$ 31,602	$ 2,670	$ 51,494	$ 4,464	$ 414,574	$ 35,230	8.5	$ 6.54
Albuquerque	99,906	9,284	8,066	757	13,598	1,284	121,570	11,325	9.3	6.13
Butte	109,738	10,336	4,790	432	6,050	558	120,578	11,326	9.4	14.65
Chicago	140,950	10,964	11,858	1,023	6,185	545	158,991	12,532	7.9	4.81
Denver	210,600	17,539	15,444	1,206	24,700	1,997	250,744	20,822	8.3	9.87
Fort Worth	86,050	6,804	9,795	768	15,547	1,245	111,392	8,817	7.9	6.29
Houston	190,439	14,103	11,425	889	13,570	1,048	215,434	16,040	7.4	8.60
Kansas City	184,131	15,201	11,996	1,117	28,320	2,441	224,447	18,759	8.4	7.57
Lincoln	210,030	18,591	11,937	1,102	20,428	1,915	242,395	21,608	8.9	8.83
Oklahoma City	149,182	12,210	12,975	1,096	19,015	1,607	181,172	14,913	8.2	7.03
Salt Lake	122,742	10,290	10,668	969	16,957	1,412	150,367	12,671	8.4	14.52
Total	$ 1,503,768	$ 125,322	$ 108,954	$ 9,439	$ 164,370	$ 14,052	$ 1,777,092	$ 148,813	8.4	$ 7.99

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5-25-53

JAX 376
Commission's Exhibit 2631
FTC 1/28/54

8169

JAX 376

Commission's Exhibit 2831

T.B.A. DIVISION SALES FOR MAY 1953 AND CUMULATIVE

	TIRES AND TUBES		BATTERIES		ACCESSORIES		TOTAL		Per Cent	Sales Per 1,000 Gallons of Gasoline
	Sales	Commission	Sales	Commission	Sales	Commission	Sales	Commission		
Albuquerque	$ 29,592	$ 2,584	$ 2,053	$ 187	$ 4,198	$ 381	$ 35,843	$ 3,152	8.8	$ 6.87
Butte	26,277	2,483	845	80	1,800	178	28,922	2,741	9.5	10.19
Chicago	47,172	3,663	4,397	361	2,547	209	54,116	4,233	7.8	5.28
Denver	41,394	3,484	2,639	220	6,243	500	50,276	4,204	8.4	6.39
Fort Worth	28,907	2,374	2,487	207	6,464	537	37,858	3,118	8.2	7.90
Houston	27,089	2,042	3,484	273	7,668	589	38,241	2,904	7.6	6.04
Kansas City	52,889	4,582	1,981	168	5,717	512	60,587	5,282	8.7	7.04
Lincoln	48,656	4,194	1,687	159	7,442	689	57,785	5,042	8.7	6.03
Oklahoma City	44,812	3,660	2,820	242	4,873	411	52,505	4,313	8.2	7.67
Salt Lake	25,226	2,225	1,844	166	4,208	393	31,278	2,784	8.9	9.71
Total	$ 372,014	$ 31,291	$ 24,237	$ 2,083	$ 51,160	$ 4,399	$ 447,411	$ 37,773	8.4	$ 6.82
Albuquerque	129,498	11,868	10,119	943	17,796	1,666	157,413	14,477	9.2	6.28
Butte	136,015	12,819	5,635	512	7,850	736	149,500	14,067	9.4	13.51
Chicago	188,122	14,627	16,255	1,384	8,732	754	213,109	16,765	7.9	4.92
Denver	251,994	21,023	18,083	1,506	30,943	2,496	301,020	25,025	8.3	9.05
Fort Worth	114,957	9,178	12,282	975	22,011	1,781	149,250	11,934	8.0	6.63
Houston	217,528	16,145	14,909	1,162	21,238	1,637	253,675	18,944	7.5	8.08
Kansas City	237,020	19,782	13,977	1,305	34,037	2,954	285,034	24,041	8.4	7.45
Lincoln	258,686	22,784	13,624	1,261	27,870	2,605	300,180	26,650	8.9	8.10
Oklahoma City	193,994	15,870	15,795	1,338	23,888	2,018	233,677	19,226	8.2	7.16
Salt Lake	147,968	12,514	12,512	1,136	21,165	1,805	101,645	15,455	8.5	11.38
Total	$ 1,875,782	$ 156,610	$ 133,191	$ 11,522	$ 215,530	$ 18,452	$ 2,224,503	$ 186,584	8.4	$ 7.72

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8170

T.B.A. DIVISION SALES FOR JUNE 1953 AND CUMULATIVE

	TIRES AND TUBES		BATTERIES		ACCESSORIES		TOTAL		Per Cent	Sales Per 1,000 Gallons of Gasoline
	Sales	Commission	Sales	Commission	Sales	Commission	Sales	Commission		
Albuquerque	$ 42,867	$ 4,037	$ 2,445	$ 219	$ 4,457	$ 423	$ 49,769	$ 4,679	9.4	$ 8.28
Butte	26,556	2,520	1,152	100	1,067	94	28,775	2,714	9.4	7.67
Chicago	61,585	4,801	4,152	373	4,672	409	70,409	5,584	7.9	6.30
Denver	54,155	43516	4,172	340	8,122	651	66,449	5,507	8.3	6.60
Fort Worth	33,217	2,667	3,768	316	5,565	455	42,550	3,438	8.1	7.34
Houston	52,251	3,874	6,114	488	2,747	215	61,112	4,577	7.5	8.37
Kansas City	126,672	9,925	4,174	400	15,741	1,312	146,587	11,637	7.9	10.93
Lincoln	62,990	5,573	2,846	266	9,619	886	75,455	6,724	8.9	7.22
Oklahoma City	76,703	6,337	5,682	468	7,075	611	89,460	7,416	8.3	10.10
Salt Lake	36,248	3,084	2,517	226	4,247	378	43,012	3,688	8.6	10.29
Total	$ 573,244	$ 47,334	$ 37,022	$ 3,196	$ 63,312	$ 5,434	$ 673,578	$ 55,964	8.3	$ 8.61
Albuquerque	172,365	15,905	12,564	1,162	22,253	2,089	207,182	19,156	9.2	6.66
Butte	162,571	15,339	6,787	612	8,917	830	178,275	16,781	9.4	12.03
Chicago	249,707	19,428	20,407	1,757	13,404	1,163	283,518	22,349	7.9	5.20
Denver	306,149	25,539	22,255	1,846	39,065	3,147	367,469	30,532	8.3	8.45
Fort Worth	148,174	11,845	16,050	1,291	27,576	2,236	191,800	15,372	8.0	6.78
Houston	269,779	20,019	21,023	1,650	23,095	1,852	314,787	23,521	7.5	8.14
Kansas City	363,692	29,707	18,151	1,705	49,778	4,266	431,621	35,678	8.3	8.83
Lincoln	321,675	28,357	16,470	1,527	37,489	3,491	375,635	33,374	8.9	7.91
Oklahoma City	270,697	22,207	21,477	1,806	30,963	2,629	323,137	26,642	8.2	7.80
Salt Lake	184,216	15,598	15,029	1,362	25,412	2,183	224,657	19,143	8.5	12.64
Total	$ 2,449,026	$ 203,944	$ 170,213	$ 14,718	$ 278,842	$ 23,866	$ 2,898,081	$ 242,548	8.4	$ 7.91

DAE-JG
7-17-53

Commission's Exhibit 263J

8471

JAX 378
Commission's Exhibit 378K
8-19-53 E

T.B.A. DIVISION SALES FOR JULY 1953 AND CUMULATIVE

	TIRES AND TUBES		BATTERIES		ACCESSORIES		TOTAL			Sales Per 1,000 Gallons of Gasoline
	Sales	Commission	Sales	Commission	Sales	Commission	Sales	Commission	Per Cent	
Albuquerque	$ 32,810	$ 3,018	$ 3,506	$ 331	$ 3,407	$ 318	$ 39,723	$ 3,667	9.2	$ 7.50
Butte	21,825	2,032	1,696	142	816	71	24,337	2,245	9.2	5.65
Chicago	58,310	4,729	3,633	318	2,516	223	64,459	5,270	8.2	6.25
Denver	69,102	5,733	10,020	814	7,437	620	86,559	7,167	8.3	8.24
Fort Worth	28,606	2,306	6,349	517	4,548	377	39,503	3,200	8.1	8.02
Houston	29,538	2,239	7,039	552	5,486	439	42,063	3,230	7.7	6.72
Kansas City	73,066	6,174	8,072	716	7,890	688	89,028	7,578	8.5	9.58
Lincoln	63,949	5,638	4,924	440	10,093	879	78,966	6,957	8.8	7.56
Oklahoma City	47,893	3,929	6,999	576	6,831	586	61,723	5,091	8.2	8.49
Salt Lake	26,791	2,374	4,846	444	4,210	376	35,847	3,194	8.9	8.55
Total	$ 451,890	$ 38,172	$ 57,084	$ 4,850	$ 53,234	$ 4,577	$ 562,208	$ 47,599	8.5	7.72
Albuquerque	205,175	18,923	16,070	1,494	25,660	2,406	246,905	22,823	9.2	6.23
Butte	184,396	17,371	8,483	753	9,733	902	202,612	19,026	9.4	10.59
Chicago	308,017	24,157	24,040	2,076	15,920	1,386	347,977	27,619	7.9	5.37
Denver	375,251	31,272	32,275	2,661	46,502	3,767	454,028	37,700	8.3	08.43
Fort Worth	176,780	14,151	22,399	1,808	32,124	2,613	231,303	18,572	8.0	6.96
Houston	299,317	22,257	28,062	2,202	29,471	2,292	356,850	26,751	7.5	7.94
Kansas City	436,658	35,882	26,223	2,421	57,668	4,952	520,549	43,255	8.3	8.95
Lincoln	386,625	33,995	21,394	1,867	47,582	4,369	455,601	40,331	8.9	7.87
Oklahoma City	318,590	26,136	28,476	2,381	37,794	3,215	384,860	31,732	8.2	7.90
Salt Lake	211,007	17,972	19,875	1,806	29,622	2,559	260,504	22,337	8.6	11.86
Total	$2,901,816	$242,116	$227,297	$19,569	$332,076	$28,461	$3,461,189	$290,146	8.4	7.88

RCM-EGH
8-19-53

FEDERAL TRADE COMMISSION
Dec. 1945 Final 7631

8172

T.E.A. DIVISION SALES FOR AUGUST 1953 AND CUMULATIVE

	Texas and Texas		Distribution		Accessories		Total		Per Cent	Sales Per 1,000 Gallons of Consumption
	Sales	Commission	Sales	Commission	Sales	Commission	Sales	Commission		
Albuquerque	$ 35,728	$ 3,389	$ 3,947	$ 355	$ 3,169	$ 286	$ 42,838	$ 3,970	9.2	$ 7.38
Butte	30,287	4,835	2,301	209	1,822	147	54,390	5,191	9.5	11.47
Chicago	51,257	3,880	5,547	476	2,892	847	59,696	4,603	7.7	6.08
Denver	59,903	4,976	6,275	511	6,765	532	72,963	6,018	8.2	6.59
Fort Worth	22,610	1,833	4,787	386	4,186	337	31,583	2,556	8.1	6.25
Houston	41,440	3,090	5,155	406	3,429	273	50,084	3,769	7.5	7.55
Kansas City	65,643	5,494	4,925	468	25,050	2,226	95,618	8,188	8.6	11.01
Lincoln	68,564	5,967	6,776	626	10,599	929	85,939	7,522	8.8	9.09
Oklahoma City	36,945	2,961	3,047	264	5,518	470	49,510	3,695	8.1	6.24
Salt Lake	44,113	3,728	4,237	386	3,606	327	51,956	4,441	8.5	11.13
Total	$ 476,464	$ 40,093	$ 46,997	$ 4,087	$ 67,016	$ 5,774	$ 590,477	$ 49,954	8.5	$ 8.07
Albuquerque	240,897	22,252	20,017	1,848	28,829	2,693	289,743	26,793	9.2	6.87
Butte	234,663	22,206	10,784	964	11,955	1,049	257,002	24,217	9.4	10.77
Chicago	359,274	28,037	29,587	2,552	18,772	1,633	407,633	32,222	7.9	5.46
Denver	435,154	36,249	38,550	3,171	53,287	4,299	526,991	43,719	8.3	8.12
Fort Worth	199,390	15,984	27,186	2,194	36,310	2,950	262,886	21,128	8.0	6.88
Houston	340,757	25,348	33,217	2,608	32,900	2,565	406,874	30,521	7.5	7.89
Kansas City	502,301	41,376	31,148	2,888	82,727	7,179	616,176	51,443	8.3	9.21
Lincoln	455,189	39,962	28,170	2,692	58,181	5,299	541,540	47,853	8.8	8.03
Oklahoma City	355,535	29,097	31,523	2,645	43,312	3,684	430,370	35,426	8.2	7.68
Salt Lake	255,120	21,699	24,112	2,193	33,228	2,886	312,460	26,778	8.6	11.73
Total	$3,378,280	$282,210	$274,294	$23,653	$399,101	$34,237	$4,051,675	$340,100	8.4	$ 7.91

RGH-MEC
9-16-53

8173

JAX 379
Complainant's Exhibit 2631
For Identification
Received in Evidence

T.B.A. DIVISION SALES FOR SEPTEMBER 1953 AND CUMULATIVE

	TIRES AND TUBES		BATTERIES		ACCESSORIES		TOTAL		Per Cent	Sales Per 1,000 Gallons of Gasoline
	Sales	Commission	Sales	Commission	Sales	Commission	Sales	Commission		
Albuquerque	$ 24,710	$ 2,254	$ 4,423	$ 400	$ 4,117	$ 372	$ 33,250	$ 3,026	9.1	$ 6.29
Butte	21,282	1,962	3,025	260	1,295	110	25,602	2,332	9.1	6.66
Chicago	57,321	4,557	8,806	767	3,575	326	69,702	5,650	8.1	6.71
Denver	64,040	5,291	8,409	700	6,012	489	78,461	6,480	8.3	7.68
Fort Worth	22,442	1,812	5,902	498	6,196	490	34,540	2,800	8.1	6.30
Houston	53,331	3,876	6,060	483	4,763	368	64,154	4,727	7.4	9.39
Kansas City	79,949	6,112	9,935	833	12,726	1,103	102,610	8,048	7.8	10.88
Lincoln	91,398	8,125	9,161	843	11,322	995	111,881	9,963	8.9	11.74
Oklahoma City	46,321	3,702	7,371	608	6,266	530	59,958	4,840	8.1	7.84
Salt Lake	26,783	2,323	5,121	454	4,380	410	36,284	3,187	8.8	8.79
Total	$ 487,577	$ 40,014	$ 68,213	$ 5,846	$ 60,652	$ 5,193	$ 616,442	$ 51,053	8.3	$ 8.47
Albuquerque	265,607	24,506	24,440	2,248	32,946	3,065	322,993	29,818	9.2	6.81
Butte	255,945	24,168	13,809	1,222	12,850	1,159	282,604	26,549	9.4	10.20
Chicago	416,605	32,595	38,393	3,318	22,347	1,959	477,345	37,872	7.9	5.61
Denver	499,194	41,339	46,959	3,872	59,299	4,788	605,452	50,199	8.3	8.06
Fort Worth	221,832	17,796	33,088	2,692	42,506	3,440	297,426	23,928	8.0	6.80
Houston	354,088	29,223	39,277	3,091	37,663	2,933	471,028	35,247	7.5	8.06
Kansas City	582,290	47,487	41,065	3,721	95,453	8,282	718,768	59,491	8.3	9.42
Lincoln	546,587	48,087	37,331	3,436	69,503	6,294	653,421	57,816	8.8	8.49
Oklahoma City	401,896	32,799	38,894	3,253	49,578	4,214	490,328	40,266	8.2	7.70
Salt Lake	281,903	24,022	29,233	2,646	37,608	3,296	348,744	29,965	8.6	11.34
Total	$ 3,865,867	$ 322,222	$ 342,489	$ 29,499	$ 459,753	$ 39,430	$ 4,668,109	$ 391,151	8.4	$ 7.98

JAX 280
Commissioner's Exhibit 2838
Entered

123

BAE-BGH
10-19-53

FEDERAL TRADE COMMISSION
FILED 1955

8171

T.B.A. DIVISION SALES FOR OCTOBER 1953 AND CUMULATIVE

	TIRES AND TUBES		BATTERIES		ACCESSORIES		TOTAL		Per Cent	Sales Per 1,000 Gallons of Gasoline
	Sales	Commission	Sales	Commission	Sales	Commission	Sales	Commission		
Albuquerque	$ 28,610	$ 2,615	$ 3,111	$ 287	$ 3,745	$ 362	$ 35,466	$ 3,264	9.2	$ 6.96
Butte	38,078	3,653	2,889	277	1,746	143	42,713	4,073	8.5	15.10
Chicago	43,365	3,444	6,733	588	2,421	217	52,519	4,250	8.1	5.06
Denver	49,415	4,188	8,577	716	7,694	616	65,686	5,520	8.4	7.57
Fort Worth	13,390	1,072	5,084	402	8,332	662	26,806	2,136	8.0	4.75
Houston	36,910	2,736	4,532	357	3,169	252	44,611	3,347	7.5	6.35
Kansas City	46,781	3,752	10,377	883	11,781	1,009	68,939	5,644	8.2	7.63
Lincoln	44,913	4,056	12,360	1,077	11,462	1,023	68,735	6,156	9.0	7.40
Oklahoma City	25,545	2,046	3,914	324	4,014	341	33,474	2,710	8.1	4.43
Salt Lake	32,211	2,738	6,343	551	4,508	401	43,062	3,670	8.5	11.59
Total	$ 359,218	$ 30,282	$ 63,920	$ 5,462	$ 58,872	$ 5,026	$ 482,011	$ 40,770	8.5	$ 6.96
Albuquerque	294,217	27,121	27,551	2,534	36,691	3,427	358,459	33,082	9.2	6.82
Butte	294,023	27,821	16,698	1,499	14,596	1,303	325,317	30,623	9.3	10.65
Chicago	499,970	36,038	45,126	3,907	24,768	2,177	569,864	42,122	7.9	5.55
Denver	548,609	45,727	55,536	4,587	66,993	5,404	671,138	55,718	8.3	8.01
Fort Worth	235,222	18,868	38,172	3,095	50,838	4,102	324,232	26,065	8.0	6.56
Houston	430,998	31,962	43,809	3,448	40,832	3,185	515,639	38,594	7.5	7.88
Kansas City	629,031	51,239	51,442	4,605	107,234	9,290	787,707	65,134	8.3	9.23
Lincoln	591,500	52,142	49,691	4,513	80,965	7,317	722,156	63,973	8.9	8.38
Oklahoma City	427,402	34,845	42,808	3,577	53,592	4,554	523,802	42,976	8.2	7.36
Salt Lake	314,114	26,740	35,576	3,197	42,116	3,698	391,806	33,635	8.6	11.36
Total	$ 4,225,086	$ 352,503	$ 406,409	$ 34,962	$ 518,625	$ 44,457	$ 5,150,120	$ 431,922	8.4	$ 7.87

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11-19-53

JAX 281
Commission's Exhibit 263N
Exhibit T-N

8175

T.B.A. DIVISION SALES FOR NOVEMBER 1953 AND CUMULATIVE

	TIRES AND TUBES		BATTERIES		ACCESSORIES		TOTAL		Per Cent	Sales Per 1,000 Gallons of Gasoline
	Sales	Commission	Sales	Commission	Sales	Commission	Sales	Commission		
Albuquerque	$ 41,861	$ 4,030	$ 4,136	$ 383	$ 3,429	$ 330	$ 49,486	$ 4,743	9.6	$ 9.79
Butte	15,212	1,408	2,181	187	2,497	207	19,890	1,802	9.1	8.09
Chicago	40,993	3,208	8,957	774	2,909	269	52,459	4,245	8.1	5.88
Denver	35,302	2,432	11,220	893	9,397	756	55,919	4,081	7.3	7.69
Fort Worth	11,535	1,101	3,733	314	5,640	489	20,908	1,904	9.1	4.18
Houston	33,027	2,504	6,819	530	4,392	343	44,238	3,377	7.6	6.75
Kansas City	44,097	3,434	8,860	777	13,902	1,200	66,859	5,411	8.1	8.31
Lincoln	56,827	5,076	14,935	1,389	13,381	1,230	85,143	7,695	9.0	10.93
Oklahoma City	27,327	2,307	4,735	392	6,928	583	38,990	3,282	8.4	5.27
Salt Lake	13,959	1,148	5,342	455	5,348	480	24,649	2,083	8.5	8.20
Total	$ 319,740	$ 26,642	$ 70,918	$ 6,094	$ 67,823	$ 5,887	$ 458,481	$ 38,623	8.4	$ 7.45
Albuquerque	336,078	31,151	31,687	2,917	40,120	3,757	407,885	37,825	9.3	7.08
Butte	309,835	29,229	18,879	1,686	17,093	1,510	345,207	32,425	9.4	10.45
Chicago	500,563	39,840	54,083	4,681	27,677	2,446	582,323	46,367	8.0	5.58
Denver	583,911	48,160	66,756	5,480	76,390	6,160	727,057	59,800	8.2	7.98
Fort Worth	246,757	19,969	41,905	3,408	56,478	4,591	345,140	27,968	8.1	6.35
Houston	464,025	34,466	50,686	3,978	45,224	3,508	559,877	41,972	7.5	7.78
Kansas City	673,128	54,673	60,302	5,382	121,136	10,490	854,566	70,545	8.3	9.15
Lincoln	648,327	57,219	64,626	5,903	94,346	8,546	807,299	71,668	8.9	8.59
Oklahoma City	454,729	37,152	47,543	3,969	60,520	5,137	562,792	46,258	8.2	7.16
Salt Lake	326,073	27,888	40,918	3,692	47,464	4,178	416,455	35,718	8.6	11.11
Total	$ 4,544,826	$ 379,147	$ 477,327	$ 41,056	$ 586,448	$ 50,343	$ 5,608,601	$ 470,546	8.4	$ 7.83

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12-21-53

8175

JAX 383
Commission's Exhibit 2630
Exhibit T-4
231
2630

T.B.A. DIVISION SALES FOR DECEMBER 1953 AND CUMULATIVE

	TIRES AND TUBES		BATTERIES		ACCESSORIES		TOTAL		Per Cent	Sales Per 1,000 Gallons of Gasoline
	Sales	Commission	Sales	Commission	Sales	Commission	Sales	Commission		
Albuquerque	$ 27,753	$ 2,532	$ 2,301	$ 208	$ 5,400	$ 487	$ 35,454	$ 3,227	9.1	$ 6.84
Butte	18,842	1,786	2,482	230	2,843	231	24,167	2,247	9.3	10.86
Chicago	39,172	2,971	9,260	823	5,176	435	53,608	4,229	7.9	6.11
Denver	24,966	2,089	6,635	528	7,590	628	39,191	3,245	8.3	5.67
Fort Worth	9,120	731	2,137	177	6,516	530	17,773	1,433	8.1	3.23
Houston	6,668	579	2,073	166	5,353	417	14,094	1,162	8.2	2.00
Kansas City	41,983	3,324	7,820	666	11,354	971	61,157	4,961	8.1	7.59
Lincoln	47,784	4,213	11,068	1,038	9,752	925	68,604	6,176	9.0	9.18
Oklahoma City	[illegible]5,406	1,148	3,301	274	4,997	425	23,704	1,847	7.8	3.09
Salt Lake	[illegible]6,666	1,520	4,072	359	6,549	541	27,287	2,420	8.9	10.29
Total,	$ [illegible]0	$ 20,893	$ 51,149	$ 4,469	$ 65,530	$ 5,590	$ 365,039	$ 30,952	8.5	$ 5.94
Albuquerque	363,831	33,683	33,988	3,124	45,520	4,245	443,339	41,052	9.3	7.06
Butte	327,077	31,015	21,361	1,916	19,936	1,740	369,374	34,671	9.4	10.48
Chicago	546,304	42,847	63,535	5,524	32,905	2,885	642,744	51,256	8.0	5.68
Denver	608,877	50,248	73,391	6,009	83,980	6,787	766,248	63,044	8.2	7.82
Fort Worth	255,877	20,700	44,042	3,586	62,994	5,120	362,913	29,406	8.1	6.06
Houston	470,693	35,044	52,701	4,145	50,577	3,945	573,971	43,134	7.5	7.26
Kansas City	715,111	57,997	68,122	6,048	132,490	11,461	915,723	75,506	8.2	9.03
Lincoln	696,111	61,431	75,694	6,940	104,098	9,472	875,903	77,843	8.9	8.63
Oklahoma City	470,135	38,301	50,844	4,242	65,517	5,562	586,496	48,105	8.2	6.80
Salt Lake	344,739	29,408	44,990	4,011	54,013	4,719	443,742	38,138	8.6	11.05
Total	$ 4,799,755	$ 400,674	$ 528,668	$ 45,545	$ 652,030	$ 55,936	$ 5,980,453	$ 502,155	8.4	$ 7.69

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1-22-54

JAX 383
Commission's Exhibit 2638
Exhibit T-13
231

8177

2634

T. B. A. DIVISION SALES FOR JANUARY 1954

	TIRES AND TUBES		BATTERIES		ACCESSORIES		TOTAL		Per Cent	Sales Per 1,000 Gallons Gasoline
	Sales	Comm.	Sales	Comm.	Sales	Comm.	Sales	Comm.		
Albuquerque	$ 40,359	$ 3,624	$ 3,071	$ 276	$ 3,699	$ 343	$ 47,089	$ 4,243	9.0	$ 9.39
Butte	20,329	1,950	2,545	240	965	88	23,869	2,278	9.5	12.70
Chicago	57,969	4,709	7,149	607	2,743	256	67,861	5,572	8.2	8.58
Denver	46,052	3,733	7,428	621	5,849	465	59,329	4,819	8.1	9.19
Fort Worth	29,881	2,386	3,305	256	6,042	515	39,228	3,157	8.0	8.22
Houston	58,260	4,433	5,130	403	4,146	331	67,536	5,167	7.7	10.24
Kansas City	72,763	5,780	7,069	628	7,470	643	87,322	7,051	8.1	12.31
Lincoln	65,131	5,747	13,181	1,222	10,081	925	88,393	7,894	8.9	12.70
Oklahoma City	43,776	3,488	4,761	418	5,956	538	54,493	4,444	8.2	8.44
Salt Lake City	25,453	2,034	6,205	522	4,558	420	36,216	2,976	8.2	15.90
Total	$ 460,003	$ 37,884	$ 59,864	$ 5,195	$ 51,469	$ 4,524	$ 571,386	$ 47,603	8.3	$ 10.32

JAX 384
Commission's Exhibit 2630
FTC JAN 23

RCMcG-LEP
2-16-54

FEDERAL TRADE COMMISSION
RECEIVED JAN 23 1954

T.B.A. DIVISION SALES FOR FEBRUARY 1954 AND CUMULATIVE

	TIRES AND TUBES		BATTERIES		ACCESSORIES		TOTAL		Per Cent	Sales Per 1,000 Gallons of Gasoline
	Sales	Commission	Sales	Commission	Sales	Commission	Sales	Commission		
Albuquerque	$ 52,854	$ 4,989	$ 2,882	$ 250	$ 4,996	$ 440	$ 60,692	$ 5,619	9.3	$ 12.90
Butte	22,111	2,132	2,414	221	2,264	212	26,789	2,565	9.6	15.04
Chicago	58,670	4,929	2,269	204	2,896	273	63,815	5,406	8.5	8.20
Denver	38,964	3,172	3,446	283	8,100	653	50,590	4,108	8.1	7.82
Fort Worth	27,058	2,108	3,099	238	9,049	750	40,006	3,096	7.7	7.83
Houston	23,528	1,792	2,128	168	3,661	294	29,317	2,254	7.7	4.35
Kansas City	75,279	5,550	6,200	536	13,225	1,036	94,704	7,122	7.5	12.84
Lincoln	61,410	5,195	8,536	802	13,169	1,234	83,115	7,231	8.7	12.60
Oklahoma City	45,883	3,561	4,620	396	7,647	677	58,150	4,634	8.0	8.53
Salt Lake	18,822	1,564	3,800	341	4,136	375	26,758	2,280	8.5	11.25
Total	$ 424,579	$ 34,932	$ 39,414	$ 3,439	$ 69,943	$ 5,944	$ 533,936	$ 44,315	8.3	$ 9.58
Albuquerque	93,213	8,553	5,953	528	8,615	783	107,781	9,864	9.2	11.21
Butte	42,470	4,082	4,959	461	3,229	300	50,658	4,843	9.6	13.84
Chicago	116,639	9,638	9,438	811	5,599	530	131,676	10,979	8.3	8.39
Denver	85,016	6,904	10,874	905	14,329	1,118	109,919	8,927	8.1	8.50
Fort Worth	56,939	4,454	6,404	493	15,891	1,265	79,234	6,252	7.9	8.02
Houston	81,788	6,284	7,258	572	7,807	625	96,853	7,421	7.7	7.26
Kansas City	148,042	11,331	13,289	1,164	20,695	1,679	182,026	14,174	7.8	12.58
Lincoln	126,541	10,942	21,717	2,034	23,250	2,159	171,508	15,125	8.8	12.65
Oklahoma City	89,659	7,048	9,381	814	13,603	1,215	112,643	9,077	8.1	8.49
Salt Lake	44,275	3,598	10,005	863	8,654	795	62,934	5,256	8.3	13.36
Total	$ 884,582	$ 72,814	$ 99,278	$ 8,635	$ 121,412	$ 10,469	$ 1,105,272	$ 91,918	8.3	$ 9.95

BCM-HD
3-19-54

JAX 385
Commission's Exhibit 2618
Exhibit T-15

FEDERAL TRADE COMMISSION
DOCKET NO. 6115

8179

T.B.A. DIVISION SALES FOR MARCH 1954 AND CUMULATIVE

	TIRES AND TUBES		BATTERIES		ACCESSORIES		TOTAL		Per Cent	Sales per 1,000 Gallons of Gasoline
	Sales	Commission	Sales	Commission	Sales	Commission	Sales	Commission		
Albuquerque	$ 16,098	$ 1,438	$ 2,589	$ 224	$ 3,570	$ 326	$ 22,151	$ 1,988	9.0	$ 4.51
Butte	19,774	1,901	2,112	202	2,514	241	24,400	2,344	9.6	10.90
Chicago	41,496	3,079	1,922	161	3,199	275	46,617	3,515	7.5	5.19
Denver	41,480	3,440	4,868	384	7,205	589	53,553	4,413	8.2	7.28
Fort Worth	18,691	1,717	2,913	241	4,694	435	26,298	2,393	9.1	4.80
Houston	23,329	1,878	3,436	273	4,657	363	31,622	2,514	8.0	4.26
Kansas City	51,329	4,000	2,158	179	11,735	1,031	65,222	5,210	8.0	8.05
Lincoln	47,320	4,179	4,640	426	12,077	1,109	64,037	5,714	8.9	8.15
Oklahoma City	34,266	2,779	2,780	237	5,200	458	42,246	3,474	8.2	9.70
Salt Lake	36,370	2,970	5,261	446	7,499	671	49,130	4,087	8.3	14.78
Total	$ 330,307	$ 27,381	$ 32,619	$ 2,773	$ 62,350	$ 5,498	$ 425,276	$ 35,652	8.4	$ 6.74
Albuquerque	109,265	9,998	8,482	752	12,185	1,108	129,932	11,852	9.1	8.94
Butte	62,284	5,984	7,071	663	5,743	541	75,098	7,188	9.6	12.72
Chicago	158,892	12,792	11,375	974	8,820	806	179,087	14,572	8.1	7.26
Denver	126,496	10,345	15,742	1,289	21,234	1,707	163,472	13,341	8.2	8.06
Fort Worth	75,630	6,211	9,317	734	20,585	1,700	105,532	8,645	8.2	6.87
Houston	105,317	8,101	10,694	845	12,464	988	128,475	9,934	7.7	6.19
Kansas City	199,371	15,331	15,447	1,343	32,430	2,720	247,248	19,384	7.8	10.95
Lincoln	173,861	15,121	26,357	2,450	35,327	3,269	235,545	20,840	8.8	11.00
Oklahoma City	123,925	9,827	12,161	1,051	18,803	1,673	154,889	12,551	8.1	7.49
Salt Lake	80,645	6,367	15,266	1,310	16,193	1,466	112,104	9,343	8.3	13.94
Total	$ 1,215,646	$ 100,271	$ 131,912	$ 11,411	$ 183,784	$ 15,968	$ 1,531,342	$ 127,650	8.3	$ 8.79

BCM-JR
4-19-54

JAX 386
Commission's Exhibit 2638

8450

T.B.A. DIVISION SALES FOR APRIL 1954 AND CUMULATIVE

	TIRES AND TUBES		BATTERIES		ACCESSORIES		TOTAL		Per Cent	Sales Per 1,000 Gallons of Gasoline
	Sales	Commission	Sales	Commission	Sales	Commission	Sales	Commission		
Albuquerque	$ 25,661	$ 2,278	$ 2,381	$ 214	$ 5,196	$ 468	$ 32,648	$ 2,960	9.1	$ 6.37
Butte	21,964	2,039	790	77	2,826	261	25,580	2,397	9.4	8.98
Chicago	69,231	5,319	3,074	269	5,535	507	77,840	6,095	7.8	8.05
Denver	45,385	3,735	4,081	389	8,896	710	58,810	4,774	8.1	7.21
Fort Worth	20,401	1,606	2,336	193	8,366	707	31,005	2,506	8.1	5.45
Houston	30,858	2,354	4,627	395	2,441	182	37,366	2,931	7.8	5.06
Kansas City	52,145	4,232	3,319	259	9,938	811	65,402	5,338	8.2	7.66
Lincoln	53,291	5,263	4,915	506	14,215	1,306	77,421	7,095	9.2	8.06
Oklahoma City	34,586	2,841	2,660	237	6,016	538	43,262	3,616	8.4	5.76
Salt Lake	24,706	2,142	3,073	280	5,299	508	33,160	2,930	8.8	9.56
Total	$ 382,698	$ 31,849	$ 31,216	$ 2,755	$ 68,588	$ 6,008	$ 482,498	$ 40,612	8.4	$ 7.10
Albuquerque	134,326	12,270	10,873	965	17,381	1,577	162,580	14,812	9.1	8.27
Butte	84,208	8,043	7,861	740	8,569	802	100,638	9,585	9.5	11.50
Chicago	220,532	18,149	14,463	1,245	14,498	1,327	257,493	20,721	8.0	7.50
Denver	172,419	14,081	19,773	1,618	30,090	2,416	222,282	18,115	8.1	6.82
Fort Worth	96,031	7,817	11,653	928	28,851	2,407	136,535	11,152	8.2	6.49
Houston	135,615	10,456	15,321	1,199	14,905	1,180	165,841	12,835	7.7	5.89
Kansas City	251,516	19,562	18,766	1,638	42,368	3,321	312,650	24,721	7.9	10.05
Lincoln	232,192	20,604	31,272	2,996	49,542	4,375	312,966	27,935	8.9	10.09
Oklahoma City	158,511	12,668	14,821	1,288	24,819	2,211	198,151	16,167	8.2	7.03
Salt Lake	105,833	8,710	16,339	1,390	21,498	1,973	145,864	12,273	8.4	12.62
Total	$ 1,590,743	$ 132,160	$ 163,142	$ 14,167	$ 252,515	$ 21,989	$ 2,014,400	$ 168,316	8.4	$ 8.32

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5-17-54

JAX 387
Commission's Exhibit 283T
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8181

T.B.A. DIVISION SALES FOR MAY 1954 AND CUMULATIVE

	TIRES AND TUBES		BATTERIES		ACCESSORIES		TOTAL		Per Cent	Sales Per 1,000 Gal. of Gaso.
	Sales	Commission	Sales	Commission	Sales	Commission	Sales	Commission		
Albuquerque	$ 26,258	$ 2,264	$ 2,724	$ 240	$ 4,301	$ 378	$ 33,283	$ 2,882	8.7	$ 6.46
Butte	25,200	2,410	780	76	1,246	110	27,226	2,596	9.5	8.32
Chicago	61,615	4,607	3,144	273	5,027	453	69,786	5,333	7.6	6.97
Denver	54,636	4,567	5,647	467	10,512	856	70,795	5,890	8.3	8.67
Fort Worth	28,888	2,259	2,777	234	9,974	800	41,639	3,293	7.9	7.45
Houston	53,738	4,091	3,631	291	4,030	312	61,399	4,694	7.6	6.78
Kansas City	54,459	4,415	4,445	385	10,718	893	69,622	5,693	8.2	8.00
Lincoln	70,062	6,256	4,838	435	18,299	1,621	93,199	8,312	8.9	9.29
Oklahoma City	50,204	3,512	4,671	384	6,060	530	60,935	4,426	7.3	8.04
Salt Lake	27,353	2,349	2,893	265	6,019	552	36,265	3,166	8.7	10.16
Total	$ 452,413	$ 36,730	$ 35,550	$ 3,050	$ 76,186	$ 6,555	$ 564,149	$ 46,285	8.2	$ 8.17
Albuquerque	160,584	14,534	13,597	1,205	21,682	1,955	195,863	17,694	9.0	7.90
Butte	109,408	10,453	8,641	816	9,815	912	127,864	12,181	9.5	10.64
Chicago	290,147	22,756	17,607	1,517	19,525	1,781	327,279	26,054	8.0	7.38
Denver	227,055	18,648	25,429	2,084	40,602	3,273	293,086	24,005	8.2	8.01
Fort Worth	124,919	10,076	14,430	1,162	38,825	3,207	178,174	14,445	8.1	6.69
Houston	189,353	14,547	18,952	1,491	18,935	1,491	227,240	17,529	7.7	6.47
Kansas City	305,975	23,978	23,211	2,023	53,086	4,413	382,272	30,414	8.0	9.60
Lincoln	302,214	26,660	36,480	3,392	67,841	6,195	406,535	36,247	8.9	9.91
Oklahoma City	208,715	16,180	19,498	1,673	30,879	2,740	259,086	20,593	7.9	7.24
Salt Lake	132,786	11,959	21,232	1,855	27,211	2,525	181,329	15,439	8.5	12.04
Total	$ 2,051,196	$ 168,891	$ 199,071	$ 17,218	$ 328,701	$ 28,492	$ 2,578,928	$ 214,601	8.3	$ 8.28

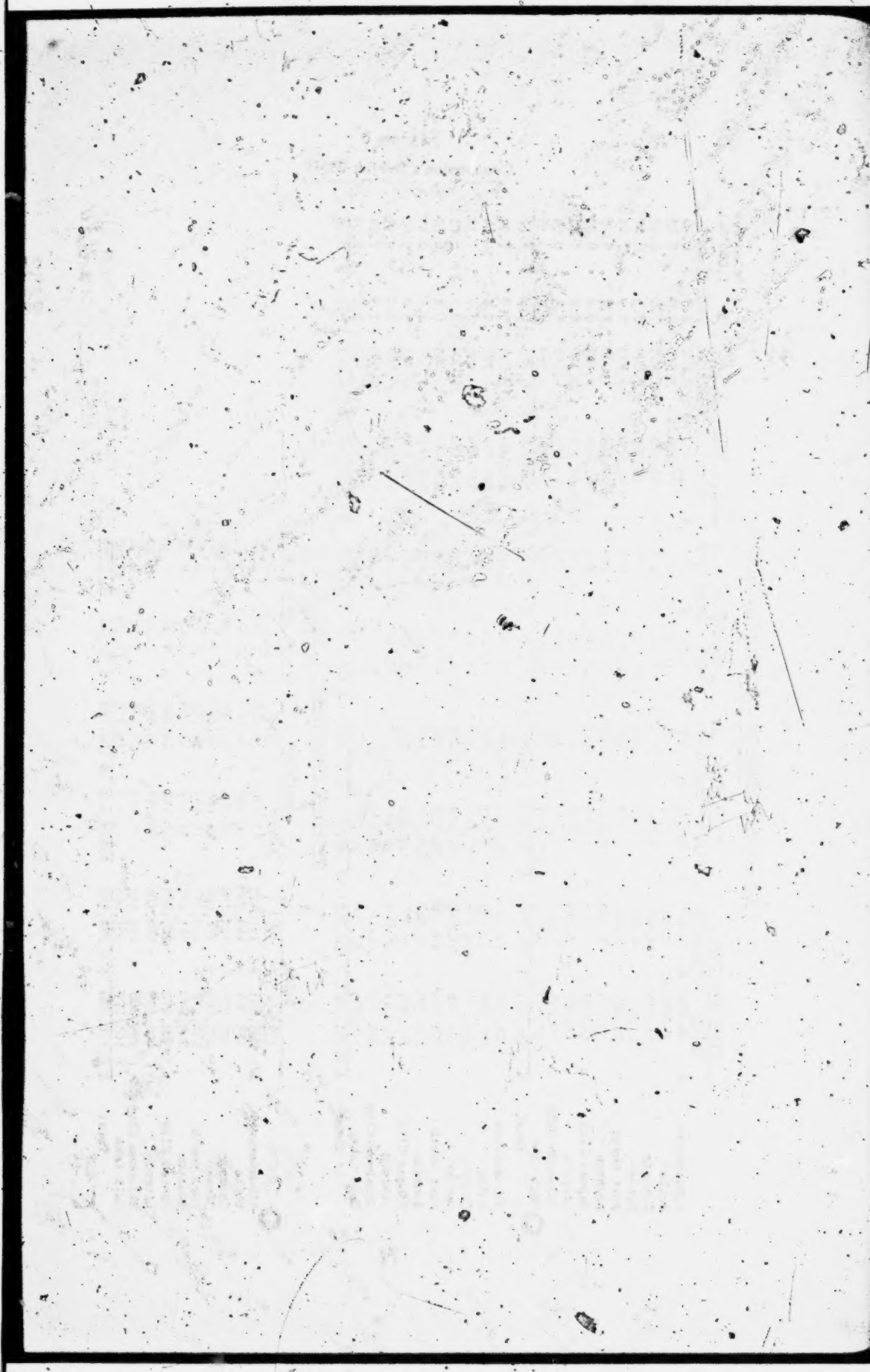
CUMULATIVE COMPARISON WITH PREVIOUS YEAR

	SALES		COMMISSION		SALES PER 1,000 GALLONS OF GASOLINE	
	1954	1953	1954	1953	1954	1953
Albuquerque	$ 195,863	$ 157,413	$ 17,694	$ 14,477	$ 7.90	$ 6.28
Butte	127,864	169,500	12,181	14,064	10.64	13.51
Chicago	327,279	213,109	26,054	16,765	7.38	4.92
Denver	293,086	301,080	24,005	25,085	8.01	9.05
Fort Worth	178,174	149,250	14,445	11,934	6.69	6.63
Houston	227,240	253,673	17,529	18,944	6.47	8.08
Kansas City	382,272	885,094	30,414	28,041	9.60	7.45
Lincoln	406,535	300,180	36,247	26,650	9.91	8.10
Oklahoma City	259,086	233,677	20,593	19,226	7.24	7.16
Salt Lake	181,329	181,645	15,439	15,455	12.04	11.38
Total	$ 2,578,928	$ 2,224,503	$ 214,601	$ 185,584	$ 8.28	$ 7.72

Commission's Exhibit No. 263 U

FEDERAL TRADE COMMISSION
DOCKET NO. [illegible] EXHIBIT NO. 263 U

8182



T.B.A. DIVISION SALES FOR JUNE 1954 AND CUMULATIVE

	TIRES AND TUBES		BATTERIES		ACCESSORIES		TOTAL		Per Cent	Sales Per 1,000 Gal. of Gaso.
	Sales	Commission	Sales	Commission	Sales	Commission	Sales	Commission		
Albuquerque	$ 32,080	$ 2,776	$ 2,172	$ 154	$ 5,704	$ 581	$ 39,956	$ 3,501	8.8	$ 6.52
Butte	35,763	3,327	1,356	129	4,653	446	39,772	3,902	9.8	10.62
Chicago	51,537	4,099	4,782	400	3,988	367	60,307	4,866	8.0	5.91
Denver	80,394	6,449	4,547	362	8,295	647	93,236	7,478	8.0	6.92
Fort Worth	32,960	2,797	4,041	316	10,587	873	47,588	3,986	8.3	7.17
Houston	50,397	3,941	5,066	412	3,701	282	59,164	4,635	7.9	8.15
Kansas City	75,115	6,155	5,133	442	14,003	1,167	94,251	7,764	8.2	9.10
Lincoln	73,076	6,332	4,773	494	14,594	1,327	92,443	8,053	8.7	8.72
Oklahoma City	49,273	3,754	4,256	356	6,454	580	59,983	4,690	7.8	6.24
Salt Lake	31,661	2,732	4,745	431	5,898	544	42,304	3,707	8.9	9
Total	$ 909,766	$ 42,855	$ 40,871	$ 3,466	$ 77,857	$ 6,794	$ 628,494	$ 52,513	8.4	$ 7.31
Albuquerque	198,664	17,310	15,769	1,399	27,386	2,486	235,819	21,195	9.0	7.62
Butte	143,171	13,700	9,997	944	14,468	1,358	167,636	16,002	9.6	10.54
Chicago	341,664	26,795	22,309	1,918	23,493	2,147	387,366	30,860	8.0	7.10
Denver	307,579	25,098	29,976	2,446	48,897	3,939	386,452	31,483	8.1	8.21
Fort Worth	157,879	12,866	18,471	1,478	49,112	4,080	225,462	18,424	8.1	6.78
Houston	239,720	18,488	24,018	1,903	22,636	1,783	286,374	22,174	7.7	6.75
Kansas City	361,089	30,133	28,344	2,465	87,089	5,580	476,523	38,178	8.0	9.30
Lincoln	375,490	32,992	41,253	3,816	82,435	7,522	498,978	44,330	8.9	9.66
Oklahoma City	237,988	19,934	23,748	2,029	37,333	3,326	319,069	25,289	7.9	7.03
Salt Lake	163,867	13,790	25,277	2,267	33,409	3,052	223,253	19,146	8.6	11.51
Total	$ 2,560,982	$ 211,146	$ 239,942	$ 20,695	$ 406,358	$ 35,264	$ 3,207,422	$ 267,115	8.3	$ 8.21

CUMULATIVE COMPARISON WITH PREVIOUS YEAR

	SALES		COMMISSION		SALES PER 1,000 GALLONS OF GASOLINE	
	1954	1953	1954	1953	1954	1953
Albuquerque	$ 235,819	$ 207,188	$ 21,195	$ 19,196	$ 7.62	$ 6.66
Butte	167,636	170,875	16,002	16,381	10.54	12.09
Chicago	387,366	283,510	30,860	22,349	7.10	5.20
Denver	386,452	387,469	31,483	30,532	8.21	8.45
Fort Worth	225,462	191,800	18,384	15,372	6.78	6.78
Houston	286,374	314,787	22,174	23,321	6.75	8.14
Kansas City	476,523	431,662	38,178	35,696	9.30	8.63
Lincoln	498,978	375,635	44,330	33,374	9.66	7.91
Oklahoma City	319,069	323,137	25,289	26,042	7.03	7.80
Salt Lake	223,253	224,657	19,146	19,143	11.51	12.64
Total	$ 3,207,422	$ 2,898,081	$ 267,115	$ 242,548	$ 8.21	$ 7.91

JAN 28

Commission's Exhibit No.

FEDERAL TRADE COMMISSION

T.B.A. DIVISION SALES FOR JULY 1954 AND CUMULATIVE

	TIRES AND TUBES		BATTERIES		ACCESSORIES		TOTAL		Per Cent	Sales Per 1,000 Gal. of Gaso.
	Sales	Commission	Sales	Commission	Sales	Commission	Sales	Commission		
Albuquerque	$ 40,496	$ 3,545	$ 4,809	$ 421	$ 6,272	$ 578	$ 51,577	$ 4,544	8.8	$ 9.08
Butte	35,141	3,346	1,086	100	3,910	378	40,137	3,824	9.5	8.43
Chicago	56,169	4,640	5,887	512	4,709	452	66,765	5,604	8.4	7.04
Denver	53,824	4,398	8,908	730	10,218	820	72,945	5,948	8.2	6.87
Fort Worth	38,300	2,984	5,984	484	8,953	725	53,237	4,198	7.9	9.72
Houston	47,630	3,560	7,628	598	3,184	251	58,442	4,409	7.5	8.20
Kansas City	97,344	7,641	11,597	1,017	15,029	1,324	123,970	9,982	8.0	13.71
Lincoln	77,922	6,630	8,441	746	13,308	1,207	99,671	8,583	8.6	8.92
Oklahoma City	43,151	3,432	7,751	664	6,382	552	57,284	4,648	8.1	7.64
Salt Lake	53,392	4,474	6,309	601	5,946	553	65,637	5,628	8.6	15.81
Total	$ 543,399	$ 44,650	$ 68,395	$ 5,873	$ 77,911	$ 6,840	$ 689,665	$ 57,363	8.3	$ 9.20
Albuquerque	233,160	20,855	20,578	1,820	33,658	2,863	287,396	25,538	8.9	7.85
Butte	178,312	17,127	11,083	1,044	18,378	1,735	207,773	19,907	9.6	10.05
Chicago	397,853	31,435	28,276	2,430	28,202	2,599	454,331	36,464	8.0	7.09
Denver	361,405	29,496	38,879	3,176	59,113	4,759	459,397	37,431	8.1	7.96
Fort Worth	196,179	15,810	24,455	1,962	58,365	4,805	278,999	22,577	8.1	7.20
Houston	287,340	22,048	31,646	2,501	25,820	2,034	344,806	26,583	7.7	6.96
Kansas City	478,434	37,774	39,541	3,482	82,118	6,904	600,493	48,160	8.0	10.14
Lincoln	453,218	39,622	49,694	4,562	95,743	8,729	598,649	52,913	8.8	9.53
Oklahoma City	301,139	23,366	31,499	2,693	43,715	3,872	376,353	29,931	7.9	7.12
Salt Lake	217,249	18,264	32,286	3,009	30,375	3,622	280,890	24,774	8.6	12.27
Total	$ 3,104,269	255,797	308,337	26,958	484,469	41,922	3,897,087	324,278	8.3	8.37

CUMULATIVE COMPARISON WITH PREVIOUS YEAR

	SALES		COMMISSION		SALES PER 1,000 GALLONS OF GASOLINE	
	1954	1953	1954	1953	1954	1953
Albuquerque	$ 287,396	$ 246,905	$ 25,538	$ 22,685	$ 7.85	$ 6.23
Butte	207,773	202,612	19,907	19,028	10.05	10.99
Chicago	454,331	347,977	36,464	27,619	7.09	5.37
Denver	459,397	454,088	37,431	37,720	7.96	8.43
Fort Worth	278,999	231,303	22,577	18,572	7.20	6.96
Houston	344,806	356,890	26,583	26,751	6.96	7.94
Kansas City	600,493	520,549	48,160	43,255	10.14	8.95
Lincoln	598,649	455,601	52,913	40,331	9.53	7.87
Oklahoma City	376,353	384,860	29,931	31,732	7.12	7.90
Salt Lake City	280,890	269,504	24,774	22,337	12.27	11.86
Total	$ 3,897,087	$ 3,461,189	$ 324,278	$ 295,146	$ 8.37	$ 7.88

FEDERAL TRADE COMMISSION
DOCKET NO. 6181 EXHIBIT NO. 2634

8181

T.B.A. DIVISION SALES

FOR AUGUST 1954 AND CUMULATIVE

	TIRES AND TUBES		BATTERIES		ACCESSORIES		TOTAL				FOR AUGUST 1953 AND CUMULATIVE TOTAL T.B.A.		
	Sales	Commission	Sales	Commission	Sales	Commission	Sales	Commission	Per Cent	Sales Per 1,000 Gal. of Gaso.	Sales	Commission	Sales Per 1,000 Gal. of Gaso.
Albuquerque	$ 35,944	$ 3,241	$ 4,812	$ 436	$ 4,954	$ 456	$ 45,7[illegible]	[illegible],133	9.4	$ 8.76	$ 42,838	$ 3,970	$ 7.38
Butte	24,169	2,479	2,579	234	3,461	337	30,2[illegible]	3,050	10.0	5.70	54,390	5,191	11.47
Chicago	50,751	4,020	7,099	598	3,914	353	61,76[illegible]	4,971	8.0	9.14	59,696	4,603	6.08
Denver	51,769	4,237	8,912	725	8,914	734	69,595	5,696	8.2	6.21	72,963	6,019	6.59
Fort Worth	23,213	1,813	8,257	668	9,583	816	41,053	3,297	8.0	7.60	31,583	2,556	6.29
Houston	42,849	3,268	7,465	585	3,611	280	53,925	4,133	7.7	7.53	50,024	3,769	7.55
Kansas City	57,532	4,661	9,258	783	19,225	1,661	86,015	7,105	8.3	9.75	95,618	8,188	11.01
Lincoln	72,661	6,309	10,679	919	11,370	1,016	94,710	8,244	8.7	9.65	85,939	7,522	9.09
Minneapolis	16,594	1,261	995	94	987	91	18,516	1,446	7.8	8.34	-	-	-
Oklahoma City	55,101	4,251	8,139	702	7,668	672	70,908	5,625	7.9	9.11	45,510	3,695	6.24
Salt Lake	31,065	2,737	8,328	737	6,430	605	45,823	4,079	8.9	10.38	51,956	4,441	11.13
Total	$ 461,648	$ 38,277	$ 76,523	$ 6,481	$ 80,057	$ 7,021	$ 618,228	$ 51,779	8.4	$ 8.34	$ 590,477	$ 49,954	$ 8.07
Albuquerque	269,104	24,096	25,390	2,255	38,612	3,319	333,106	29,670	8.9	7.96	269,743	26,793	6.87
Butte	202,481	19,605	13,662	1,278	21,839	2,073	237,982	22,956	9.6	9.16	257,002	24,217	10.77
Chicago	448,604	35,455	35,375	3,028	32,116	2,952	516,095	41,435	8.0	7.29	407,633	32,228	5.46
Denver	413,172	33,733	47,791	3,901	68,029	5,492	528,992	43,126	8.1	7.68	526,991	43,719	8.12
Fort Worth	219,392	17,623	32,712	2,629	67,948	5,621	320,052	25,873	8.1	7.25	262,886	21,128	6.88
Houston	330,189	25,315	39,111	3,086	29,431	2,315	398,731	30,716	7.7	7.03	406,8[illegible]	30,521	7.89
Kansas City	335,966	42,435	49,199	4,265	101,343	8,566	686,508	55,266	8.1	10.09	616,176	51,443	9.21
Lincoln	525,873	45,930	60,373	5,481	107,113	9,746	693,359	61,157	8.8	9.55	541,540	47,853	8.03
Minneapolis (1 mo.)	16,594	1,861	995	94	987	91	18,516	1,446	7.8	8.34	-	-	-
Oklahoma City	356,240	27,618	39,638	3,394	51,383	4,543	447,261	35,555	7.9	7.37	430,370	35,426	7.68
Salt Lake	248,314	21,002	40,614	3,698	45,705	4,228	334,713	28,854	8.6	11.97	312,469	26,778	11.73
Total	$ 3,565,929	$ 294,073	$ 384,860	$ 33,035	$ 564,526	$ 48,946	$ 4,515,315	$ 376,054	8.3	$ 8.36	$ 4,051,673	$ 340,100	$ 7.91

JM-4854
9-20-54

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263X

Commission's Exhibit 263X

JAX 101

T.B.A. DIVISION SALES

FOR SEPTEMBER 1954 AND CUMULATIVE

	TIRES AND TUBES		BATTERIES		ACCESSORIES		TOTAL				FOR SEPTEMBER 1953 AND CUMULATIVE TOTAL T.B.A.		
	Sales	Commission	Sales	Commission	Sales	Commission	Sales	Commission	Per Cent	Sales Per 1,000 Gal. of Gaso.	Sales	Commission	Sales Per 1,000 Gal. of Gaso.
Albuquerque	$ 41,2[illegible]	$ 3,677	$ 3,542	$ 307	$ 5,114	$ 469	$ 50,047	$ 4,453	8.9	$ 9.79	$ 33,250	$ 3,026	$ 6.29
Butte	38,391	3,315	2,462	256	3,000	443	41,893	3,994	9.5	10.16	25,602	2,332	6.66
Chicago	48,497	3,405	8,058	697	2,199	189	58,754	4,289	7.3	8.25	69,702	5,690	6.71
Denver	69,799	5,235	9,037	744	10,165	809	89,001	6,788	7.9	8.37	78,461	6,169	7.68
Fort Worth	30,665	2,495	4,815	338	7,439	637	42,119	3,466	8.2	7.68	34,540	2,880	6.30
Houston	44,471	3,421	7,058	581	4,910	404	56,479	4,406	7.8	7.81	64,254	4,787	9.39
Kansas City	83,162	6,825	11,222	1,004	18,774	1,602	113,058	8,861	7.8	12.46	103,630	8,858	10.88
Lincoln	82,630	6,587	12,154	1,037	16,177	1,469	110,961	9,443	8.5	10.82	111,884	9,585	11.74
Minneapolis	16,676	1,074	2,089	168	642	57	19,357	1,299	6.7	9.69	-	-	-
Oklahoma City	53,474	4,079	7,701	653	9,449	825	70,624	5,547	7.8	9.82	78,908	6,340	7.89
Salt Lake City	38,220	2,961	6,578	602	3,876	576	48,674	4,139	8.5	11.24	38,484	3,287	9.72
Total	$ 535,366	$ 42,792	$ 79,125	$ 6,441	$ 83,305	$ 7,408	$ 694,797	$ 56,641	8.1	$ 9.50	$ 686,142	$ 59,853	$ 8.47
Albuquerque	310,495	27,773	28,932	2,582	43,726	3,788	383,153	34,143	8.9	8.36	332,822	28,748	6.81
Butte	236,872	22,919	16,124	1,514	25,859	2,517	279,855	26,950	9.6	9.69	220,852	20,748	10.20
Chicago	497,111	38,899	43,462	3,724	34,275	3,180	574,848	45,803	7.9	7.38	477,346	37,858	5.61
Denver	478,971	38,988	35,868	4,614	78,194	6,332	593,993	49,934	8.1	7.77	496,249	39,748	8.66
Fort Worth	290,057	20,118	36,787	2,963	75,389	6,258	368,171	29,339	8.1	7.32	307,545	24,588	6.80
Houston	378,660	28,737	46,849	3,687	34,341	2,718	459,850	35,142	7.7	7.32	472,988	37,847	8.06
Kansas City	639,128	48,651	69,321	5,859	188,117	14,188	896,566	68,698	8.0	10.35	748,988	59,918	9.42
Lincoln	608,593	52,847	72,497	6,578	185,850	11,175	866,938	70,600	8.7	9.71	693,444	57,865	8.49
Minneapolis	33,270	2,335	3,814	282	1,569	149	37,853	2,766	7.3	8.78	-	-	-
Oklahoma City	409,714	32,697	47,339	4,047	66,892	5,338	523,885	42,082	7.9	7.58	498,288	40,086	7.70
Salt Lake City	282,524	23,963	47,322	4,344	21,461	1,762	351,737	30,069	8.6	11.87	280,744	25,678	11.34
Total	$ 4,101,305	$ 336,867	$ 458,985	$ 39,473	$ 650,031	$ 56,355	$ 5,210,321	$ 432,695	8.3	$ 8.50	$ 4,688,189	$ 388,181	$ 7.98

JCH-EPH
10-20-54

JAX 300
Commission's Exhibit 241
241 FILED

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JAX 286

Complainant's Exhibit 2652-I

Docket 7-29

2632

T.B.A. DIVISION SALES

FOR NOVEMBER 1954 AND CUMULATIVE

	TIRES AND TUBES		BATTERIES		ACCESSORIES		TOTAL				FOR NOVEMBER 1953 AND CUMULATIVE TOTAL T.B.A.		
	Sales	Commission	Sales	Commission	Sales	Commission	Sales	Commission	Per Cent	Sales Per 1,000 Gal. of Gas.	Sales	Commission	Sales Per 1,000 Gal. of Gas.
Albuquerque	$ 44,426	$ 4,019	$ 2,905	$ 257	$ 4,686	$ 436	$ 52,017	$ 4,712	9.1	$ 9.97	$ 49,426	$ 4,743	$ 9.79
Butte	25,971	2,501	2,608	249	2,346	228	30,925	2,978	9.6	11.75	19,890	1,802	8.01
Chicago	34,201	2,665	6,458	537	4,618	378	45,277	3,580	7.9	6.69	52,459	4,345	5.88
Denver	42,461	3,386	8,880	698	7,635	621	58,976	4,705	7.9	7.44	55,819	4,681	7.69
Fort Worth	19,696	1,574	5,895	491	9,040	744	34,551	2,809	8.1	5.93	20,908	1,904	4.18
Houston	37,966	2,856	4,586	366	3,573	284	46,125	3,506	7.6	6.22	44,288	3,377	6.73
Kansas City	48,505	4,051	11,085	951	11,028	953	70,533	5,955	8.4	8.12	66,859	5,411	8.31
Lincoln	61,678	5,163	11,527	1,041	15,999	1,412	88,804	7,616	8.6	9.59	85,143	7,695	10.98
Minneapolis	12,484	1,027	2,608	236	668	64	15,760	1,327	8.4	7.59	-	-	-
Oklahoma City	32,671	2,560	5,848	492	7,127	686	45,646	3,678	8.1	6.28	38,990	3,282	5.37
Salt Lake City	20,154	1,601	4,857	425	6,340	561	31,351	2,587	8.2	13.93	24,649	2,083	8.80
Spokane	1,820	782	1,870	127	2,345	234	11,435	1,143	10.0	38.82	-	-	-
Total	$ 367,993	$ 32,185	$ 68,427	$ 5,870	$ 75,180	$ 6,541	$ 531,600	$ 44,596	8.4	$ 8.10	$ 458,481	$ 38,665	$ 7.35
Albuquerque	392,841	35,227	36,410	3,240	52,735	4,680	481,986	43,087	8.9	8.39	407,885	37,885	7.08
Butte	269,730	26,017	21,444	2,026	32,568	3,071	343,742	33,114	9.6	9.65	345,897	32,425	10.45
Chicago	566,608	44,398	57,883	4,252	42,417	3,820	666,908	53,150	7.9	7.29	582,325	46,397	5.58
Denver	558,445	45,351	76,519	6,215	93,902	7,564	728,866	59,130	8.1	7.60	727,057	59,809	7.98
Fort Worth	289,120	22,940	45,809	3,706	91,811	7,796	422,740	34,442	8.1	6.83	345,140	27,958	4.35
Houston	441,166	33,652	55,896	4,438	41,872	3,518	538,934	41,608	7.7	6.86	559,877	41,972	7.76
Kansas City	714,186	56,700	83,491	7,275	147,715	12,582	945,832	76,993	8.1	9.38	898,966	70,549	9.15
Lincoln	721,007	58,443	96,491	8,733	154,618	14,011	972,116	69,187	8.7	9.98	807,899	72,668	8.59
Minneapolis	64,869	4,857	8,573	753	3,389	323	76,831	5,933	7.7	9.22	-	-	-
Oklahoma City	479,713	37,193	59,863	5,105	75,612	6,664	615,188	48,962	7.9	7.41	566,798	46,298	7.16
Salt Lake City	320,245	27,107	58,287	5,185	63,480	5,826	441,952	38,120	8.6	11.33	416,455	35,718	11.11
Spokane	1,820	782	1,870	127	2,345	234	11,435	1,143	9.9	38.82	-	-	-
Total	$ 4,841,750	$ 398,667	$ 601,676	$ 51,735	$ 808,404	$ 69,649	$ 6,245,890	$ 508,931	8.3	$ 8.35	$ 5,608,681	$ 470,596	$ 7.83

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Commission's Exhibit 2832-A
JAX 284
12-1-54

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T.B.A. DIVISION SALES

FOR DECEMBER 1954 AND CUMULATIVE

	TIRES AND TUBES		BATTERIES		ACCESSORIES		TOTAL			Sales Per 1,000 Gal. of Gaso.	FOR DECEMBER 1953 AND CUMULATIVE TOTAL T.B.A.		Sales Per 1,000 Gal. of Gaso.
	Sales	Commission	Sales	Commission	Sales	Commission	Sales	Commission	Per Cent		Sales	Commission	
Albuquerque	$ 39,420	$ 3,359	$ 4,418	$ 388	$ 4,691	$ 429	$ 48,529	$ 4,176	8.6	$ 10.13	$ 35,494	$ 3,287	$ 6.84
Butte	10,855	1,838	3,696	336	2,809	257	25,360	2,433	9.6	11.74	24,287	2,267	10.86
Chicago	34,523	2,770	7,889	633	6,084	505	47,836	3,908	8.2	7.52	53,608	4,289	6.11
Denver	31,711	2,483	8,962	677	5,772	454	46,045	3,614	7.8	6.49	39,188	3,549	5.67
Fort Worth	25,347	1,868	3,883	306	7,358	628	36,588	2,802	7.6	6.28	17,773	1,438	3.13
Houston	29,881	2,249	5,198	415	3,992	310	38,331	2,994	7.8	5.21	16,054	1,162	2.40
Kansas City	37,496	4,997	5,000	449	8,343	695	70,989	5,741	8.0	8.84	62,157	4,951	7.72
Lincoln	62,356	5,687	9,845	886	13,308	1,215	85,489	7,788	9.0	11.10	68,604	6,176	9.18
Minneapolis	13,387	1,148	1,937	156	873	88	16,197	1,392	8.8	9.97	-	-	-
Oklahoma City	33,799	2,431	3,657	320	5,071	444	42,527	3,195	7.9	8.66	25,704	1,847	3.69
Salt Lake City	21,453	1,774	5,996	533	5,294	467	32,703	2,774	8.5	9.33	27,887	2,480	10.59
Spokane	5,687	498	1,349	97	2,904	244	9,939	839	8.4	10.08	-	-	-
Total	$ 373,525	$ 30,642	$ 60,270	$ 5,235	$ 66,341	$ 5,714	$ 500,136	$ 41,592	8.3	$ 8.09	$ 365,039	$ 30,991	$ 5.95
Albuquerque	432,261	38,586	40,828	3,628	57,426	5,049	530,515	47,263	8.9	8.92	443,339	41,092	7.05
Butte	308,585	29,695	25,140	2,365	35,377	3,388	369,102	35,448	9.6	9.77	369,374	34,671	10.46
Chicago	601,131	47,188	69,112	5,965	48,501	4,305	718,744	57,458	8.0	7.30	648,744	51,856	5.68
Denver	390,196	47,834	85,021	6,892	99,654	8,018	774,911	62,744	8.1	7.33	766,868	69,044	7.82
Fort Worth	310,867	24,809	49,698	4,011	99,361	8,288	459,380	37,044	8.1	6.78	362,919	28,406	6.08
Houston	470,397	35,921	61,094	4,894	45,864	3,637	577,865	44,398	7.7	6.72	573,971	43,134	7.86
Kansas City	771,852	61,897	88,431	7,724	156,098	13,275	1,016,321	82,896	8.0	9.50	925,723	73,906	9.03
Lincoln	783,543	69,070	105,136	9,619	167,926	15,286	1,057,605	98,975	8.4	9.49	875,903	77,843	8.63
Minneapolis	78,196	6,005	10,310	947	4,862	409	93,768	7,361	7.9	9.10	-	-	-
Oklahoma City	513,512	39,644	63,920	5,425	80,688	7,109	657,695	52,178	7.9	7.30	586,496	48,105	6.80
Salt Lake City	341,698	28,880	64,343	5,718	68,714	6,258	474,695	40,854	8.6	11.36	443,748	38,138	11.03
Spokane	53,977	1,850	2,419	204	4,999	418	60,895	1,472	2.4	10.43	-	-	-
Total	$ 5,219,273	$ 429,309	$ 661,946	$ 56,972	$ 888,745	$ 79,344	$ 6,745,966	$ 565,625	8.3	$ 8.33	$ 5,980,433	$ 502,193	$ 7.89

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1-17-55

JAX 183
Commission's Exhibit 2132-G
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26723

T.B.A. DIVISION SALES

Division	TIRES AND TUBES Sales	TIRES AND TUBES Commission	BATTERIES Sales	BATTERIES Commission	ACCESSORIES Sales	ACCESSORIES Commission	TOTAL Sales	TOTAL Commission	Per Cent	Sales Per 1,000 Gal. of Gaso.	% of Difference	FOR JANUARY 1954 TOTAL T.B.A. Sales	FOR JANUARY 1954 TOTAL T.B.A. Commission	FOR JANUARY 1954 Sales Per 1,000 Gal. of Gaso.
Albuquerque	$ 31,985	$ 2,699	$ 3,311	$ 282	$ 6,927	$ 562	$ 41,834	$ 3,493	8.3	$ 8.90	85.3	$ 47,859	$ 4,845	$ 9.59
Butte	17,221	1,458	2,458	240	1,898	182	21,457	2,084	9.6	10.57	111.0	23,869	2,278	12.70
Chicago	51,405	4,187	3,339	287	3,233	407	59,997	4,841	8.1	10.23	92.7	48,387	3,994	7.76
Denver	58,722	4,746	8,988	727	7,198	584	74,843	6,047	8.1	10.79	112.0	59,389	4,819	9.29
Fort Worth	34,410	1,897	4,970	316	7,819	990	37,399	2,883	7.5	7.12	74.0	39,888	3,157	8.38
Laredo	30,586	2,595	3,885	305	3,828	288	38,699	4,388	7.7	8.50	87.4	67,336	5,167	10.34
Kansas City	70,374	5,837	7,314	638	10,432	865	87,980	7,395	8.4	12.21	126.1	87,388	7,851	12.31
Lincoln	79,813	6,587	9,760	838	14,881	1,343	104,454	8,788	8.4	14.73	152.3	88,393	7,894	12.78
Minneapolis	7,363	579	2,317	185	350	36	9,030	760	8.1	5.44	56.2	19,334	1,588	11.68
Oklahoma City	36,285	2,898	4,972	440	6,673	593	47,930	3,931	8.1	6.71	69.8	54,493	4,444	8.44
Salt Lake City	35,557	2,987	7,484	635	6,888	563	48,884	4,185	8.4	12.82	132.5	56,228	2,916	13.90
Wichita	1,830	146	847	67	2,307	243	3,983	356	9.9	16.82	88.4	-	-	-
Portland	7,888	778	338	30	38	1	7,434	381	7.8	11.76	121.7	-	-	-
Total	$ 472,231	$ 38,116	$ 58,195	$ 4,977	$ 73,985	$ 6,849	$ 605,949	$ 49,842	8.2	$ 10.39	107.4	$ 572,336	$ 47,685	$ 10.32
% of Tires	78.2%		9.6%		12.2%									
Sales over 1953	$ 12,228		$ (1,662)		$ 22,854		$ 33,418							
% increase over 1953	2.66%		(2.77%)		44.8%		5.7%							

2-18-55

FEDERAL TRADE COMMISSION
DOCKET 4685 EXHIBIT NO. 2673-J

8-1362

Commission's Exhibit 2673-J
JAN 1956

JAX 397

Commission's Exhibit 2032-6

Exhibit 7-89

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T.B.A. DIVISION SALES

MARCH 1955 VERSUS MARCH 1954

Division	MONTH OF MARCH 1955 TIRES AND TUBES Sales	TIRES AND TUBES Commission	BATTERIES Sales	BATTERIES Commission	ACCESSORIES Sales	ACCESSORIES Commission	TOTAL T.B.A. Sales	TOTAL T.B.A. Commission	Per Cent	Sales per 1,000 Gal. of Gaso.	MONTH OF MARCH 1954 TOTAL T.B.A. Sales	TOTAL T.B.A. Commission	Sales Per 1,000 Gal. of Gaso.
Albuquerque	$ 35,943	$ 3,163	$ 3,087	$ 279	$ 5,640	$ 469	$ 44,670	$ 3,911	8.8	$ 8.95	$ 22,151	1,988	$ 4.51
Butte	29,366	2,804	3,690	346	4,580	447	37,636	3,597	9.6	17.30	24,400	2,344	10.90
Chicago	26,858	1,846	2,566	229	6,340	501	35,764	2,576	7.2	5.52	46,617	3,515	5.19
Corpus Christi	15,188	1,223	1,136	101	839	83	17,163	1,406	8.2	8.33			
Denver	27,721	2,226	5,764	444	6,181	473	39,666	3,143	7.9	5.34	8,415	627	4.53
Fort Worth	20,619	1,596	4,156	319	6,491	491	31,266	2,406	7.7	5.29	53,353	4,413	7.28
Houston	10,557	795	1,025	79	2,319	174	13,901	1,046	7.5	5.66	26,298	2,393	4.80
Kansas City	51,727	3,961	5,683	484	11,843	1,010	69,253	5,455	7.9	8.08	9,157	798	3.69
Lincoln	55,090	4,952	5,414	514	13,842	1,237	74,346	6,703	9.0	8.81	65,222	5,210	8.05
Minneapolis	12,685	1,177	690	74	1,220	118	14,595	1,369	9.4	7.93	64,037	5,714	8.15
New Orleans	18,528	1,364	1,251	95	1,522	126	21,301	1,585	7.4	6.30	-	-	-
Oklahoma City	36,294	2,691	3,553	289	5,830	515	45,677	3,495	7.7	5.84	14,050	1,089	4.62
Salt Lake City	20,612	1,798	2,980	261	6,201	548	29,793	2,606	8.7	[illegible]	42,246	3,474	5.70
Spokane	4,722	410	577	58	2,087	185	7,386	653	8.8	18.84	49,130	4,087	14.78
Westcott	1,321	118	195	16	75	6	1,591	141	8.9	1.82	-	-	-
Total	$ 367,231	$ 30,122	$ 41,767	$ 3,588	$ 75,010	$ 6,385	$ 484,008	$ 40,092	8.3	$ [illegible]	$ 425,276	$ 35,652	$ 6.74

HEW-AM
4-15-55

FEDERAL TRADE COMMISSION
[illegible]

T.B.A. DIVISION SALES

APRIL 1955 VERSUS APRIL 1954

Division	MONTH OF APRIL 1955 — TIRES AND TUBES Sales	TIRES AND TUBES Commission	BATTERIES Sales	BATTERIES Commission	ACCESSORIES Sales	ACCESSORIES Commission	TOTAL T.B.A. Sales	TOTAL T.B.A. Commission	Per Cent	Sales Per 1,000 Gal. of Gaso.	MONTH OF APRIL 1954 — TOTAL T.B.A. Sales	TOTAL T.B.A. Commission	Sales Per 1,000 Gal. of Gaso.
Albuquerque	$ 37,996	$ 3,354	$ 3,384	$ 309	$ 7,483	$ 682	$ 48,803	$ 4,345	8.9	$ 9.54	$ 32,648	$ 2,860	$ 6.37
Butte	29,074	2,722	2,514	232	2,384	280	33,972	3,175	9.3	12.50	25,580	2,397	8.98
Chicago	48,394	3,806	2,700	239	6,481	587	57,575	4,632	8.0	8.20	77,840	6,095	8.05
Corpus Christi	7,288	656	1,341	113	2,771	221	11,400	998	8.7	5.63	8,259	726	4.30
Denver	46,386	3,693	5,340	430	8,846	706	60,572	4,829	8.0	7.35	58,810	4,774	7.21
Fort Worth	27,721	2,084	3,089	238	8,370	646	39,180	2,968	7.6	6.63	31,003	2,406	5.45
Houston	13,992	1,066	1,442	111	1,970	148	17,004	1,325	7.8	7.70	12,674	957	4.98
Kansas City	82,525	6,393	4,133	364	16,905	1,430	103,563	8,187	7.9	11.32	69,402	5,338	7.66
Lincoln	75,201	6,442	4,441	410	19,109	1,694	98,751	8,546	8.7	9.29	77,421	7,055	8.06
Memphis	18,132	1,046	1,442	110	4,327	325	23,901	1,481	6.2	11.56	-	-	-
Minneapolis	17,407	1,960	463	47	1,441	141	19,311	1,748	9.1	8.47	-	-	-
New Orleans	25,525	1,888	1,927	153	2,890	239	30,342	2,280	7.4	9.44	17,033	1,266	5.68
Oklahoma City	25,118	2,047	1,990	175	7,125	626	34,193	2,851	8.3	6.27	43,288	3,616	5.76
Salt Lake City	37,888	3,346	2,813	253	7,835	689	48,536	4,289	8.8	11.23	33,160	2,930	9.56
Spokane	3,395	308	478	40	1,397	126	5,270	474	8.9	11.46	-	-	-
Westcott	6,846	625	277	26	348	32	7,471	683	9.2	6.63	-	-	-
Total	$ 502,488	$ 41,035	$ 37,674	$ 3,252	$ 99,682	$ 8,495	$ 639,844	$ 52,705	8.2	$ 8.87	$ 482,492	$ 40,612	$ 7.10

RIV-RMR
5-17-55

JAX 389
Commission's Exhibit 2832-7

FEDERAL TRADE COMMISSION
FILED 2832-7

8103

T.B.A. DIVISION SALES

MAY 1955 VERSUS MAY 1954

Division	MONTH OF MAY 1955 TIRES AND TUBES Sales	Commission	BATTERIES Sales	Commission	ACCESSORIES Sales	Commission	TOTAL T.B.A. Sales	Commission	Per Cent	Sales Per 1,000 Gal. of Gaso.	MONTH OF MAY 1954 TOTAL T.B.A. Sales	Commission	Sales Per 1,000 Gal. of Gaso.
Albuquerque	$ 33,968	$ 2,958	$ 2,085	$ 198	$ 5,696	$ 508	$ 41,709	$ 3,664	8.8	$ 7.89	$ 33,283	$ 2,882	$ 6.46
Butte	20,350	1,925	849	77	2,076	196	23,305	2,198	9.4	7.48	27,228	2,596	8.32
Chicago	67,707	5,460	2,461	207	6,408	549	76,576	6,216	8.1	10.04	69,786	5,333	6.97
Corpus Christi	7,812	701	1,662	138	1,718	150	11,192	989	8.8	5.53	12,285	1,014	6.68
Denver	35,236	2,839	4,349	358	8,391	641	47,976	3,836	8.0	5.51	70,795	5,890	8.67
Fort Worth	29,705	2,258	2,384	194	7,551	580	39,640	3,032	7.6	6.36	41,639	3,293	7.45
Houston	22,086	1,623	2,340	177	4,018	77	25,444	1,877	7.4	11.40	30,854	2,346	13.33
Kansas City	77,246	6,171	3,491	319	12,445	1,066	93,182	7,556	8.1	10.09	69,682	5,693	8.88
Lincoln	85,857	7,625	4,057	405	17,890	1,614	107,804	9,644	8.9	10.12	93,199	8,312	9.29
Memphis	15,936	1,112	850	69	1,722	134	18,508	1,313	7.1	7.80	-	-	-
Minneapolis	16,693	1,350	363	36	1,718	167	18,732	1,554	8.3	7.35	-	-	-
New Orleans	20,825	1,570	1,216	97	909	71	22,950	1,739	7.6	7.15	18,320	1,334	6.44
Oklahoma City	38,335	2,983	3,735	331	7,325	636	49,395	3,950	8.0	8.45	60,935	4,486	8.04
Salt Lake City	27,067	2,413	3,558	316	8,900	804	39,325	3,533	8.9	10.41	36,269	3,166	10.16
Spokane	7,417	693	823	72	3,392	320	11,632	1,085	9.3	24.85	-	-	-
Westcott	1,713	138	87	8	157	15	1,957	161	8.1	3.61	-	-	-
Total	$ 509,941	$ 42,019	$ 34,310	$ 3,000	$ 87,276	$ 7,528	$ 631,527	$ 52,549	8.3	$ 8.48	$ 564,149	$ 46,285	$ 8.17

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6-16-55

JAX 409
Commission's Exhibit 2832-B
Entered 7-20

FEDERAL TRADE COMMISSION
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8106

T.B.A. DIVISION SALES

JUNE 1955 VERSUS JUNE 1954

Division	MONTH OF JUNE 1955 TIRES AND TUBES Sales	Commission	BATTERIES Sales	Commission	ACCESSORIES Sales	Commission	TOTAL T.B.A. Sales	Commission	Per Cent	Sales Per 1,000 Gal. of Gaso.	MONTH OF JUNE 1954 TOTAL T.B.A. Sales	Commission	Sales Per 1,000 Gal. of Gaso.
Albuquerque	$ 37,934	$ 3,290	$ 2,846	$ 244	$ 6,298	$ 568	$ 47,078	$ 4,102	8.7	$ 7.73	$ 39,956	$ 3,501	$ 6.52
Butte	44,359	4,266	1,321	124	3,134	291	48,814	4,681	9.6	12.14	39,772	3,902	10.22
Chicago	44,630	3,275	2,486	217	4,552	398	51,668	3,889	7.5	6.55	60,267	4,806	5.91
Corpus Christi	14,975	1,230	1,895	154	2,466	207	19,336	1,591	8.2	9.18	12,100	1,030	6.57
Denver	86,201	7,014	4,733	387	12,597	1,043	103,531	8,444	8.2	9.80	93,366	7,478	8.92
Fort Worth	36,786	2,703	4,666	358	8,822	686	50,274	3,747	7.5	7.04	47,588	3,939	7.17
Houston	14,273	1,047	2,499	193	1,925	144	18,697	1,385	7.4	8.09	18,923	1,469	7.88
Kansas City	94,474	7,325	4,474	404	14,096	1,195	113,044	8,924	7.9	10.54	94,251	7,764	9.10
Lincoln	96,087	7,902	6,531	569	17,883	1,642	120,501	10,113	8.4	10.56	92,443	8,083	8.72
Memphis	24,700	1,387	766	62	2,436	189	27,902	1,633	5.9	10.66	-	-	-
Minneapolis	23,189	1,793	633	63	1,343	132	25,165	1,987	7.9	9.45	-	-	-
New Orleans	27,669	2,041	1,978	152	907	71	30,554	2,264	7.4	9.09	28,101	2,146	9.34
Oklahoma City	38,760	3,205	3,073	256	5,968	546	47,801	4,007	8.4	6.56	59,983	4,690	6.24
Salt Lake City	38,623	3,371	4,231	401	10,081	930	52,935	4,703	8.9	11.97	41,724	3,707	9.66
Spokane	10,516	980	484	48	994	46	11,994	1,074	9.3	21.51	-	-	-
Westcott	9,102	787	13	2	102	10	9,217	799	8.7	7.73	-	-	-
Total	$ 642,278	$ 51,616	$ 42,629	$ 3,634	$ 93,204	$ 8,054	$ 778,111	$ 63,343	8.1	$ 9.23	$ 626,494	$ 52,515	$ 7.91

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JAX 401
Commission's Exhibit 2822-B
2 pp.

T.B.A. DIVISION SALES

JULY 1955 VERSUS JULY 1954

Division	MONTH OF JULY 1955 TIRES AND TUBES Sales	TIRES AND TUBES Commission	BATTERIES Sales	BATTERIES Commission	ACCESSORIES Sales	ACCESSORIES Commission	TOTAL T.B.A. Sales	TOTAL T.B.A. Commission	Per Cent	Sales Per 1,000 Gal. of Gaso.	MONTH OF JULY 1954 TOTAL T.B.A. Sales	TOTAL T.B.A. Commission	Sales Per 1,000 Gal. of Gaso.
Albuquerque	$ 66,861	$ 6,100	$ 2,959	$ 266	$ 6,321	$ 575	$ 76,141	$ 6,940	9.1	$ 12.87	$ 51,577	$ 4,544	$ 9.08
Butte	36,313	3,492	1,585	136	2,187	205	40,085	3,832	9.5	8.19	40,137	3,824	8.43
Chicago	79,227	6,254	2,531	215	6,968	583	88,726	7,052	7.9	12.12	66,765	5,604	7.04
Corpus Christi	15,814	1,299	1,798	152	1,432	123	19,044	1,574	8.3	9.07	17,956	1,420	9.51
Denver	98,599	7,867	7,246	579	11,211	896	117,096	9,342	8.0	9.97	72,945	5,948	6.87
Fort Worth	54,229	3,979	6,563	511	8,653	658	69,445	5,147	7.4	10.91	53,237	4,193	9.72
Houston	17,233	1,339	2,796	216	1,595	123	21,624	1,677	7.8	9.69	18,148	1,321	7.90
Kansas City	107,303	7,779	5,737	515	16,816	1,390	129,856	9,684	7.5	12.81	123,970	9,982	13.71
Lincoln	83,727	7,348	4,984	473	15,041	1,368	103,752	9,189	8.9	9.09	99,671	8,583	8.92
Memphis	22,468	1,432	1,155	87	2,919	224	26,542	1,743	6.6	11.05	-	-	-
Minneapolis	20,678	1,628	982	88	750	72	22,410	1,788	8.0	8.11	-	-	-
New Orleans	29,439	2,755	2,696	251	1,461	136	33,596	3,142	9.4	10.56	22,338	1,668	7.58
Oklahoma City	42,135	3,296	4,618	424	7,152	609	53,906	4,329	8.0	8.35	57,284	4,648	7.64
Salt Lake City	53,000	4,478	5,671	534	8,595	766	67,306	5,778	8.6	14.36	65,637	5,628	15.81
Spokane	11,393	1,023	708	71	2,643	243	14,824	1,337	9.0	27.10	-	-	-
Westcott	8,588	776	437	38	131	13	9,156	827	9.0	7.88	-	-	-
Total	$ 747,088	$ 60,845	$ 52,546	$ 4,556	$ 93,835	$ 7,984	$ 893,469	$ 73,361	8.2	$ 10.72	$ 689,665	$ 57,363	$ 9.20
Per Cent of Total	83.6		5.9		10.5		100.0						
Sales Over 1954	203,729		(15,849)		15,984		203,804						
Per Cent of Increase Over 1954	37.5		(23.2)		20.4		29.6						

Commission's Exhibit T-48

8198

T.B.A. DIVISION SALES

AUGUST 1955 VERSUS AUGUST 1954

Division	MONTH OF AUGUST 1955 TIRES AND TUBES Sales	Commission	BATTERIES Sales	Commission	ACCESSORIES Sales	Commission	TOTAL T.B.A. Sales	Commission	Per Cent	Sales Per 1,000 Gal. of Gaso.	MONTH OF AUGUST 1954 TOTAL T.B.A. Sales	Commission	Sales Per 1,000 Gal. of Gaso.
Albuquerque	$ 56,957	$ 4,082	$ 3,980	348	$ 5,468	$ 479	$66,405	$ 5,896	8.87	$ 11.85	$45,710	$ 4,133	$ 8.76
Butte	49,354	4,734	6,860	557	4,109	402	60,325	5,693	9.43	10.60	30,309	3,080	8.70
Chicago	64,686	4,987	9,221	838	6,282	556	80,122	6,381	7.96	11.29	41,706	4,971	9.14
Corpus Christi	8,311	522	4,018	322	1,194	105	10,523	965	9.08	4.27	11,739	1,021	6.46
Denver	65,290	5,241	10,486	896	12,510	1,025	88,218	7,122	8.07	7.47	68,396	5,896	6.21
Fort Worth	35,169	2,861	11,177	874	12,921	974	59,247	4,689	7.89	9.24	41,061	3,297	7.60
Houston	44,886	3,486	4,762	364	2,898	200	52,976	4,050	7.77	21.19	21,861	1,638	9.18
Kansas City	89,570	7,207	12,939	1,151	17,982	1,539	120,101	9,897	8.24	12.48	86,015	7,109	9.78
Lincoln	80,323	6,894	13,246	1,156	18,361	1,656	112,050	9,706	8.66	10.46	94,710	8,246	9.65
Memphis	19,323	1,239	894	88	2,867	209	23,274	1,881	6.44	8.96	-	-	-
Minneapolis	24,890	1,901	2,105	196	1,702	156	28,696	2,155	7.51	10.20	18,316	1,446	8.34
New Orleans	25,829	1,968	1,277	101	1,121	89	28,226	2,089	7.22	8.89	20,316	1,474	6.90
Oklahoma City	40,976	3,262	7,936	668	8,178	715	56,990	4,705	8.30	9.15	70,928	5,622	9.11
Salt Lake City	54,736	4,219	7,289	618	7,738	702	69,694	5,836	8.37	14.86	46,892	4,078	10.36
Spokane	10,308	977	786	78	2,309	217	13,689	1,270	9.41	20.78	-	-	-
Westcott Total	5,837	869	328	30	282	24	6,118	622	10.17	4.88	-	-	-
	$675,444	$ 54,869	$96,658	$ 8,186	$108,125	$ 9,080	$878,228	$ 72,134	8.21	$ 10.51	$616,269	$ 51,776	$ 8.34
Per Cent of Total	77.0		11.0		12.0		100						
Amt. over 1954	211,796		20,136		25,068		257,000						
Per Cent of Increase Over 1954	45.9		26.3		31.3		41.6						

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Commission's Exhibit 2632-11

FEDERAL TRADE COMMISSION

8137

JAX 604
Commission's Exhibit 2632-12
2632 II

T.B.A. DIVISION SALES

SEPTEMBER 1955 VERSUS SEPTEMBER 1954

Division	MONTH OF SEPTEMBER 1955 — TIRES AND TUBES Sales	TIRES AND TUBES Commission	BATTERIES Sales	BATTERIES Commission	ACCESSORIES Sales	ACCESSORIES Commission	TOTAL T.B.A. Sales	TOTAL T.B.A. Commission	Per Cent	Sales Per 1,000 Gal. of Gas.	MONTH OF SEPTEMBER 1954 — TOTAL T.B.A. Sales	TOTAL T.B.A. Commission	Sales Per 1,000 Gal. of Gas.
Albuquerque	$ 27,423	$ 2,382	$ 4,852	$ 444	$ 4,278	$ 386	$ 36,553	$ 3,212	8.8	$ 7.04	$ 30,047	$ 4,453	$ 9.79
Butte	43,282	4,207	4,002	393	3,502	340	50,786	4,940	9.7	12.91	41,853	3,934	10.16
Chicago	42,670	3,464	8,629	755	8,421	714	59,720	4,933	8.2	8.10	58,726	4,289	8.23
Corpus Christi	6,931	593	649	59	727	63	8,307	715	8.6	3.37	12,344	1,725	6.44
Denver	53,045	4,225	13,636	1,080	12,944	1,022	79,625	6,327	7.9	7.68	85,001	6,788	8.37
Fort Worth	41,529	3,977	10,400	803	7,221	553	59,150	4,433	7.5	9.48	42,119	3,466	7.00
Houston	22,269	1,671	2,606	204	2,213	172	27,088	2,047	7.5	11.43	22,451	1,666	9.33
Kansas City	82,089	6,450	12,092	1,061	19,327	1,627	113,508	9,138	8.0	11.83	113,058	8,841	12.24
Lincoln	87,314	7,342	18,194	1,618	20,678	1,780	126,186	10,740	8.5	12.37	110,931	9,443	10.92
Memphis	18,247	1,046	3,790	313	4,016	304	26,053	1,663	6.4	10.13	-	-	-
Minneapolis	20,080	1,401	5,219	457	1,716	150	27,015	2,008	7.4	9.81	19,337	1,299	9.09
New Orleans	23,102	1,709	6,487	509	4,915	372	34,504	2,590	7.5	9.94	21,684	1,017	7.47
Oklahoma City	38,678	3,143	6,425	563	7,029	626	52,132	4,332	8.3	8.97	70,624	5,547	9.22
Salt Lake City	29,397	2,419	5,773	504	6,378	602	41,548	3,525	8.5	9.36	46,824	4,115	11.24
Spokane	5,400	500	2,015	188	3,570	334	10,985	1,022	9.3	19.32	-	-	-
Westcott	6,293	582	204	20	132	13	6,629	615	9.3	5.54	-	-	-
Total	$ 547,749	$44,211	$104,973	$ 8,971	$107,087	$ 9,058	$759,789	$ 62,240	8.2	9.67	$694,997	$ 56,641	$ 9.50
% of Total	72.1		13.8		14.1		100.0						
Amt. over 1954	12,383		30,847		21,562		64,792						
% of Increase over 1954	2.3		41.6		25.2		9.3						

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FEDERAL TRADE COMMISSION
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T.B.A. DIVISION SALES

OCTOBER 1955 VERSUS OCTOBER 1954

Division	MONTH OF OCTOBER 1955 TIRES AND TUBES Sales	Commission	BATTERIES Sales	Commission	ACCESSORIES Sales	Commission	TOTAL T.B.A. Sales	Commission	Per Cent	Sales Per 1,000 Cal. of Gaso.	MONTH OF OCTOBER 1954 TOTAL T.B.A. Sales	Commission	Sales Per 1,000 Cal. of Gaso.
Albuquerque	$ 45,203	$ 3,936	$ 8,350	$ 753	$ 4,749	$ 417	$ 58,302	$ 5,106	8.8	$ 11.19	$ 46,846	$ 4,251	$ 8.84
Butte	23,906	2,078	2,810	243	2,606	243	29,322	2,564	8.7	10.20	32,582	3,186	11.43
Chicago	33,409	4,253	8,506	728	7,295	617	69,210	5,598	8.1	9.19	46,655	3,850	6.85
Corpus Christi	8,102	670	3,842	298	502	42	12,446	1,010	8.1	5.65	9,369	805	5.00
Denver	45,983	3,767	9,985	799	11,702	908	67,670	5,474	8.1	7.10	55,897	4,511	6.28
Fort Worth	27,690	1,992	7,841	626	8,034	608	43,565	3,226	7.4	6.94	26,018	2,093	4.41
Houston	29,732	2,240	3,414	262	1,303	98	34,449	2,600	7.5	14.77	10,914	808	5.75
Kansas City	62,447	4,996	9,926	866	31,400	2,811	103,773	8,673	8.4	12.49	75,233	6,492	8.64
Lincoln	61,967	5,155	17,320	1,519	15,719	1,388	95,006	8,072	8.5	9.48	79,022	6,971	8.44
Memphis	16,965	1,079	962	73	2,654	206	20,581	1,358	6.6	8.25	-	-	-
Minneapolis	17,782	1,282	2,900	241	1,047	81	21,729	1,604	7.4	8.24	23,018	1,861	11.09
New Orleans	35,011	2,519	2,752	218	1,381	106	39,144	2,843	7.3	11.70	17,316	1,166	5.71
Oklahoma City	28,495	2,279	5,216	464	7,429	677	41,140	3,420	8.3	6.91	51,697	4,382	6.91
Salt Lake City	42,185	3,395	6,680	594	7,904	702	56,769	4,691	8.3	14.81	28,864	2,563	6.24
Spokane	2,493	203	644	51	2,202	193	5,339	447	8.4	9.32	-	-	-
Westcott	4,385	385	372	30	193	19	4,950	434	8.8	4.14	-	-	-
TOTAL	$505,755	$ 40,239	$91,520	$ 7,765	$106,120	$9,116	$703,395	$ 57,120	8.1	$ 9.46	$503,791	$ 42,739	$ 7.28
% of Total	71.9		13.0		15.1		100.0						
Amt. over 1954	153,221		17,256		29,127		199,604						
Per cent of increase over 1954	43.5		23.2		37.8		39.6						

FAN-BAL
11-17-55

FEDERAL TRADE COMMISSION
DOCKET No. 6405 FILED 12/12

8501

Commission's Exhibit 2832-13
JAX 486

T.B.A. DIVISION SALES

NOVEMBER 1955 VERSUS NOVEMBER 1954

Division	TIRES AND TUBES Sales	TIRES AND TUBES Commission	MISCELLANEOUS Sales	MISCELLANEOUS Commission	ACCESSORIES Sales	ACCESSORIES Commission	TOTAL T.B.A. Sales	TOTAL T.B.A. Commission	Per Cent	1,000 Gal. of Gas.
MONTH OF NOVEMBER 1955										
Albuquerque	$37,669	$ 3,272	$ 3,157	$ 278	$ 4,909	$ 402	$45,731	$ 3,952	8.6	$ 8.97
Butte	17,988	1,710	2,735	260	1,527	147	22,250	2,117	9.5	8.74
Chicago	31,893	2,541	10,076	877	9,971	854	51,340	4,272	8.3	7.36
Corpus Christi	12,883	998	(2,780)	(200)	689	51	10,732	849	7.9	4.72
Denver	47,824	3,895	12,394	986	12,187	989	72,385	5,860	8.1	8.98
Fort Worth	24,733	1,834	6,376	491	9,360	705	40,469	3,030	7.5	6.64
Houston	22,667	1,659	2,105	166	1,639	123	26,411	1,948	7.4	12.23
Kansas City	46,410	3,631	10,752	961	23,896	2,042	81,058	6,634	8.2	9.75
Lincoln	49,904	4,266	16,474	1,446	24,983	2,152	91,361	7,864	8.6	10.27
Memphis	9,585	516	1,053	81	3,916	294	14,554	891	6.1	6.03
Minneapolis	14,414	1,232	2,306	206	1,013	106	17,733	1,544	8.7	8.09
New Orleans	18,996	1,356	2,907	232	413	33	22,316	1,621	7.3	6.49
Oklahoma City	25,865	2,047	5,713	517	7,241	654	38,819	3,198	8.2	6.63
Salt Lake City	17,692	1,499	9,308	829	8,149	731	35,149	3,059	8.7	11.11
Spokane	6,841	664	1,445	142	3,155	297	11,441	1,103	9.6	21.02
Westcott	4,818	451	860	85	193	19	5,871	555	9.5	6.06
Total	$389,562	$31,561	$84,881	$ 7,357	$113,177	$ 9,579	$587,620	$ 48,497	8.25	$ 8.52
Per Cent of Total	66.3		14.4		19.3		100.0			
Sales over 1954	$1,369		$16,454		$ 37,997		$ 56,020			
Per Cent of increase over 1954	.4		24.0		50.5		10.5			

Division	MONTH OF NOVEMBER 1954 TOTAL T.B.A. Sales	TOTAL T.B.A. Commission	Sales Per 1,000 Gal. of Gasoline
Albuquerque	$52,017	$ 4,712	$ 9.97
Butte	20,985	2,978	11.75
Chicago	45,277	3,580	6.69
Corpus Christi	5,519	548	3.05
Denver	58,976	4,705	7.44
Fort Worth	34,551	2,809	5.95
Houston	21,016	1,571	9.14
Kansas City	70,533	5,995	8.12
Lincoln	88,804	7,616	9.39
Memphis	-	-	-
Minneapolis	15,760	1,387	7.59
New Orleans	19,190	1,395	6.02
Oklahoma City	45,646	3,678	6.88
Salt Lake City	31,551	2,587	13.95
Spokane	11,435	1,143	39.84
Westcott	-	-	-
Total	$531,600	$44,586	$ 8.10

JAX 408

Commission's Exhibit 2832-14

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T.B.A. DIVISION SALES

DECEMBER 1955 VERSUS DECEMBER 1954

Division	MONTH OF DECEMBER 1955 TIRES AND TUBES Sales	Commission	BATTERIES Sales	Commission	ACCESSORIES Sales	Commission	TOTAL T.B.A. Sales	Commission	Per Cent	Sales Per 1,000 Gal. of gaso.	MONTH OF DECEMBER 1954 TOTAL T.B.A. Sales	Commission	Sales Per 1,000 Gal. of Gasoline
Albuquerque	$42,827	$3,561	$ 5,910	$ 598	$ 6,930	$ 630	$55,667	$ 4,719	8.5	$10.54	$48,529	$ 4,176	$10.13
Butte	21,844	2,153	9,083	835	1,152	113	32,079	3,101	9.7	14.21	25,360	2,433	11.74
Chicago	31,109	2,517	8,999	801	6,370	557	46,478	3,875	8.3	6.96	47,836	3,908	7.52
Corpus Christi	8,507	698	1,614	128	1,915	154	12,036	980	8.1	4.93	6,487	581	3.80
Denver	34,849	2,868	13,024	1,034	8,520	684	56,393	4,586	8.1	7.51	46,045	3,614	6.49
Fort Worth	56,415	3,961	5,137	394	8,640	649	70,192	5,004	7.1	11.67	36,780	2,802	6.28
Houston	6,974	497	1,556	125	1,567	119	10,097	741	7.3	4.41	6,359	478	2.88
Kansas City	49,895	4,073	22,092	1,048	34,465	2,803	95,852	7,924	8.3	18.17	70,989	5,741	8.84
Lincoln	77,533	6,428	15,534	1,376	15,142	1,363	108,209	9,167	8.5	13.23	85,489	7,728	11.10
Memphis	15,752	1,003	1,877	155	3,736	284	21,365	1,442	6.7	8.42	-	-	-
Minneapolis	18,546	1,324	3,442	292	2,745	248	24,733	1,864	7.5	11.06	16,137	1,428	9.57
New Orleans	20,912	1,512	1,708	136	2,537	194	25,157	1,842	7.3	7.32	25,485	1,985	8.15
Oklahoma City	27,586	2,143	4,177	369	6,521	563	38,284	3,075	8.0	7.06	42,507	3,195	6.06
Salt Lake City	49,790	2,659	6,740	552	4,971	427	61,501	3,638	5.9	22.46	32,[illegible]	2,774	9.30
Spokane	4,433	426	1,672	141	2,034	195	8,139	762	9.4	17.72	9,[illegible]50	809	39.00
Westcott	3,230	312	241	20	187	11	3,598	343	9.5	4.89	-	-	-
Total	469,602	36,135	92,806	7,954	107,372	8,994	669,780	53,083	7.9	10.16	500,136	41,598	8.09
Per Cent of Total	70.1		13.9		16.0		100.0						
Sales over 1954	$96,077		$32,536		$41,031		$169,644						
Per Cent of increase over 1954	25.7		54.0		61.8		33.9						

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Consolidated Exhibit 7-39

JAX 107

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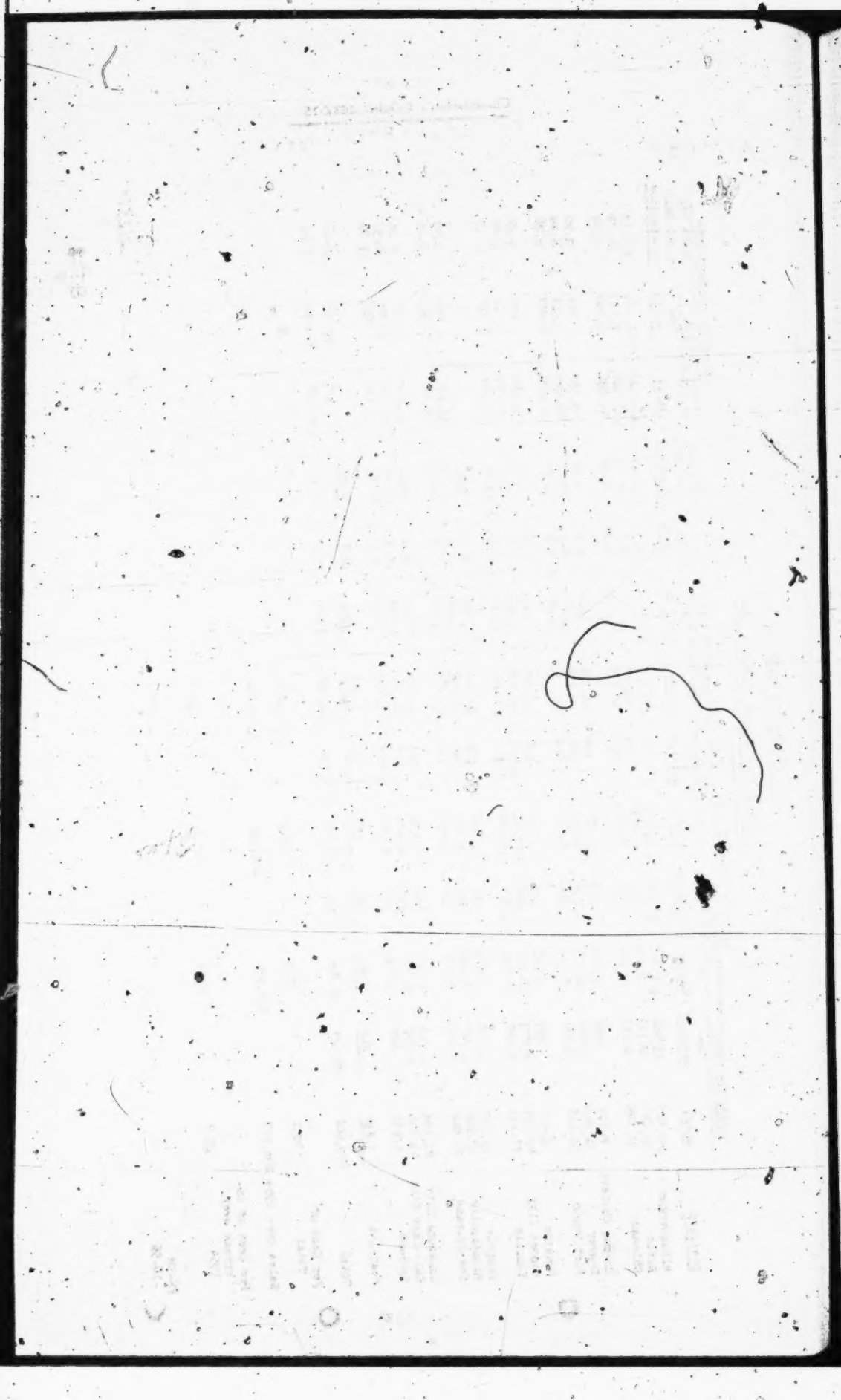

T.B.A. DIVISION SALES

CUMULATIVE THROUGH DECEMBER 1955 VERSUS DECEMBER 1954

Division	CUMULATIVE THROUGH DECEMBER 1955 TIRES AND TUBES Sales	TIRES AND TUBES Commission	BATTERIES Sales	BATTERIES Commission	ACCESSORIES Sales	ACCESSORIES Commission	TOTAL T.B.A. Sales	TOTAL T.B.A. Commission	Per Cent	Sales Per 1,000 Gal. of Gaso.	CUMULATIVE THROUGH DEC. 1954 TOTAL T.B.A. Sales	TOTAL T.B.A. Commission	Sales Per 1,000 Gal. of Gaso.
Albuquerque	$ 486,022	$ 42,225	$ 48,401	$ 4,338	$ 68,985	$ 6,104	$ 603,408	$ 52,667	8.7	$ 9.62	$ 530,515	$ 47,263	$ 8.52
Butte	368,760	35,277	40,197	3,643	31,909	3,034	440,866	41,954	9.5	11.62	369,102	35,548	9.77
Chicago	590,721	46,250	70,606	6,181	80,339	6,829	741,666	59,260	8.0	8.87	714,744	57,058	7.30
Corpus Christi	117,778	9,821	16,823	1,495	15,791	1,331	150,392	12,557	8.3	6.79	125,696	10,579	5.60
Denver	634,302	51,204	102,904	8,245	119,867	9,580	857,073	69,029	8.1	8.01	774,911	62,744	7.53
Fort Worth	397,838	29,392	70,445	5,465	101,235	7,694	569,518	42,551	7.5	7.80	459,520	37,044	6.78
Houston	272,058	20,698	30,786	2,400	22,944	1,745	325,788	24,842	7.6	8.94	202,582	15,363	7.27
Kansas City	874,324	68,536	97,996	8,646	220,000	18,671	1,192,320	95,853	8.0	11.33	1,016,321	82,296	9.90
Lincoln	898,826	76,182	130,566	11,617	207,038	18,485	1,236,430	106,285	8.6	10.83	1,057,605	92,915	9.69
Memphis	161,718	9,859	12,589	1,001	28,373	2,166	202,680	13,026	6.4	9.16	-	-	-
Minneapolis	208,171	16,347	22,841	2,044	16,195	1,517	247,207	19,908	8.1	8.82	92,768	7,361	9.10
New Orleans	260,478	19,638	26,861	2,103	18,911	1,482	305,650	23,223	7.6	9.20	248,987	18,450	7.03
Oklahoma City	431,823	33,930	55,594	4,888	84,885	7,443	572,212	46,261	8.1	7.54	657,695	52,158	7.30
Salt Lake City	429,710	34,713	68,696	6,046	88,552	7,962	586,958	48,721	8.3	13.70	474,655	40,894	11.16
Spokane	77,437	7,085	10,998	997	27,992	2,563	116,427	10,645	9.1	20.26	20,865	1,992	39.43
Westcott	63,857	5,778	3,848	350	1,884	184	69,589	6,312	9.1	5.79	-	-	-
Total	$6,273,823	$506,935	$809,461	$69,369	$1,134,840	$96,790	$8,218,124	$673,094	8.2	$ 9.53	$6,745,966	$561,685	$ 8.33
Per Cent of Total	76.4		9.8		13.8		100.0						
Sales over 1954	$1,058,548		$147,515		$266,095		$1,472,158						
Per Cent of Increase over 1954	20.3		22.3		30.6		21.8						

JAX 388

Commission's Exhibit 2832-16

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T.B.A. DIVISION SALES

JANUARY 1956 VERSUS JANUARY 1955

Division	MONTH OF JANUARY 1956 — TIRES AND TUBES Sales	TIRES AND TUBES Commission	BATTERIES Sales	BATTERIES Commission	ACCESSORIES Sales	ACCESSORIES Cash Discount	TOTAL T.B.A. Sales	TOTAL T.B.A. Commission	Per Cent	Sales Per 1,000 Gal. of Gaso.	MONTH OF JANUARY 1955 — TOTAL T.B.A. Sales	TOTAL T.B.A. Commission	Sales Per 1,000 Gal. of Gaso.
Albuquerque	$ 31,055	$ 2,741	$ 3,689	$ 338	$ 5,237	$ 448	$ 39,981	$ 3,527	8.8	$8.58	$ 41,834	$ 3,493	$ 8.90
Butte	26,301	2,490	2,645	264	3,087	303	32,033	3,057	9.5	15.28	21,457	2,064	10.57
Chicago	40,934	3,303	9,698	824	10,245	848	60,837	4,975	8.2	9.56	59,997	4,841	10.23
Corpus Christi	8,254	675	689	60	1,602	133	10,585	868	8.2	4.39	-	-	-
Denver	49,269	4,103	5,633	447	8,743	670	63,645	5,220	8.2	8.87	74,843	6,047	10.79
Fort Worth	16,128	1,244	2,772	220	8,745	658	27,645	2,122	7.7	5.04	37,399	2,883	7.12
Houston	26,135	1,978	2,954	225	1,991	152	31,080	2,357	7.6	5.04	58,699	4,586	8.91
Kansas City	75,295	6,436	8,852	795	17,485	1,433	101,632	8,664	8.5	13.48	87,980	7,355	12.21
Lincoln	59,171	4,796	11,204	996	15,492	1,315	85,867	7,067	8.2	11.25	104,494	8,782	14.79
Memphis	11,003	601	1,546	116	1,446	109	13,995	826	5.9	5.76	-	-	-
Minneapolis	16,293	1,313	2,588	218	1,388	189	20,149	1,660	8.2	10.65	9,080	740	5.44
New Orleans	21,766	1,589	2,216	172	1,752	133	25,734	1,894	7.4	7.49	-	-	-
Oklahoma City	23,357	1,907	4,683	408	6,649	602	34,689	2,917	8.4	6.33	47,935	3,891	6.71
Salt Lake City	25,497	2,074	1,975	157	3,316	253	31,788	2,484	7.8	12.16	48,884	4,105	19.82
Spokane	6,454	449	954	91	1,327	118	8,735	658	7.5	18.44	3,993	334	16.62
Westcott	4,897	391	490	49	183	18	5,570	458	8.2	7.53	7,414	581	11.76
Total	$442,849	$36,090	$62,368	$5,340	$88,628	$7,322	$593,845	$48,752	8.2	$9.45	$603,949	$49,642	$10.39
Per Cent of Total	74.6		10.5		14.9		100.0						
Sales Over 1955	($29,388)		$ 4,173		$15,105		($10,104)						
Per Cent of Increase Over 1955	(6.2)		7.2		20.5		(1.7)						

JAX 409

Commission's Exhibit 2632-17

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T.B.A. DIVISION SALES

FEBRUARY 1956 VERSUS FEBRUARY 1955

Division	MONTH OF FEBRUARY 1956 TIRES AND TUBES Sales	Tires and Tubes Commission	Batteries Sales	Batteries Commission	Accessories Sales	Accessories Commission	TOTAL T.B.A. Sales	TOTAL T.B.A. Commission	Per Cent	Sales per 1,000 Cal. of Gaso.	MONTH OF FEBRUARY 1955 TOTAL T.B.A. Sales	TOTAL T.B.A. Commission	Sales Per 1,000 Cal. of Gaso.
Albuquerque	$ 22,016	$ 2,085	$ 3,446	$ 310	$ 5,665	$ 473	$31,127	$ 2,788	89.0	$7.63	$40,515	$ 3,587	$8.96
Butte	28,695	2,539	1,898	169	1,337	123	31,898	2,831	8.9	16.29	40,855	3,588	20.9
Chicago	89,851	2,684	5,468	447	5,128	474	40,447	3,605	8.9	6.98	64,415	4,584	11.08
Corpus Christi	3,998	337	1,851	100	664	56	5,907	493	8.3	2.81	18,213	1,498	.
Denver	37,317	2,948	9,143	713	8,273	653	54,733	4,314	7.9	7.96	49,130	4,026	7.93
Fort Worth	9,009	661	5,908	448	8,782	664	23,699	1,773	7.5	5.64	29,691	2,256	5.78
Houston	4,480	385	689	59	2,730	226	7,999	666	8.3	1.11	20,258	1,619	.
Kansas City	65,302	5,093	7,321	590	14,042	1,234	86,665	6,917	8.1	12.21	81,210	6,486	12.08
Lincoln	45,542	3,762	4,117	352	13,513	1,209	62,972	5,363	8.5	8.87	95,990	7,737	14.32
Memphis	18,745	1,050	1,956	121	2,468	264	22,869	1,415	6.2	10.28	28,334	.	.
Minneapolis	8,718	774	495	45	1,746	140	10,959	959	8.8	5.65	18,039	1,550	11.11
New Orleans	10,759	736	1,627	126	2,180	163	14,566	1,025	7.0	4.35	17,560	1,298	.
Oklahoma City	35,351	2,811	4,903	426	8,710	744	48,964	3,981	8.1	9.54	22,945	5,008	9.86
Salt Lake City	30,761	2,485	5,650	513	7,023	627	43,434	3,625	8.3	17.82	35,328	2,986	16.01
Spokane	3,599	285	184	19	1,432	127	5,215	431	8.3	11.21	12,335	1,025	40.51
Westcott	7,577	637	768	68	186	13	8,531	718	8.8	13.44	3,680	306	6.85
Total	$361,544	$29,192	$54,456	$ 4,606	$83,679	$ 7,160	$499,679	$40,958	68.2	$8.58	$592,389	$48,235	$10.86
Per Cent of Total	72.4		10.9		16.7		100.0						
Sales over 1955	$(8,890)		$(17,050)		$10,230		$(51,710)						
Per Cent of Increase Over 1955	(19.0)		(23.8)		13.9		(15.5)						

FEDERAL TRADE COMMISSION
FILED 1956 263317

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FTC Commission's Exhibit 2832-18
In re Firestone 7-24-57
FTC

T.B.A. DIVISION SALES

MARCH 1956 VERSUS MARCH 1955

Division	MONTH OF MARCH 1956 TIRES AND TUBES Sales	Commission	BATTERIES Sales	Commission	ACCESSORIES Sales	Commission	TOTAL T.B.A. Sales	Commission	Per Cent	Sales Per 1,000 Cal. of Cane.	MONTH OF MARCH 1955 TOTAL T.B.A. Sales	Commission	Sales Per 1,000 Cal. of Cane.
Albuquerque	$40,995	$ 3,659	$ 3,533	$ 304	$ 4,438	$ 396	$48,966	$ 4,359	8.9	$18.34	$44,670	$ 3,911	$ 8.95
Butte	37,154	3,475	1,448	143	4,730	495	43,602	4,113	9.4	18.63	37,636	3,597	17.30
Chicago	44,832	3,582	5,386	477	4,753	416	54,911	4,475	8.1	7.78	35,764	2,576	5.52
Corpus Christi	9,169	773	1,738	140	2,315	187	13,222	1,100	8.3	5.54	17,163	1,406	8.33
Denver	37,230	3,055	5,406	422	8,282	660	50,918	4,137	8.1	6.51	39,666	3,143	5.34
Fort Worth	21,446	1,500	3,119	246	8,130	613	32,695	2,359	7.2	5.31	31,866	2,406	5.29
Houston	15,487	1,234	1,510	117	947	71	17,944	1,422	7.9	7.50	13,501	1,046	5.66
Kansas City	61,377	4,832	2,440	204	12,856	1,082	76,673	6,118	8.0	8.85	69,253	5,455	8.08
Lincoln	64,046	5,000	3,836	348	18,004	1,582	85,886	6,930	8.1	9.31	74,346	6,703	8.81
Memphis	18,009	952	796	62	3,761	282	22,566	1,296	5.7	8.03	15,452		
Minneapolis	11,441	930	619	57	2,660	217	14,720	1,204	8.2	6.61	14,995	1,359	7.93
New Orleans	24,371	1,781	1,544	132	5,345	415	31,260	2,328	7.4	8.63	21,301	1,585	6.30
Oklahoma City	31,431	2,563	2,585	220	7,736	639	41,752	3,422	8.2	7.28	30,285	3,495	5.84
Salt Lake City	21,471	1,788	3,376	291	6,402	559	31,249	2,638	8.4	9.83	29,793	2,606	10.79
Spokane	11,206	1,022	1,289	120	2,833	264	15,328	1,406	9.2	26.96	7,386	653	18.84
Westcott	8,844	814	209	19	352	35	9,405	868	9.2	9.18	1,591	141	1.82
Total	$458,509	$36,960	$38,774	$ 3,302	$93,544	$ 7,913	$591,097	$ 48,175	8.2	$ 8.45	$484,008	$40,058	$ 7.38
Per Cent of Total	77.6		6.6		15.8		100.0						
Sales Over 1955	$91,278		($2,993)		$18,534		$107,089						
Per Cent of Increase Over 1955	24.9		(7.2)		24.7		22.1						

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JAX 411
Commission's Exhibit 2632-18
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2632-18

S.D.5

T.B.A. DIVISION SALES

APRIL 1956 VERSUS APRIL 1955

Division	MONTH OF APRIL 1956 TIRES AND TUBES Sales	Commission	BATTERIES Sales	Commission	ACCESSORIES Sales	Commission	TOTAL T.B.A. Sales	Commission	Per Cent	Sales Per 1,000 Gal. of Gaso.	MONTH OF APRIL 1955 TOTAL T.B.A. Sales	& Commission	Sales Per 1,000 Gal. of Gaso.
Albuquerque	$43,402	$3,691	$3,114	$ 261	$5,500	$ 462	$52,016	$4,414	8.5	$10.93	$46,803	$4,395	$9.94
Butte	34,575	3,369	1,217	116	3,721	354	39,513	3,839	9.7	12.62	33,572	3,175	12.99
Chicago	47,747	3,833	1,991	164	6,977	608	56,715	4,605	8.1	7.72	57,575	4,632	8.10
Corpus Christi	8,957	759	1,199	98	1,981	199	12,097	1,056	8.4	5.43	11,400	991	5.63
Denver	48,937	3,938	4,218	347	10,930	885	64,085	5,130	8.0	7.39	60,572	4,889	7.35
Fort Worth	28,315	2,254	3,701	281	9,978	735	41,994	3,290	7.8	6.92	39,180	2,968	6.63
Houston	10,224	778	1,706	128	2,927	220	14,857	1,126	7.6	6.31	17,004	1,385	7.70
Kansas City	77,311	6,304	1,485	161	16,222	1,495	99,018	7,960	8.4	10.81	103,563	8,187	11.38
Lincoln	73,560	6,160	3,270	329	21,498	1,952	98,328	8,441	8.6	9.46	98,751	8,596	9.29
Memphis	17,781	1,102	907	73	2,340	179	21,028	1,354	6.4	7.37	23,901	1,481	11.86
Minneapolis	30,223	2,400	768	66	4,055	333	35,046	2,799	8.0	13.74	19,311	1,748	8.47
New Orleans	38,952	3,650	2,186	202	3,524	343	44,662	4,195	9.4	12.05	30,342	2,260	9.44
Oklahoma City	45,849	3,706	2,641	230	7,957	688	56,427	4,624	8.2	10.11	34,193	2,851	6.27
Salt Lake City	37,469	3,143	3,667	316	10,002	847	51,138	4,306	8.4	13.29	48,536	4,289	13.65
Spokane	4,039	450	453	45	2,817	270	7,309	765	10.5	12.26	5,270	471	11.46
Westcott	6,152	551	179	18	419	41	6,750	610	9.0	5.69	7,471	687	6.65
Total	$553,493	$46,088	$32,662	$2,835	$110,818	$9,551	$696,973	$58,474	8.4	$9.42	$639,844	$52,765	$9.01
Per Cent of Total	79.4		4.7		15.9		100.0						
Sales Over 1955	$51,005		$(5,012)		$11,136		$57,129						
Per Cent of Increase Over 1955	10.2		(13.3)		11.2		8.9						

4-EM
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Commission's Exhibit 8023-A
JAX 413

T.B.A. DIVISION SALES

MAY 1956 VERSUS MAY 1955

Division	MONTH OF MAY 1956 TIRES AND TUBES Sales	TIRES AND TUBES Commission	BATTERIES Sales	BATTERIES Commission	ACCESSORIES Sales	ACCESSORIES Commission	TOTAL T.B.A. Sales	TOTAL T.B.A. Commission	Per Cent	Sales Per 1,000 Gal. of Gaso.	MONTH OF MAY 1955 TOTAL T.B.A. Sales	TOTAL T.B.A. Commission	Sales Per 1,000 Gal. of Gaso.
Albuquerque	41,272	3,733	2,449	247	9,194	846	52,915	4,846	9.2	10.60	41,709	3,664	7.89
Butte	22,547	2,094	419	44	3,297	304	26,263	2,442	9.3	8.25	23,305	2,198	7.48
Chicago	55,000	4,497	3,828	330	6,429	541	65,257	5,368	8.2	8.39	76,576	6,216	10.04
Corpus Christi	7,348	608	363	32	766	66	8,477	706	8.3	3.65	11,192	989	5.53
Denver	54,252	4,314	3,837	301	8,437	4653	66,526	5,268	7.9	7.37	47,976	3,838	5.51
Fort Worth	32,729	2,505	2,669	207	8,371	632	43,769	3,344	7.6	6.54	39,640	3,032	6.36
Houston	32,425	2,387	1,111	87	1,864	137	35,400	2,611	7.4	14.65	25,444	1,877	11.40
Kansas City	57,151	4,693	4,848	449	14,383	1,252	76,382	6,394	8.4	8.26	93,182	7,556	10.09
Lincoln	71,312	5,665	4,482	385	16,009	1,436	91,803	7,486	8.2	8.18	107,804	9,644	10.12
Memphis	19,822	1,192	437	33	2,117	159	22,376	1,384	6.2	6.96	18,508	1,313	7.80
Minneapolis	20,086	1,545	501	40	5,878	458	26,465	2,043	7.7	8.50	18,732	1,554	7.33
New Orleans	41,075	3,012	1,124	90	3,445	264	45,644	3,366	7.4	11.60	22,950	1,739	7.15
Oklahoma City	36,807	3,082	2,812	252	5,228	472	44,847	3,806	8.5	7.69	49,395	3,950	8.45
Salt Lake City	32,468	2,694	2,250	194	6,196	551	40,914	3,439	8.4	10.70	39,525	3,533	10.41
Spokane	7,491	692	470	43	2,105	209	10,066	944	9.4	14.84	11,632	1,085	24.85
Westcott	10,181	885	275	27	461	45	10,917	957	8.8	9.86	3,957	361	3.61
Total	541,966	43,618	31,875	2,761	94,180	8,025	668,021	54,404	8.1	8.50	631,527	52,949	8.48
Per Cent of Total	81.1		4.8		14.1		100.0						
Sales Over 1955	32,025		(2,435)		6,904		36,494						
Per Cent of Increase Over 1955	6.3		(7.1)		7.9		5.8						

FM-EM
5-18-56

Commission's Exhibit 2432-21

T.B.A. DIVISION SALES

JUNE 1956 VERSUS JUNE 1955

Division	MONTH OF JUNE 1956 TIRES AND TUBES Sales	Commission	BATTERIES Sales	Commission	ACCESSORIES Sales	Commission	TOTAL T.B.A. Sales	Commission	Per Cent	Sales Per 1,000 Gal. of Gaso.	MONTH OF JUNE 1955 TOTAL T.B.A. Sales	Commission	Sales Per 1,000 Gal. of Gaso.
Albuquerque	$ 51,387	$ 4,692	$ 4,054	$ 330	$ 2,909	$ 204	$58,030	$ 5,286	9.0	$10.38	$47,078	$ 4,108	$ 7.73
Butte	26,385	2,321	1,554	133	3,677	345	31,616	2,999	9.5	7.86	48,814	4,681	12.14
Chicago	70,983	5,516	7,608	654	5,663	485	84,254	6,653	7.9	10.76	51,608	3,889	6.95
Corpus Christi	16,637	1,317	980	86	1,569	127	19,186	1,530	8.0	7.99	19,336	1,598	9.18
Denver	69,880	5,387	6,203	504	12,846	977	88,069	6,868	8.2	8	108,531	8,444	9.80
Fort Worth	41,572	3,182	4,884	369	5,220	358	51,696	3,954	7.7	7.92	30,274	3,747	7.04
Houston	18,678	1,508	4,076	315	1,662	130	24,416	1,953	8.0	9.89	18,697	1,385	8.09
Kansas City	101,467	7,406	7,115	605	10,776	1,008	119,358	9,019	7.6	10.72	113,044	8,986	10.54
Lincoln	83,884	7,084	12,949	1,105	17,782	1,551	114,295	9,720	8.5	9.23	120,501	10,113	10.56
Memphis	36,990	2,157	1,794	146	2,324	177	41,108	2,480	6.0	13.56	27,902	1,633	10.66
Minneapolis	15,958	1,213	2,362	188	2,713	229	21,039	1,630	7.7	6.99	25,165	1,987	9.45
New Orleans	30,388	2,147	3,276	252	2,969	223	36,573	2,622	7.2	9.36	30,394	2,264	9.09
Oklahoma City	63,284	5,076	7,639	696	8,587	749	79,510	6,481	8.1	11.78	47,801	4,007	6.56
Salt Lake City	52,357	4,898	4,388	383	8,235	706	64,980	5,381	8.3	14.35	52,935	4,703	11.97
Spokane	11,135	1,042	704	70	2,695	251	14,534	1,363	9.4	19.57	11,394	1,074	21.51
Westcott	1,247	114	88	8	490	48	8,092	764	9.5	6.14	9,217	722	7.72
Total	$694,019	$55,244	$69,548	$5,798	$89,347	$7,601	$852,914	$68,643	8.0	$ 9.80	$778,111	$63,343	$ 7.91
Per Cent of Total	81.4		8.1		10.5		100.0						
Sales Over 1955	$ 31,741		$86,219		$(3,857)		$ 74,803						
Per Cent of Increase over 1955	8.1		63.1		(4.1)		9.6						

JAX 414
Commission's Exhibit 2632-22
In 7-11-57

263721

FEDERAL [illegible] COMMISSION
[illegible] 1957

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T.B.A. DIVISION SALES

CUMULATIVE THROUGH JUNE 1956 VERSUS JUNE 1955

Division	CUMULATIVE THROUGH JUNE 1956 TIRES AND TUBES Sales	TIRES AND TUBES Commission	BATTERIES Sales	BATTERIES Commission	ACCESSORIES Sales	ACCESSORIES Commission	TOTAL T.B.A. Sales	TOTAL T.B.A. Commission	Per Cent	Sales Per 1,000 Gal. of Gas.	CUMULATIVE THROUGH JUNE 1955 TOTAL T.B.A. Sales	Commission	Sales per 1,000 Gal. of Gas.
Albuquerque	$224,247	$ 20,091	$ 19,894	$ 1,761	$ 31,748	$ 2,769	$275,889	$ 24,621	8.9	$ 9.54	$263,609	$23,041	$ 8.68
Butte	175,607	16,488	9,173	870	20,109	1,924	204,889	19,282	9.4	12.25	206,019	19,707	13.16
Chicago	289,287	23,415	33,865	2,896	39,209	3,369	362,361	29,680	8.2	8.59	345,995	27,139	8.51
Corpus Christi	54,397	4,469	6,120	516	8,897	727	69,414	5,712	8.2	5.00	54,446		
Denver	292,825	23,745	34,440	2,734	56,911	4,458	384,176	30,937	8.1	7.60	375,718	30,318	7.82
Fort Worth	149,199	11,356	23,053	1,772	49,206	3,715	221,458	16,843	7.6	6.09	287,450	17,213	6.39
Houston	107,429	8,269	12,046	931	12,181	927	131,656	10,127	7.7	9.53	111,087		
Kansas City	437,883	34,763	32,061	2,866	85,764	7,503	555,708	45,132	8.1	10.57	548,172	43,903	10.63
Lincoln	397,255	32,446	39,858	3,515	102,038	9,046	539,151	45,007	8.3	9.30	599,886	51,545	10.97
Memphis	121,996	7,037	7,076	552	14,810	1,175	143,882	8,764	6.1	8.69	121,799		
Minneapolis	102,571	8,161	7,325	619	18,484	1,513	128,380	10,293	8.0	8.61	104,922	8,948	8.31
New Orleans	167,851	12,914	11,973	975	19,215	1,541	198,439	15,430	7.8	9.10	148,921	9,147	9.32
Oklahoma City	236,129	19,151	25,203	2,192	45,247	3,893	306,579	25,236	8.2	8.93	239,763		
Salt Lake City	201,023	16,475	21,246	1,854	41,174	3,543	263,443	21,872	8.3	12.85	255,001	22,192	13.28
Spokane	43,925	3,939	4,054	388	13,119	1,240	61,098	5,567	9.1	17.31	52,210	4,703	21.69
Westcott	44,876	3,982	1,943	182	2,031	200	48,852	4,374	9.0	8.03	33,270	2,983	6.04
Total	$3,045,902	$246,711	$289,330	$24,623	$560,143	$47,543	$3,895,375	$318,877	8.2	$ 9.04	$3,728,828	$306,656	$ 9.14
Per Cent of Total	78.2		7.4		14.4		100.0						
Sales Over 1955	$105,279		$ 3,869		$57,999		$166,547						
Per Cent of Increase Over 1955	3.6		1.1		11.6		4.5						

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24-56

FEDERAL TRADE COMMISSION
FILED 1956

JAX 415
Commission's Exhibit 2612-Z
Entered

2589

JAX 416

Commission's Exhibit 264

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 COMMISSION EXHIBIT NO. 264
IN THE MATTER OF B. F. Goodrich Co., et al
DATE 11/5/57 WITNESS —
ACE REPORTING CO., Official Reporter
By Brown

In the Matter of
The B.F. Goodrich
Company, Et Al
FTC Docket #6485

RESPONSE OF CONTINENTAL OIL COMPANY
TO
ITEM 2(a) OF SPECIFICATION IV OF SUBPOENA

The following pertains to the sales commission arrangement between Conoco and the B. F. Goodrich Company.

The commodities subject to sales commission are the net purchases of:

Tires & Tubes - B. F. Goodrich new first-class Passenger, Truck & Bus, Farm, Solids, Industrials, Vulcanized-On; and Retreads, Recaps, and Recapping Service when purchased from a B. F. Goodrich Recap Plant.

Batteries - B. F. Goodrich Batteries and Battery Parts.

B. F. Goodrich Accessories, B. F. Goodrich Repair and Treading Materials and Auto and Home Supplies, Schrader and Dill Hardware -

See below for exceptions; otherwise, sales commission shall be paid on all items shown and listed in the following B. F. Goodrich Auto and Home Supply Catalogs*:

Automotive Supplies and Tools Catalog
Hardware - Fan Catalog
Home Radios - Television-Appliances Catalog
Seat Covers Catalog
Bicycles - Wheel Goods Catalog
Christmas Toys Catalog

These commodities are not subject to sales commission:

Seconds	Chargers and Testers	Promotional Leader Items
Rejects	Battery Service Kits	Major Appliances (Electric Ranges, Water Heaters, Refrigerators & Freezers, Laundry Equipment, Space Heaters).
Adjustments	Battery Equipment	
Stationery	Advertising	
Repairs	Anti-Freeze Testers	
Transportation Charges	Power Lawn Mowers	
Wheels, Rims and Parts	Motorola Home Radios & Television Sets	
Rental Batteries		

* Copies of the listed catalogs are not attached, pursuant to agreement of Counsel.

CSM 0

264

263- 1st

JAX 417

Commission's Exhibit 267A

FEDERAL TRADE COMMISSION
DOCKET 6485 FILED 2624
B.F. Goodrich Co. et al
DATE 11/2/57 TYPIST —
U.S. Co., Official Reporters
By Gann

In the Matter of
The B.F. Goodrich
Company, Et Al
FTC Docket 6485

RESPONSE OF CONTINENTAL OIL COMPANY
TO
ITEM 3(b) OF SPECIFICATION IV OF SUBPOENA

When Continental Oil Company entered its TBA program in 1952, the program was set up under the direction of an Assistant General Sales Manager. At that time the following new positions in Marketing Headquarters were established, and the primary concern of the personnel who filled these positions was the promotion of TBA sales:

Manager, TBA Sales
Two Assistant Managers, TBA Sales
One Clerk
One Secretary

In addition to the above headquarters personnel, ten new Assistant Division Managers were added, one for each of the following Divisions:

Albuquerque, New Mexico
Butte, Montana
Chicago, Illinois
Denver, Colorado
Fort Worth, Texas
Houston, Texas
Kansas City, Missouri
Lincoln, Nebraska
Oklahoma City, Oklahoma
Salt Lake City, Utah

Responsibility of the promotion of TBA sales was added to the regular duties of the following personnel:

Marketing Department	1952	1953	1954	1955
Regional Managers	5	5	5	5
Regional Sales Development Managers	0	0	0	4
Division Managers	10	10	12	10
Coordinating Assistant Division Managers	10	10	10	10
Assistant Division Managers	40	45	47	44
City Managers	19	24	25	24
Jobber Salesmen	25	9	9	10
District Sales Representatives	152	164	146	141
Merchandisers	77	88	137	160
City Salesmen	29	33	35	33
Total	367	388	426	441

267 (1)

JAX 418

Commission's Exhibit 267B

Response to Item 3(b)
of Specification IV
Page Two

The Conoco Marketing Department was reorganized in 1956. The title Coordinating Assistant Division Manager was changed to Assistant Division Manager. The other Assistant Division Managers became District Managers, and in most cases their headquarters were moved from the Division Office to a District Headquarters point in their districts. Below is the new personnel set-up for the operating field offices of the Marketing Department, showing the personnel who are primarily responsible for promoting the sale of Goodrich TBA to Conoco outlets in equal degree to their responsibility for promoting the sale of Conoco products:

5	Regional Managers of Marketing
5	Regional Assistant Managers of Marketing
5	Regional Sales Development Managers
5	Regional Sales Operations Managers
13	Division Managers
14	Assistant Division Managers
44	District Managers
13	City Sales Managers
318	District Sales Representatives
12	Jobber Salesmen
54	Sales Representatives
488	Total

270

ION

6485 — 267(6)

JAX 419

Commission's Exhibit 267C

In the Matter of
The B. F. Goodrich
Company Et Al
FTC Docket #6485

ADDENDUM TO RESPONSE OF CONTINENTAL OIL COMPANY
TO
ITEM 3(b) OF SPECIFICATION IV OF SUBPOENA

Although Continental Oil Company maintains no time records and has made no time studies, it is our estimate, based upon knowledge of operations and experience that the percentage of time spent by Continental Oil Company personnel in promoting the sale of TBA or in the promotion of our TBA program is as follows:

MARKETING HEADQUARTERS OFFICE

Administrative Vice President of Marketing	- 3 - 5%
General Manager of Marketing	- 3 - 5%
Assistant General Manager of Marketing	- 5 - 10%
Director of Retail Marketing	- 10 - 12%
Manager of TBA Sales	- 100%
Assistant Manager of TBA Sales	- 100%
Manager of Sales Promotion	- 10 - 12%
Manager of Sales Training	- 3 - 5%
Assistant Managers (2) of Sales Training	- 3 - 5%

FIELD OFFICES

Regional Managers of Marketing	- 4 - 5%
Regional Assistant Managers of Marketing	- 5%
Regional Sales Development Managers	- 18 - 20%
Regional Sales Operations Managers	- 2%
Division Managers	- 8 - 10%
Assistant Division Managers	- 10%
District Managers	- 12 - 15%
City Sales Managers	- 12 - 15%
District Sales Representatives	- 15%
Jobber Salesmen	- 8 - 10%
Sales Representatives	- 15%

271

8518

FEDERAL ... DOCKET NO. 6485 2-6-7(c)

165-

JAX 420

Commission's Exhibit 268G

The B. F. Goodrich Company's sales commission agreements with The Texas Company, Continental Oil Company, Ohio Oil Company, Emblem Oil Company, Shell-American Petroleum Company and Jenny Manufacturing Company provide for the payment of commissions on sales to outlets of those companies as follows:

> New tires and tubes, new batteries and accessories, as listed in three accompanying catalogues (B.F. Goodrich 1957 Automotive Supplies and Tools Wholesale Catalogue, issued February 1957; B. F. Goodrich Fall and Winter Home Radios, Television and Appliances Wholesale Catalogue, issued October 1956; and B. F. Goodrich Lawn and Garden Supplies, Recreational and Picnic Supplies and Electrical Supplies 1957 Wholesale Catalogue, issued December 1956).

Items not subject to the payment of commissions are as follows:

> Seconds, rejects, adjustments, tire repairs, transportation charges, wheels, rims & parts, rental batteries, battery chargers and testers, battery equipment, battery service kits, battery [illegible], advertising material, stationery, antifreeze testers, power lawn mowers, home radio and television sets, major electric appliances (electric ranges, water heaters, refrigerators and freezers, laundry equipment, space heaters), and promotional leader items.

FEDERAL TRADE COMMISSION
DOCKET NO. 6775 EXHIBIT NO. 268-G
IN THE MATTER OF Goodrich
DATE NOV 1957 WITNESS Weber
ACE REPORTING CO., Official Reporter
By Monick

8939

JAX 421

Commission's Exhibit 389

Printed in U.S.A.

A/C Rec. "A"
Sta. # 220

DEBIT OR CREDIT MEMORANDUM

Denver, Colorado. 8/20 19 54

James E. Kalenak
13th & Deer Park Blvd.
Omaha, Nebraska

FEDERAL TRADE COMMISSION
DOCKET NO. 6147
IN THE MATTER OF
THE TEXAS COMPANY
WITNESS
DATE
REPORTER

DENVER DIVISION

We to day credit your account as follows:

EXPLANATION	BY	AMOUNT
Quantity deferred discount earned on Motor Lubricants		
purchased on S-2070 Contract # D-32051		
From 7/25/53 to 7/23/54		
3277.78 Gallons Oil @ .06		$ 196.67
Less: Discount allowed at time of delivery		
2700 Lbs. Grease @ .01		$ 27.00
Less: Discount allowed at time of delivery		223 67
See S-261 Card in PRICE GROUP FILE		
CHARGE: Sundries Class 29 - $ 196.67		
CHARGE: Sundries Class 49 - $ 27.00		
Copy to SUPT. SALES PROMOTION		
Copy to PRICE GROUP		
PT 121.29		
#448		

THE TEXAS COMPANY

Approved _____ By _____

8010

JAX 422
Commission's Exhibit 270

CX 170

THE TEXAS COMPANY
TEXACO PETROLEUM PRODUCTS

FEDERAL TRADE COMMISSION
EXHIBIT NO. 270
DOCKET NO. 6115
IN THE MATTER OF F. F. Goodrich Co.
DATE 5/24/57 WITNESS Heinz
ACE REPORTING CO., Official Reporter
By

September 17, 1956

12101 So. Peoria St.
Chicago 43, Ill.

Kieniec & Grelecki
552 Burnham Ave.
Calumet City, Ill.

Gentlemen:

This is to advise that our new Texaco service station at 21st & Clark, Gary, Ind. will soon be opened for business and that we have selected Mr. Warren Dotson as the dealer. His home address is 832 W. 19th St., Gary and his phone number is TUrner 5-4244.

Please feel free to call on him and solicit his T.B.A. business.

Yours very truly,
THE TEXAS COMPANY

W. M. Fisher

W. M. Fisher
Zone Manager

WMF/s

9-19-56

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Office-Supreme Court, U.S.
FILED
APR 30 1968
JOHN F. DAVIS, CLERK

VOLUME V

APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1968

No. 24

FEDERAL TRADE COMMISSION, PETITIONER

v.

TEXACO, INC., AND THE B. F. GOODRICH COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 25, 1968
CERTIORARI GRANTED MARCH 11, 1968

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Respondents' Exhibit 2A

(8980)

THE TEXAS COMPANY

New York, N. Y., December 11, 1953

TBA Program
Statement of Policy

Circular Letter No. 557

Messrs. R. R. Kibbe
J. A. Winger
C. N. Brooks
D. E. Beaton

Gentlemen:

This letter replaces and cancels Circular Letter No. 524 of December 19, 1951, under the above subject. It does not introduce any change in our policy of long standing, but is intended to:

A. Assist our personnel in presenting the merits of the program to dealers by stating the reasons for recommending Firestone or Goodrich as a supplier.

B. Define Division Management's responsibilities in administering the TBA program.

C. Outline the duties and responsibilities of field personnel charged with carrying out the program in the field.

(JAX 423 *continued on next page*)

Respondents' Exhibit 2A

I. What the Texas Company's TBA Program Is

The aim of the Company's TBA program is to encourage dealers to expand their business beyond the sale of petroleum products; and to counsel with and continually assist Texaco dealers to establish and maintain superior service to their customers, maintain an adequate and balanced stock of fast-moving TBA items and to improve their methods of merchandising so that they will be able to take full advantage of the profit potentials available to them through good service station operations.

Accordingly, The Texas Company recommends that its dealers handle Firestone or Goodrich. However, notwithstanding the fact that the Company recommends to its dealers these certain lines of TBA merchandise, it should be clearly understood by all concerned that the Company has neither the right nor the desire to dictate to the dealer the brand or type of merchandise he should handle, or the source from which he should purchase such merchandise, or to require him to handle any TBA merchandise.

Respondents' Exhibit 2B

(8981)

RRK-JAW-CNB-DEB—#2

II. Why Firestone and Goodrich Lines Were Selected for Recommendation to Texaco Dealers

The TBA merchandise lines and merchandising policies of both Firestone and Goodrich offer many advantages to the dealers, including a complete line of high quality automotive products to meet practically all the needs of the motorist. Firestone and Goodrich products have national acceptance, backed by extensive national advertising, and are distributed in all 48 states, with sales and delivery service available through 1,266 salary operated supply points and numerous dealer operated stores carrying the complete line.

Another advantage of handling these lines is that the dealer can purchase his entire TBA requirements from one source, conveniently located, thus earning extra discounts through volume purchases. Both Firestone and Goodrich have extensive sales promotion programs designed expressly to fit the needs of their service station accounts. Point-of-sale promotional material and cooperative advertising are available on a low-cost or no-cost basis. They also have a large sales force fully trained to assist the service station dealers to make the most of their TBA opportunities.

All these factors tend to increase the saleability of Firestone and Goodrich products, and thus increase the profits of the dealers handling such lines.

(JAX 424 *continued on next page*)

Respondents' Exhibit 2B

III. Responsibilities of Division Management in Administering the TBA Program

The proper administration of The Texas Company's TBA program in the field is the direct responsibility of Division Management. They should see to it that each member of the field organization who normally contacts dealers, consignees and distributors:

(1) Understands that even though The Texas Company does not handle tires, batteries and auto supplies, it recognizes the advantages to be derived by the dealer from the handling of such merchandise and the necessity for the dealer to do so in order to be competitive, meet the requirements of his customers, and enjoy more profitable operations.

(2) Becomes familiar with the lines and basic sales policies and promotional and merchandising programs of Firestone and Goodrich, including their Suggested Basic Stock Assortment and Inventory Guide Systems.

(3) Handles assigned duties outlined in Section IV.

Respondents' Exhibit 2C

(8982)

RRK-JAW-CNB-DEB—#3

IV. Duties of Texaco Sales Personnel Charged With Handling TBA Program in the Field

Listed below are the responsibilities and activities which are part of the regularly assigned duties of selling personnel who normally contact dealers, consignees or distributors:

(1) Present the merits of our TBA program, recommending the products of Firestone or Goodrich if best suited to the dealer's interest.

(2) Recommendations with respect to TBA merchandise made by a Texaco representative to a Texaco dealer should in the best interest of the dealer take into consideration the following factors:

(a) The dealer's requirements based on an analysis of the potential volume available within the dealer's specific trading area;

(b) The availability of a convenient source of supply and the frequency of contact and type of service to be afforded the dealer by a wholesale supplier, as well as the supplier's ability and willingness to assist the dealer to be competitive in the market at all times;

(c) The established representation of the tire company in the area.

(JAX 425 *continued on next page*)

Respondents' Exhibit 2C

(3) If, after a straightforward sales presentation of the Company's TBA program, and a full explanation of the merits of such program, the dealer should in exercising his free choice of a brand of TBA merchandise express his preference for the Goodrich or Firestone line, the Texaco representative should promptly arrange to introduce to him a sales representative of the supplier chosen by the dealer. It should be recognized at all times that the negotiations between the dealer and the tire company representative, and any purchase arrangements resulting therefrom, are matters for their mutual consideration. The Texaco representative, however, should be prepared and willing to lend any advice and counsel that may be requested of him by the dealer during such negotiations.

Respondents' Exhibit 2D

(8983)

RRK-JAW-CNB-DEB—#4

(4) In an effort to help dealers expand and develop their business, the Company urges them to stock an adequate amount of TBA merchandise to serve fully the motorists' needs. Texaco selling personnel, with the dealers approval, will assist in the physical installation of an "Inventory Guide System", and continue to assist in the maintenance until its use is habitual with the dealer, regardless of the brand chosen by the dealer. The Firestone or Goodrich "Suggested Basic Stock Assortment and Inventory Guide System" is considered among the simplest methods available to assure the maintenance of a well-balanced stock of fast-moving TBA merchandise, and dealers should be advised of this and urged to consider its installation and use.

(5) Similar guidance and assistance should be offered in the use and maintenance of TBA display programs, and dealers should be urged to utilize all appropriate space available to them in building displays that will attract customers and increase sales.

(6) The Company's sales personnel should be sufficiently alert at each visit to a service station to call the dealer's attention to their willingness to aid him by actually writing up the dealer's order for Goodrich or Firestone merchandise. As a further assistance to the dealer, Texaco personnel should personally mail or deliver such orders to the dealer's source of supply.

(JAX 426 *continued on next page*)

Respondents' Exhibit 2D

Orders should be written on the forms furnished by Firestone and Goodrich and carried by Texaco personnel at all times.

(7) Although reference is made heretofore to dealers, it should be understood that every phase of the program is adaptable to TBA programs of consignees and distributors. Equal effort should be made by the Company's personnel to sell consignees and distributors on the merits of the program and the benefits to be derived by adopting it for their own use and wholeheartedly encouraging the dealers they serve to use it.

The importance of respecting the independence of the Texaco dealer and his right to exercise his free and independent judgment with respect to the brand of TBA merchandise he will handle, and the quantities he will purchase, cannot be overemphasized. Insofar as The Texas Company is concerned, no TBA supplier shall be preferred over any other as to any territory or portion thereof.

Respondents' Exhibit 2E

(8984)

RRK-JAW-CNB-DEB—#5

The success of the TBA Program depends upon the kind of a selling job that is done. The principles of the Texaco Selling Method are sound and appropriate, and should be applied as wholeheartedly in handling this program as in all other sales efforts.

Yours very truly,

C. B. BARRETT

CBB-MJD

SCB WBH RWD CHD JEF
NB JMG WFW DWS FMH GWS FER
KK

JAX 428

Respondents' Exhibit 3

(8985)

(COPY)

"OUR FORTY-SECOND YEAR WITH TEXACO"

June 20, 1956

Federal Trade Commission
Washington 25, D. C.
ATTENTION: Peter J. Dias
Trial Attorney

Gentlemen:

I have your complaint with reference to the B. F. Goodrich Company, et al., Docket No. 6485 and have noted same most carefully.

I am enclosing herewith a copy of your letter with the questions answered. I am giving you just a little history of my dealings with The Texas Company. In 1914 they set me up as just a little Distributor and I have kept on with them, this being the forty-second year. I have added to my line during this time, and today we have U. S. Tires, Exide Batteries, and N.A.P.A. Parts line. We have never purchased any B. F. Goodrich or Firestone products. I have been asked if I would like to handle Firestone through the Texas Company with no pressure at all put on me to do it. The Texas Company has never high pressured me during the forty-two years I have been dealing with them. I cannot make any complaint at all against them today.

(JAX 428 *continued on next page*)

Respondents' Exhibit 3

I have around one hundred outlets handling their products in addition to farm trade. I have about fifteen hundred accounts, and our purchases are supplied by the Texas Company.

Of course, other oil companies have attempted to sell us their products but we are sold completely on The Texas Company and their employees. We think they are the best, based on the way they have handled us during this time. If I can be of any more service, please advise.

Yours very truly,

H. C. Watson

HCW:mm
Enc.

JAX 439

Respondents' Exhibit 4

Rx 4

FTC

Docket 4485

In the matter of B. F. Goodrich Co.

FEDERAL TRADE COMMISSION 1-21-55

WASHINGTON 25

Ace Reporting Co.

BUREAU OF LITIGATION

June 14, 1954.

Mr. H. C. Watson,
Onley, Virginia.

In re: The B. F. Goodrich Company, et al.,
Docket No. 6485.

Dear Mr. Watson:

Complaints, including one in the above-entitled matter, currently pending before the Commission, are intended to determine whether operators of major oil company petroleum outlets are independent businessmen with complete freedom of choice as to the products which they stock for resale or are obliged to handle products chosen for them by the respective oil companies.

It would be helpful, in arriving at some determination of this matter, if you would answer the following questions:

1. Type outlet: (a) Consignee (b) Distributor
   (c) Service Station (d) If service station, lease contract
2. Date present operator acquired the outlet.
3. Name of former operator, if known.
4. (a) Do you carry TBA products? yes
   (b) What is your principal line of:
   (1) Tires 11 years
   (2) Batteries same
   (3) Accessories same — same year
5. When did you first take on these lines? 2nd year same

Enclosed please find a copy of the Commission's complaint in this matter. It would be helpful if, when answering the above questions, you would submit any additional comments you care to make in regard to the complaint.

Your prompt cooperation in this matter is anticipated and will be appreciated. An extra copy of this letter, which you may use in replying, is enclosed for your convenience.

Very truly yours,

Peter J. Liss,
Trial Attorney.

8966

Enclosures.

Respondents' Exhibit 6A

(8987)

THE TEXAS COMPANY

New York 17, N. Y., June 1, 1948
SERVICE STATION OPERATIONS

Messrs. R. R. Kibbe (6)
S. C. Bartlett (6)
C. B. Barrett (6)
D. E. Beaton (6)

Gentlemen:

The petroleum trade journals during the past several weeks have been carrying reports of the anti-trust suit being conducted by the Government against the Standard Oil Company of California. One of the principal items of discussion in this suit is the question of influence being exerted by the petroleum supplier on the gasoline dealer to have him purchase directly or indirectly certain items for resale through the dealer station. In view of this it seems advisable to restate our policy.

With all of our dealers, whether they are operators of Company owned or Company leased service stations or dealers operating their own service stations, we have a sales contract which provides for the purchase by the dealer of certain estimated quantities of Texaco products. This contract does not prevent the dealer from purchasing competitive products in addition to Texaco products, though generally the dealer recognizes that there are definite advantages in handling one nationally advertised line of petroleum products.

(JAX 430 *continued on next page*)

Respondents' Exhibit 6A

A Texaco dealer is an independent businessman and he is entitled to conduct his business according to his own desires. Our men are expected to help the Texaco dealer to improve his business and make many helpful suggestions to that end. They may explain to the dealer the advantages of tying-in with a national program developed for the more than 40,000 Texaco Dealers throughout the country, but it is not in accord with the dealer's contract with The Texas Company to infer or indicate to a Texaco dealer directly or indirectly that any purchase by him of any type of merchandise from any supplier whatsoever will result in a reduction of the supply of petroleum products available to him or in a cancellation of any sales contract or lease agreement that may be in effect or in any other event which will make him feel that more persuasion is being exercised by us than would normally and properly be used by us toward a customer.

The Texas Company does not sell tires, tubes, batteries, accessories or items other than petroleum that might be sold through a service station, but we recognize that it is to the advantage of the dealer to handle such merchandise in order to increase his earnings and enable him to have a more profitable operation. In fact, we encourage the dealer to expand his business beyond the sale of petroleum products for those reasons, and because, in the case of a Company owned or Company leased service station which has been leased to the dealer for operation, it means a more profitable venture through our facilities and eventually increases our earnings as well as the dealer's through that location.

Respondents' Exhibit 6B

(8988)

Messrs. RRK-SCB-CBB-DEB

6-1-48

Even though we urge and encourage the dealer to handle merchandise other than petroleum products, we have neither the right nor the desire to dictate to him or influence him in any way as to the type of merchandise he should handle or the source from which he should purchase it. We can and do recommend certain lines which we feel fit into the program of handling such nationally advertised products as Texaco, but our representatives are not to exert any influence upon the dealer to have him follow our suggestions.

We frequently install fixtures and display shelves at Company owned or Company leased service stations for use by the dealer in selling merchandise, and we should urge the dealer to use those facilities to increase his earnings and to keep on hand at all times a satisfactory amount of merchandise of the proper type, but again no pressure is to be put on the dealer to do so. There is no objection, after proper facilities for the sale of tires, tubes, batteries, and accessories have been provided at a service station, to our representatives introducing to the dealer a salesman who has such items for sale, or even of recommending to the dealer that he give consideration to the purchase of that salesman's merchandise, but it must be borne in mind at all times that after the introduction the negotiations and arrangements between the dealer and the TBA salesman are not to be interfered with or influenced in any way by The Texas Company's representative.

(JAX 431 *continued on next page*)

Respondents' Exhibit 6B

I emphasize again that the Texaco dealer is an independent businessman and he must be permitted to operate as one. Any one who violates these policies may be subject to immediate dismissal from the Company's service.

Please pass this information on to your division offices for dissemination to the people interested.

Yours very truly,

/Sgd/ Walter Hochuli

WH-PD

RLS-OJD

DDM-PMI-RTH-
NB-JKS-JGVS-AK

JAX 628

Respondents' Exhibit 8A

THE TEXAS COMPANY

Chicago, Illinois, January 21, 1952

FTC 9-1

THE TEXAS COMPANY'S TBA PROGRAM

PRESENTED BY PUBLIC [illegible]

FEDERAL TRADE COMMISSION

DOCKET NO. [illegible] EXHIBIT NO. 917

IN THE MATTER OF [illegible]

DATE [illegible] FTC [illegible]

[illegible] REPORTING CO. [illegible]

Circular Letter No. 152

Zone Managers
Resale Salesmen

Gentlemen:

In order that all concerned may be fully informed, The Texas Company's policy with respect to the procedure to be followed in carrying out its TBA program, which policy has been in effect for many years, is reiterated below:

1. When presenting the merits of the Company's TBA program to Texaco dealers, the selling personnel should explain to the dealer that even though The Texas Company does not handle tires, batteries and auto supplies, it recognizes the advantages to be derived by the dealer from the handling of such merchandise and the necessity for the dealer to do so in order to be competitive, meet the requirements of his customers, and enjoy more profitable operations.

   Texaco dealers should be encouraged to expand their business beyond the sale of petroleum products for the reasons outlined.

2. To facilitate the handling of TBA merchandise by Texaco dealers the Company provides adequate display equipment in its service stations for the sale of such items.

3. The Company recommends certain lines of merchandise which are nationally advertised and enjoy national distribution, just as is true with respect to Texaco products.

4. Notwithstanding the fact that the Company recommends to its dealers certain lines of TBA merchandise, it should be recognized by all concerned that the Company has neither the right nor desire to dictate to the dealer the type of merchandise he should handle or the source from which he should purchase such merchandise.

5. In the interest of the dealer any recommendation with respect to TBA merchandise made by a Texaco representative to a Texaco dealer should take into consideration the following factors:

   (a) The dealer's requirements based on an analysis of the potential market;

   (b) The availability of a convenient source of supply;

[illegible]

9-B

Zone Managers
Resale Salesmen

January 21, 1952

FEDERAL TRADE COMMISSION
DOCKET NO. 6 [illegible] EXHIBIT NO. 9B

(c) The representation of the tire companies already established in the area and the kind of service that will be available through the Authorized supply points;

(d) In all dealings the fact that the Texaco dealer is an independent business man and not employed and he must be permitted to operate as such.

6. If [illegible] TBA merchandising [illegible] expresses a preference [illegible] line, following a [illegible] of the Texaco representative [illegible] introduce him to [illegible] chosen by the dealer. [illegible] at all times that the negotiations between the dealer and the representative, and any [illegible] thereto, are matters for [illegible] and the Texaco representative [illegible] by attempt to influence such negotiations or [illegible] in any way.

7. The Company's assistance to Texaco dealers goes beyond the mere recommendation pertaining to the Goodrich or Firestone line. In an effort to assist dealers to acquire and develop their business, the Company makes [illegible] on hand an adequate amount of merchandise of [illegible] to serve fully the patrons' needs. The Firestone and Goodrich Suggested Basic Stock Agreement [illegible] Guide System is considered to be the simplest [illegible] to assure the maintenance of adequate [illegible] moving TBA merchandise. The Texaco selling personnel should therefore offer to make recommendations with respect to the proper selection of basic stock of TBA merchandise and to assist them in the setting up [illegible] the Inventory Guide System. After the inventory is properly set up Texaco personnel should take an active part in maintaining and handling of such inventory records to the extent of taking orders for merchandise required, as indicated in Item 8.

8. If the dealer so desires, The Texas Company's selling personnel will further aid him by actually writing up the dealer's order for Goodrich or Firestone merchandise and will personally mail or deliver such orders to the dealer's regular source of supply.

9. The primary purpose of The Texas Company in sponsoring its TBA program is to counsel with and continually assist Texaco dealers so that they will establish and maintain superior

6009

JAX-434

Respondents' Exhibit 9C

Zone Managers
Resale Salesmen

January 21, 1952

FEDERAL TRADE COMMISSION
DOCKET NO. 6644 EXHIBIT NO. 9C

9-C

service to their customers and thereby earn greater profits.

10. Although in the foregoing program reference is made to Texaco dealers, it should be understood that every phase of the program outlined is readily adaptable to all TBA programs of Texaco consignees and distributors. Equal effort should be made by the Company's selling personnel to sell them on the merits of the program and the benefits to be derived by adopting it for their own use, and wholeheartedly encouraging the dealers they serve to adopt it.

11. Definite responsibilities and activities necessary to the effective adaptation of the Company's TBA program are a part of the regularly assigned duties of all the Texas Company's field personnel who normally contact dealers, or consignees, or distributors. The Company's selling personnel are expected to become familiar with the Firestone and Goodrich Suggested Basic Stock Assortment and Inventory Guide System and the merchandising of TBA products generally. It should be clearly understood, however, that assistance will also be rendered by Texaco personnel to all dealers in setting up their own Basic Stock Assortment and Inventory Guide System regardless of the brand of merchandise handled.

It should be further understood by all concerned that the activities of The Texas Company's personnel in carrying out its TBA program must be considered as an addition to the efforts or activities of the TBA suppliers' selling personnel and not in lieu thereof.

12. The importance of respecting the independence of the Texaco dealer and his right to exercise his free and independent judgment with respect to the kind of TBA merchandise he will handle, and the quantities he will purchase, cannot be over-emphasized. Insofar as The Texas Company is concerned no TBA supplier shall be preferred over any other as to any territory or portion thereof.

The foregoing covers completely The Texas Company's TBA policy of long standing and it must be adhered to without deviation.

Yours very truly,

C. H. Dodson

C. H. DODSON

KZB:DM

CHD-HRF-LDP-ARC-JPO-WHS-RLB-HSBo
RLKy-GBF-HGA-FAS-CAB-OCD-RCC-GWCh
RCB-JPO'H-HBH-KCP(5)-SHF(3)-NJZ-FLL
DEALER SERVICE REPRESENTATIVES
REPRESENTATIVE DEALER TRAINING

8999

JAX 435

Respondents' Exhibit 16A

Instructions

THE TEXAS COMPANY Chicago, Illinois - December 20, 195

FEDERAL TRADE COMMISSION

DOCKET NO.

IN THE MATTER OF

DATE

WITNESS

FCC REPORTING CO.

BY

State Managers
Zone Managers
Merchandising Salesmen
General Salesmen
Dealer Service Representatives
Representatives Dealer Training

Gentlemen:

In order to review our policies [illegible] particularly new assignees who have joined [illegible] years, of the merits of The Texas Company's [illegible] and to outline the duties and responsibilities of [illegible] personnel in this connection, it is felt desirable to review the Company's policy with respect [illegible] the duties of our field organization in connection therewith are fully covered by the attached statement.

As indicated therein, it is believed that a copy of this policy statement be added to each salesman's portfolio. "Business Builders for Texaco Dealers" or any newly acquired will at all times have with him for ready reference. [illegible] explanation of the Company's TCA policy and the [illegible] instructions as to how he should function under the program.

Yours very truly,

C. A. Barker

CAB-PH

CWK WHP KMB CAB GWCh RCB
HBH(5) XCP(5) SHP FILE

Attachment

JAX 436

Respondents' Exhibit 108

FEDERAL TRADE COMMISSION 108
EXHIBIT NO. 108
6115

THE TEXAS COMPANY'S TBA PROGRAM

In order to remind our selling organization of the merits of The Texas Company's long standing TBA Program and to outline the [illegible] and responsibilities of field personnel [illegible] this program, it is felt desirable to review fully herein the Company's [illegible] intended that these sheets be added to each salesman's portfolio [illegible] and be made a part thereof, so that every salesman will at all times [illegible] of the Company's TBA Policy and the [illegible] tion under this program.

I. WHY THE TEXAS COMPANY HAS A TBA PROGRAM

It is recognized that most modern dealers [illegible] customers and reap the profits from [illegible] that the average automobile owner [illegible] motive necessities apart of motor [illegible] merchandise, [illegible] normally handled by most [illegible]

The purpose of the Company's TBA [illegible] business beyond the sale of petroleum [illegible] counsel with and assistance [illegible] customers, maintain its adequate and [illegible] methods of merchandising as [illegible] able to them through good service station operations.

II. WHY FIRESTONE AND GOODRICH LINES WERE SELECTED FOR RECOMMENDATION TO TEXACO DEALERS

The Texas Company believes that the TBA merchandise lines and [illegible] Firestone and Goodrich offer many advantages to [illegible] quality automotive products to meet practically all the [illegible] products have national acceptance, backed by extensive [illegible] 48 states, with sales and delivery service [illegible] and numerous dealer operated stores which carry the complete [illegible]

Another advantage of handling Firestone or Goodrich products is that the dealer can purchase his entire TBA requirements from one source, considerably [illegible] volume purchases. Both Firestone and Goodrich have [illegible] expressly to fit the needs of dealer service station [illegible] operative advertising are available on a low cost [illegible] trained to assist the service station dealers to make the most [illegible]

All these factors tend to increase the saleability of Firestone and Goodrich products and thus increase the profits of dealers handling such lines. Accordingly, [illegible] desire handle Firestone or Goodrich merchandise.

Notwithstanding the fact that the Company recommends [illegible] chandise, it should be clearly understood [illegible] the desire to dictate to the dealer [illegible] which he should purchase such merchandise, or to require him to handle any TBA [illegible]

III. DUTIES OF TEXACO SALES PERSONNEL

(1) Each member of the field organization who [illegible] utors should clearly understand that [illegible] and auto supplies, it recognizes the advantages to [illegible] merchandise and the necessity for the dealer to do [illegible] of his customers and enjoy more profitable operation.

(2) In order to present the merits of The Texas TBA Program [illegible] thoroughly familiar with the lines, the basic sales [illegible] dising programs of both Firestone and Goodrich, including [illegible] "Suggested Basic Stock Assortment and Inventory Guide Systems."

(3) Before making definite recommendations with respect to TBA merchandise to a Texaco dealer, the Texaco representative should assist the dealer in analyzing the potential volume of TBA business that the dealer can reasonably expect within the specific trading area, and help him to derive at a basic minimum inventory that should permit adequate service of his particular market.

One of the important responsibilities of Texaco sales personnel is that they should continually be in position to advise dealers of forthcoming Firestone or Goodrich promotional programs so that the dealer can take advantage of every opportunity to increase his profits and be more competitive.

2901

Respondents' Exhibit 10C

FEDERAL TRADE COMMISSION
DOCKET NO. 8911 EXHIBIT NO. 10-C

(4) Any recommendation with respect to brand of TBA merchandise made by the Texaco representative should be predicated on the availability of a convenient source of supply, the frequency of contact and the type of service to be afforded the dealer by the wholesale supplier. A further factor should be the supplier's ability and willingness to assist the dealer to be competitive in the promotion of sales. The established representation of the tire company in the area should also be taken into consideration.

(5) If, after a straightforward sales presentation of the Company's TBA program and a full explanation of the merits of such program, the dealer should in good faith express a desire to handle 3A merchandise, express his preference for the Goodrich or Firestone line, the Texaco representative should promptly arrange to introduce to him a sales representative of the company whose line the dealer prefers. It should be recognized at all times that the negotiations between the dealer and the selling representative, and any purchase arrangements resulting therefrom, are matters for their personal consideration. The Texaco representative, however, should be prepared and willing to lend any advice and counsel that may be requested of him by the dealer during such negotiations.

(6) The Firestone or Goodrich "Suggested Basic Stock Assortment and Inventory Guide System" is considered among the simplest methods available to assure the maintenance of a well balanced stock of fast-moving TBA merchandise. The Texaco representative should explain to the dealer the complete functions of the "Inventory Guide" and urge the dealer to consider its installation and use. Assuming that it is consistent with good business management to maintain proper and adequate inventories, it should be explained to the dealer that this type of Guide can be of much value to him in effecting sales and in making it easier for him to buy only the merchandise needed. Texaco selling personnel should not only assist in the physical installation of the Inventory Guide System, but should continue to assist the dealer in the maintenance of the Guide until its use by the dealer becomes established routine in his everyday operation.

(7) It has been said that merchandise well displayed is half sold. Eye-catching displays of TBA products at service stations, like petroleum product displays, can be of utmost value to dealers in increasing their sales and profits. It is also important that the price be prominently shown on all TBA merchandise displayed and that the merchandise be kept in a clean and orderly arrangement. To help attract more customers and make more sales, both Firestone and Goodrich make available to dealers an inexpensive pricing kit as well as display packages containing up-to-date and attractive point of sale material.

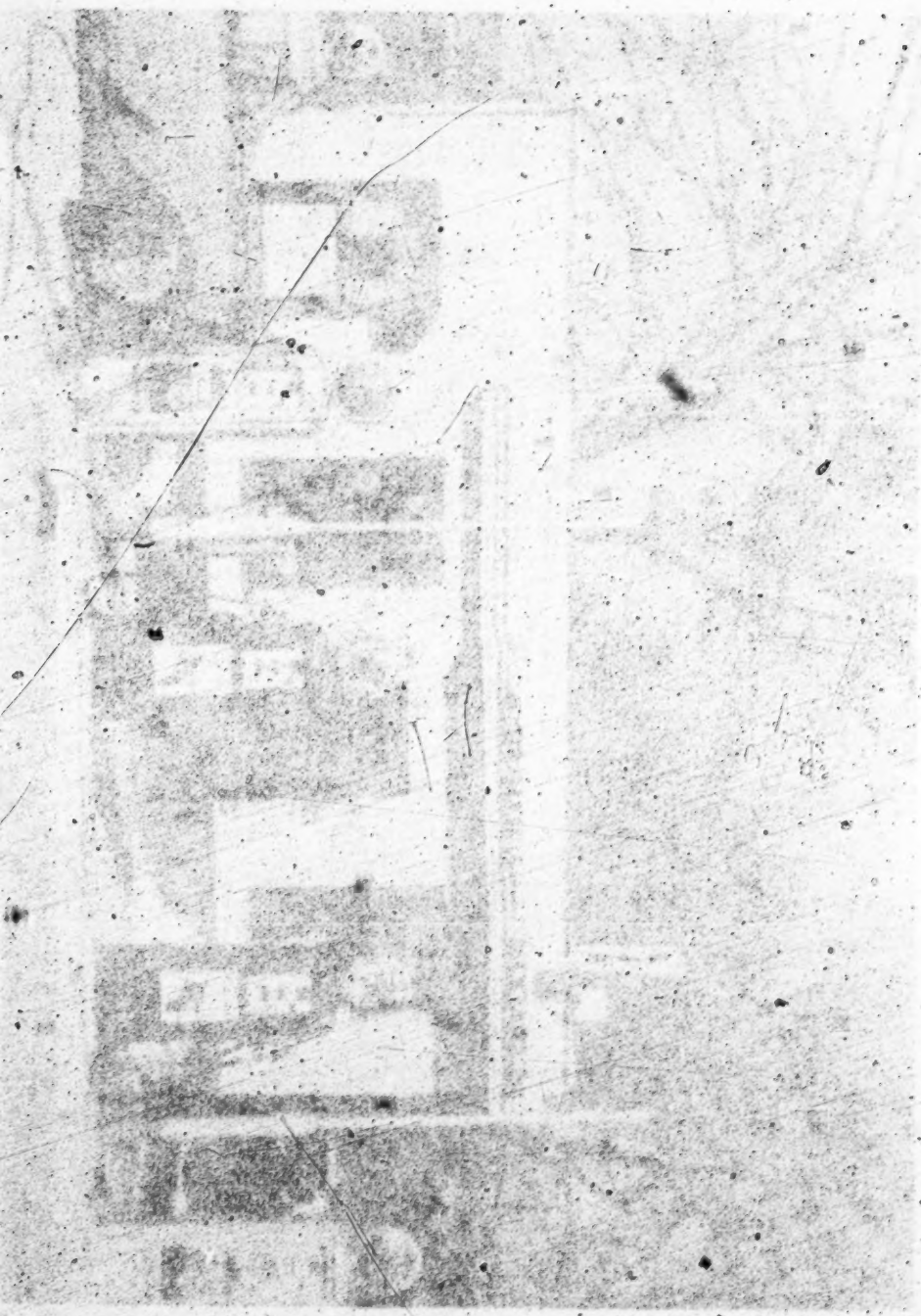
Texaco representatives should urge dealers to take full advantage of the tire company's offer of assistance in improving their station's "sparkle" with displays that present an attractive appearance. The Company's selling personnel should assist dealers in utilizing all appropriate space available to them for building displays that will attract customers and increase sales.

(8) The regular order forms furnished by Firestone and Goodrich are to be serviced by Texaco selling personnel at all times. At each visit to a service station, the Company's sales personnel should call the dealer's attention to the fact that as a further assistance to him in keeping his desired inventory balance, he will write up the dealer's order for the Goodrich or Firestone merchandising that is needed. Texaco personnel should personally mail or deliver such orders to the dealer's source of supply.

(9) Holders of The Texas Company's National Credit Cards are privileged to purchase Firestone or Goodrich TBA merchandise from Texaco dealers on their regular 30-day account, or may, when desired, extend their payments for such merchandise over a period up to 6 months. If properly promoted by the dealer, this Texaco Deferred Payment Plan can be of material assistance to him in increasing his sales and profits without the necessity of tying up the dealer's working capital by increasing receivable. The Company's selling personnel should urge dealers to take full advantage of this dealer aid for the convenience of their customers, which is available without cost. The Texaco representative should also make sure that the dealer understands the proper handling of customer charges for TBA merchandise on The Texas Company's Deferred Payment Plan.

(10) Although reference is made heretofore to dealers, it should be understood that every phase of the TBA program is adaptable to TBA programs of consignees and distributors. Equal effort should be made by the Company's personnel to sell consignees and distributors on the merits of the program as a means of developing their dealers, and the benefits to be derived by adopting it for their own use.

The principles of the Texaco Selling Method are sound and appropriate and should be applied wholeheartedly by The Texas Company's selling personnel when selling the merits of or handling any phase of the Company's TBA program. The success of the TBA program depends upon the kind of selling job that is done. The handling of the TBA program with dealers is an important part of the regularly assigned duties of the Company's selling personnel. Nevertheless, the importance of respecting the independence of the Texaco dealer and his right to exercise his free and independent judgment on all matters and all phases of his business cannot be overemphasized.



JAX 429

Respondents' Exhibit 14A

THE TEXAS COMPANY Denver, Colorado, June 9, 1948

SERVICE STATION OPERATIONS

State Managers
Zone Representatives
Representatives-Dealer Service
Representatives-Dealer Training
Lubrication Engineers
Salesmen (Industrial)
Salesmen (Resale)
Bulk Station Salaried Agents
Denver Division

Gentlemen:

For your information and guidance, I am quoting below letter dated June 1 from Mr. Walter Mochuli, our General Sales Manager:

"The petroleum trade journals during the past several weeks have been carrying reports of the anti-trust suit being conducted by the Government against the Standard Oil Company of California. One of the principal items of discussion in this suit is the question of influence being exerted by the petroleum supplier on the gasoline dealer to have him purchase directly or indirectly certain items for resale through the dealer station. In view of this it seems advisable to restate our policy.

"With all of our dealers, whether they are operators of Company owned or Company leased service stations or dealers operating their own service stations, we have a sales contract which provides for the purchase by the dealer of certain estimated quantities of Texaco products. This contract does not prevent the dealer from purchasing competitive products in addition to Texaco products, though generally the dealer recognizes that there are definite advantages in handling one nationally advertised line of petroleum products.

"A Texaco dealer is an independent businessman and he is entitled to conduct his business according to his own desires. Our men are expected to help the Texaco dealer to improve his business and make many helpful suggestions to that end. They may explain to the dealer the advantages of tying-in with a national program developed for the more than 40,000 Texaco Dealers throughout the country, but it is not in accord with the dealer's contract with The Texas Company to infer or indicate to a Texaco dealer directly or indirectly that any purchase by him of any type of merchandise from any supplier whatsoever will result in a reduction of the supply of petroleum products available to him or in a cancellation of any sales

7004

contract or lease agreement that may be in effect or in any other event which will make him feel that more persuasion is being exercised by us than would normally and properly be used by us toward a customer.

"The Texas Company does not sell tires, tubes, batteries, accessories or items other than petroleum that might be sold through a service station, but we recognize that it is to the advantage of the dealer to handle such merchandise in order to increase his earnings and enable him to have a more profitable operation. In fact, we encourage the dealer to expand his business beyond the sale of petroleum products for those reasons, and because, in the case of a Company owned or Company leased service station which has been leased to the dealer for operation, it means a more profitable venture through our facilities and eventually increases our earnings as well as the dealer's through that location.

"Even though we urge and encourage the dealer to handle merchandise other than petroleum products, we have neither the right nor the desire to dictate to him or influence him in any way as to the type of merchandise he should handle or the source from which he should purchase it. We can and do recommend certain lines which we feel fit into the program of handling such nationally advertised products as Texaco, but our representatives are not to exert any influence upon the dealer to have him follow our suggestions.

"We frequently install fixtures and display shelves at Company owned or Company leased service stations for use by the dealer in selling merchandise, and we should urge the dealer to use those facilities to increase his earnings and to keep on hand at all times a satisfactory amount of merchandise of the proper type, but again no pressure is to be put on the dealer to do so. There is no objection, after proper facilities for the sale of tires, tubes, batteries, and accessories have been provided at a service station, to our representatives introducing to the dealer a salesman who has such items for sale, or even of recommending to the dealer that he give consideration to the purchase of that salesman's merchandise, but it must be borne in mind at all times that after the introduction the negotiations and arrangements between the dealer and the TBA salesman are not to be interfered with or influenced in any way by The Texas Company's representative.

"I emphasize again that the Texaco dealer is an independent businessman and he must be permitted to operate

JAX 441

Respondents' Exhibit 14C

as one. Any one who violates these policies may be subject to immediate dismissal from the Company's service."

Yours very truly,

CHD-CH

WAS-WGL-CWT-FWH-WLB

JHD-WJF-RCH-HFW-ETB

MHP-LMB-WGH-WBP-RWS

EBC-FLR-EBP-JHCY

JAX 443

Respondents' Exhibit 15A

THE TEXAS COMPANY

Denver, Colorado, January 14, 1952

THE TEXAS COMPANY'S TBA PROGRAM
STATEMENT OF POLICY

CIRCULAR LETTER NO. 355

State Managers
Zone Managers
Denver Division

Gentlemen:

Attached hereto is copy of Mr. J. A. Winger's Circular Letter No. 355 of January 3. This letter covers a restatement of our policy with respect to the procedure to be followed in carrying out our TBA program. Everyone concerned is urged to read this letter, to make sure that our handling is in accordance with our policy.

Yours very truly,

W. A. Stamps

WAS-CH

JMLaF-FES-CWT-FMH-WLB

WJF-JHD-HCM-HFW-ETS-PLH

LMB-WOH-WBP-LFC-FRO-EBC

DEALER SERVICE REPRESENTATIVES
LUBRICATION ENGINEERS
SALESMEN (INDUSTRIAL)
SALESMEN (RETAIL)
BULK PLANT AGENTS

JAX 443

Respondents' Exhibit 188

COPY

Chicago, Illinois, January 3, 1952

THE TEXAS COMPANY'S TBA PROGRAM
STATEMENT OF POLICY

Circular Letter No. 155

Division Managers
Central Territory

Gentlemen:

In order that all concerned may be fully informed, The Texas Company's policy with respect to the procedure to be followed in carrying out its TBA program, which policy has been in effect for many years, is reiterated below:

1. When presenting the merits of the Company's TBA program to Texaco dealers, the selling personnel should explain to the dealer that even though The Texas Company does not handle tires, batteries and auto supplies, it recognizes the advantages to be derived by the dealer from the handling of such merchandise and the necessity for the dealer to do so in order to be competitive, meet the requirements of his customers, and enjoy more profitable operations.

   Texaco dealers should be encouraged to expand their business beyond the sale of petroleum products for the reasons outlined.

2. To facilitate the handling of TBA merchandise by Texaco dealers the Company provides adequate display equipment in its service stations for the sale of such items.

3. The Company recommends certain lines of merchandise which are nationally advertised and enjoy national distribution, just as is true with respect to Texaco products.

4. Notwithstanding the fact that the Company recommends to its dealers certain lines of TBA merchandise, it should be recognized by all concerned that the Company has neither the right nor desire to dictate to the dealer the type of merchandise he should handle or the source from which he should purchase such merchandise.

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JAX 444

Respondents' Exhibit 18C

5. In the interest of the dealer any recommendation with respect to TBA merchandise made by a Texaco representative to a Texaco dealer should take into consideration the following factors:

(a) The dealer's requirements based on an analysis of the potential market;

(b) The availability of a convenient source of supply;

(c) The representation of the tire companies already established in the area, and the type of service that will be available through the wholesale supply point;

(d) In all dealings the fact that the Texaco dealer is an independent businessman must be emphasized and he must be permitted to operate as such.

6. If, in exercising his own free choice of the brand of TBA merchandise he desires to handle, the dealer expresses a preference either for the Goodrich or Firestone line, following a clear cut and straight forward presentation of the Texaco TBA program as outlined, the Texaco representative should assist the dealer further by arranging to introduce him to a sales representative of the supplier chosen by the dealer. It should be recognized at all times that the negotiations between the dealer and the TBA representative, and any purchase arrangement resulting therefrom, are matters for their mutual consideration, and the Texaco representative should not interfere with or attempt to influence such negotiations or purchase arrangements in any way.

7. The Company's assistance to Texaco dealers goes beyond the mere recommendation covering the Goodrich or Firestone line. In an effort to assist dealers to expand and develop their business, the Company urges them to keep on hand an adequate amount of merchandise of the proper type to serve fully the motorists' needs. The Firestone and Goodrich Suggested Basic Stock Assortment and Inventory Guide System is considered to be the simplest method available to assure the maintenance of a well balanced stock of fast moving TBA merchandise.

The Texaco selling personnel should therefore offer to make recommendations to the dealers with respect to the proper selection of basic stocks of TBA merchandise and to assist them in the initial installation of the Inventory Guide System. After the inventory is properly set up Texaco personnel should take no further part in maintaining and handling of such inventory except to the extent of taking orders for merchandise required, as indicated in Item 8.

8. If the dealer so desires, The Texas Company's selling personnel will further aid him by actually writing up the dealer's order for Goodrich or Firestone merchandise and will personally mail or deliver such orders to the dealer's regular source of supply.

9. The primary purpose of The Texas Company in sponsoring its TBA program is to counsel with and continually assist Texaco dealers so that they will establish and maintain superior service to their customers and thereby earn greater profits.

10. Although in the foregoing program reference is made to Texaco dealers, it should be understood that every phase of the program outlined is readily adaptable to all TBA programs of Texaco consignees and distributors. Equal effort should be made by the Company's selling personnel to sell them on the merits of the program and the benefits to be derived by adopting it for their own use, and wholeheartedly encouraging the dealers they serve to adopt it.

11. Definite responsibilities and activities necessary to the effective adaptation of the Company's TBA program are a part of the regularly assigned duties of all of The Texas Company's field personnel who normally contact dealers, or consignees, or distributors. The Company's selling personnel are expected to become familiar with the Firestone and Goodrich Suggested Basic Stock Assortment and Inventory Guide System and the merchandising of TBA products generally. It should be clearly understood, however, that assistance will also be rendered by Texaco personnel to all dealers in setting up their own Basic Stock Assortment and Inventory Guide System regardless of the brand of merchandise handled.

It should be further understood by all concerned that the activities of The Texas Company's personnel in carrying out its TBA program must be considered as an addition to the efforts or activities of the TBA suppliers' selling personnel and not in lieu thereof.

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440

Division Managers -4- 1/3/52

12. The importance of respecting the independence of the Texaco dealer and his right to exercise his free and independent judgment with respect to the brand of TBA merchandise he will handle, and the quantities he will purchase, cannot be over-emphasized. Insofar as The Texas Company is concerned no TBA supplier shall be preferred over any other as to any territory or portion thereof.

The foregoing covers completely The Texas Company's TBA policy of long standing and it must be adhered to without deviation.

Yours very truly,

JAW-MK

SIGNED: J. A. WINGER

RLS-WFW-KRK-CBB-DLB

CHD-WAC-THS-CWK

HSBe-FMJ-AN-WSO

8 9018

JAX 447

Respondents' Exhibit 16A

THE TEXAS COMPANY Denver, Colorado, January 7, 1954

TBA PROGRAM
STATEMENT OF POLICY

CIRCULAR LETTER NO. 369

State Managers
Zone Managers
Denver Division

Gentlemen:

This letter replaces and cancels our Circular Letter No. 355 of January 14, 1952, under the above subject. It does not introduce any change in our policy of long standing, but is intended to:

A. Assist our personnel in presenting the merits of the program to dealers by stating the reasons for recommending Firestone or Goodrich as a supplier.

B. Outline the duties and responsibilities of field personnel charged with carrying out the program in the field.

I. WHAT THE TEXAS COMPANY'S TBA PROGRAM IS

The aim of the Company's TBA program is to encourage dealers to expand their business beyond the sale of petroleum products; and to counsel with and continually assist Texaco dealers to establish and maintain superior service to their customers, maintain an adequate and balanced stock of fast-moving TBA items and to improve their methods of merchandising so that they will be able to take full advantage of the profit potentials available to them through good service station operations.

Accordingly, The Texas Company recommends that its dealers handle Firestone or Goodrich. However, notwithstanding the fact that the Company recommends to its dealers these certain lines of TBA merchandise, it should be clearly understood by all concerned that the Company has neither the right nor the desire to dictate to the dealer the brand or type of merchandise he should handle, or the source from which he should purchase such merchandise, or to require him to handle any TBA merchandise.

II. WHY FIRESTONE AND GOODRICH LINES WERE SELECTED FOR RECOMMENDATION TO TEXACO DEALERS

The TBA merchandise lines and merchandising policies of both Firestone and Goodrich offer many advantages to the dealers, including a complete line of high quality automotive products to meet practically all the needs of the motorist. Firestone and Goodrich products have national acceptance, backed by extensive

..tional advertising, and are distributed in all 48 states, with sales and delivery service available through 1,266 salary operated supply points and numerous dealer operated stores carrying the complete line.

Another advantage of handling these lines is that the dealer can purchase his entire TBA requirements from one source, conveniently located, thus earning extra discounts through volume purchases. Both Firestone and Goodrich have extensive sales promotion programs designed expressly to fit the needs of their service station accounts. Point-of-sale promotional material and cooperative advertising are available on a low-cost or no-cost basis. They also have a large sales force fully trained to assist the service station dealers to make the most of their TBA opportunities.

All these factors tend to increase the salability of Firestone and Goodrich products, and thus increase the profits of the dealers handling such lines.

III. RESPONSIBILITIES OF FIELD PERSONNEL IN ADMINISTERING THE TBA PROGRAM

Every field member who normally contacts dealers, consignees and distributors should:

(1) Understand that even though The Texas Company does not handle tires, batteries and auto supplies, it recognizes the advantages to be derived by the dealer from the handling of such merchandise and the necessity for the dealer to do so in order to be competitive, meet the requirements of his customers, and enjoy more profitable operations.

(2) Become familiar with the lines and basic sales policies and promotional and merchandising programs of Firestone and Goodrich, including their Suggested Basic Stock Assortment and Inventory Guide Systems.

(3) Handle assigned duties outlined in Section IV.

IV. DUTIES OF TEXACO SALES PERSONNEL CHARGED WITH HANDLING TBA PROGRAM IN THE FIELD

Listed below are the responsibilities and activities which are part of the regularly assigned duties of selling

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personnel who normally contact dealers, consignees or distributors:

(1) Present the merits of our TBA program, recommending the products of Firestone or Goodrich if best suited to the dealer's interest.

(2) Recommendations with respect to TBA merchandise made by a Texaco representative to a Texaco dealer should in the best interest of the dealer take into consideration the following factors:

(a) The dealer's requirements based on an analysis of the potential volume available within the dealer's specific trading area;

(b) The availability of a convenient source of supply and the frequency of contact and type of service to be afforded the dealer by a wholesale supplier, as well as the supplier's ability and willingness to assist the dealer to be competitive in the market at all times;

(c) The established representation of the tire company in the area.

(3) If, after a straightforward sales presentation of the Company's TBA program, and a full explanation of the merits of such program, the dealer should in exercising his free choice of a brand of TBA merchandise express his preference for the Goodrich or Firestone line, the Texaco representative should promptly arrange to introduce to him a sales representative of the supplier chosen by the dealer. It should be recognized at all times that the negotiations between the dealer and the tire company representative, and any purchase arrangements resulting therefrom, are matters for their mutual consideration. The Texaco representative, however, should be prepared and willing to lend any advice and counsel that may be requested of him by the dealer during such negotiations.

JAX 490

Respondents' Exhibit 16D

(4) In an effort to help dealers expand and develop their business, the Company urges them to stock an adequate amount of TBA merchandise to serve fully the motorists' needs. Texaco selling personnel, with the dealer's approval, will assist in the physical installation of an "Inventory Guide System", and continue to assist in the maintenance until its use is habitual with the dealer, regardless of the brand chosen by the dealer. The Firestone or Goodrich "Suggested Basic Stock Assortment and Inventory Guide System" is considered among the simplest methods available to assure the maintenance of a well-balanced stock of fast-moving TBA merchandise, and dealers should be advised of this and urged to consider its installation and use.

(5) Similar guidance and assistance should be offered in the use and maintenance of TBA display programs, and dealers should be urged to utilize all appropriate space available to them in building displays that will attract customers and increase sales.

(6) The Company's sales personnel should be sufficiently alert at each visit to a service station to call the dealer's attention to their willingness to aid him by actually writing up the dealer's order for Goodrich or Firestone merchandise. As a further assistance to the dealer, Texaco personnel should personally mail or deliver such orders to the dealer's source of supply. Orders should be written on the forms furnished by Firestone and Goodrich and carried by Texaco personnel at all times.

(7) Although reference is made heretofore to dealers, it should be understood that every phase of the program is adaptable to TBA programs of consignees and distributors. Equal effort should be made by the Company's personnel to sell consignees and distributors on the merits of the program and the benefits to be derived by adopting it for their own use and wholeheartedly encouraging the dealers they serve to use it.

The importance of respecting the independence of the

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JAX 461

Respondents' Exhibit 182

Texaco dealer and his right to exercise his free and independent judgment with respect to the brand of TBA merchandise he will handle, and the quantities he will purchase, cannot be overemphasized. Insofar as The Texas Company is concerned, no TBA supplier shall be preferred over any other as to any territory or portion thereof.

The success of the TBA Program depends upon the kind of a selling job that is done. The principles of the Texaco Selling Method are sound and appropriate, and should be applied as wholeheartedly in handling this program as in all other sales efforts.

Yours very truly,

THE TEXAS COMPANY

By W. A. Tarpley, Jr.

WAS-CH

JMLaF-EPO'S-PEJ-CWT-IWK-WLB

WJF-CWJ-RCM-HFW-LMB-CWT-FRC

JVM-WCH-WBP

EBC

DEALER SERVICE REPRESENTATIVES
LUBRICATION ENGINEERS
ALL SALESMEN
BULK PLANT AGENTS

90-1

JAX 459

Respondents' Exhibit 17A

THE TEXAS COMPANY Denver, Colorado, December 12, 1955

THE TEXAS COMPANY'S TBA PROGRAM

Zone Managers
Representatives-Dealer Training
Dealer Service Representatives
Merchandising Salesmen
General Salesmen

Denver Division

Gentlemen:

In order to remind our selling organization, particularly new employees who have joined our ranks in recent years, of the merits of The Texas Company's TBA Program and to outline the duties and responsibilities of our field personnel in this connection, it is felt desirable to review the Company's policy with respect thereto. The program and the duties of our field organization in connection therewith are fully covered by the attached statement.

As indicated therein, it is intended that a copy of this policy statement be added to each Salesman's portfolio "Business Builders for Texaco Dealers" so that every salesman will at all times have with him for ready reference a full explanation of the Company's TBA policy and the detailed instructions as to how he should function under the program.

Please handle accordingly.

Very truly yours,

WAS-EC

JALaF-FRS-FES-C.T-F.M-VLB

WAB-FFC-HYR-JFV

JAX 453

Respondents' Exhibit 17B

THE TEXAS COMPANY'S TBA PROGRAM

In order to remind our selling organization of the merits of The Texas Company's long standing TBA Program and to outline the duties and responsibilities of field personnel charged with carrying out this program, it is felt desirable to review fully herein the Company's policy with respect thereto. It is intended that these sheets be added to each salesman's portfolio "Business Builders For Texaco Dealers" and be made a part thereof, so that every salesman will at all times have with him the full explanation of the Company's TBA Policy and the detailed instructions as to how the selling organization should function under this program.

I. WHY THE TEXAS COMPANY HAS A TBA PROGRAM

It is recognized that most service station dealers cannot successfully gain and retain regular customers and reap full profits from their operation if only petroleum products are handled. Statistics prove that the average automobile owner prefers to depend on his regular service station dealer for his automotive necessities short of major repairs. These necessities, commonly known in the industry as TBA merchandise, include tires, batteries, fan belts, spark plugs, hoses, oil filters and other replacement items normally handled by most successful service station dealers, plus many of the "throw on" accessory items.

The purpose of the Company's TBA program therefore is to assist dealers to expand their business beyond the sale of petroleum products. To accomplish this Texaco selling personnel should counsel with and continually assist Texaco dealers to establish and maintain superior service to their customers, maintain an adequate and balanced stock of fast-moving TBA items and to improve their methods of merchandising so that they will be able to take full advantage of the profit potentials available to them through good service station operations.

II. WHY FIRESTONE AND GOODRICH LINES WERE SELECTED FOR RECOMMENDATION TO TEXACO DEALERS

The Texas Company believes that the TBA merchandise lines and merchandising policies of both Firestone and Goodrich offer many advantages to Texaco dealers, including a complete line of high quality automotive products to meet practically all the needs of the motorist. Firestone and Goodrich products have national acceptance, backed by extensive national advertising, and are distributed in all 48 states, with sales and delivery service available through more than 1,000 salary-operated supply points and numerous dealer operated stores which carry the complete line.

Another advantage of handling Firestone or Goodrich products is that the dealer can purchase his entire TBA requirements from one source, conveniently located, thus earning extra discounts through volume purchases. Both Firestone and Goodrich have extensive sales promotion programs designed expressly to fit the needs of their service station accounts. Point-of-Sale promotional material and cooperative advertising are available on a low-cost or no-cost basis. They also have large sales forces fully trained to assist the service station dealers to make the most of their TBA opportunities.

All these factors tend to increase the saleability of Firestone and Goodrich products, and thus increase the profits of dealers handling such lines. Accordingly, The Texas Company recommends that its dealers handle Firestone or Goodrich merchandise.

Notwithstanding the fact that the Company recommends to its dealers certain lines of TBA merchandise, it should be clearly understood by all concerned that the Company has neither the right nor the desire to dictate to the dealer the brand or type of merchandise he should handle, or the source from which he should purchase such merchandise, or to require him to handle any TBA merchandise.

III. DUTIES OF TEXACO SALES PERSONNEL

(1) Each member of the field organization who normally contacts dealers, consignees, and distributors should clearly understand that even though The Texas Company does not handle tires, batteries, and auto supplies, it recognizes the advantages to be derived by the dealer from the handling of such merchandise and the necessity for the dealer to do so in order to be competitive, meet the requirements of his customers and enjoy more profitable operations.

(2) In order to present the merits of The Texaco TBA Program all selling personnel should be thoroughly familiar with the lines, the basic sales policies, the promotional programs and the merchandising programs of both Firestone and Goodrich, including establishment and maintenance of their "Suggested Basic Stock Assortment and Inventory Guide Systems."

(3) Before making definite recommendations with respect to TBA merchandise to a Texaco dealer, the Texaco representative should assist the dealer in analyzing the potential volume of TBA business that the dealer can reasonably expect within his specific trading area, and help him to arrive at a basic minimum inventory that should permit adequate service of his particular market.

One of the important responsibilities of Texaco sales personnel is that they should continually be in position to advise dealers of forthcoming Firestone or Goodrich promotional programs so that the dealer can take advantage of every opportunity to increase his profits and be more competitive.

13-6032

JAX 454

Respondents' Exhibit 17C

(4) Any recommendation with respect to brands of TBA merchandise made by the Texaco representative should be predicated on the profitability of a succession sequence of [illegible] the frequency of contact and the type of service to be rendered by the dealer [illegible] be the supplier's ability and willingness to make the goods [illegible] The established representation of the line [illegible]

(5) If, after a straightforward sales presentation of the Company's [illegible] planation of the merits of [illegible] TBA merchandise appears [illegible] should promptly arrange [illegible] it should be remembered at all [illegible] sentative, and any purchase [illegible] tion. The Texaco representative [illegible] that may be requested of him by the dealer [illegible]

(6) The Firestone or Goodrich [illegible] is considered among the [illegible] of fast-moving TBA merchandise. The [illegible] functions of the "inventory [illegible] it is consistent with [illegible] explained to the dealer that [illegible] it easier for him to buy [illegible] the physical installation of [illegible] maintenance of the Units until he [illegible]

(7) It has been said that [illegible] products at service stations, [illegible] ing their sales and profits. [illegible] chandise displayed and that the [illegible] more customers and make more sales [illegible] pensive pricing kit as well as [illegible]

Texaco representatives should [illegible] assistance in improving their [illegible] The Company's selling personnel should [illegible] for building displays that will attract customers and increase sales.

(8) The regular order forms furnished by Firestone and Goodrich are to be carried by Texaco selling personnel at all times. At each visit [illegible] call the dealer's attention to the fact that [illegible] balance, he will write up the dealer's order [illegible] Texaco personnel should personally mail or deliver [illegible]

(9) Holders of The Texas Company [illegible] or Goodrich TBA merchandise from [illegible] desired, extend their payments for [illegible] by the dealer, this Texaco [illegible] ing his sales and profits without [illegible] ceivable, The Company's selling [illegible] for the convenience of [illegible] also make sure that the [illegible] dise on The Texas Company's [illegible]

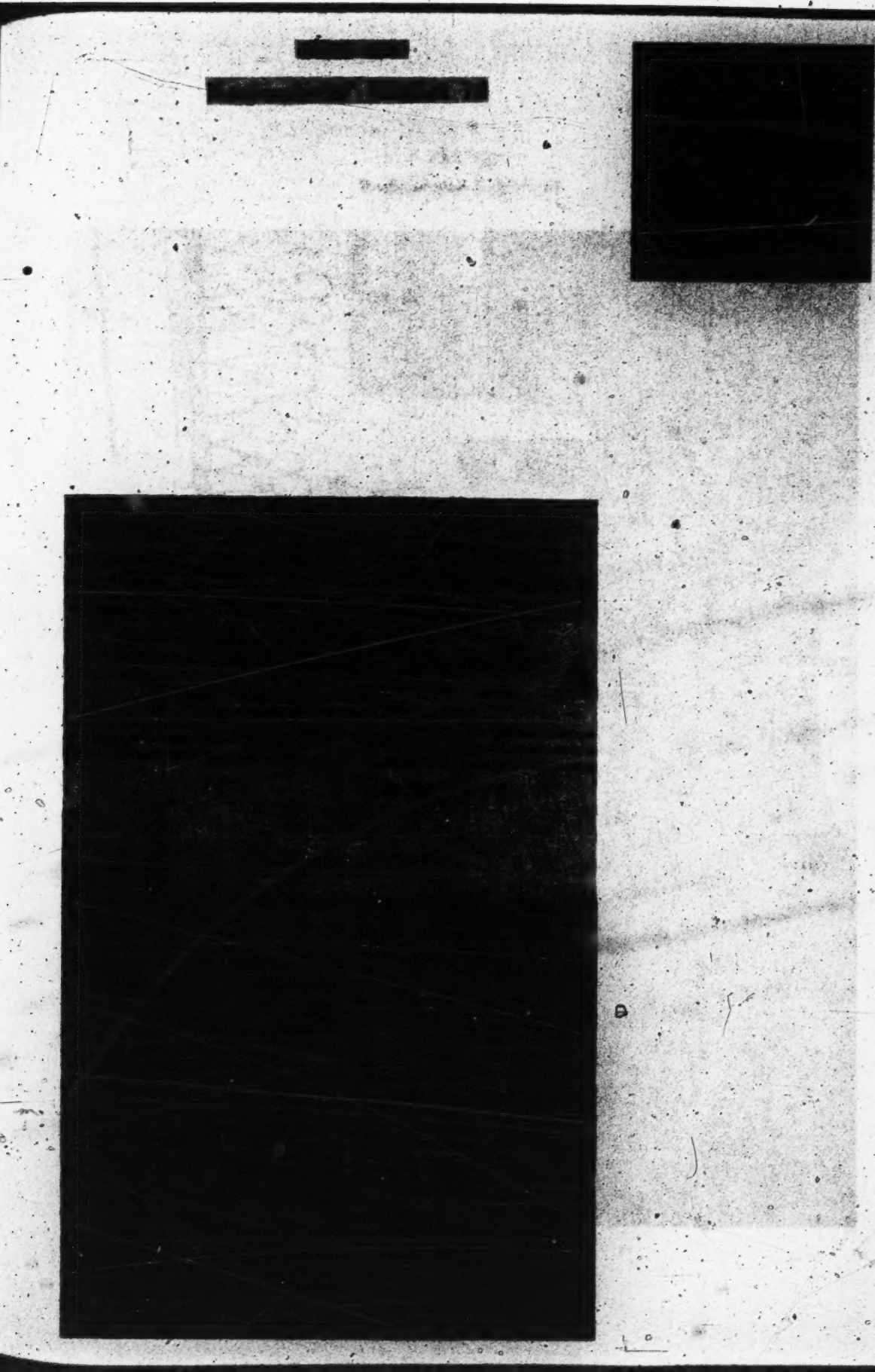
(10) Although responsibility [illegible] the TBA program is advisable to [illegible] made by the Company's personnel [illegible] means of developing their business, and this training is to be carried by [illegible] their own use.

The principles of the Texaco Selling Method are sound and commendable and should be practiced wholeheartedly by The Texas Company's selling personnel [illegible] of the Company's TBA program. The success of the TBA program depends upon the kind of selling [illegible] that is done. The handling of the TBA merchandise will therefore be an important part of the regularly assigned duties of the Company's selling personnel. Nevertheless, the importance of respecting the independence of the Texaco dealer and his right to exercise his free and independent judgment on all matters and all phases of his business cannot be overemphasized.

11-46-1866

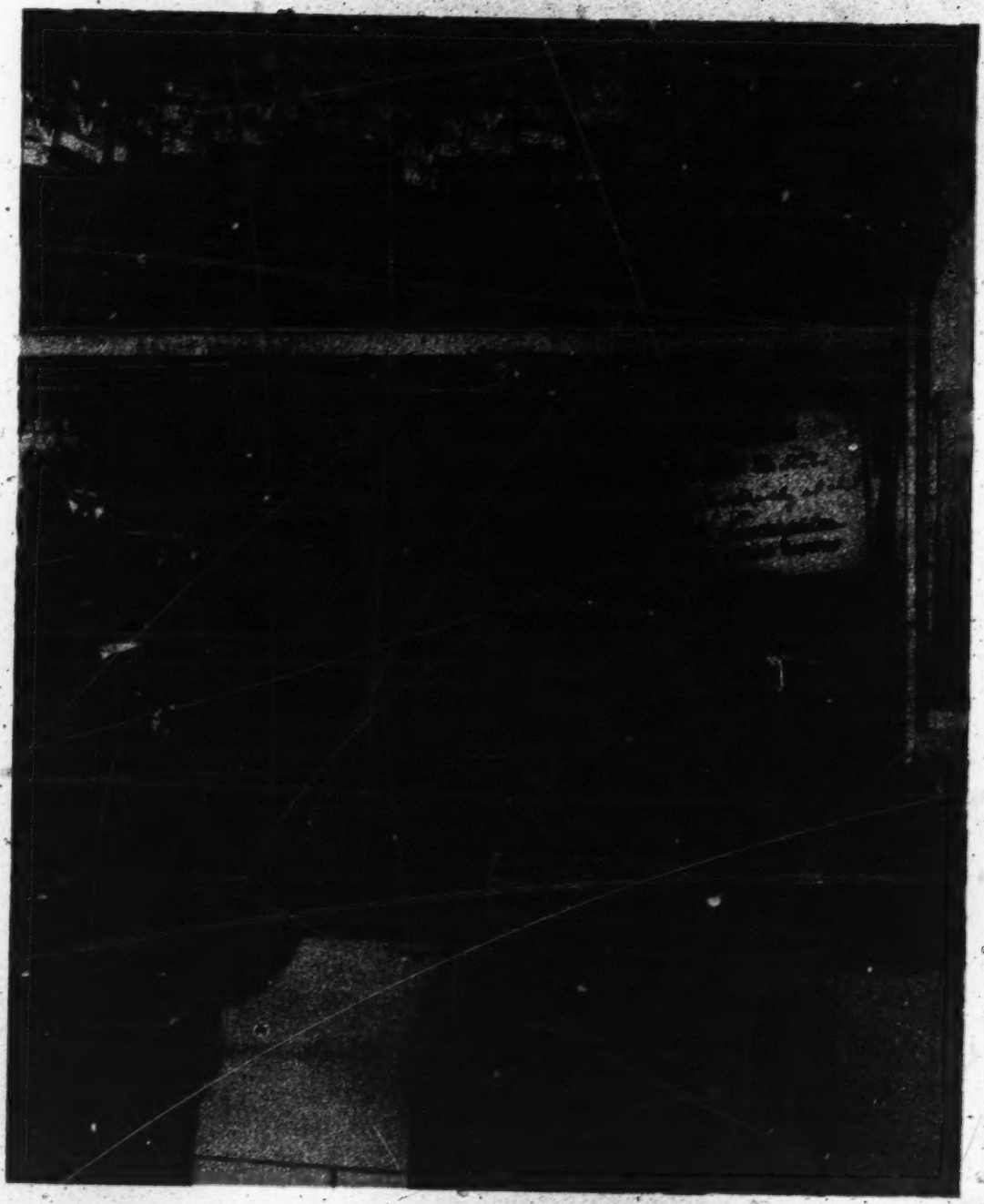
SALES DEPARTMENT
THE TEXAS COMPANY

16



JAX 456

Respondents' Exhibit 19



JAX 458

Respondents' Exhibit 28A

FEDERAL TRADE COMMISSION
DOCKET NO. [illegible] RESPONDENT'S EXHIBIT NO.
IN THE MATTER OF D. F. [illegible]
DATE 7/20/54 WITNESS [illegible]
ACE REPORTING CO., OFFICIAL REPORTER
BY

VERY IMPORTANT

Dallas, Texas , August 20, 1948

SERVICE STATION OPERATORS

STAFF MEMBERS, 153-GR
STATE MANAGERS,
ZONE REPRESENTATIVES,
REPRESENTATIVES DEALER SERVICE
REPRESENTATIVES DEALER TRAINING
SALESMEN

Gentlemen:

Under date of June 8 Mr. Fowlkes wrote you under the above subject and attached hereto is my letter, on the same subject.

Mr. Hochuli's letter is considered so important that we have asked you to again re-read it.

After you have pulled the original letter on this subject, which we ask that you do immediately, write on the bottom of this letter that you have read the contents of letter referred to, understand it perfectly, and will be guided by the contents thereof.

Please again refer to Mr. Fowlkes' letter of June 8, to which was attached copy of Mr. Walter Hochuli's letter of June 1.

PLEASE ACKNOWLEDGE THIS LETTER BY SIGNING AND RETURNING TO US. H. D. FORBES.

Yours very truly,

H. D. Morgan

DDH-DS

GFB

HDF-HT-GM-WWI-JVA-JIC

SEP-SLG

9237

JAX 459

Respondents' Exhibit 2028

FEDERAL TRADE COMMISSION
DOCKET NO. 2166

26-B

THE TEXAS COMPANY

Dallas, Texas, August 20, 1948

IMPORTANT

NEW YORK STATION OPERATIONS
15-38

Messrs. W. B. Sanderson,
C. B. Hall,
A. E. Martin,
M. C. Lewis,

Gentlemen:

On June 8, 1948 Mr. H. D. Perkins addressed a letter to you, with a copy to all Field Men and Salaried Selling Organization, to which he attached a copy of Mr. Walter Hochuli's letter of June 1, addressed to Territorial Managers.

Mr. Hochuli's letter was on the same subject as this letter today and it is considered so important that we ask you to pull this letter from your files and to carefully re-read it.

I am not attempting to cover the subject of Mr. Hochuli's letter, but it behooves us to be quite certain that we understand, thoroughly, our contact relations with Texaco Dealers.

I believe it a good idea for every Representative, who supervises Salesmen, to read this Letter to them and discuss its contents in detail. New Salesmen who have been added to our payroll in the last year or so will not conversant with our Company Policies, and it is felt Salesmen who contact Dealers - Representatives of Dealer Service and Dealer Training, should be careful in their contacts with Dealers, to continually recognize the fact that Dealers are Independent Merchants and to operate as such.

Doubtless all of you have read in the Trade Magazines that a Decree has been entered in the case of United States v. Standard Oil Company of California, which has reference to agreements and understandings between the supplying company and its dealers. This decree, again, emphasizes the importance of a proper understanding of our Policy by those of our field men who contact dealers and service station operators. PERUSE MR. HOCHULI'S LETTER ABOVE REFERRED TO - thorough knowledge by every employee in the Sales Department, who, as part of his assigned duties, has occasion to contact dealers, contractors or unattached, third party or first party, who purchase a part or all of their Petroleum requirements from The Texas Company.

Yours very truly,

IGM-GS
CBB
HDF-MT -GM-GRI-JFA-JTO
ZONE REPRESENTATIVES, SEP-SALT
REPRESENTATIVES DEALER SERVICE
AND DEALER TRAINING & SALESMEN

JAX 460

Respondents' Exhibit 26C

6 - 11 - FEDERAL TRADE COMMISSION

DOCKET 6488 EXHIBIT NO. 26C

26-C

THE TEXAS COMPANY

Dallas 2, Texas, June 8, 1948

SERVICE STATION OPERATIONS

1 - 130-27

Messrs. W. B. Sandercom,
C. E. Hall,
A. B. Hutchins,
M. C. Lovell.

Gentlemen:

Attached for your information and guidance is copy of Mr. Walter Neenan's letter of June 1 addressed to territorial managers, subject "Service Station Operations", in which he reiterates our policy with respect to Texaco dealers being independent businessmen and are to operate as such.

While we are quite sure that there are no instances in the Dallas Division where anyone has attempted in any manner to dictate the policies of Texaco dealers who are operators of company-owned and company-leased service stations, or dealers operating their own service stations, we, nevertheless, feel that you should again be reminded of our policy in this connection.

Yours very truly,

H D Bowles

HDF:LMB

IGW-HDF-MF-
GW-WWI-JVA-FJD-
ZONE REPRESENTATIVES-
SZP-RLC-REPRESENTATIVES
DEALER SERVICE AID
DEALER TRAINING

2339

JAX 461

Respondents' Exhibit 28D

FEDERAL TRADE COMMISSION
DOCKET NO. 6456 EXHIBIT NO. 456-D

THE TEXAS COMPANY New York 17, N.Y., June 1, 1948

SERVICE STATION OPERATIONS

Messrs. R. R. Kibbe (6)
S. C. Bartlett (6)
C. B. Barrett (6)
D. R. Beaton (6)

Gentlemen:

The petroleum trade journals during the past several weeks have been carrying reports of the anti-trust suit being conducted by the Government against the Standard Oil Company of California. One of the principal items of discussion in this suit is the question of influence being exerted by the petroleum supplier on the gasoline dealer to have him purchase directly or indirectly certain items for resale through the dealer station. In view of this it seems advisable to restate our policy.

With all of our dealers, whether they are operators of Company owned or Company leased service stations or dealers operating their own service stations, we have a sales contract which provides for the purchase by the dealer of certain estimated quantities of Texaco products. This contract does not prevent the dealer from purchasing competitive products in addition to Texaco products, though generally the dealer recognizes that there are definite advantages in handling one nationally advertised line of petroleum products.

A Texaco dealer is an independent businessman and he is entitled to conduct his business according to his own desires. Our men are expected to help the Texaco dealer to improve his business and make many helpful suggestions to that end. They may explain to the dealer the advantages of tying-in with a national program developed for the more than 40,000 Texaco dealers throughout the country, but it is not in accord with the dealer's contract with The Texas Company to infer or indicate to a Texaco dealer directly or indirectly that any purchase by him of any type of merchandise from any supplier whatsoever will result in a reduction of the supply of petroleum products available to him or in a cancellation of any sales contract or lease agreement that may be in effect or in any other event which will make him feel that more persuasion is being exercised by us than would normally and properly be used by us toward a customer.

The Texas Company does not sell tires, tubes, batteries, accessories or items other than petroleum that might be sold through a service station, but we recognize that it is to the advantage of the dealer to handle such merchandise in order to increase his earnings and enable him to have a more profitable operation. In fact, we encourage the dealer to expand his business beyond the sale of petroleum products for these reasons, and because, in the case of a Company owned or Company leased service station which has been leased to the dealer for operation, it means a more profitable venture through our facilities and eventually increases our earnings as well as the dealer's through that location.

JAX 463

Respondents' Exhibit 26E

5X

Messrs. RMK-SCB-CBB-DEB -2- 1 Feb 1949

Even though we urge and encourage the dealer to handle merchandise other than petroleum products, we have neither the right nor the desire to dictate to him or influence him in any way as to the type of merchandise he should handle or the source from which he should purchase it. We can and do recommend certain lines which we feel fit into the program of handling such nationally advertised products as Texaco, but our representatives are not to exert any influence upon the dealer to have him follow our suggestions.

We frequently install fixtures and display shelves at Company owned or Company leased service stations for use by the dealer in selling merchandise, and we should urge the dealer to use those facilities to increase his earnings and to keep on hand at all times a satisfactory amount of merchandise of the proper type, but again no pressure is to be put on the dealer to do so. There is no objection, after proper facilities for the sale of tires, tubes, batteries, and accessories have been provided at a service station, to our representatives introducing to the dealer a salesman who has such items for sale, or even of recommending to the dealer that he give consideration to the purchase of that salesman's merchandise, but it must be borne in mind at all times that after the introduction the negotiations and arrangements between the dealer and the TBA salesman are not to be interfered with or influenced in any way by The Texas Company's representative.

I emphasize again that the Texaco dealer is an independent businessman and he must be permitted to operate as one. Any one who violates these policies may be subject o immediate dismissal from the Company's service.

Please pass this information on to your division offices for dissemination to the people interested.

Yours very truly,

WE-PD

Signed: Walter Hochuli

C
O
P
Y

3011

JAX 463

Respondents' Exhibit 27A

-6

THE TEXAS COMPANY

Resp. 27-A

Dallas, Texas, February 25, 1938

CIRCULAR
LETTER NO. 8-B

THE TEXAS COMPANY'S TBA PROGRAM
STATEMENT OF POLICY

FEDERAL TRADE COMMISSION
DOCKET NO. 6116 RESPONDENT'S EXHIBIT NO. 27-A
IN THE MATTER OF G-F Manufacturing Co. et al
DATE 7/24/57 WITNESS
ACE REPORTING CO., INC.
By

STATE MANAGERS
ZONE MANAGERS
RESALE SALESMEN
DEALER SERVICE REPS.
DALLAS DIVISION

Gentlemen:

For your information, under date of January 8, 1938, Mr. C. B. Barrett in his circular letter #909, re-issued The Company's policy with respect to our TBA Program.

This letter is hereinafter quoted in its entirety:

"In order that all concerned may be fully informed, The Texas Company's policy with respect to the procedure to be followed in carrying out its TBA Program, which policy has been in effect for many years, is reiterated below:

1. When presenting the merits of the Company's TBA Program to TEXACO Dealers, the selling personnel should explain to the Dealer that even though The Texas Company does not handle tires, batteries and auto supplies, it recognizes the advantages to be derived by the Dealer from the handling of such merchandise and the necessity for the Dealer to do so in order to be competitive, meet the requirements of his customers, and enjoy more profitable operations.

   TEXACO Dealers should be encouraged to expand their business beyond the sale of petroleum products for the reasons outlined.

2. To facilitate the handling of TBA merchandise by TEXACO Dealers the Company provides adequate display equipment in its Service Stations for the sale of such items.

3. The Company recommends certain lines of merchandise which are nationally advertised and enjoy national distribution, just as is true with respect to TEXACO Products.

(Continued Page #2)

9042

D

JAX 464
Respondents' Exhibit 378
FEDERAL TRADE COMMISSION
DOCKET NO. EXHIBIT NO.

4. Notwithstanding the fact that the Company recommends to its Dealers certain lines of TBA Merchandise, it should be recognized by all concerned that the Company has neither the right nor desire to dictate to the Dealer the type of merchandise he should handle or the source from which he should purchase such merchandise.

5. In the interest of the Dealer, any recommendation with respect to TBA Merchandise made by a TEXACO representative to a TEXACO Dealer should take into consideration the following factors:

(a) The Dealer's requirements based on an analysis of the potential market;

(b) The availability of a convenient source of supply;

(c) The representation of the tire companies already established in the Area, and the type of service that will be available through the wholesale supply points;

(d) In all dealings, the fact that the TEXACO Dealer is an independent businessman must be emphasized and he must be permitted to operate as such.

6. If, in exercising his own free choice of the brand of TBA merchandise he desires to handle, the Dealer expresses a preference either for the Goodrich or Firestone line, following a clear cut and straight forward presentation of the TEXACO TBA Program as outlined, the TEXACO representative should assist the Dealer further by arranging to introduce him to a sales representative of the supplier chosen by the Dealer. It should be recognized at all times that the negotiations between the Dealer and the TBA representative, and any purchase arrangement resulting therefrom, are matters for their mutual consideration, and the TEXACO representative should not interfere with or attempt to influence such negotiations or purchase arrangements in any way.

7. The Company's assistance to TEXACO Dealers goes beyond the mere recommendation covering the Goodrich or Firestone line. In an effort to assist Dealers to expand and develop their business, the Company urges them to keep on hand an adequate amount of merchandise of the proper type to serve fully the motorists' needs. The Firestone or Goodrich Suggested Basic Stock Assortment and Inventory Guide System is considered to be the simplest method available to assure the maintenance of a well balanced stock of fast moving TBA Merchandise.

The Texaco selling personnel should therefore offer to make recommendations to the Dealers with respect to the proper

(Cont'd Page #3)

selection of basic stocks of TBA Merchandise and to assist them in the initial installation of the Inventory Guide System. After the inventory is properly set up, TEXACO personnel should take no further part in maintaining and handling of such inventory except to the extent of taking orders for merchandise required, as indicated in Item 8.

8. If the Dealer so desires, The Texas Company's selling personnel will further aid him by actually writing up the Dealer's order for Goodrich or Firestone Merchandise and will personally mail or deliver such orders to the Dealer's regular source of supply.

9. The primary purpose of The Texas Company in sponsoring its TBA Program is to counsel with and continually assist TEXACO Dealers so that they will establish and maintain superior service to their customers and thereby earn greater profits.

10. Although in the foregoing program reference is made to TEXACO Dealers, it should be understood that every phase of the program outlined is readily adaptable to all TBA programs of TEXACO consignees and distributors. Equal effort should be made by the Company's selling personnel to sell them on the merits of the program and the benefits to be derived by adopting it for their own use, and wholeheartedly encouraging the Dealers they serve to adopt it.

11. Definite responsibilities and activities necessary to the effective adaptation of the Company's TBA Program are a part of the regularly assigned duties of all of The Texas Company's field personnel who normally contact Dealers, or Consignees, or distributors. The Company's selling personnel are expected to become familiar with the Firestone and Goodrich Suggested Basic Stock Assortment and Inventory Guide System and the merchandising of TBA Products generally. It should be clearly understood, however, that assistance will also be rendered by TEXACO personnel to all Dealers in setting up their own Basic Stock Assortment and Inventory Guide System regardless of the brand of merchandise handled.

It should be further understood by all concerned that the activities of The Texas Company's personnel in carrying out its TBA Program must be considered as an addition to the efforts or activities of the TBA suppliers' selling personnel and not in lieu thereof.

12. The importance of respecting the independence of the TEXACO Dealer and his right to exercise his free and independent judgment with respect to the brand of TBA Merchandise he will handle, and the quantities he will purchase, cannot be over-emphasized. Insofar as The Texas Company is concerned, no TBA supplier shall be preferred over any other as to any territory or portion thereof.

(Continued Page #4)

JAX 68

Respondents' Exhibit 27D

FEDERAL TRADE COMMISSION

6018 27-D

CIRCULAR LETTER NO. 8-8 Page 4 2-27-52

"The foregoing covers completely The Texas Company's TBA policy of long standing, and it must be adhered to without deviation."

Please be governed accordingly.

Yours very truly,

I. S. MORGAN.

IGM:GS

HDF-HT-FDR-CDH-JVA-JIC-TLC
RLC-AAZ-RLM-HCS-JFD-HAL

REPRS. DEALER TRAINING

JAX 467
Respondents' Exhibit 28A

191 1 28-A

THE TEXAS COMPANY

Dallas, Texas, December 28, 1953

TBA PROGRAM
STATEMENT OF POLICY
1-150-29e
32-05

FEDERAL TRADE COMMISSION
DOCKET NO. 6[illegible] EXHIBIT NO. 28-B
IN THE MATTER OF B. F. Goodrich Lexington
DATE 7/21/54 WITNESS
ACME REPORTING CO., INC.
By

Mr. W. B. Sanderson - Dallas
Mr. F. R. Skipwith - Amarillo
Mr. J. B. Bolger - Oklahoma City
Mr. A. E. Martin - Albuquerque

Gentlemen:

Attached you will find a copy of Circular Letter No. 544, above subject, as issued to the field by Territorial Manager, C. N. Brooks.

Yours very truly,

J. T. MUSE.

JTM:BC

HDF CDH FHC FDB JVA JIC TLC
TLT AAZ RLN JSL WAP HAL
ZONE MANAGERS
SALESMEN
DEALER SERVICE REPRS.
REPRS. DEALER TRAINING

Attachment: (Copy of Circular Letter No. 544)

28A

9316

JAX 488

Respondents' Exhibit 268

FEDERAL TRADE COMMISSION EXHIBIT NO. 268

COPY

THE TEXAS COMPANY

Houston, Texas, December 15, 1951

TBA PROGRAM
STATEMENT OF POLICY

CIRCULAR LETTER NO. [illegible]

Messrs: J. A. Sanders
R. D. Parker
J. W. Brown
H. B. Riley

Gentlemen:

This letter replaces and cancels Circular Letter No. 509 of January 2, 1948, under the above subject. It does not introduce any change in our policy of long standing, but is intended to:

A. Assist our personnel in presenting the merits of the Program to Dealers by stating the reasons for recommending Firestone or Goodrich as a supplier.

B. Define Division Management's responsibilities in administering the TBA Program.

C. Outline the duties and responsibilities of field personnel charged with carrying out the Program in the field.

I. WHAT THE TEXAS COMPANY'S TBA PROGRAM IS:

The aim of the Company's TBA Program is to encourage Dealers to expand their business beyond the sale of Petroleum Products; and to counsel with and continually assist TEXACO Dealers to establish and maintain superior service to their customers, maintain an adequate and balanced stock of fast-moving TBA items and to improve their methods of merchandising so that they will be able to take full advantage of the profit potentials available to them through good Service Station operations.

Accordingly, The Texas Company recommends that its Dealers handle Firestone or Goodrich. However, notwithstanding the fact that the Company recommends to its Dealers these certain lines of TBA merchandise, it should be clearly understood by all concerned that the Company has neither the right

(Continued Page #2)

9217

FEDERAL TRADE COMMISSION
DOCKETED

nor the desire to dictate to the Dealer the brand or type of merchandise he should handle, or the source from which he should purchase such merchandise, or to require him to handle any TBA Merchandise.

II. WHY FIRESTONE AND GOODRICH LINES WERE SELECTED FOR RECOMMENDATION TO TEXACO DEALERS

The TBA merchandise lines and merchandising policies of both Firestone and Goodrich offer many advantages to the Dealers, including a complete line of high quality automotive products to meet practically all the needs of the motorist. Firestone and Goodrich products have national acceptance, backed by extensive national advertising, and are distributed in all 48 States, with sales and delivery service available through 1,266 salary operated supply points and numerous Dealer operated stores carrying the complete line.

Another advantage of handling these lines is that the Dealer can purchase his entire TBA requirements from one source, conveniently located, thus earning extra discounts through volume purchases. Both Firestone and Goodrich have extensive sales promotion programs designed expressly to fit the needs of their Service Station accounts. Point-of-sale promotional material and cooperative advertising are available on a low-cost or no-cost basis. They also have a large sales force fully trained to assist the Service Station Dealers to make the most of their TBA opportunities.

All these factors tend to increase the salability of Firestone and Goodrich products, and thus increase the profits of the Dealers handling such lines.

III. RESPONSIBILITIES OF DIVISION MANAGEMENT IN ADMINISTERING THE TBA PROGRAM

The proper administration of The Texas Company's TBA Program in the field is the direct responsibility of Division Management. They should see to it that each member of the field organization who normally contacts Dealers, Consignees and Distributors:

(1) Understands that even though The Texas Company does not handle tires, batteries and auto supplies, it recognizes the advantages to be derived by the Dealer from the handling of such merchandise and the necessity for the Dealer to do

(Continued Page 23)

FEDERAL TRADE COMMISSION
DOCKET NO. 8918 - D

so in order to be competitive, meet the requirements of his customers, and enjoy more profitable operations.

(2) Becomes familiar with the lines and basic sales policies and promotional and merchandising programs of Firestone and Goodrich, including their Suggested Basic Stock Assortment and Inventory Guide systems.

(3) Handles assigned duties outlined in Section IV.

IV. DUTIES OF TEXACO SALES PERSONNEL CHARGED WITH HANDLING TBA PROGRAM IN THE FIELD

Listed below are the responsibilities and activities which are part of the regularly assigned duties of selling personnel who normally contact Dealers, Consignees or Distributors:

(1) Present the merits of our TBA Program, recommending the products of Firestone or Goodrich if best suited to the Dealer's interest.

(2) Recommendations with respect to TBA merchandise made by a TEXACO representative to a TEXACO dealer should in the best interest of the Dealer take into consideration the following factors:

(a) The Dealer's requirements based on an analysis of the potential volume available within the Dealer's specific trading area;

(b) The availability of a convenient source of supply and the frequency of contact and type of service to be afforded the Dealer by a wholesale supplier, as well as the supplier's ability and willingness to assist the Dealer to be competitive in the market at all times;

(c) The established representation of the tire company in the area.

(Continued Page #4)

FEDERAL TRADE COMMISSION
DOCKET 6112 — 205 E-F

CIRCULAR LETTER NO. 54
Page 4

(3) If, after a straightforward sales presentation of the Company's TBA Program, and a full explanation of the merits of such Program, the Dealer should in exercising his free choice of a brand of TBA merchandise express his preference for the Goodrich or Firestone line, the TEXACO representative should promptly arrange to introduce to him a sales representative of the supplier chosen by the Dealer. It should be recognized at all times that the negotiations between the Dealer and the Tire Company representative, and any purchase arrangements resulting therefrom, are matters for their mutual consideration. The TEXACO representative, however, should be prepared and willing to lend any advice and counsel that may be requested of him by the Dealer during such negotiations.

(4) In an effort to help Dealers expand and develop their business, the Company urges them to stock an adequate amount of TBA merchandise to serve fully the motorists' needs. TEXACO selling personnel, with the Dealers approval, will assist in the physical installation of an "Inventory Guide System", and continue to assist in the maintenance until its use is habitual with the Dealer, regardless of the brand chosen by the Dealer. The Firestone or Goodrich "Suggested Basic Stock Assortment and Inventory Guide System" is considered among the simplest methods available to assure the maintenance of a well-balance stock of fast moving TBA merchandise, and Dealers should be advised of this and urged to consider its installation and use.

(5) Similar guidance and assistance should be offered in the use and maintenance of TBA display programs, and Dealers should be urged to utilize all appropriate space available to them in building displays that will attract customers and increase sales.

(6) The Company's sales personnel should be sufficiently alert at each visit to a Service Station to call the Dealer's attention to their willingness to aid him by actually writing up the Dealer's

(Continued Page #5)

order for Goodrich or Firestone [illegible]. As a further assistance to the Dealer, TEXACO personnel should personally mail or deliver such orders to the Dealer's source of supply. Orders should be written on the forms furnished by Firestone and Goodrich and carried by TEXACO personnel at all times.

(7) Although reference is made hereinbefore to Dealers, it should be understood that every phase of the Program is applicable to TBA Programs of Consignees and Distributors. Equal effort should be made by the Company's personnel to sell Consignees and Distributors on the merits of the Program and the benefits to be derived by adopting it for their own use and wholeheartedly encouraging the Dealers they serve to use it.

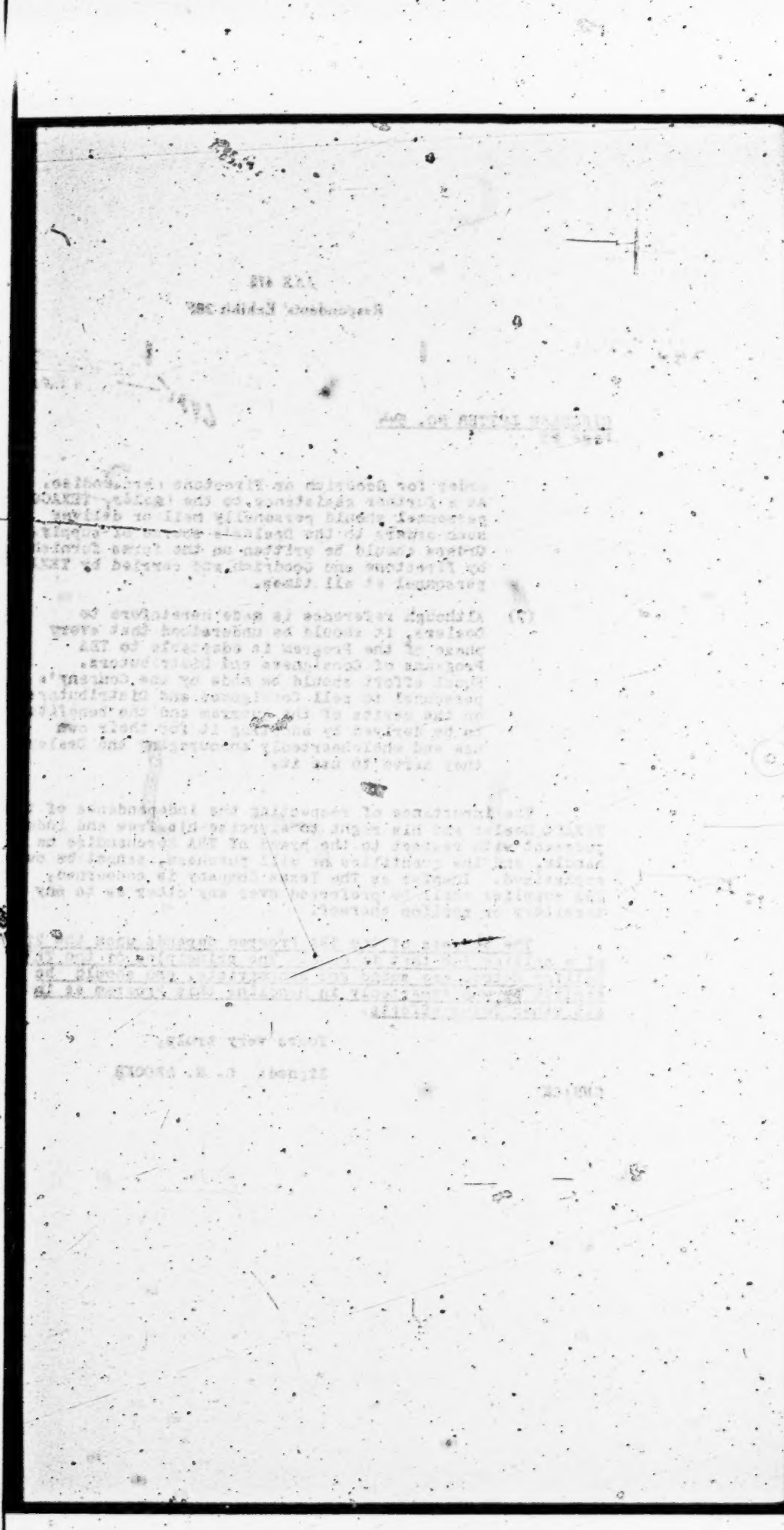
The importance of respecting the independence of the TEXACO Dealer and his right to exercise his free and independent judgment with respect to the brand of TBA merchandise he will handle, and the quantities he will purchase, cannot be over-emphasized. Insofar as The Texas Company is concerned, no TBA supplier shall be preferred over any other as to any territory or portion thereof.

The success of the TBA Program depends upon the kind of a selling job that is done. The principles of the TEXACO Selling Method are sound and appropriate, and should be applied as wholeheartedly in handling this Program as in all other sales efforts.

Yours very truly,

Signed: C. N. BROOKS

CNB:CK



JAX 478

Respondents' Exhibit 29A

Resp 29-A

35

THE TEXAS COMPANY

Dallas, Texas, December 13, 1935

CIRCULAR LETTER #8-36

THE TEXAS COMPANY'S TBA PROGRAM

1-140-36
12-36

STATE MANAGERS
ZONE MANAGERS
GENERAL SALESMEN
MERCHANDISING SALESMEN
DEALER SERVICE REPRESENTATIVES
REPRESENTATIVES (DEALER TRAINERS)
THE TEXAS COMPANY
DALLAS DIVISION

Gentlemen:

We are attaching, hereto, the Company's policy sheet with respect to our TBA Program in which is outlined the duties and responsibilities charged to our field personnel in carrying out this program.

The attached policy instruction sheet is to be inserted in your portfolio "Business Builders for Texaco Dealers" and be made a part thereof so that you will, at all times, have with you a full explanation of the Company's TBA policy and the detailed instructions as to how you should function under this program.

Yours very truly,

J. H. PAYNE

JHP:AM

KDP CDK FWC FDB JEL JVA JIC

TLP KRR LPB

Attachment

FEDERAL TRADE COMMISSION
DOCKET NO. 6 [illegible] RESPONDENT EXHIBIT NO. 29-A
IN THE MATTER OF [illegible]
DATE 7/21/41 WITNESS [illegible]
RCS REPORTING CO., OFFICIAL REPORTERS
By

"DRIVE IN '36"

THE TEXAS COMPANY'S TRAINING PROGRAM

[redacted]

Respondents' Exhibit 29C

29-C FEDERAL TRADE COMMISSION

DOCKET NO. 8752

(4) Any recommendation with respect to brand of TBA merchandise made by the Texaco representative should be predicated on the availability of a convenient source of supply, the frequency of contact and the type of service to be afforded the dealer by the wholesale supplier. A major factor would be the supplier's ability and willingness to assist the dealer to be competitive in the market at all times. The established representation of the tire company in the area should also be taken into consideration.

(5) If, after a straightforward sales presentation of the Company's TBA program, and a full explanation of the merits of such program, the dealer should in exercising his free choice of a brand of TBA merchandise express his preference for the Goodrich or Firestone line, the Texaco representative should personally endeavor to introduce to him a sales representative of the supplier chosen by the dealer. It should be recognized at all times that the negotiations between the dealer and the tire company representative, and any purchase arrangements resulting therefrom, are matters for their mutual consideration. The Texaco representative, however, should be prepared and willing to lend any advice and counsel that may be requested of him by the dealer during such negotiations.

(6) The Firestone or Goodrich "Suggested Basic Stock Assortment and Inventory Guide System" is considered among the important marketing facilities to assure the maintenance of a well-balanced stock of fast-moving TBA merchandise. The Texaco representative should explain to the dealer the complete functions of the "Inventory Guide" and urge the dealer to consider its installation and use. Inasmuch as it is consistent with good business management to maintain proper and adequate inventories, it should be explained to the dealer that this type of Guide can be of much value to him in effecting sales and in making it easier for him to keep only the merchandise needed. Texaco selling personnel should not only assist in the physical installation of the Inventory Guide System, but should continue to assist the dealer in the maintenance of the Guide until its use by the dealer becomes established routine in his everyday operation.

(7) It has been said that merchandise well displayed is half sold. Eye-catching displays of TBA products at service stations, like petroleum product displays, can be of greatest value to dealers in increasing their sales and profits. It is also important that the prices be prominently shown on all TBA merchandise displayed and that the merchandise be kept in a clean and orderly arrangement. To help attract more customers and make more sales, both Firestone and Goodrich make available to dealers an inexpensive printing kit as well as display packages containing up-to-date and attractive point-of-sale material.

Texaco representatives should urge dealers to take full advantage of the tire company's offer of assistance in improving their station's "sparkle" with displays that present an attractive appearance. The Company's sales personnel should assist dealers in utilizing all appropriate space available to them for building displays that will attract customers and increase sales.

(8) The regular order forms furnished by Firestone and Goodrich are to be carried by Texaco selling personnel at all times. At each visit to a service station, the Company's sales personnel should call the dealer's attention to the fact that as a further assistance to him in keeping his desired inventory balanced, he will write up the dealer's order for the Goodrich or Firestone merchandise that is needed. Texaco personnel should personally mail or deliver such orders to the dealer's source of supply.

(9) Holders of The Texas Company's National Credit Cards are privileged to purchase Firestone or Goodrich TBA merchandise from Texaco dealers on their regular 30-day account, or, may, when desired, extend their payments for such merchandise over a period up to 6 months. If properly promoted by the dealer, this Texaco Deferred Payment Plan can be of material assistance to him in increasing his sales and profits without the necessity of tieing up the dealer's working capital for accounts receivable. The Company's selling personnel should urge dealers to take full advantage of this dealer aid for the convenience of their customers, which is available without cost. The Texaco representative should also make sure that the dealer understands the proper handling of customer charges for TBA merchandise on The Texas Company's Deferred Payment Plan.

(10) Although reference is made heretofore to dealers, it should be understood that every phase of the TBA program is adaptable to TBA programs of consignees and distributors. Equal effort should be made by the Company's personnel to sell consignees and distributors on the merits of the program as a means of developing their dealers, and the benefits to be derived by adopting it for their own use.

The principles of the Texaco Selling Method are sound and appropriate and should be applied wholeheartedly by The Texas Company's selling personnel when selling the merits of or handling any phase of the Company's TBA program. The success of the TBA program depends upon the kind of selling job that is done. The handling of the TBA program with dealers is an important part of the regularly assigned duties of the Company's selling personnel. Nevertheless, the importance of respecting the independence of the Texaco dealer and his right to exercise his free and independent judgment on all matters and all phases of his business cannot be overemphasized.

SALES DEPARTMENT
THE TEXAS COMPANY

11-55-1000

9051

Respondents' Exhibit 30A

(9055)

THE TEXAS COMPANY'S TBA PROGRAM

Statement of Policy

State Manager's
Zone Manager's
Dealer Service Representatives
Representatives (Dealer Training)
Salesmen (Resale)

Gentlemen:

For your information and guidance, We quote below Mr. C. B. Barrett's circular letter #509 of January 2, 1952 under the above subject:

"In order that all concerned may be fully informed, The Texas Company's policy with respect to the procedure to be followed in carrying out its TBA Program, which policy has been in effect for many years, is reiterated below:

1. When presenting the merits of the Company's TBA Program to Texaco Dealers, the selling personnel should explain to the Dealer that even though The Texas Company does not handle tires, batteries and auto supplies, it recognizes the advantages to be derived by the Dealer from the handling of such merchandise and the necessity for the Dealer to do so in order to be competitive, meet the requirements of his customers, and enjoy more profitable operations.

   Texaco Dealers should be encouraged to expand their business beyond the sale of petroleum products for the reasons outlined.

(JAX 476 *continued on next page*)

2. To facilitate the handling of TBA merchandise by Texaco Dealers the Company provides adequate display equpiment in its Service Stations for the sale of such items.

3. The Company recommends certain lines of merchandise which are nationally advertised and enjoy national distribution, just as is true with respect to Texaco Products.

4. Notwithstanding the fact that the Company recommends to its Dealers certain lines of TBA Merchandise, it should be recognized by all concerned that the Company has neither the right nor desire to dictate to the Dealer the type of merchandise he should handle or the source from which he should purchase such merchandise.

5. In the interest of the Dealer, any recommendation with respect to TBA Merchandise made by a Texaco representative to a Texaco Dealer should take into consideration the following factors:

Respondents' Exhibit 30B

(9056)

2-8-52

(a) The Dealer's requirements based on an analysis of the potential market;

(b) The availability of a convenient source of supply;

(c) The representation of the tire companies already established in the Area, and the type of service that will be available through the wholesale supply point;

(d) In all dealings, the fact that the Texaco Dealer is an independent businessman must be emphasized and he must be permitted to operate as such.

6. If, in exercising his own free choice of the brand of TBA merchandise he desires to handle, the Dealer expresses a preference either for the Goodrich or Firestone line, following a clear cut and straight forward presentation of the Texaco TBA Program as outlined, the Texaco representative should assist the Dealer further by arranging to introduce him to a sales representative of the supplier chosen by the Dealer. It should be recognized at all times that the negotiations between the Dealer and the TBA representative, and any purchase arrangement resulting therefrom, are matters for their mutual consideration, and the Texaco representative should not interfere with or attempt to influence such negotiations or purchase arrangements in any way.

(JAX 477 *continued on next page*)

Respondents' Exhibit 30B

7. The Company's assistance to Texaco Dealers goes beyond the mere recommendation covering the Goodrich or Firestone line. In an effort to assist Dealers to expand and develop their business, the Company urges them to keep on hand an adequate amount of merchandise of the proper type to serve fully the motorists' needs. The Firestone or Goodrich Suggested Basic Stock Assortment and Inventory Guide System is considered to be the simplest method available to assure the maintenance of a well balanced stock of fast moving TBA Merchandise.

   The Texaco selling personnel should therefore offer to make recommendations to the Dealers with respect to the proper selection of basic stocks of TBA Merchandise and to assist them in the initial installation of the Inventory Guide System. After the inventory is properly set up, Texaco personnel should take no further part in maintaining and handling of such inventory except to the extent of taking orders for merchandise required, as indicated in Item 8.

8. If the Dealer so desires, The Texas Company's selling personnel will further aid him by actually writing up the Dealer's order for Goodrich or Firestone Merchandise and will personally mail or deliver such orders to the Dealer's regular source of supply.

Respondents' Exhibit 30C

(9057)

2-8-52

9. The primary purpose of The Texas Company in sponsoring its TBA Program is to counsel with and continually assist Texaco Dealers so that they will establish and maintain superior service to their customers and thereby earn greater profits.

10. Although in the foregoing program reference is made to Texaco Dealers, it should be understood that every phase of the program outlined is readily adaptable to all TBA programs of Texaco consignees and distributors. Equal effort should be made by the Company's selling personnel to sell them on the merits of the program and the benefits to be derived by adopting it for their own use, and wholeheartedly encouraging the Dealers they serve to adopt it.

11. Definite responsibilities and activities necessary to the effective adaptation of the Company's TBA Program are a part of the regularly assigned duties of all of The Texas Company's field personnel who normally contact Dealers, or Consignees, or distributors. The Company's selling personnel are expected to become familiar with the Firestone and Goodrich Suggested Basic Stock Assortment and Inventory Guide System and the merchandising of TBA Products generally. It should be clearly understood, however, that assistance will also be rendered by Texaco personnel to all Dealers in setting up their own Basic Stock Assortment and Inven-

(JAX 478 *continued on next page*)

tory Guide System regardless of the brand of merchandise handled.

It should be further understood by all concerned that the activities of The Texas Company's personnel in carrying out its TBA Program must be considered as an addition to the efforts or activities of the TBA suppliers' selling personnel and not in lieu thereof.

12. The importance of respecting the independence of the Texaco Dealer and his right to exercise his free and independent judgment with respect to the brand of TBA Merchandise he will handle, and the quantities he will purchase, cannot be over-emphasized. Insofar as The Texas Company is concerned, no TBA supplier shall be preferred over any other as to any territory or portion thereof.

"The foregoing covers completely The Texas Company's TBA policy of long standing, and it must be adhered to without deviation."

Yours very truly,

T. E. HORTON

DBM:rhp

JAX 479

Respondents' Exhibit 31A

Resp. 31-A

979

THE TEXAS COMPANY

Atlanta, Georgia, December 31, 1953

CIRCULAR LETTER NO. 4

TBA PROGRAM
STATEMENT OF POLICY

FILE: 683.1

State Managers
Zone Managers
Dealer Service Representatives
Dealer Training Representatives
Salesmen (Resale)
ATLANTA DIVISION

FEDERAL TRADE COMMISSION
DOCKET NO. [illegible]
IN THE MATTER OF
DATE [illegible]
WITNESS: [illegible]
COURT REPORTING CO.
By

Gentlemen:

This letter replaces and cancels Circular Letter No. 3C9 of January 2, 1952, under the above subject. It does not introduce any change in our policy of long standing, but is intended to:

A. Assist our personnel in presenting the merits of the program to dealers by stating the reasons for recommending Firestone or Goodrich as a supplier.

B. Define Division Management's responsibilities in administering the TBA program.

C. Outline the duties and responsibilities of field personnel charged with carrying out the program in the field.

I. WHAT THE TEXAS COMPANY'S TBA PROGRAM IS

The aim of the Company's TBA program is to encourage dealers to expand their business beyond the sale of petroleum products; and to counsel with and continually assist Texaco dealers to establish and maintain superior service to their customers, maintain an adequate and balanced stock of fast-moving TBA items and to improve their methods of merchandising so that they will be able to take full advantage of the profit potentials available to them through good service station operations.

Accordingly, The Texas Company recommends that its dealers handle Firestone or Goodrich. However, notwithstanding the fact that the Company recommends to its dealers these certain lines of TBA merchandise, it should be clearly understood by all concerned that the Company has neither the right nor the desire to dictate to the dealer the brand or type of merchandise he should handle, or the source from which he should purchase such merchandise, or to require him to handle any TBA merchandise.

9359

JAX 480

Respondents' Exhibit 31B

FEDERAL TRADE COMMISSION
DOCKET NO. [illegible] RESPONDENT EXHIBIT NO. 31-B

II. WHY FIRESTONE AND GOODRICH LINES WERE SELECTED FOR RECOMMENDATION TO TEXACO DEALERS

The TBA merchandise lines and merchandising policies of both Firestone and Goodrich offer many advantages to the dealers, including a complete line of high quality automotive products to meet practically all the needs of the motorist. Firestone and Goodrich products have national acceptance, backed by extensive national advertising, and are distributed in all 48 states, with sales and delivery service available through 1,286 salary operated supply points and numerous dealer operated stores carrying the complete line.

Another advantage of handling these lines is that the dealer can purchase his entire TBA requirements from one source, conveniently located, thus earning extra discounts through volume purchases. Both Firestone and Goodrich have extensive sales promotion programs designed expressly to fit the needs of their service station accounts. Point-of-sale promotional material and cooperative advertising are available on a low-cost or no-cost basis. They also have a large sales force fully trained to assist the service station dealers to make the most of their TBA opportunities.

All these factors tend to increase the saleability of Firestone and Goodrich products, and thus increase the profits of the dealers handling such lines.

III. RESPONSIBILITIES OF DIVISION MANAGEMENT IN ADMINISTERING THE TBA PROGRAM

The proper administration of The Texas Company's TBA program in the field is the direct responsibility of Division Management. They should see to it that each member of the field organization who normally contacts dealers, consignees and distributors:

(1) Understands that even though The Texas Company does not handle tires, batteries and auto supplies, it recognizes the advantages to be derived by the dealer from the handling of such merchandise and the necessity for the dealer to do so in order to be competitive, meet the requirements of his customers, and enjoy more profitable operations.

(2) Becomes familiar with the lines and basic sales policies and promotional and merchandising programs of Firestone and Goodrich, including their Suggested Basic Stock Assortment and Inventory Guide Systems.

JAX 481
Respondents' Exhibit 31C
FEDERAL TRADE COMMISSION
DOCKET NO. 6717 EXHIBIT NO. 31-C

(3) Handles assigned duties outlined in Section IV.

IV. DUTIES OF TEXACO SALES PERSONNEL CHARGED WITH HANDLING TBA PROGRAM IN THE FIELD

Listed below are the responsibilities and activities which are part of the regularly assigned duties of selling personnel who normally contact dealers, consignees or distributors:

(1) Present the merits of our TBA program, recommending the products of Firestone or Goodrich if best suited to the dealer's interest.

(2) Recommendations with respect to TBA merchandise made by a Texaco representative to a Texaco dealer should in the best interest of the dealer take into consideration the following factors:

(a) The dealer's requirements based on an analysis of the potential volume available within the dealer's specific trading area;

(b) The availability of a convenient source of supply and the frequency of contact and type of service to be afforded the dealer by a wholesale supplier, as well as the supplier's ability and willingness to assist the dealer to be competitive in the market at all times;

(c) The established representation of the tire company in the area.

(3) If, after a straightforward sales presentation of the Company's TBA program, and a full explanation of the merits of such program, the dealer should in exercising his free choice of a brand of TBA merchandise express his preference for the Goodrich or Firestone line, the Texaco representative should promptly arrange to introduce to him a sales representative of the supplier chosen by the dealer. It should be recognized at all times that the negotiations between the dealer and the tire company representative, and any purchase arrangements resulting therefrom, are matters for their mutual consideration. The Texaco representative, however, should be prepared and willing to lend any advice and counsel that may be requested of him by the dealer during such negotiations.

FEDERAL TRADE COMMISSION
DOCKET NO. 6181 EXHIBIT NO. 31-D

(4) In an effort to help dealers expand and develop their business, the Company urges them to stock an adequate amount of TBA merchandise to serve fully the motorists' needs. Texaco selling personnel, with the dealers approval, will assist in the physical installation of an "Inventory Guide System", and continue to assist in the maintenance until its use is habitual with the dealer, regardless of the brand chosen by the dealer. The Firestone or Goodrich "Suggested Basic Stock Assortment and Inventory Guide System" is considered among the simplest methods available to assure the maintenance of a well-balanced stock of fast-moving TBA merchandise, and dealers should be advised of this and urged to consider its installation and use.

(5) Similar guidance and assistance should be offered in the use and maintenance of TBA display programs, and dealers should be urged to utilize all appropriate space available to them in building displays that will attract customers and increase sales.

(6) The Company's sales personnel should be sufficiently alert at each visit to a service station to call the dealer's attention to their willingness to aid him by actually writing up the dealer's order for Goodrich or Firestone merchandise. As a further assistance to the dealer, Texaco personnel should personally mail or deliver such orders to the dealer's source of supply. Orders should be written on the forms furnished by Firestone and Goodrich and carried by Texaco personnel at all times.

(7) Although reference is made heretofore to dealers, it should be understood that every phase of the program is adaptable to TBA programs of consignees and distributors. Equal effort should be made by the Company's personnel to sell consignees and distributors on the merits of the program and the benefits to be derived by adopting it for their own use and wholeheartedly encouraging the dealers they serve to use it.

The importance of respecting the independence of the Texaco dealer and his right to exercise his free and independent judgment with respect to the brand of TBA merchandise he will handle, and the quantities he will purchase, cannot be overemphasized. Insofar as The Texas Company is concerned, no TBA supplier shall be preferred over any other as to any territory or portion thereof.

JAX 483

Respondents' Exhibit 31E

FEDERAL TRADE COMMISSION
DOCKET NO. 6658 RESPONDENT'S EXHIBIT NO. 31-E

Circular Letter No. 4 -5- December 31, 1953

The success of the TBA Program depends upon the kind of a selling job that is done. The principles of the Texaco Selling Method are sound and appropriate, and should be applied as wholeheartedly in handling this program as in all other sales efforts.

The success you will attain depends entirely upon the time and effort you put into the program and the cooperation you give and receive from the rubber company representatives. Your job will be much easier and your results much more satisfactory if you work closely with the tire company representatives.

Yours very truly,

O. SANDERS

JOS-EER

JOS-RWG-DD-JHB-WHOJr-JMS-LMD

ACCT. FILE

JAX 484

Respondents' Exhibit 32A

Ref. 32A

THE TEXAS COMPANY

Atlanta, Georgia, December 13, 1955

TRA PROGRAM
STATEMENT OF POLICY

FILE: 683.1

CIRCULAR LETTER NO. 4-A

FEDERAL TRADE COMMISSION
DOCKET NO. 6000 EXHIBIT NO. 32-A
IN THE MATTER OF
DATE 2/9/57 WITNESS
ACE REPORTING CO.
By

Merchandising Salesmen
General Salesmen
ATLANTA DIVISION

Gentlemen:

This supplements our Circular Letter No. 4 written December 31, 1953.

In order to remind our selling organization, particularly new employes who have joined our ranks in recent years, of the merits of the Texas Company's TRA Program and to outline the duties and responsibilities of our field personnel in this connection, it is felt desirable to review the Company's policy with respect thereto. The program and the duties of our field organization in connection therewith are fully covered by the attached statement.

Your copy of this policy statement should be placed in your portfolio "Business Builders for Texaco Dealers" so that you will at all times have with you for ready reference a full explanation of the Company's TRA policy and the detailed instructions as to how you should function under the program.

We urge that you study this program carefully and familiarize yourself with it so that you will be in a position to discuss it freely and intelligently with your dealers and prospective dealers. We also call your attention to the importance our Company places on this program and urge that you give it the effort and attention it deserves.

Yours very truly,

J. O. SANDERS

LEGjr-RR
Attach.
JOS-RJO-DD-JHB-ACK-AMO-JIH-JAD
RF-ISR-LES-JPR-LRA-JAO
Zone Managers
Dealer Service Representatives
Dealer Training Representatives

ACCTG. FILE DRIVE IN '55

JAX 485

Respondents' Exhibit 32B

FEDERAL TRADE COMMISSION

THE TEXAS COMPANY'S TBA PROGRAM

In order to remind our selling organizations of the merits of The Texas Company's long standing TBA Program and to outline the duties and responsibilities of field personnel charged with carrying out this program, it is felt desirable to review fully herein the Company's policy with regard thereto. It is intended that these sheets be added to each salesman's portfolio "Outside Services For Texaco Dealers" and be made a part thereof, so that every salesman will at all times have with him the full explanation of the Company's TBA Policy and the detailed instructions as to how the selling organization should function under this program.

I. WHY THE TEXAS COMPANY HAS A TBA PROGRAM

It is recognized that most service station dealers cannot successfully train and retain regular customers and reap full profits from their operations if only petroleum products are handled. Statistics prove that the average automobile owner purchases by far the greater portion of his supplies and service during the automotive necessities short of major repairs. These necessities, commonly known in the industry as TBA merchandise, include tires, batteries, and other sundry items, all of which must be carried in stock by service station dealers, plus many of the items of automotive equipment normally handled by most successful service station dealers, plus many of the items of accessory items.

The purpose of the Company's TBA program, therefore, is to encourage dealers to expand their business beyond the sale of petroleum products. To accomplish this, Texaco selling personnel should counsel with and continually assist Texaco dealers to establish and maintain necessary service to their customers, maintain an adequate and balanced stock of fast-moving TBA items and to improve their methods of merchandising so that they will be able to take full advantage of the profit potentials available to them through good service station operations.

II. WHY FIRESTONE AND GOODRICH LINES WERE SELECTED FOR RECOMMENDATION TO TEXACO DEALERS

The Texas Company believes that the TBA merchandise lines and merchandising policies of both Firestone and Goodrich offer many advantages to Texaco dealers, including a complete line of high quality automotive products to meet practically all the needs of the motorist. Firestone and Goodrich products have national acceptance, backed by extensive national advertising, and are distributed in all 48 states, with sales and delivery service available through more than 1,000 salary-operated supply points and numerous dealer operated stores which carry the complete line.

Another advantage of handling Firestone or Goodrich products is that the dealer can purchase his entire TBA requirements from one source, conveniently located, thus earning extra discounts through volume purchases. Both Firestone and Goodrich have extensive sales promotional programs designed expressly to fit the needs of their service station accounts. Point-of-Sale promotional material and cooperative advertising are available on a low-cost or no-cost basis. They also have large sales forces fully trained to assist the service station dealers to make the most of their TBA opportunities.

All these factors tend to increase the saleability of Firestone and Goodrich products, and thus increase the profits of dealers handling such lines. Accordingly, The Texas Company recommends that its dealers handle Firestone or Goodrich merchandise.

Notwithstanding the fact that the Company recommends to its dealers certain lines of TBA merchandise, it should be clearly understood by all concerned that the Company has neither the right nor the desire to dictate to the dealer the brand or type of merchandise he should handle, or the source from which he should purchase such merchandise, or to require him to handle any TBA merchandise.

III. DUTIES OF TEXACO SALES PERSONNEL

(1) Each member of the field organization who normally contacts dealers, consignees, and distributors should clearly understand that even though The Texas Company does not handle tires, batteries, and auto supplies, it recognizes the advantages to be derived by the dealer from the handling of such merchandise and the necessity for the dealer to do so in order to be competitive, meet the requirements of his customers and enjoy more profitable operations.

(2) In order to present the merits of The Texaco TBA Program all selling personnel should be thoroughly familiar with the lines, the basic sales policies, the promotional programs and the merchandising programs of both Firestone and Goodrich, including establishment and maintenance of their "Suggested Basic Stock Assortment, and Inventory Guide Systems."

(3) Before making definite recommendations with respect to TBA merchandise to a Texaco dealer, the Texaco representative should assist the dealer in analyzing the potential volume of TBA business that the dealer can reasonably expect within his specific trading area, and help him to arrive at a basic minimum inventory that should permit adequate service of his particular market.

One of the important responsibilities of Texaco sales personnel is that they should continually be in position to advise dealers of forthcoming Firestone or Goodrich promotional programs so that the dealer can take advantage of every opportunity to increase his profits and be more competitive.

FEDERAL TRADE COMMISSION
DOCKET 6[illegible]
RESPONDENT EXHIBIT NO. [illegible]

(4) Any recommendation with respect to brand of TBA merchandise made by the Texaco representative should be predicated on the availability of a convenient source of supply, the frequency of contact and the type of service to be afforded the dealer by the wholesale supplier. A further factor should be the supplier's ability and willingness to assist the dealer to be competitive in the sale of TBA merchandise. The established representation of the tire company in the area should also be considered.

(5) If, after a thorough and [illegible] explanation of the Company's TBA program, and a full explanation of the merits of each program, the dealer should in preference buy TBA merchandise supplied by the Goodrich or Firestone distributor, he should promptly arrange to [illegible] It should be recognized at all times that the [illegible] sentative, and any purchase arrangements [illegible] tion. The Texaco representative, however, should be prepared and willing to [illegible] that may be requested of him by the dealer during such negotiations.

(6) The Firestone or Goodrich "Recommended Basic Stock Assortment and Inventory Guide Control" is considered among the simplest methods available to assure the maintenance of a well-balanced stock of fast-moving TBA merchandise. The Texaco representative should explain to the dealer the [illegible] functions of the "Inventory Guide" and urge the dealer to consider its [illegible] it is consistent with good business management to maintain proper [illegible] explained to the dealer that this type of Guide can be of much value to him [illegible] it easier for him to buy only the merchandise needed. Texaco [illegible] the physical installation of the Inventory Guide System, but should [illegible] maintenance of the Guide until its use by the dealer becomes established [illegible]

(7) It has been said that merchandise well displayed is half sold. The [illegible] of TBA products at service stations, like petroleum product displays, can be of material value to dealers in increasing their sales and profits. It is also important that the price be prominently shown on all TBA merchandise displayed and that the merchandise be kept in a clean and orderly arrangement. To help attract more customers and make more sales, both Firestone and Goodrich make available [illegible] penalve pricing kit as well as display packages containing up-to-date and [illegible]

Texaco representatives should urge dealers to take full advantage of the tire company's offer of assistance in improving their station's "sparkle" with displays that present an attractive appearance. The Company's selling personnel should assist dealers in utilizing all appropriate space available in them for building displays that will attract customers and increase sales.

(8) The regular order forms furnished by Firestone and Goodrich are to be carried by Texaco selling personnel at all times. At each visit to a service station, the Company's sales personnel should call the dealer's attention to the fact that as a further assistance to him in keeping his desired inventory balance, he will write up the dealer's order for the Goodrich or Firestone merchandise that is needed. Texaco personnel should personally mail or deliver such orders to the dealer's source of supply.

(9) Holders of The Texas Company's National Credit Cards are privileged to purchase Firestone or Goodrich TBA merchandise from Texaco dealers on their regular 30-day account, or may, when desired, extend their payments for such merchandise over a period up to 6 months. If properly presented by the dealer, this Texaco Deferred Payment Plan can be of material assistance to him in increasing his sales and profits without the necessity of tieing up the dealer's working capital for accounts receivable. The Company's selling personnel should urge dealers to take full advantage of this dealer aid for the convenience of their customers, which is available without cost. The Texaco representative should also make sure that the dealer understands the proper handling of customer charges for TBA merchandise on The Texas Company's Deferred Payment Plan.

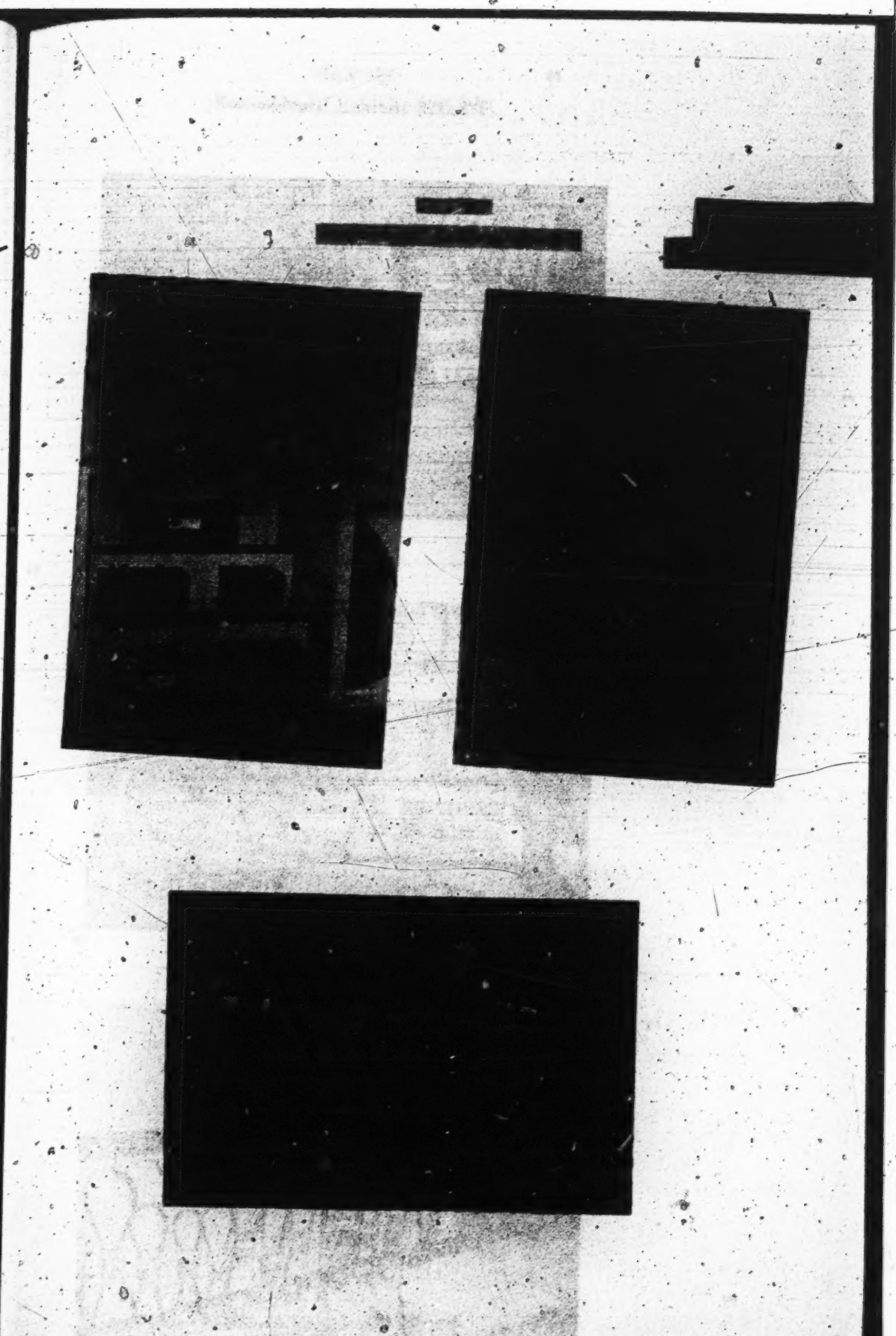
(10) Although reference is made hereinbefore to dealers, it should be understood that every phase of the TBA program is adaptable to TBA programs of consignees and distributors. Equal effort should be made by the Company's personnel to sell consignees and distributors on the merits of the program as a means of developing their dealers, and the benefits to be derived by adopting it for their own use.

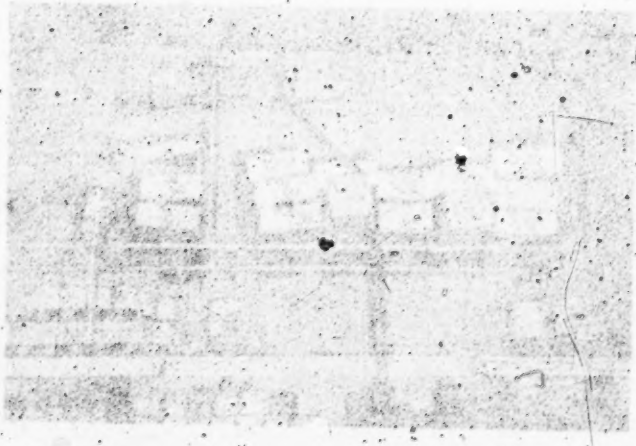
The principles of the Texaco Selling Method are sound and appropriate and should be applied wholeheartedly by The Texas Company's selling personnel when selling the merits of or handling any phase of the Company's TBA program. The success of the TBA program depends upon the kind of selling job that is done. The handling of the TBA program with dealers is an important part of the regularly assigned duties of the Company's selling personnel. Nevertheless, the importance of respecting the independence of the Texaco dealer and his right to exercise his free and independent judgment on all matters and all phases of his business cannot be overemphasized.

9965

SALES DEPARTMENT
THE TEXAS COMPANY

11-55-1459





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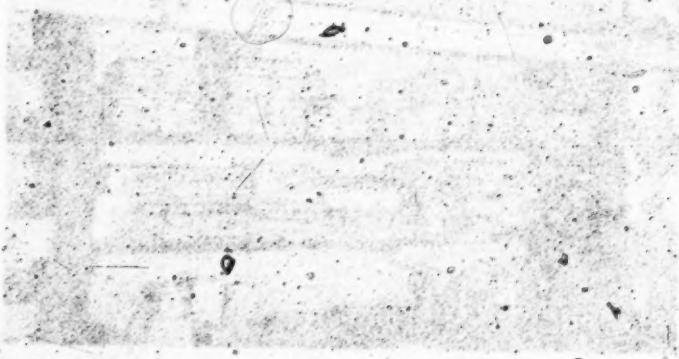

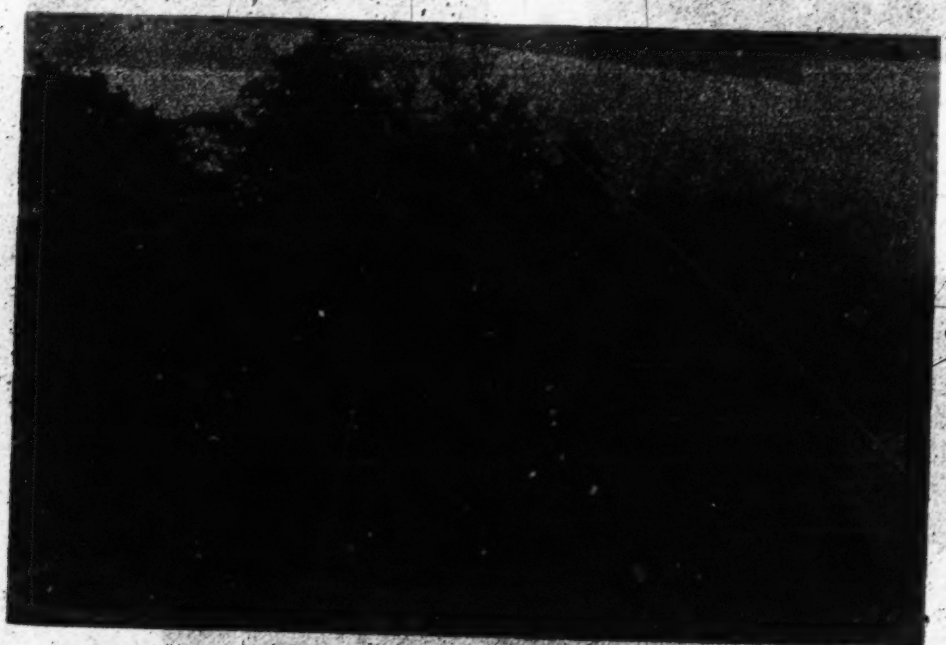

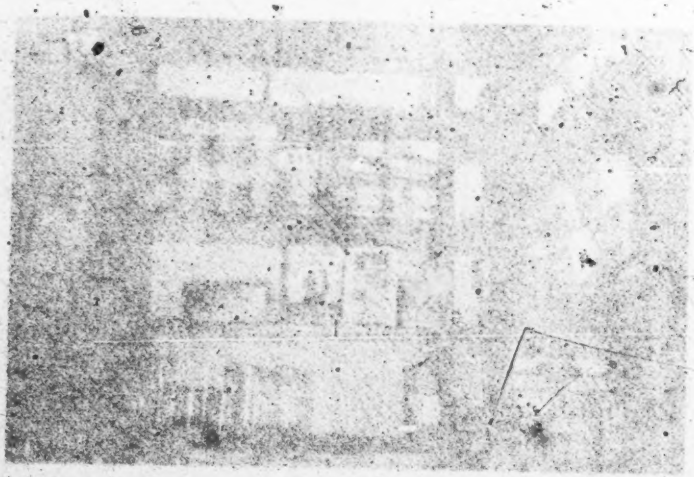

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JAX 492

Respondents' Exhibit 39

THE TEXAS COMPANY

TEXACO PETROLEUM PRODUCTS

FEDERAL TRADE COMMISSION
DOCKET NO. 6[illegible] EXHIBIT NO. 39
IN THE MATTER OF B. F. Goodrich
DATE 1/29/57 WITNESS [illegible]
ACE REPORTING CO., Official Reporters
BY

DENVER 1, COLORADO
April 14, 1939

Mac's Radiator Shop
Orson T. McMullin
Broadway and San Luis
Alamosa, Colorado

Gentlemen:

Attached hereto is our Check No. 6[illegible] which represents the extra discount you have earned during the past year on your Sales Agreement covering the purchase of Texaco Motor Lubricants. This sum represents to you an extra profit and we are pleased to see that you have availed yourself of this opportunity to increase your earnings. Extra profits are important to your business these days and we would like to be of as much help as possible to you in securing them.

In addition to increasing your earnings by increasing your lubricating oil sales, we suggest that there are also great opportunities for increased earnings in the sale of tires, tubes, and automobile accessories. If you are not already taking advantage of these opportunities, perhaps you should give consideration to doing so. The motorist today has learned to go to his service station for all his motoring needs. We feel that this presents to you a splendid opportunity for increased profits if you are adequately prepared to fill his needs.

The Texaco Representative in your area will be glad to assist you in the marketing of your TBA merchandise. If you are seeking a new line of TBA products, we will be glad to discuss it with you and give you the benefit of our experience and our help. You are free, as you know, to select any brand of TBA merchandise which you may elect and our only interest is to help you market that merchandise at a profit to you so that your business will be more successful in every way. You are handling high-quality petroleum products and the earnings that can be developed through a line of quality TBA merchandise should be very important to you in the operation of your station.

Please do not hesitate to call on us if there is any way in which we can be of help.

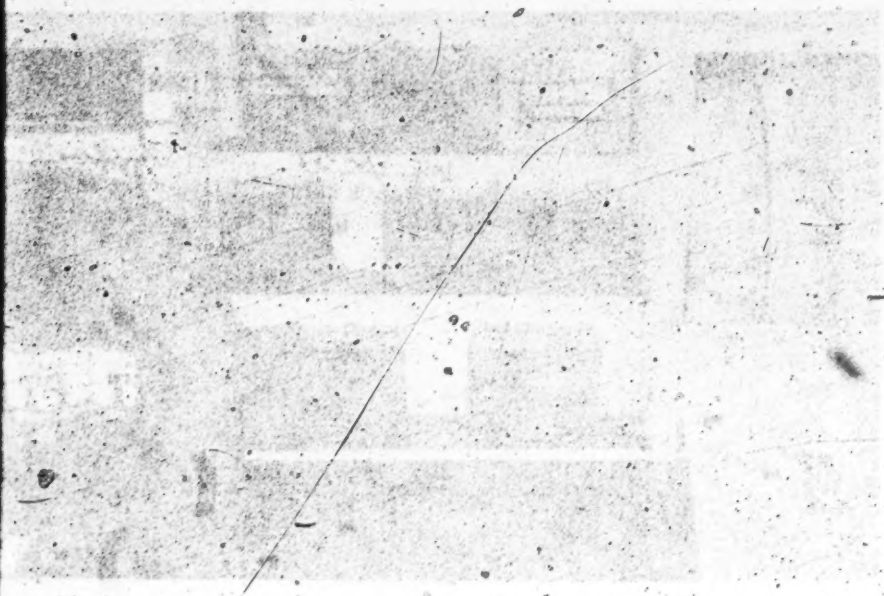
Yours very truly,

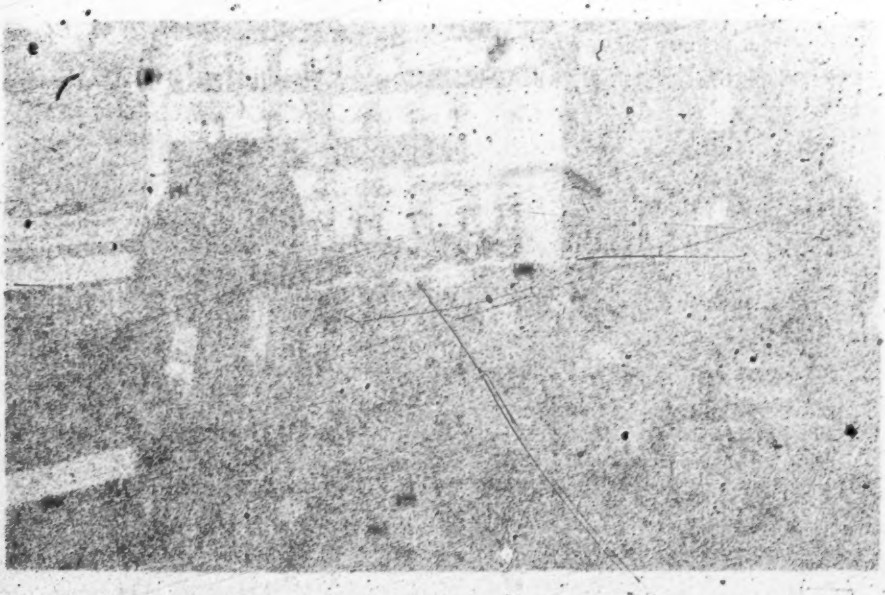
W. A. Stimple

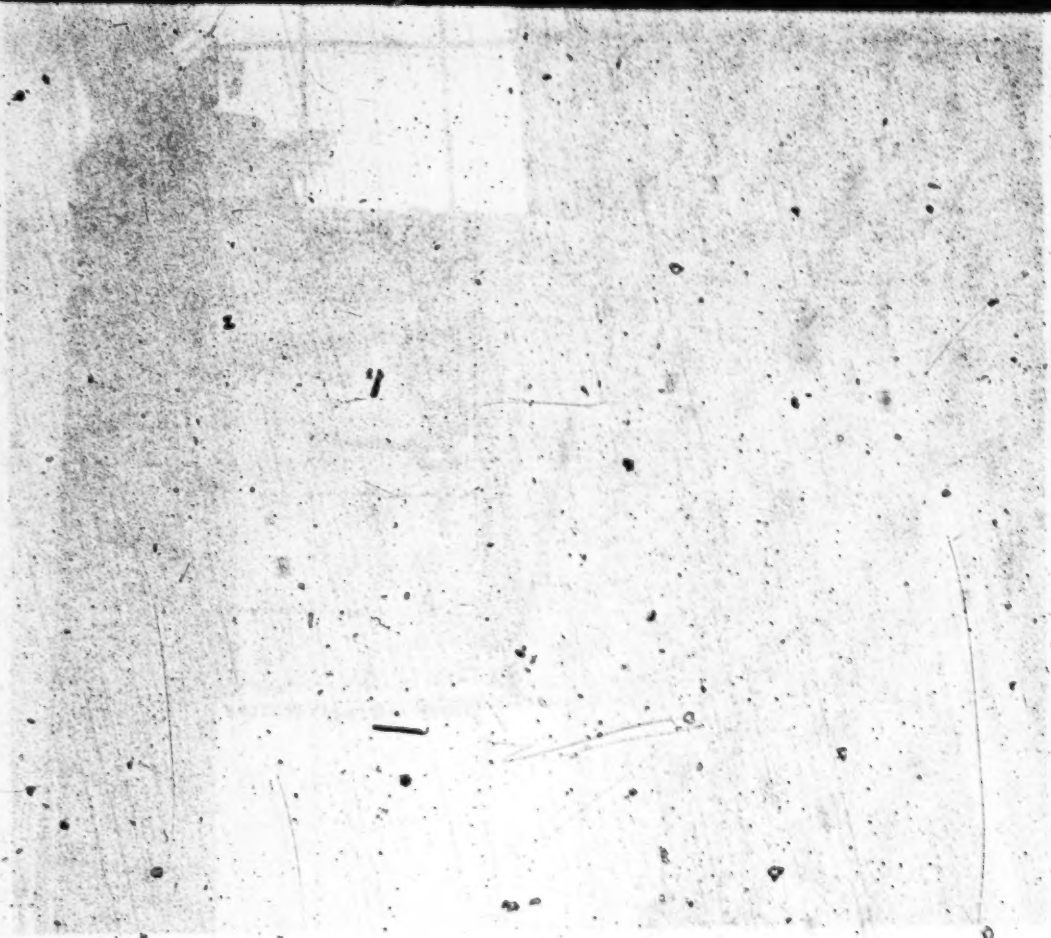
W. A. STIMPLE
DIVISION MANAGER

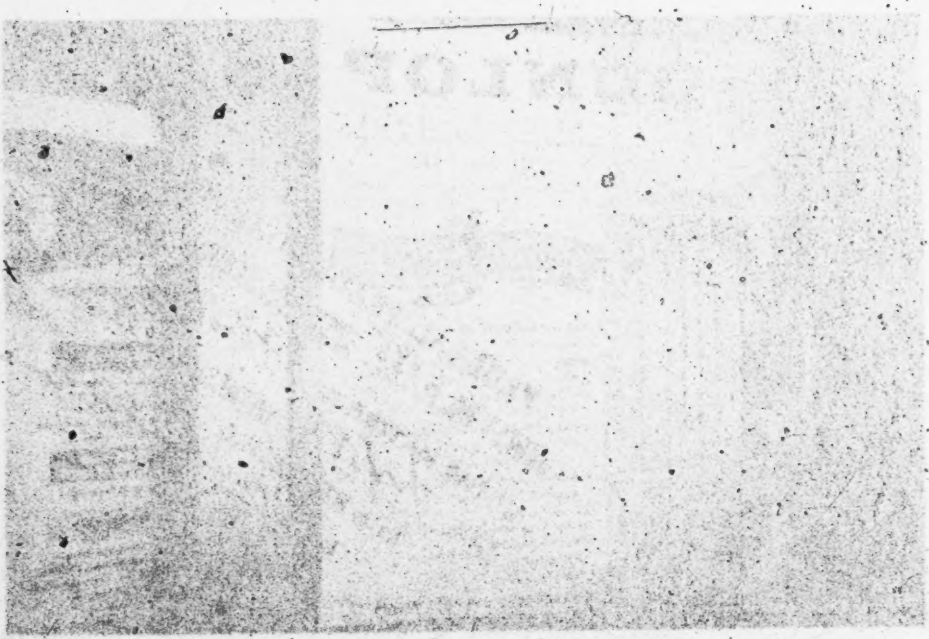
9068

235









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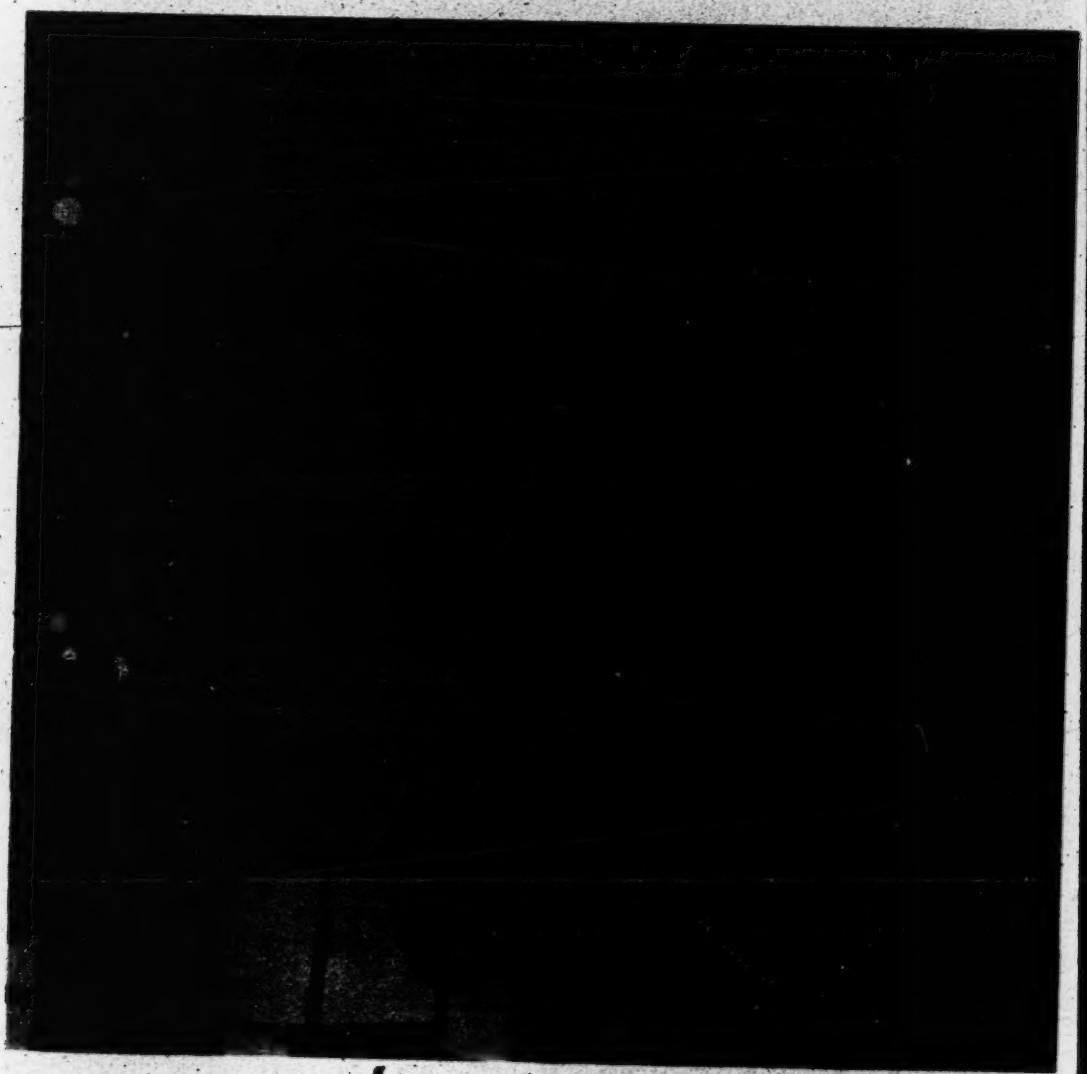
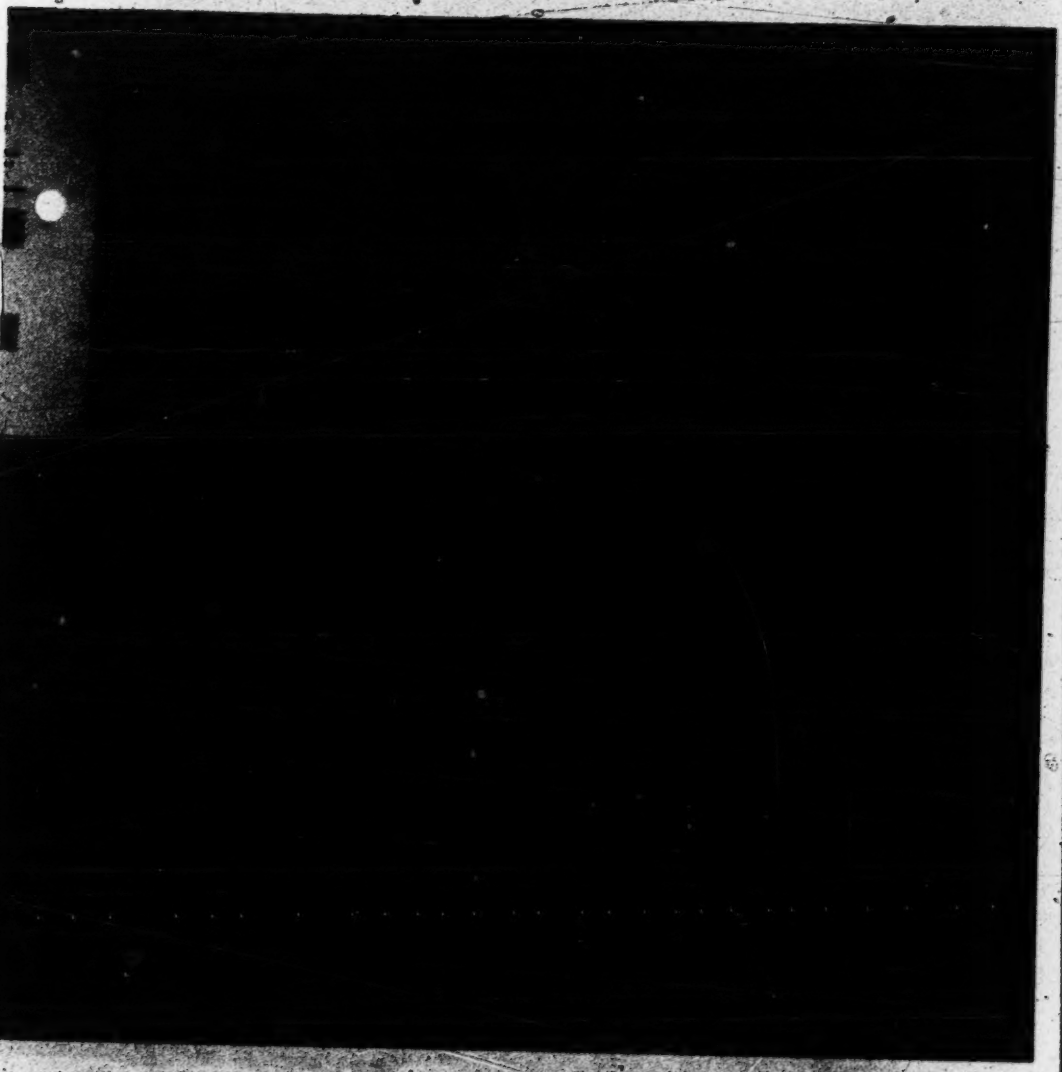
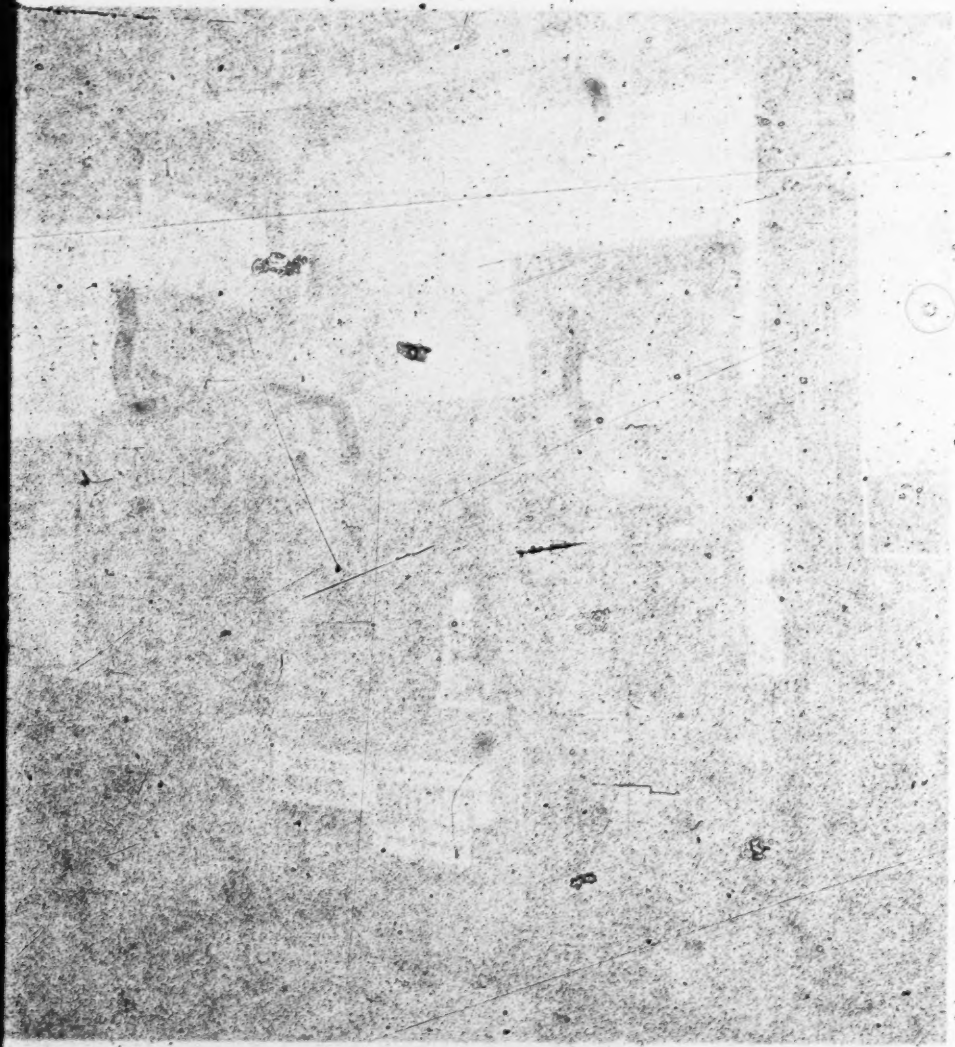


JAX 430

Respondents' Exhibit 430





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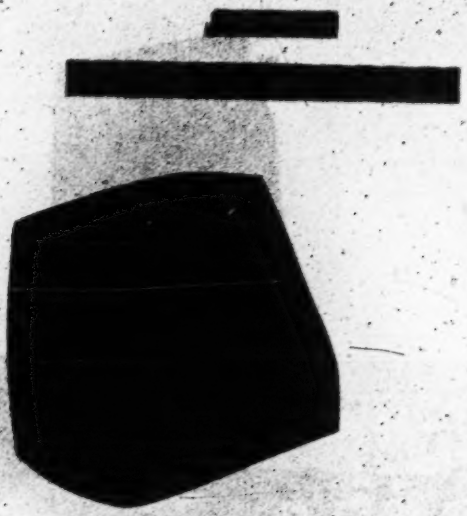
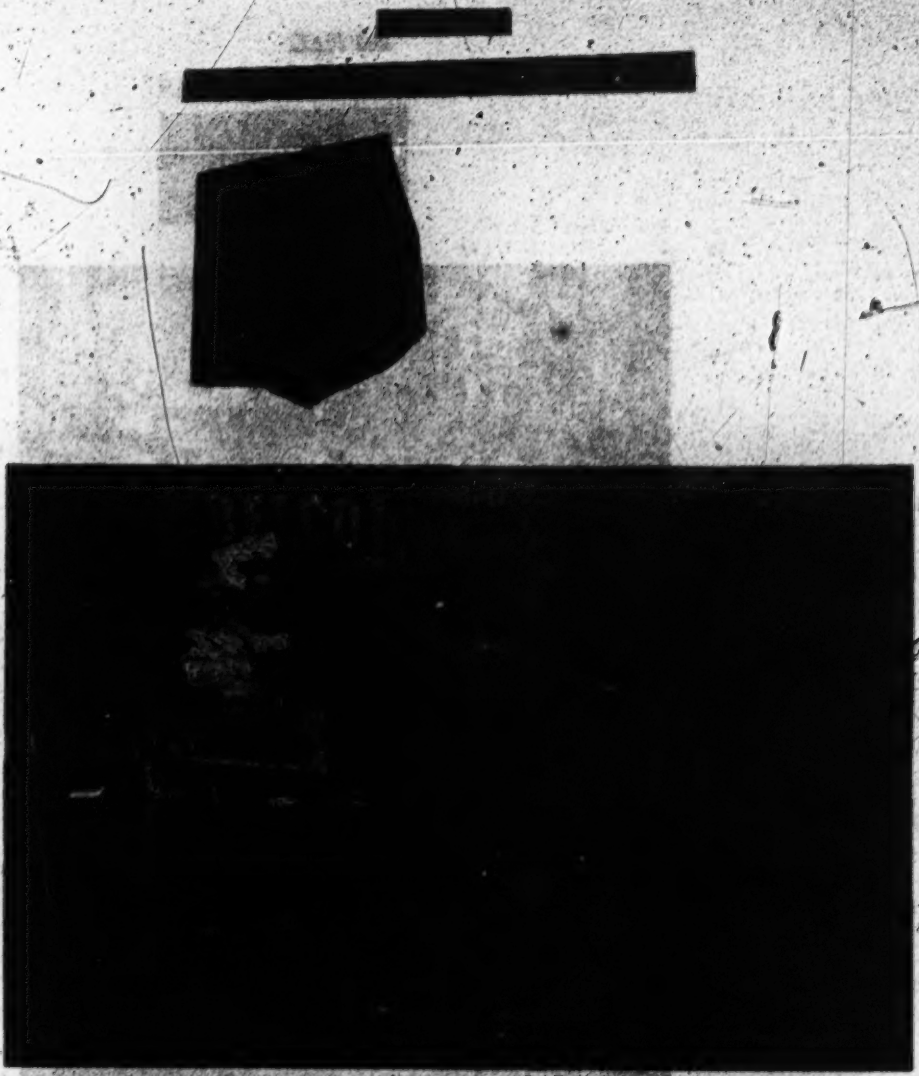
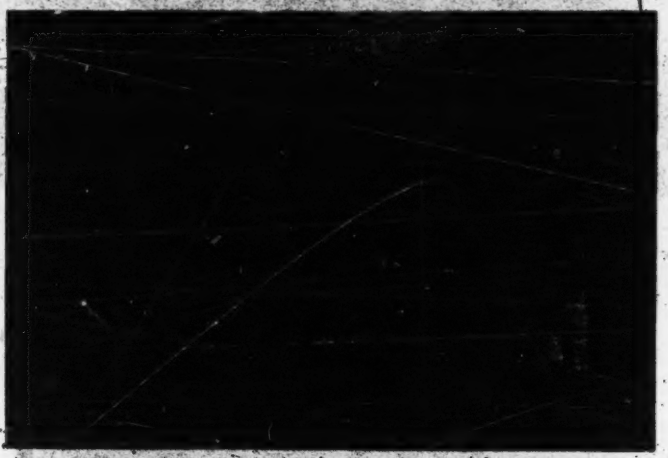
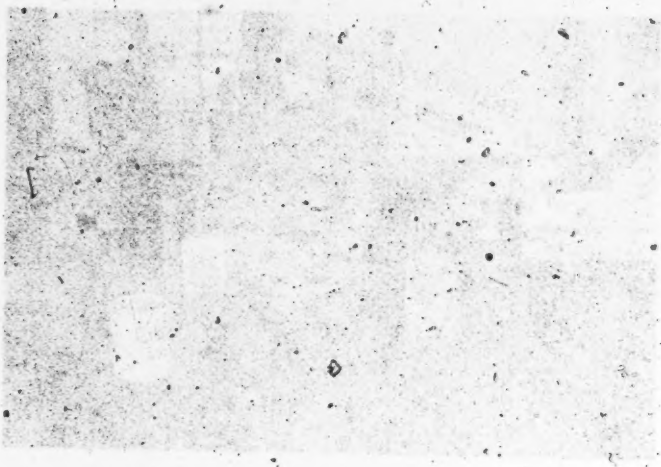
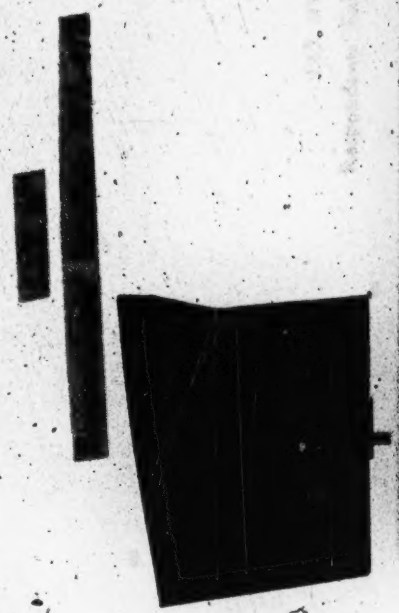
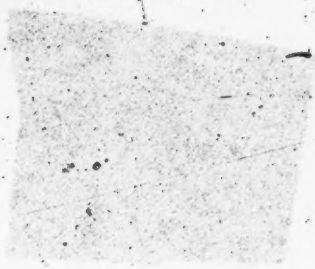


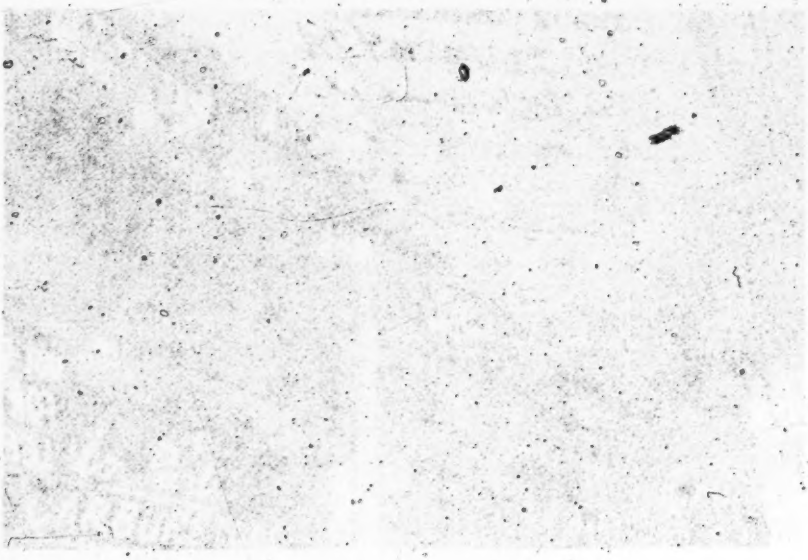


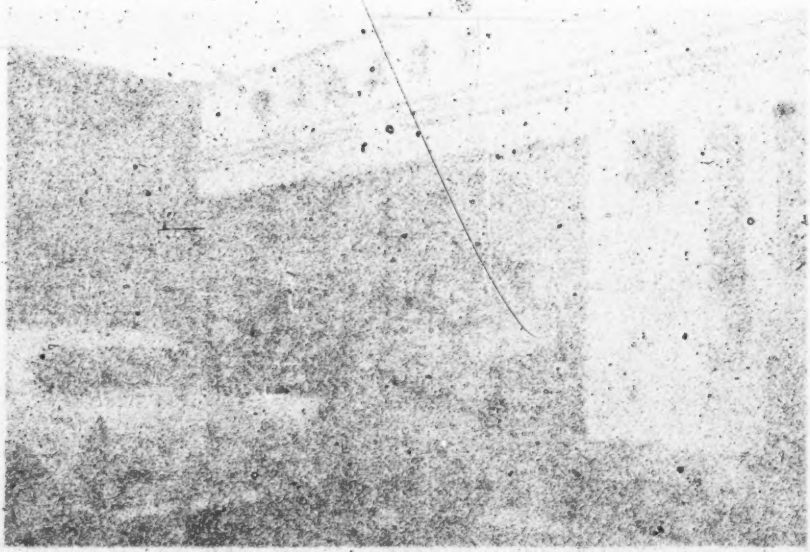






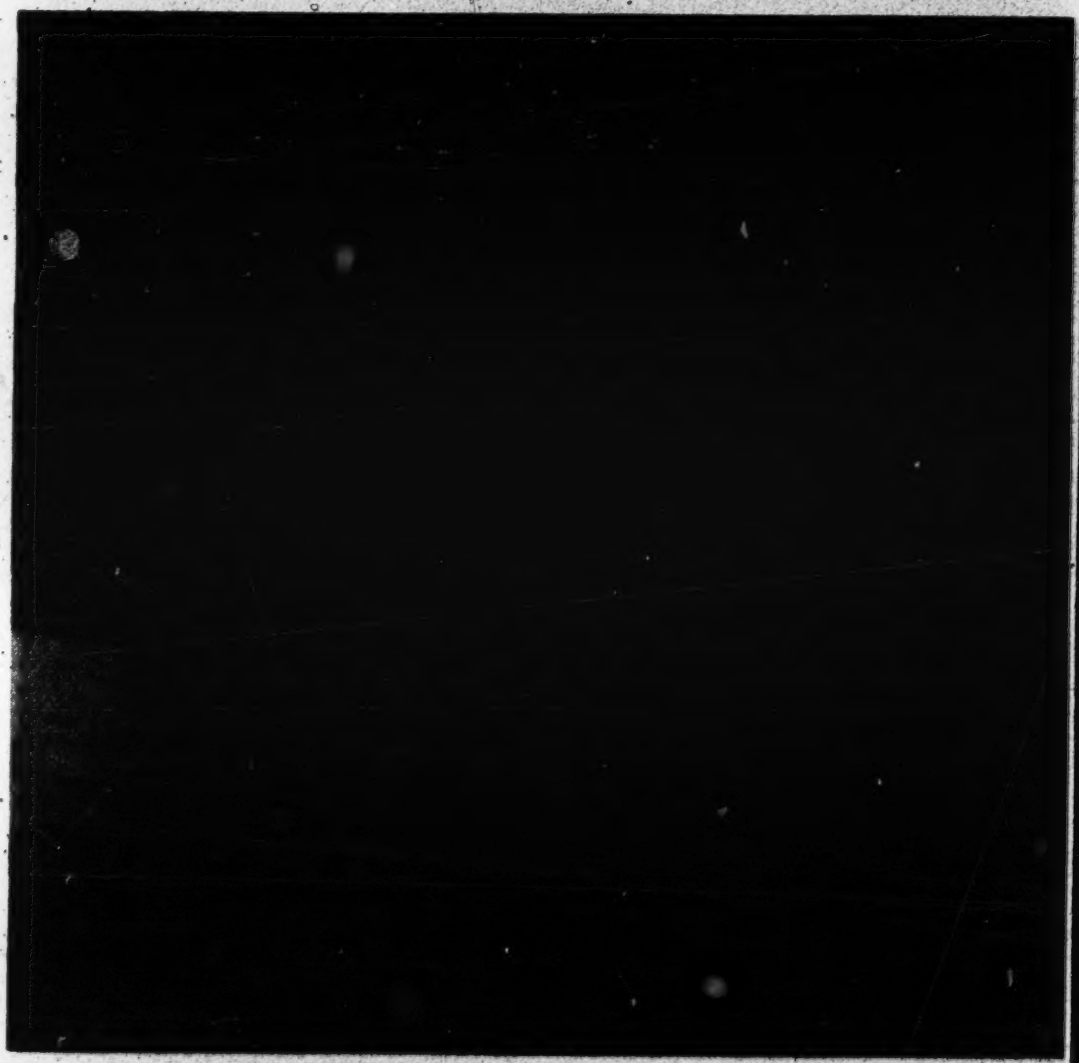






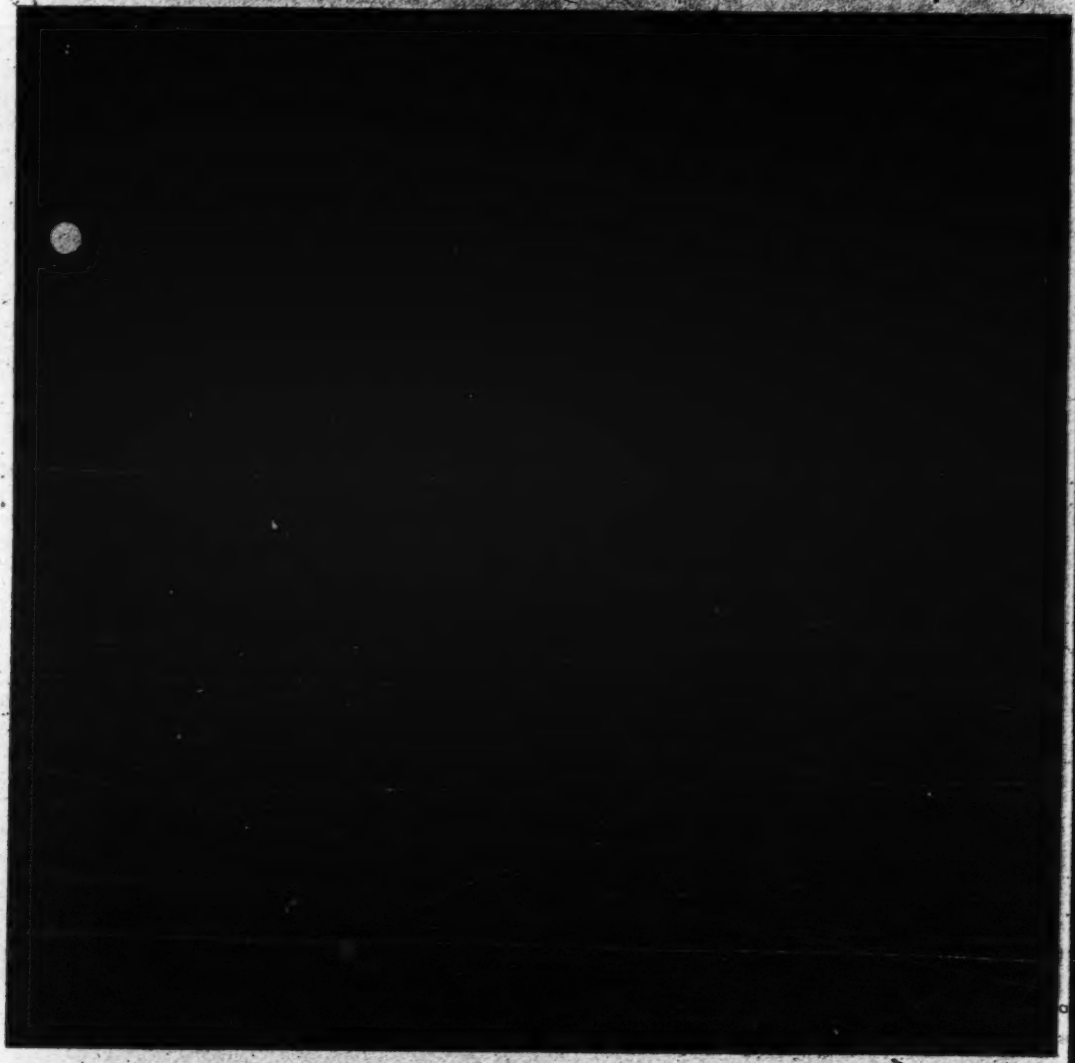
JAX 504

Respondents' Exhibit 48A



JAX 105

Respondents' Exhibit 405



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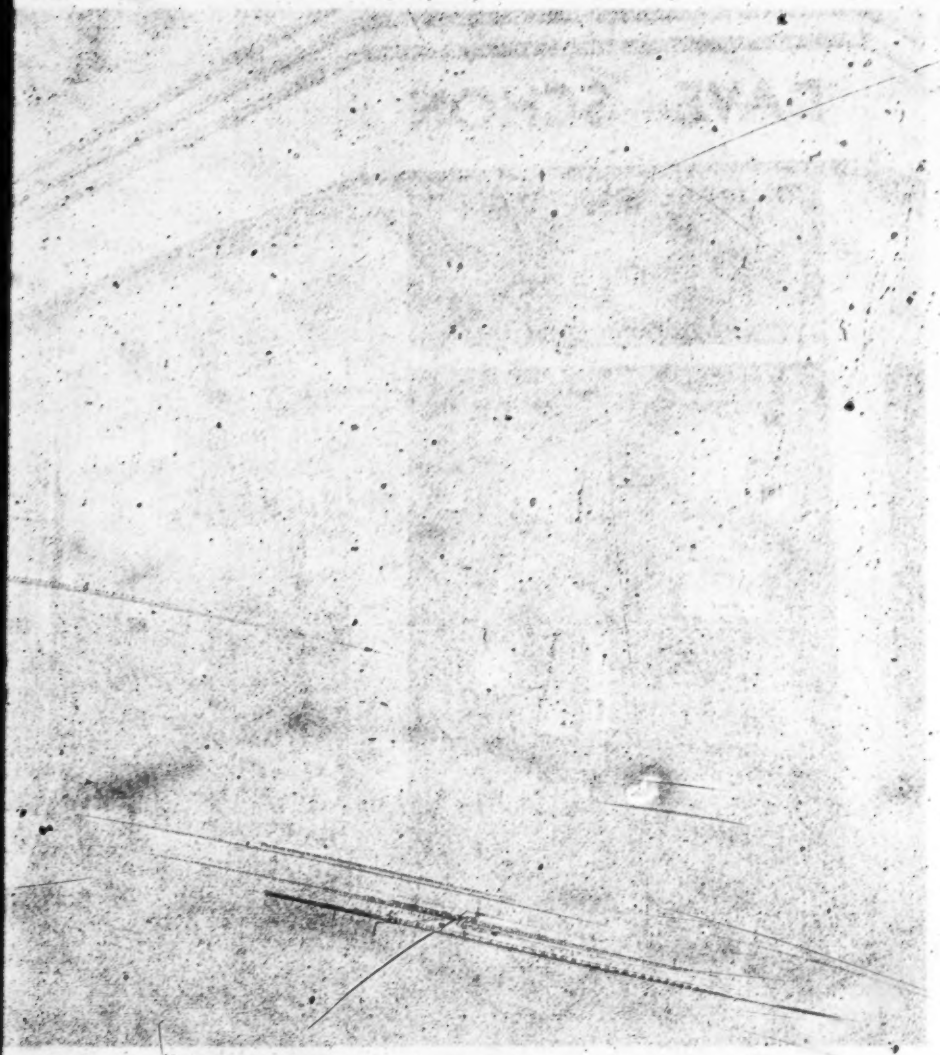
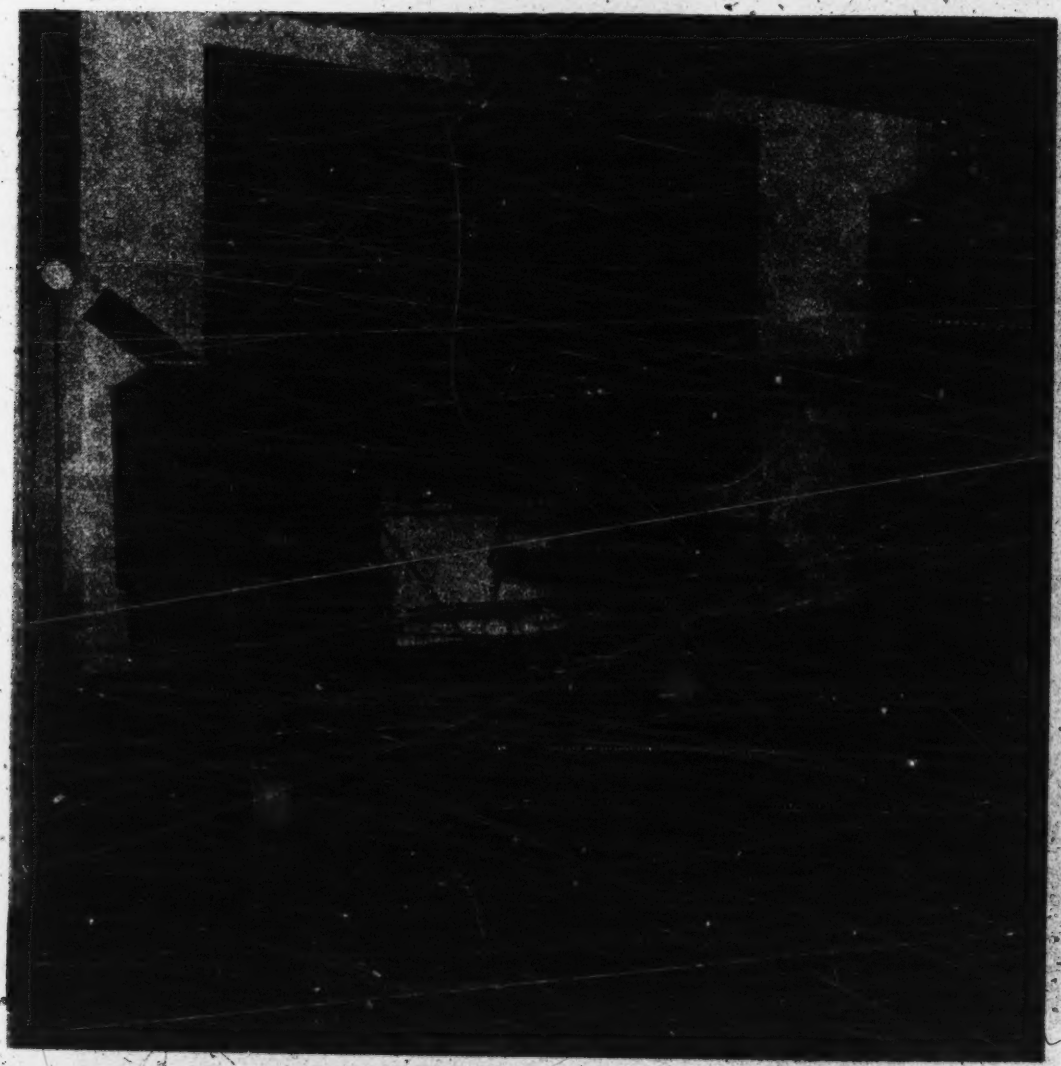


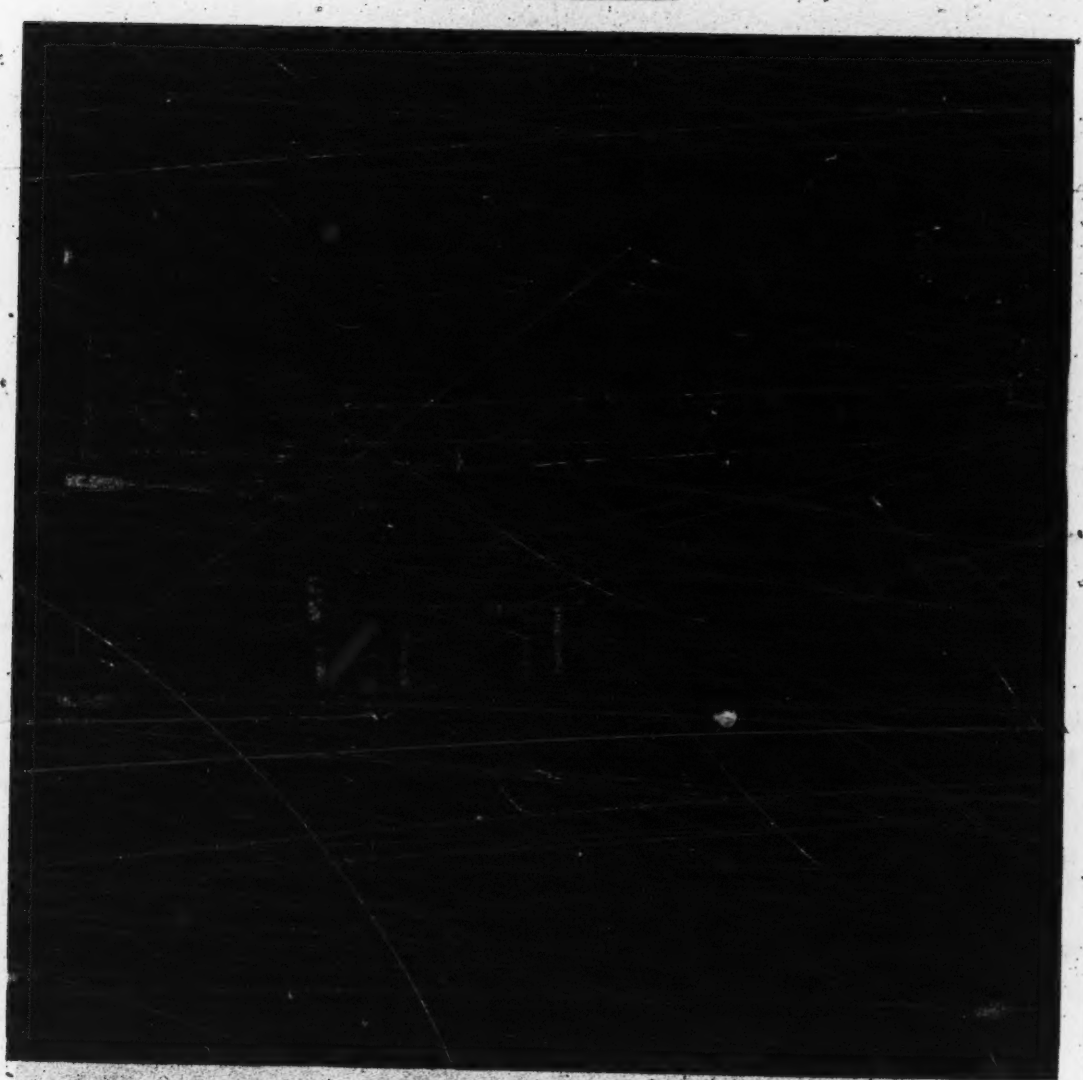
JAX 507

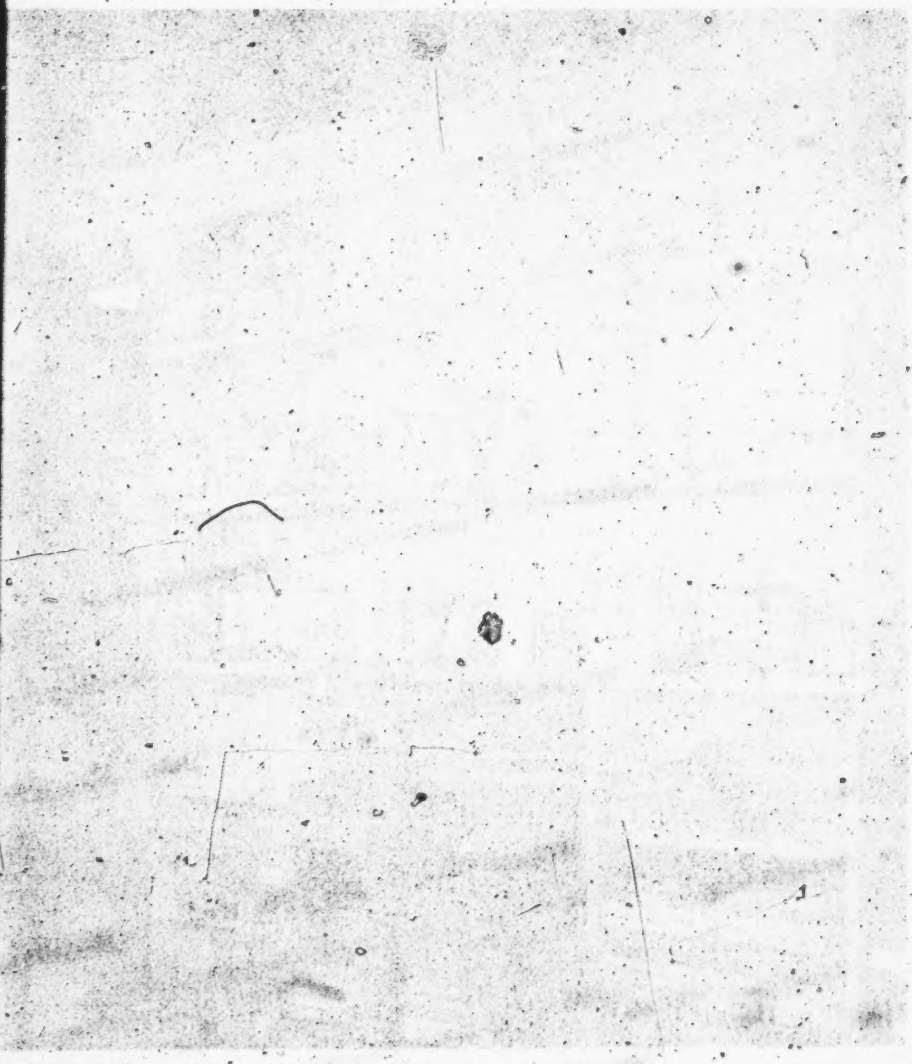
Respondents' Exhibit 48A

JAX 009

Respondents' Exhibit 4005







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JAX 512

Respondents' Exhibit 53

JAX 513

Respondents' Exhibit 54

Res 54

THE TEXAS COMPANY

TEXACO PETROLEUM PRODUCTS

SALES DEPARTMENT
INDIANAPOLIS DIVISION
ROYAL SHERATON BUILDING

5061 EAST MICHIGAN STREET
INDIANAPOLIS 1, IND.

FEDERAL TRADE COMMISSION
COURT NO. [illegible] EXHIBIT NO. 54
IN THE MATTER OF P. F. Kincaid
DATE 7/29/57 WITNESS
ACE REPORTING CO. (Official Reporters)
By

February 11, 1954

Mr. John E. Roessner
14th & Meridian
Indianapolis, Ind.

Dear Sir:

Attached hereto is our check which represents the extra discount you have earned during the past year on your Sales Agreement covering the purchase of Texaco Motor Lubricants. This sum represents to you an extra profit and we are pleased to see that you have availed yourself of this opportunity to increase your earnings. Extra profits are important to your business these days and we would like to be of as much help as possible to you in securing them.

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Please do not hesitate to call on us if there is any way in which we can be of help.

Yours very truly,

THE TEXAS COMPANY

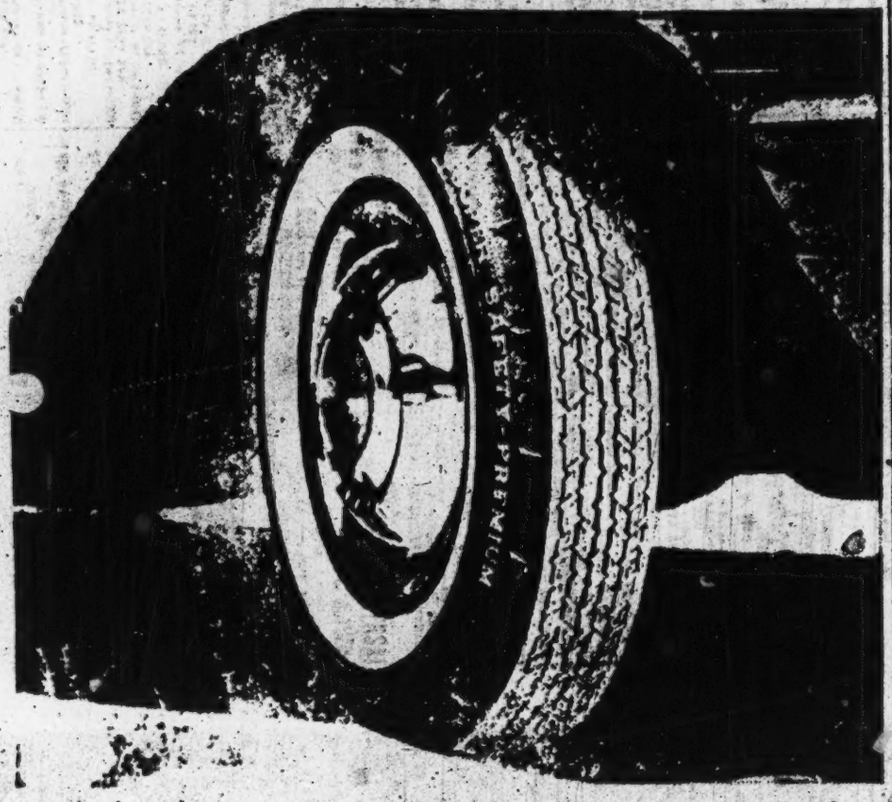
F. J. Novak

F. J. Novak
Division Manager

FJN:TV
enc.

FREEDOM
from tire trouble

...even at today's turnpike speeds



New Cooper
Safety-Premium nylon
with 3-Dimensional construction

Freedom from tire trouble is now yours to enjoy on any road and at any speed. And you get this comforting assurance for the normal trade-in life of your car when you ride on new Cooper Safety-Premium nylons. These are the tires that bring you the extra safety and greater life span of new Cooper "3-D" tubeless construction.

Never again the nightmare of a sudden blowout or puncture. Never again the worry about risky roadside tire changing, or the need for a "spare" to get you there. No worry either about the cost of replacing tires during the normal trade-in life of your car. With Cooper "3-D" Safety-Premium nylons you measure tread life in terms of years, instead of mileage. These tires are so good that they are even guaranteed against accidental road hazard damage.

A wonderful new experience of happier and safer driving is as near as your Cooper dealer. See him today for special introductory prices on new Safety-Premium nylons.

Buy Now For Dollars Less

TROUBLE-FREE GUARANTEE*

1. FOR 3 FULL YEARS against accidental damage—including bruises, breaks, blowouts, cuts, snags . . . and any road hazard failure.
2. FOR LIFE against defects in workmanship and materials—no limit on time or mileage.

*Guarantee subject to all Local and State Regulations.

3-D is the wonderful new development that adds an extra dimension of lasting dependability to nylon and rubber.

Cooper "Hi-T" Deluxe special

only **$12.45**

plus tax and recappable casing
6.70-15 black wall tube type
White walls also specially priced

Cooper TIRES

FEDERAL TRADE COMMISSION
DOCKETED
PAGE 28 — THE INDIANAPOLIS STAR

New Cooper
Safety-Premium nylon
with 3-Dimensional construction

Freedom from tire trouble is now yours to enjoy on any road and at any speed. And you get this comforting assurance for the normal trade-in life of your car when you ride on new Cooper Safety-Premium nylons. These are the tires that bring you the extra safety and greater life span of new Cooper "3-D" tubeless construction.

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Buy Now For Dollars Less

TROUBLE-FREE GUARANTEE*

1. FOR 3 FULL YEARS against accidental damage—including bruises, bursts, blowouts, cuts, snags . . . most any road hazard failure.
2. FOR LIFE against defects in workmanship and materials—no limit on time or mileage.

*Guarantee subject to all Local and State Regulations.

3-D is the wonderful new development that adds an extra dimension of lasting dependability to nylon and rubber.

Cooper "Hi-T" Deluxe special

only **$12.45**

plus tax and recappable casing
6.70-15 black wall tube type
White walls also specially priced

Cooper TIRES

WHERE TO SAVE ON TIRE PRICES

INDIANAPOLIS DEALERS

B and M Motor Service
4015 Madison Ave.

Bottorff Marathon Service
801 S. West St.

Camp, Inc.
722 E. 146th St.

Dutton and Whitaker Gulf Service
4226 E. 10th St.

Englands Texaco Service
2326 Roosevelt Ave.

Fred's Marathon
3000 N. Shadeland Ave.

Hoosier Auto Supply
2525 N. Sherman Drive

Hunsley Texaco Service
1701 E. New York St.

Keller's Texaco Service
2902 E. Washington St.
1102 N. Arlington

Moe's Brake and Alignment
210 W. Vermont St.

Monk Bros. Shell Service
1901 Prospect

Bill Miller Auto Parts
2232 Prospect

Model Tire Co.
130 E. Delaware St.

Morris Super Save Station
2701 Shelby St.

Rasmussen and Sons Texaco
10th and Shadeland Ave.

Waynedale Auto Service
815 E. West St.

Wedding Auto Supply
118-120 Main St.,
South Grove, Ind.

Speedway Marathon Service
1302 N. Main St.,
Speedway, Ind.

OUT-OF-CITY DEALERS

Al Stew Tire Sales
Anderson, Ind.

Weaver Garage,
Albany, Ind.

Jones Oil Co.
Blooming Grove, Ind.

High Speed Recap Service
Bloomington, Ind.

Gordon Recapping and Supply Co.
Shelbyville, Ind.

Hunter Tire Service
Brazil, Ind.

Longnecker Standard
Bryant, Ind.

Bibley Tire Sales
Centerville, Ind.

Frederick M. Setter, Inc.
Columbus, Ind.

Lee Wesson Mobile Station
Craigville, Ind.

Mory Auto Co.
Fountain City, Ind.

Groves Auto Service
Gas City, Ind.

Walker Service
Geneva, Ind.

Don Manton Cities Service
Greencastle, Ind.

Brad's Service Station
Greenfield, Ind.

Thomas H. Hay
Greensburg, Ind.

Kissling Service
Hope, Ind.

McKee Service
Jonesboro, Ind.

Bob and Jack's Texaco
Knightstown, Ind.

Stew Marathon Station
Lafayette, Ind.

Connell's Service
Lotts, Ind.

Burns Bros.
Marion, Ind.

Doug's Trailer Rental
Marion, Ind.

Carl Beatie Tire Service
Martinsville, Ind.

Johns Marathon
Milton, Ind.

Reirdon Mobile Service
Morgantown, Ind.

Gribble Independent
Muncie, Ind.

Justice Service
Muncie, Ind.

Zimmerman Garage and Imp.
Needham, Ind.

Wolf's Garage
Plainfield, Ind.

Bishop Service Station
Portland, Ind.

B and V Truck Stop
Redkey, Ind.

Kent Service Station
Rushville, Ind.

Landman Bros.
Shelbyville, Ind.

Gribble Service
Spiceland, Ind.

Whitcraft Garage
Union City, Ind.

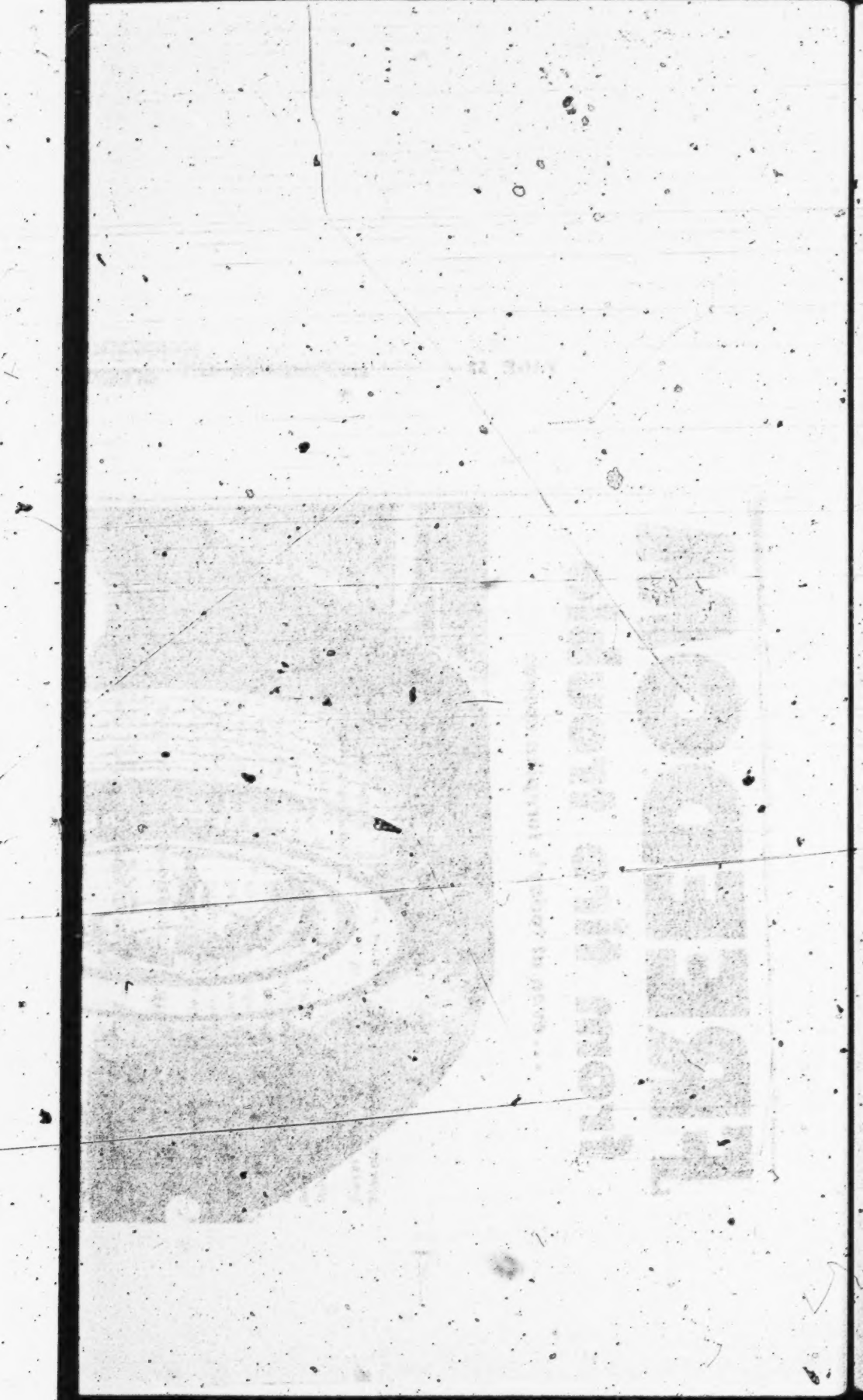
For Information Contact

COOPER TIRE & RUBBER COMPANY

2112 E. Washington — Factory Branch — ME 6-5448

WE WELCOME DEALER INQUIRIES

TRADE COMMISSION
EXHIBIT NUMBER 55 THE INDIANAPOLIS STAR FRIDAY, MAY 23, 1958
JAX 514
Respondents' Exhibit 55



Respondents' Exhibit 56A

Res Ex 56-A

ng Aid
d Supplies
tail

conditioned Batteries
ery Repairing
-----ST nto 6-2717

Bluffs ----ST nto 6-2717
STA
Sherwood Dr LI bet 6-7740
URY STANDARD
7825 -----LI bet 6-

UL BATTERIES

AUTO-LITE
sta-ful

E TO BUY THEM"
STRIBUTORS
ELEC INC
450N Carll -ME tros 5-5991
IRE
820E Troy Av -ST nto 6-9211
DEALERS
S SERV CO
2219 S Kent -ST nto 4-0994
SERV STA
531 W York -ME tros 6-9056
XCHANGE
362 Shelby -ME tros 3-9458
V STA
1336 Shelby -ME tros 7-0827
E AUTO SERV CO
3856 E Mich -FL stand 7-0951
IRE
CW Vermont -ME tros 4-8325
& SERV
7496 E Wash -FL stand 7-0801
ANCIS A GARAGE
1426 W Morris -CH nto 4-5025
ARAGE
03 S Meridian -ST nto 4-7539
SERV
-Wrecker Service,
Op -----ME tros 5-0176

E SS
1964 Bluff -ST nto 6-1997
1407 W 30 -WA tel 3-0722
STA
-Delivery Service
-----CH nto 4-0651

Sta
4 Bridgeport -CH nto 4-0839
SER SS
1 S. Illinois -ME tros 4-0859
SS
6311 W Wash -CH nto 4-1631

TERIES
ONG DISTANCE
Call
ME 7-7802
GUARANTEED—
ECONDITIONED BATTERIES
Clain - Owner
ONE NO. ME 3-3469
BATTERY CO.
TH OF SAM H. HOUSTON
RIDGEWOOD AV

Batteries—Retail—(Cont'd)

B & B INDUSTRIAL BATTERIES—
DISTRIBUTOR
ROSWELL JACK ELEC CO INC
1331 N Graham -PE tros 3-0000

COLE'S SUNSET SERV STA
Air Conditioning Wash-Up-Lubrication
6200 Alhambra -----CL blvd 5-0010

DOBBS'S ONE STOP STA
1731 Riverside -ME tros 1-3010

DALLAS & WHITAKER'S GULF
SERV STA 4026 Beltline -FL stand 7-0052

DAVE SINCLAIR FILLING STA

DELCO BATTERIES—
DISTRIBUTOR
INTERSTATE PETROLEUM CO
3001 Alexander -LI bet 7-0002
DEALERS
CARBURETOR SERVICE
2126 W York -ME tros 3-0043
CARROL SERV STA
3200 W Main -ME tros 3-0020
DAMERON TEXACO SERV STA
-----CL blvd 5-0043
ROSE TIRE CO INC
4200 Washington -ME tros 3-7161
WRAY'S MONTHLY AUTO SERV
1823 E 10 -FL stand 7-0

East Side Super Serv Sta
3360 E 10 -ME tros 3-0379

EXIDE BATTERIES

THE HONEST, ACCURATE ADVICE OF THE DEALER LISTED BELOW WILL PROLONG YOUR BATTERY'S LIFE

Exide

WHEN IT'S AN EXIDE YOU START

"FOR SERVICE CALL"
DEALERS
ASSOCIATED SERV CORP
1430 Kyle -ME tros 8-1306
BURLEY'S SHELL SERV STA
2001 College -WA tel 3-5122
PEARSON'S SERV STA
4200 Main (Bellaire) -ST nto 6-0083

FERGUSON'S SHELL SERV STA
836 W 18th -ME tros 6-0721

FIRESTONE BATTERIES

Firestone Del-Chief Battery. Guaranteed Quicker Starts and Longer Life Because It Is Factory Fresh.

"WHERE TO BUY IT"
MANUFACTURERS
FIRESTONE TIRE & RUBBER CO
300 S Belt -ME tros 7-5461
STORES
FIRESTONE STORES
5008 Telephone -ME tros 4-1346
FIRESTONE STORES
300 N Illinois -ME tros 4-2578
ASSOCIATE DISTRIBUTORS
BULLERDINE RUBBER CO
401 S Illinois -ME tros 6-0859
FIRESTONE STORES
5008 Telephone -ME tros 4-1346
FIRESTONE STORES
300 N Illinois -ME tros 4-2578
DOWNTOWN DEALERS
CAPITOL CITY TIRE CO INC
4259 Telephone -ME tros 6-3422
EASTSIDE DEALERS
ENGLAND'S TEXACO SERV STA
2326 Telephone -ME tros 3-0911
MASON BROS TEXACO SERV STA
601 S Shepherd -FL stand 7-0909
NORTHSIDE DEALERS
BOB'S TEXACO SERV STA
7039 Harrisburg -LI bet 6-0153
CRAIN'S B-R SERV STA
1930 Lyons -ME tros 8-0930
HARPER'S SERV STA
7000 Harrisburg -TE tel 3-8730
HAROLD'S TEXACO SERV STA
4141 Navigation -CH nto 4-0693

CONTINUED NEXT COLUMN

Batteries—Retail—(Cont'd)

FIRESTONE BATTERIES—
CONTINUED FROM PREVIOUS COLUMN
DEALERS
GARFIELD TEXACO SERV STA
2310 Shelby -ST nto 4-0970
NEWSELL'S TEXACO SERVICE
4201 Main -CH nto 4-0900

Garfield Texaco Serv
-----ST nto 6-0000

GENERAL BATTERIES—
GENL TIRE CO 836 Dallas -ME tros 6-2347

Gerald John H Serv Sta
2002 S Shepherd -ST nto 6-0000
Go Gulf Super Serv Sta 1100 Studewood -ME tros 7-0000
GOODRICH B F BATTERIES—
DISTRIBUTOR
Thompson's Goodrich Silvertown Store
1716 Main -CA tel 4-0000
STA 5440 Navigation -CH nto 4-0000

GOODYEAR BATTERIES—
DISTRIBUTOR
GOODYEAR TIRE & RUBBER CO
1717 Main -CA tel 4-0000
"WHERE TO BUY THEM"
DEALERS
BROAD RIPPLEBRIWELL SERV
6303 Calhoun -CL blvd 5-0971
DOOPERNER'S SHELL SERV
4561 W Dallas -CL blvd 5-0930
COWAN'S SHELL SERV STA
1420 Studewood -CL blvd 5-0914
DENISON PARKING INC
1300 Preston -WE tros 2-2505
DOYLE SHELL SERV STA
1300 Preston -WE tros 2-2505
DRAGA'S SHELL SERV STA
Road Service
4541 W Dallas -CL blvd 5-0900
GOODYEAR SERV STORES
6270 Gulf -ME tros 5-1436
HICK'S SHELL SERV STA
2730 Spencer -ST nto 4-0000
KEARNS SHELL SERV STA
3400 Telephone -WA tel 3-0000
KIEPPER SHELL SERV STA
1901 E Dallas -FL stand 7-0730
LATTIMORE G C SHELL SERV STA
3355 N Kenilworth -WA tel 3-0000
MOORE'S SHELL SERV STA
2161 Shelby -ST nto 4-0000
PITTMAN'S SHELL SERV STA
7631 Preston -LI bet 6-0001
QUIRK'S SHELL SERV STA
3214 W Main -CH nto 4-0007
W I SUPER SERV INN
2001 W Dallas -ME tros 7-1370

GOODYEAR SERV STORES
6270 Gulf -ME tros 5-1436
GOULD AUTOMOTIVE BATTERIES
STATE DISTRIBUTOR
AND TIRE & RUBBER CO
4730 Gulf -ME tros 4-3496
DEALERS
HAYE'S LU WASHINGTON SERV STA
3802 Washington -WA tel 3-0202

HARTSDALE SERV STA
1300 Shelby -ME tros 7-0827
HOUSE AUTO SUPPLY
1300 Shelby -ME tros 1-0000
HUNTSMAN SERV STA
1910 S Meridian -ME tros 3-0000
Ind Battery Co
1500 Commerce -CH nto 4-0000
Wholesale Warehouse Call Long Distance and ask for Wesley Sorrells and then ask for the number ME 3-3427

JONES BATTERY & TIRE SERV
WILLARD BATTERIES
GOODRICH TIRES ROAD SERVICE
710 E 72 -WA tel 3-0000

Lee Battery & Ignition Co
3401 E Wash -FL stand 7-0000

Batteries—Retail—(Cont'd)

Mahon Lee Standard Serv Sta
4700 Shelby -ST nto 6-0000
MARATHON SERV STA
4700 Telephone -ME tros 3-0000
MASON BROS SHELL SERV STA
1501 Studewood -ME tros 3-0000
Merkel Standard Serv Sta
2600 Shelby -ST nto 6-0000
MOORE TIRE CO INC
1107 S Meridian -ME tros 7-0000
MOORE'S SERV STA
-----ME tros 7-0000
MORRISON'S STANDARD SERV
2600 N Illinois -ME tros 3-0000
NEW & USED BATTERIES
Batteries Charged & Repaired
1400 Preston -ME tros 3-0000

NIFE-CELL BATTERIES
BATTERIES
"WHERE TO BUY THEM"
MANUFACTURER & WHOLESALER
NIFE-CELL BATTERY CORP
2900 Russell -FL stand 6-1940
DISTRIBUTOR
NIFE-CELL MAHON CO
3355 Meridian -ME tros 7-2521
SALES & SERVICE DEALERS
ASHBY'S TEXACO SERV STA
-----FL stand 7-0000
ASSOCIATED SERVICE CORP
1430 Kyle -ME tros 8-1306
BOULEVARD 66 SERV STA
1501 W York -ME tros 8-0000
BURLEY SERV STA
1001 College -WA tros 3-0000
CARROLL SERV STATION -ME tros 3-0000
CARSON SERV STA
2127 Main -ST nto 4-0000
EAST SIDE SUPER SERV STA
Battery Service
3201 E 10 -ME tros 3-0000
HODGE TIRE CO INC
3344 Telephone -ME tros 7-0000
HOUSE GARAGE
2005 S Meridian -ST nto 6-0000

STE'S STANDARD SERV STA
3999 N -WA tel 3-0000
PAT'S AUTO SUPPLY
2400 Shelby -ST nto 7-1177
PAVY'S TIRE CO 2227 E York -ME tros 3-0000
Ross Tire Co Inc 4000 Harrisburg -ME tros 7-0000
Stewart's Serv Sta 4900 Main -ST nto 4-0000

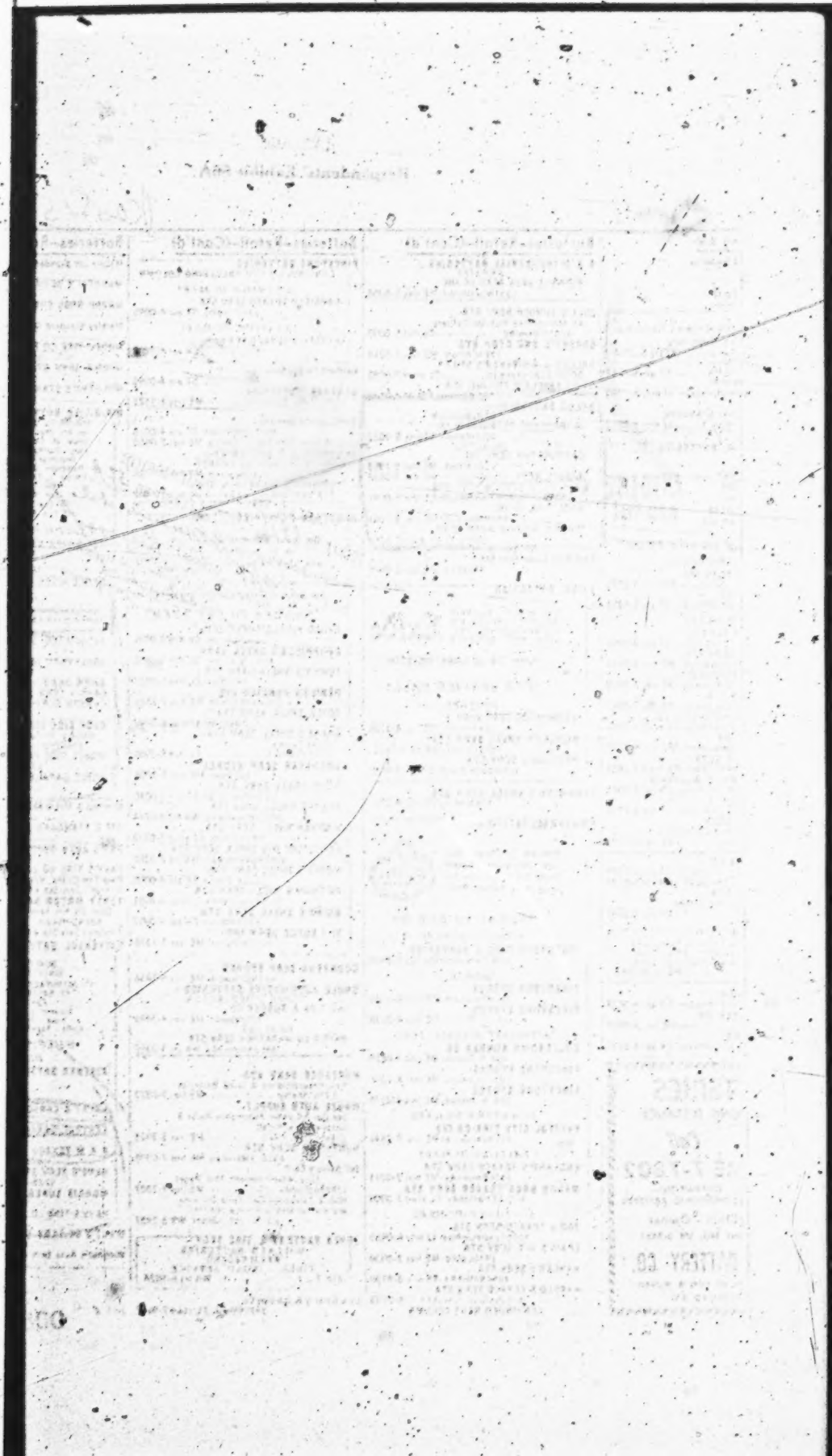
YANEY MOTOR SERV
Open 24 Hrs. Service & Parts
4000 Telephone -ME tros 8-0000
Tidwell's Serv Sta 1300 Shelby -ST nto 4-0000
UNIVERSAL BATTERIES

UNIVERSAL
QUALITY
SERVICE WITH
MANUFACTURERS OF BATTERIES FOR
THE HOME
OF YOUR CAR

"WHERE TO BUY THEM"
DISTRIBUTOR
UNIVERSAL BATTERY CO
1340 Main -ME tros 3-0000
DEALERS

F & M TEXACO SERV STA
-----CL blvd 5-0000
GUNN'S SERV STA
4200 Telephone -CL blvd 5-0000
HARRIS BROS SERV STA
2711 S Main -ST nto 4-0000
PAVY & TIRE CO -----

WELL'S GARAGE
4100 Main -LI bet 6-0000

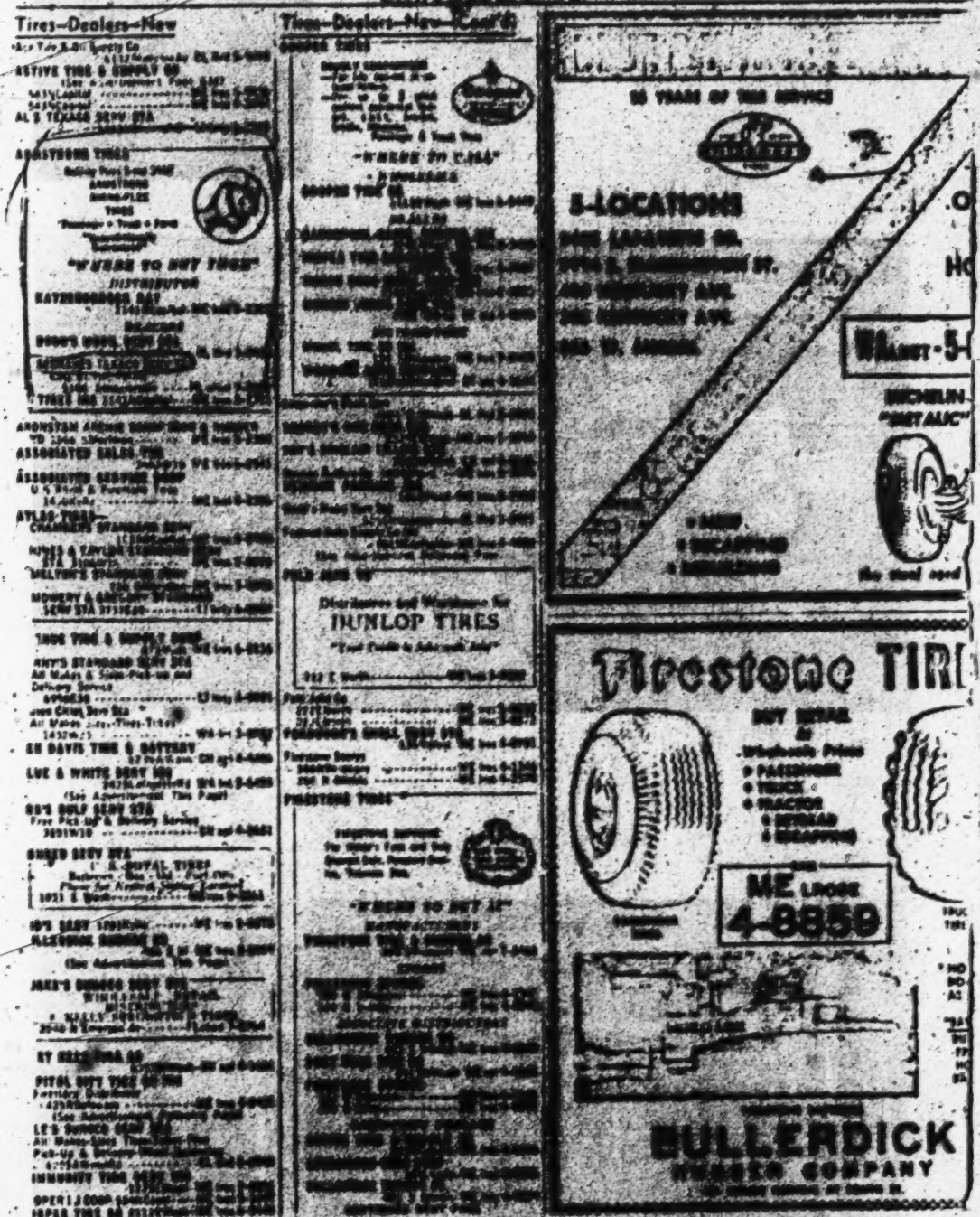


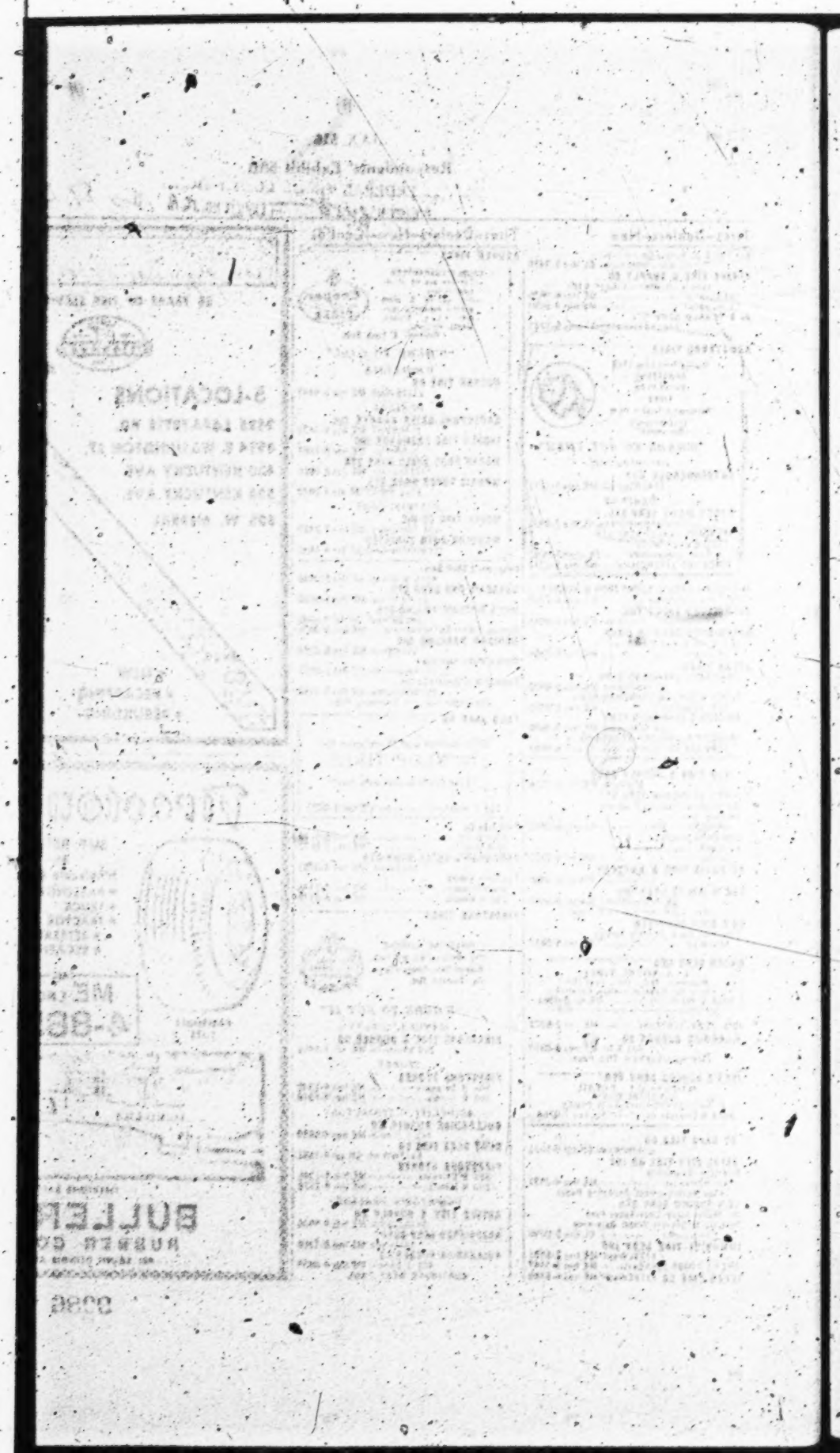
JAX 516

Respondents' Exhibit 56B

FEDERAL Trade Commission

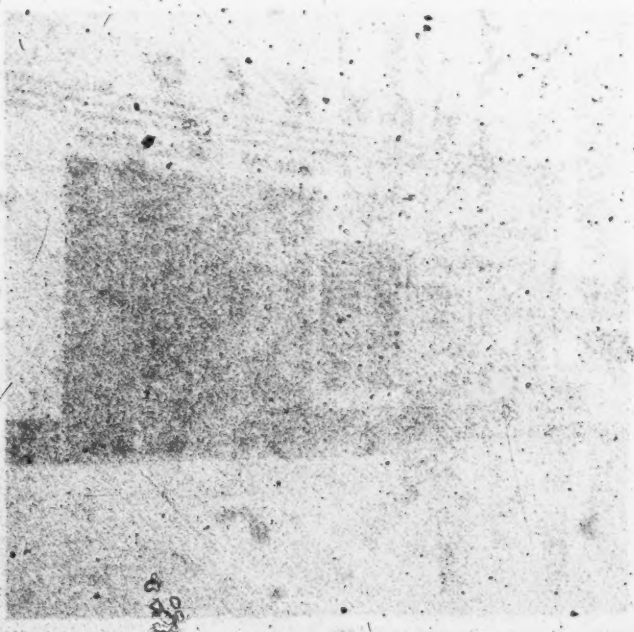
Docket No. 8456-B

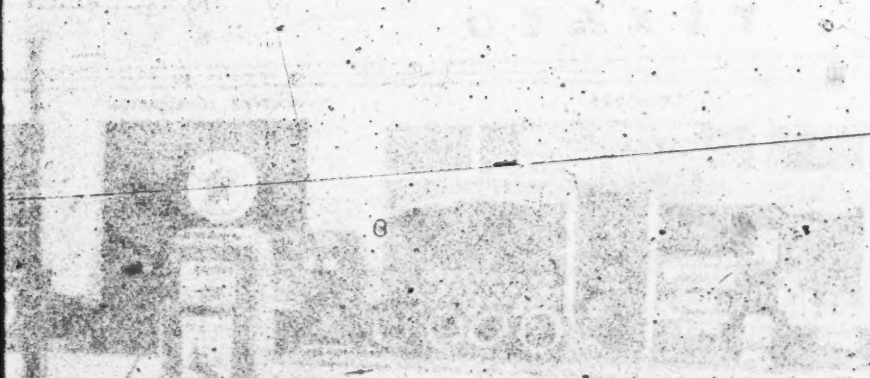




JAX 518

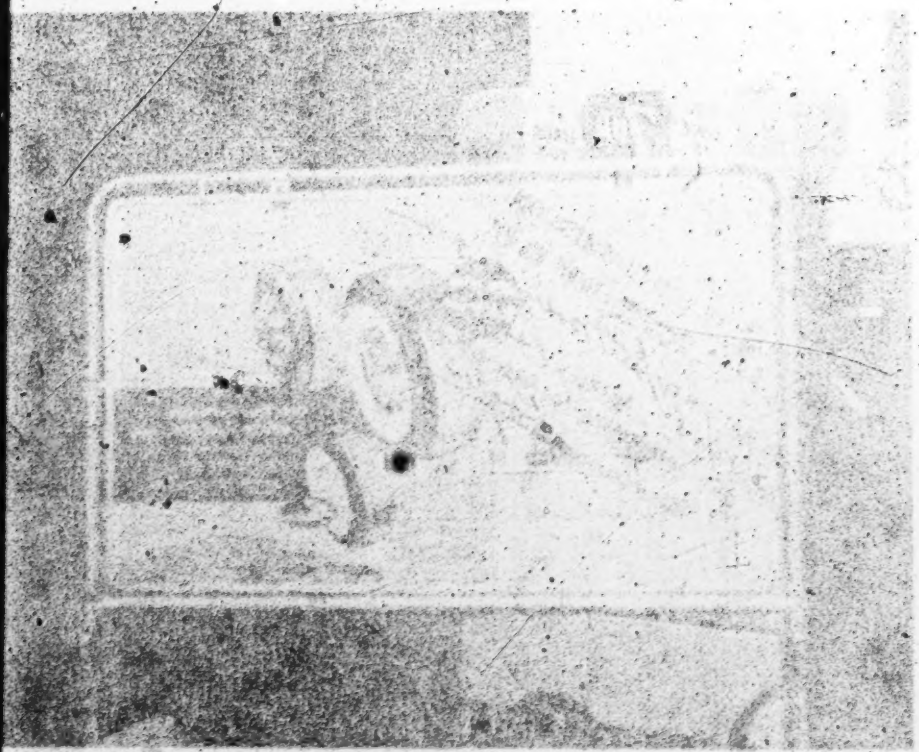
Respondents' Exhibit 68





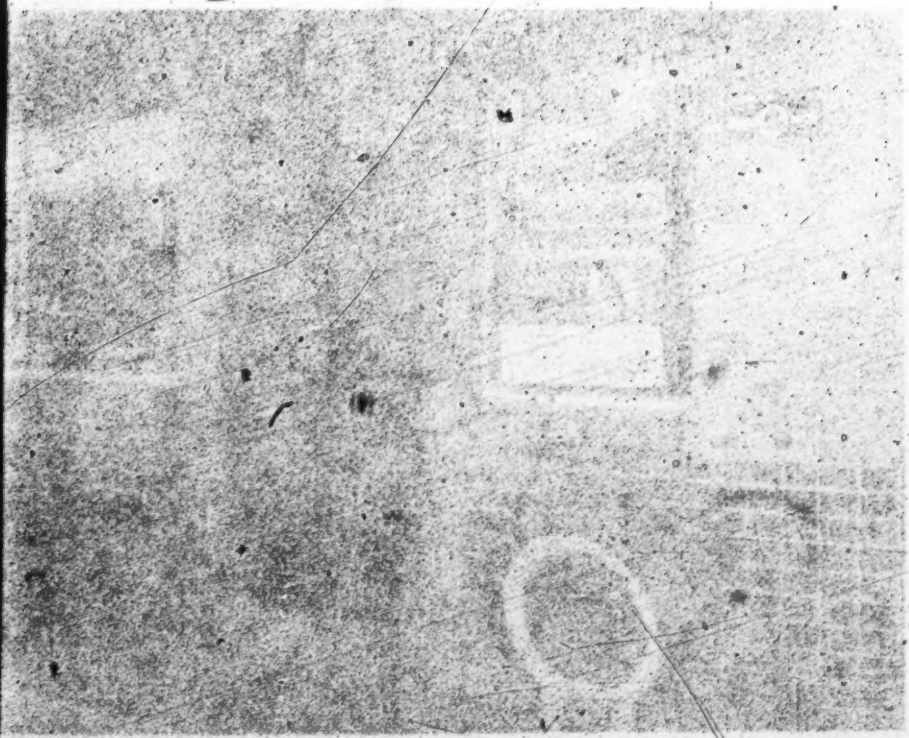
JAX 80

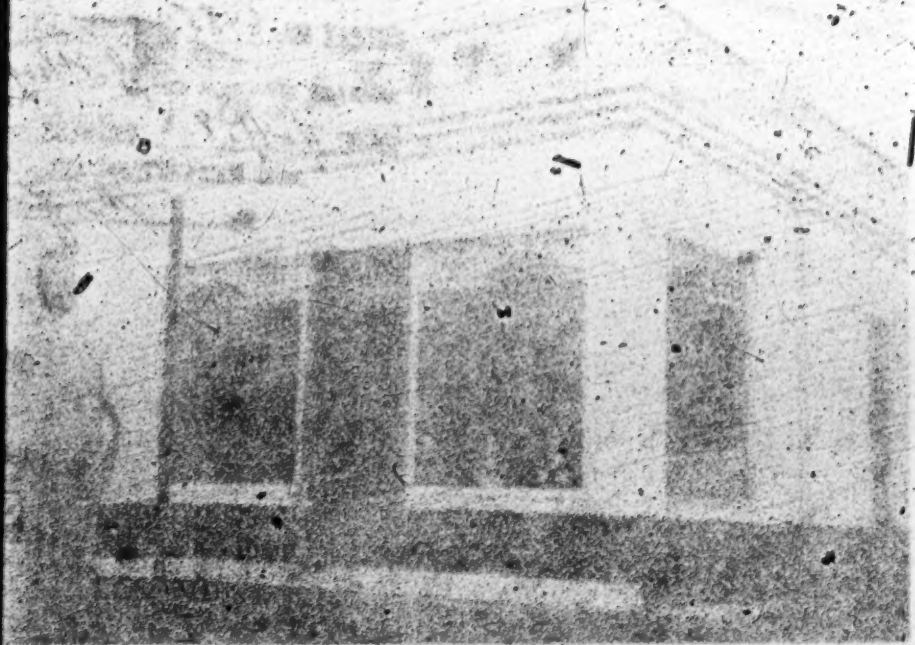
Respondents' Exhibit 80

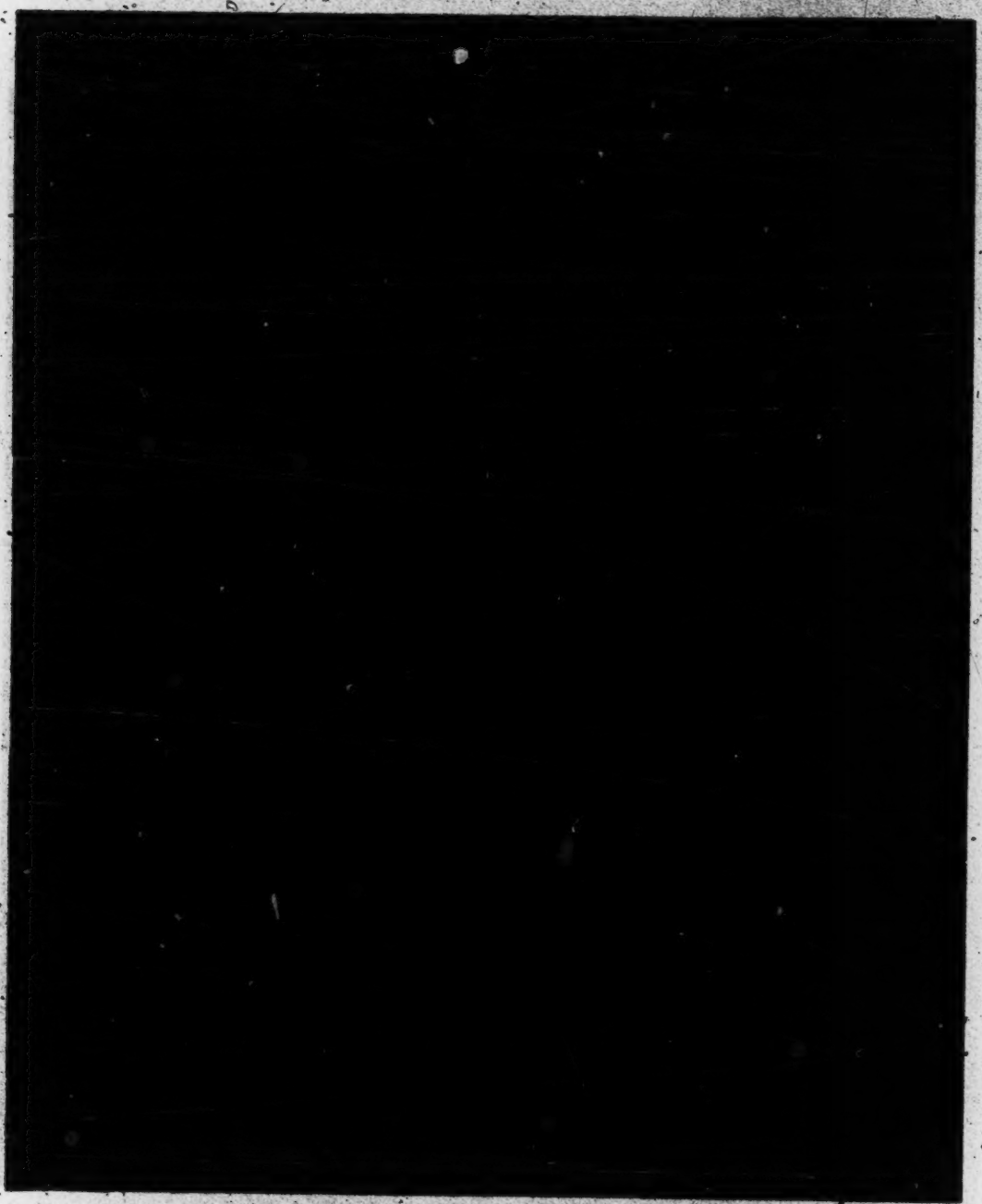


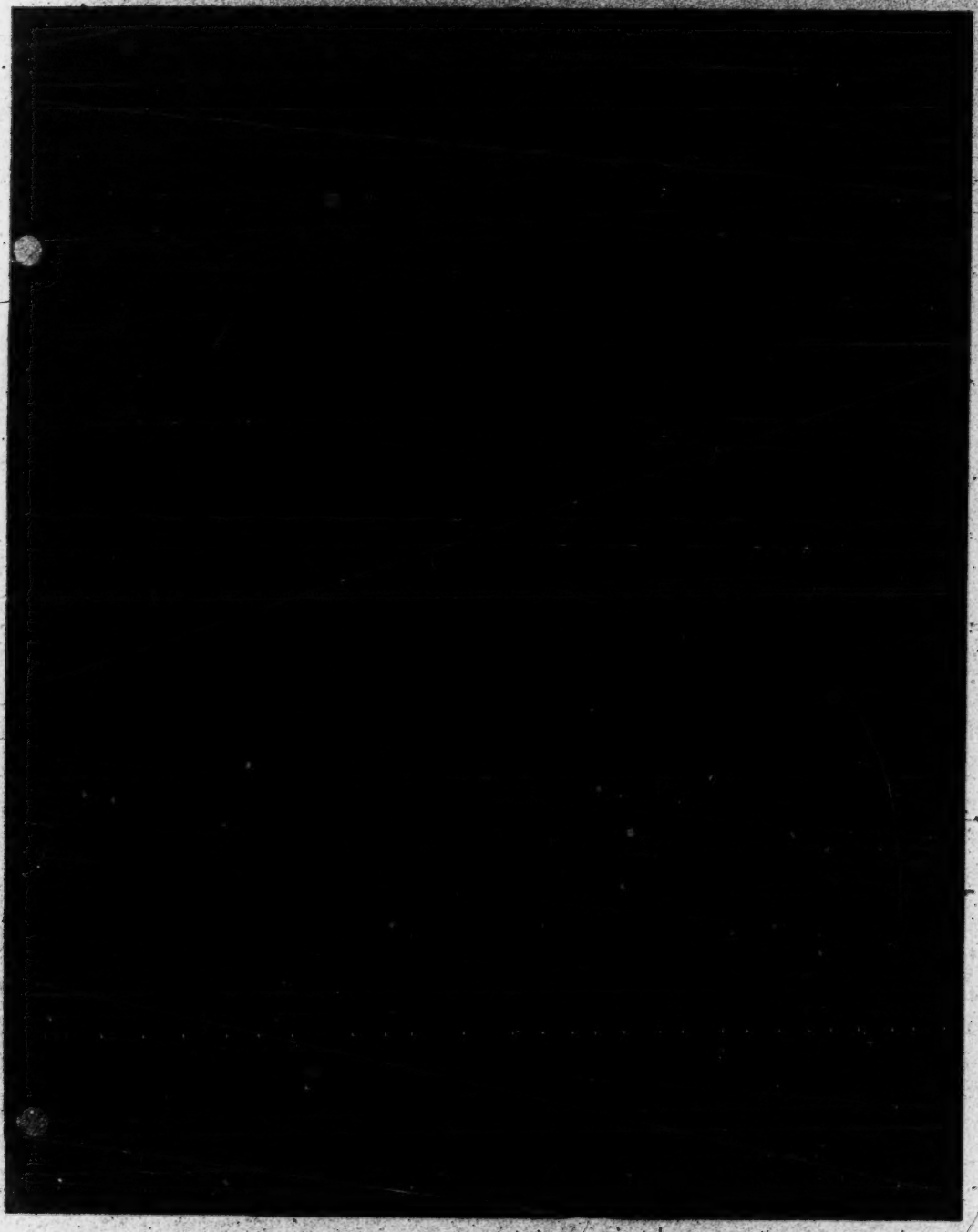
JAX 521

Respondents' Exhibit 61

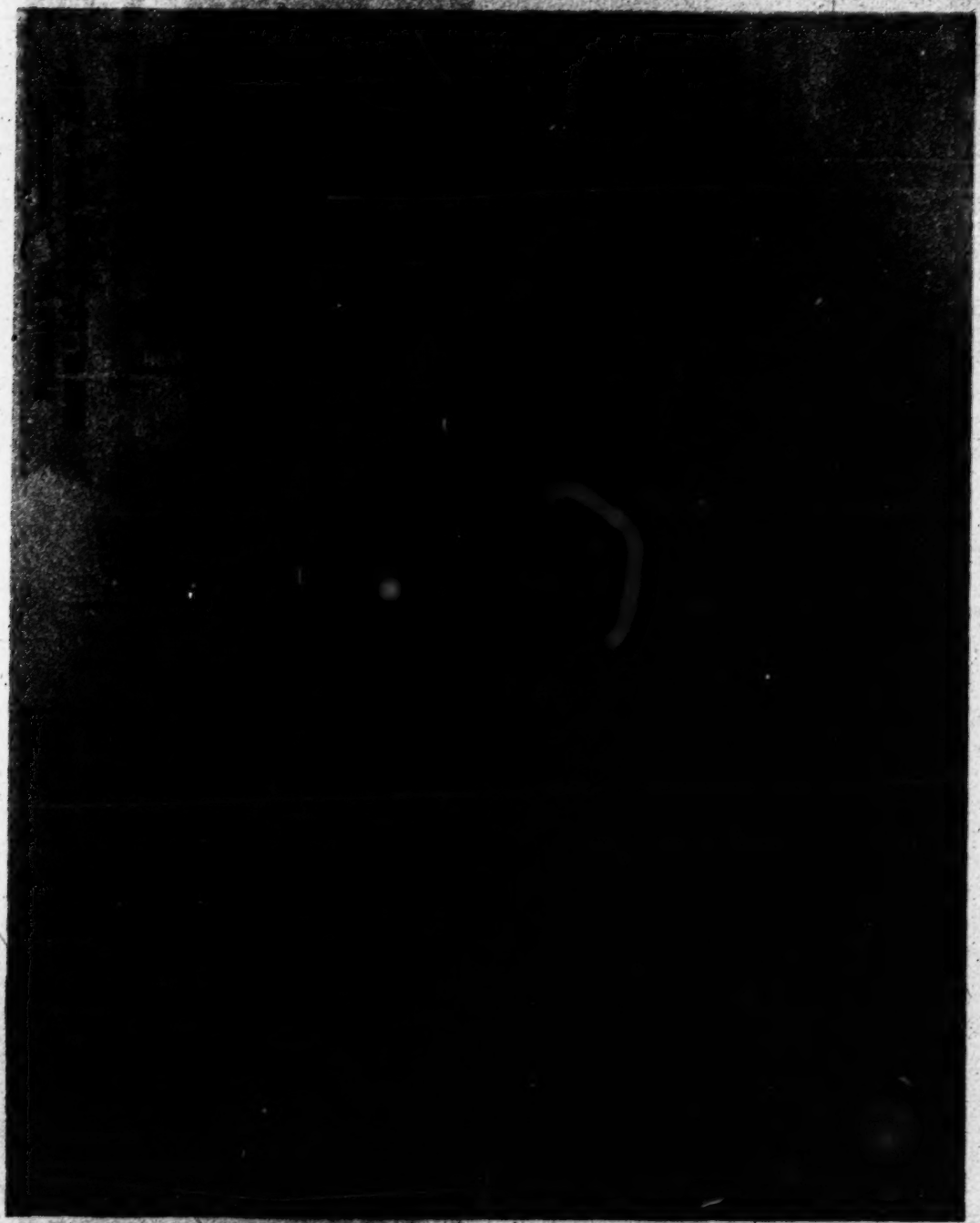


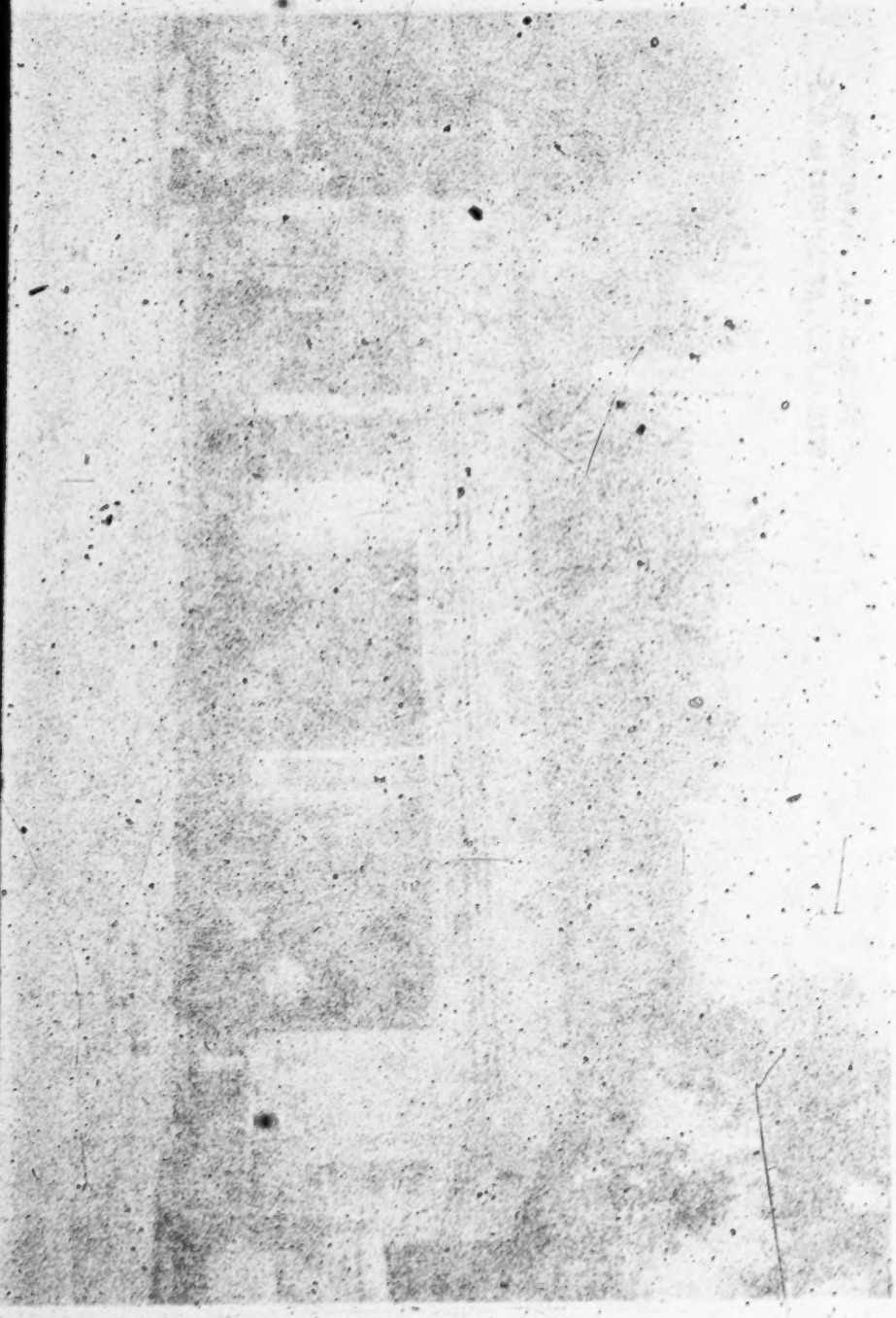






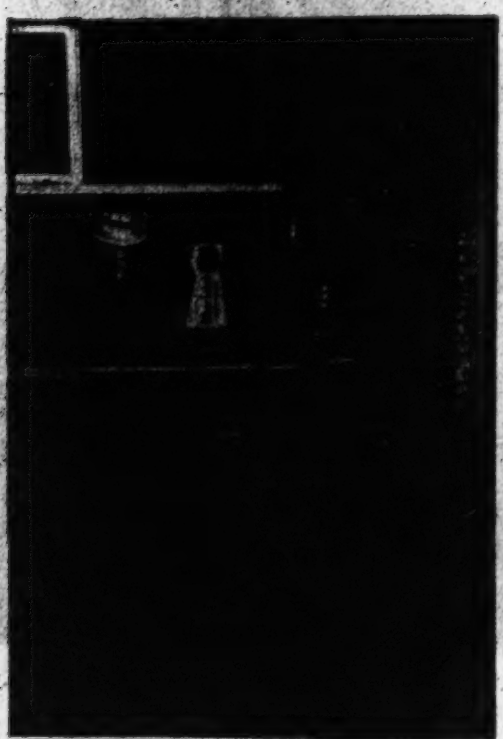
FEDERAL TRADE COMMISSION





JAX-[redacted]

Respondents' Exhibit [redacted]



JAX 530

Respondents' Exhibit 66A

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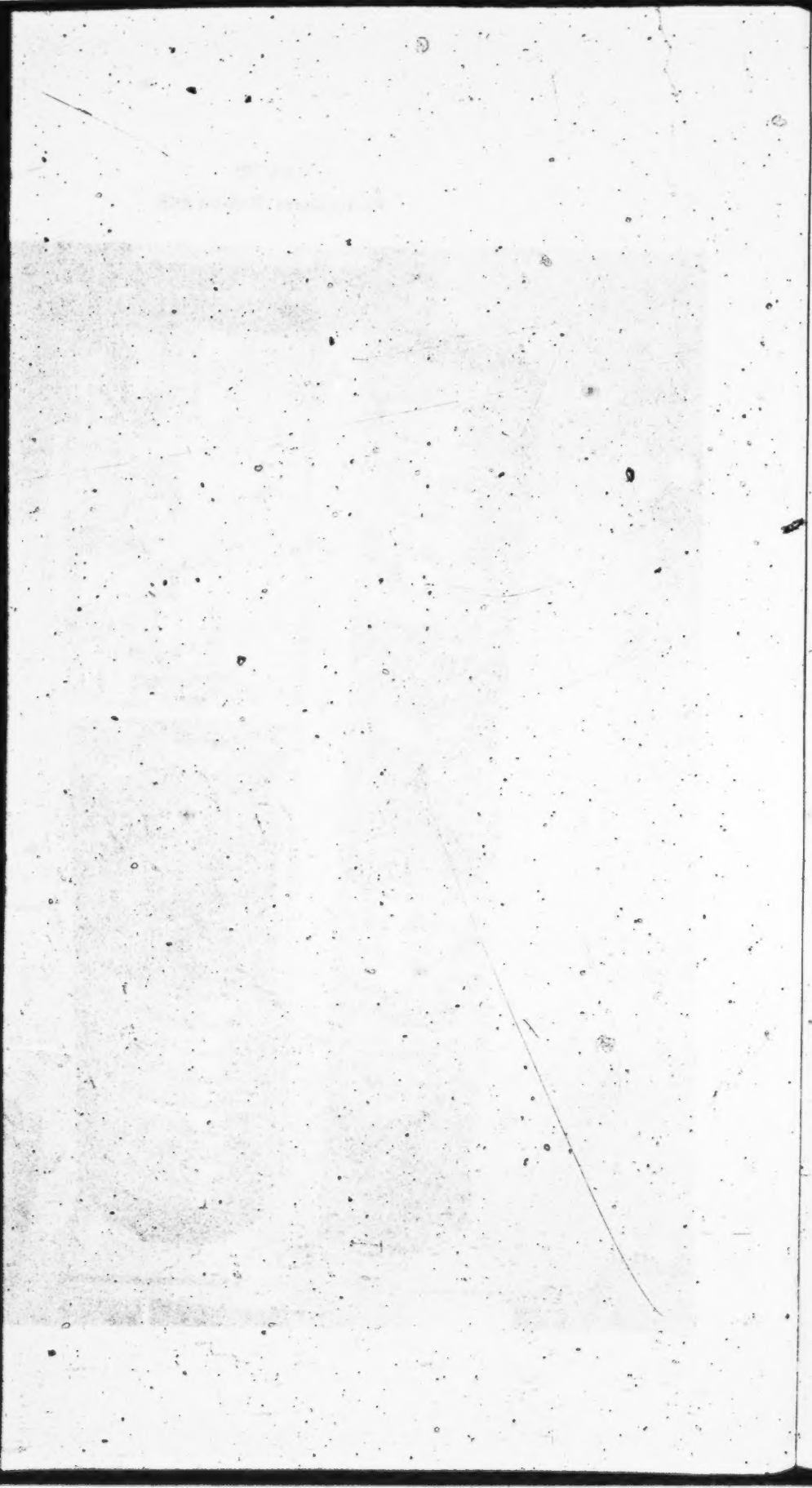

JAX 538

Respondents' Exhibit 67

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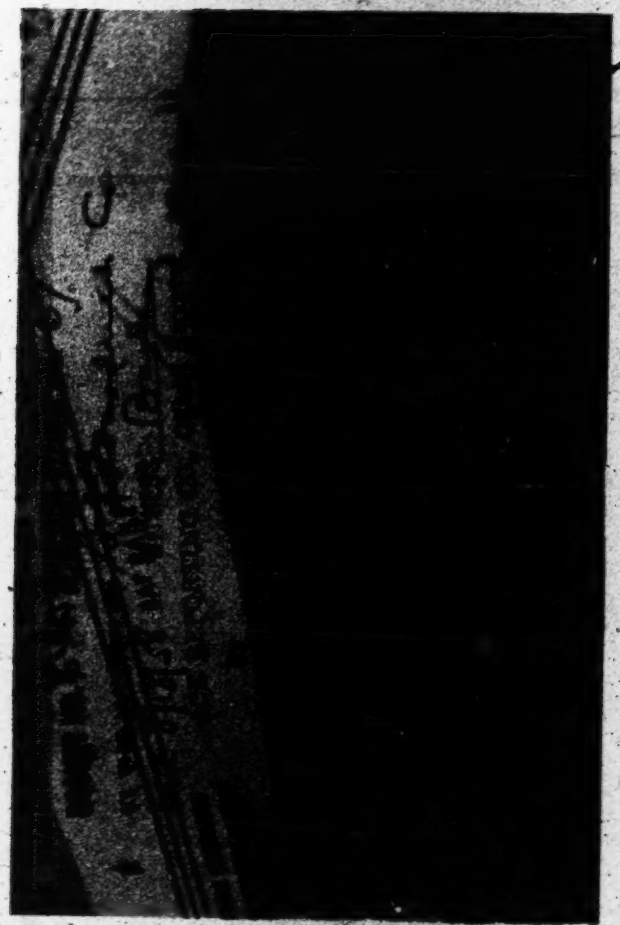
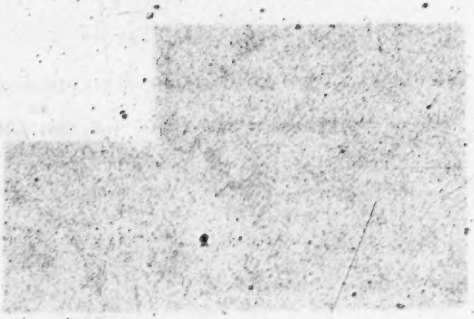




JAX 534
Respondents' Exhibit 68A

BAILEY'S SERVICE

FEDERAL TRADE COMMISSION
DOCKET NO. 8907
IN THE MATTER OF
BAILEY'S SERVICE
ACE REPORTING CO.

5034

JAX 535

Respondents' Exhibit 66B

DISTRIBUTORS OF GATE CITY BATTERIES

AUTOMOTIVE REPAIRS AND ACCESSORIES

Rx 66B

Repair Order

BAILEY'S SERVICE

TEXAS OIL PRODUCTS

PHONES:
MA 2-0100
MA 2-2617

21ST AND DOLLEY AVENUE

Hopewell, Va. _____ 195__

No. 360

PARTS USED

QUAN.	ARTICLE OR SERVICE	PRICE
	TOTAL PARTS	

Name _____

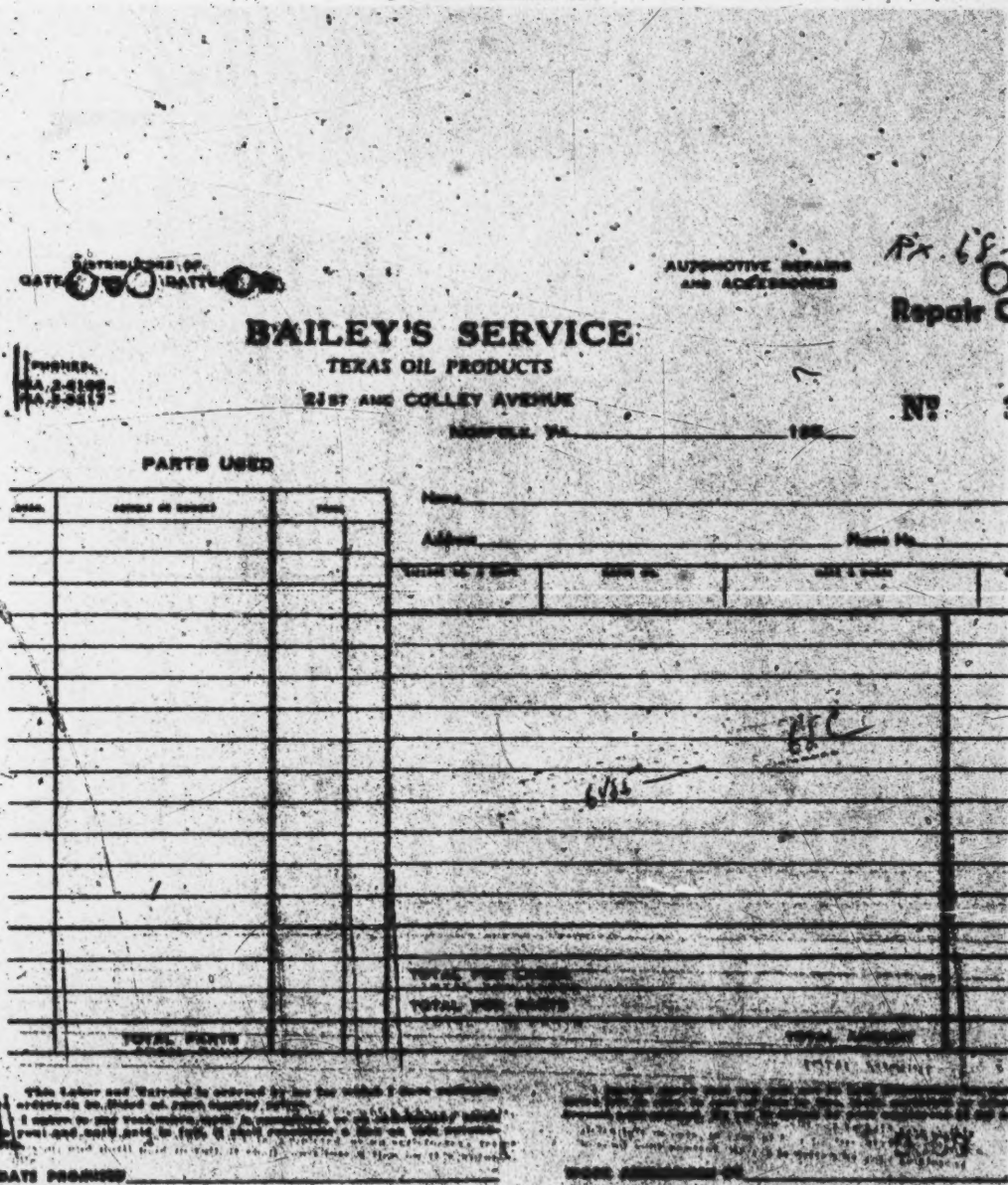
Address _____ Phone No. _____

MAKE OF CAR	SERIAL NO.	CAR NO.	COLOR

FEDERAL TRADE COMMISSION
Exhibit No. 66B

JAX 536

Respondents' Exhibit 68C



DISTRIBUTORS OF GATES V-BELTS AND PATTERSON-KELLEY

AUTOMOTIVE REPAIRS AND ACCESSORIES

Rx 68-C

BAILEY'S SERVICE

TEXAS OIL PRODUCTS

21ST AND COLLEY AVENUE

PHONES
MA. 2-6196
MA. 2-3415

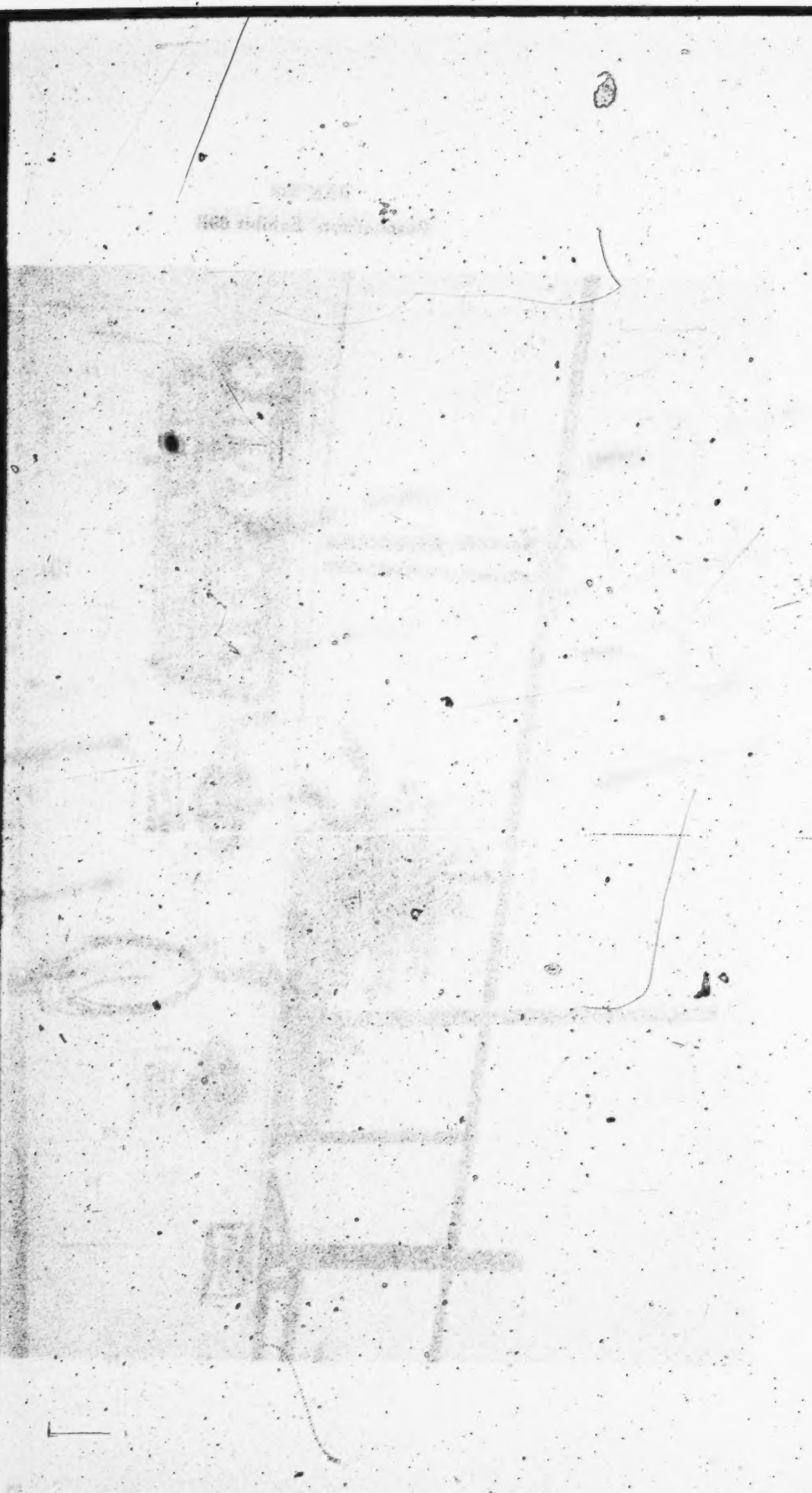
Repair Orde

No. 300

NORFOLK, Va. _____ 19__

PARTS USED

QUAN.	ARTICLE OR SERVICE	PRICE



JAX 589

Respondents' Exhibits 70A-70B

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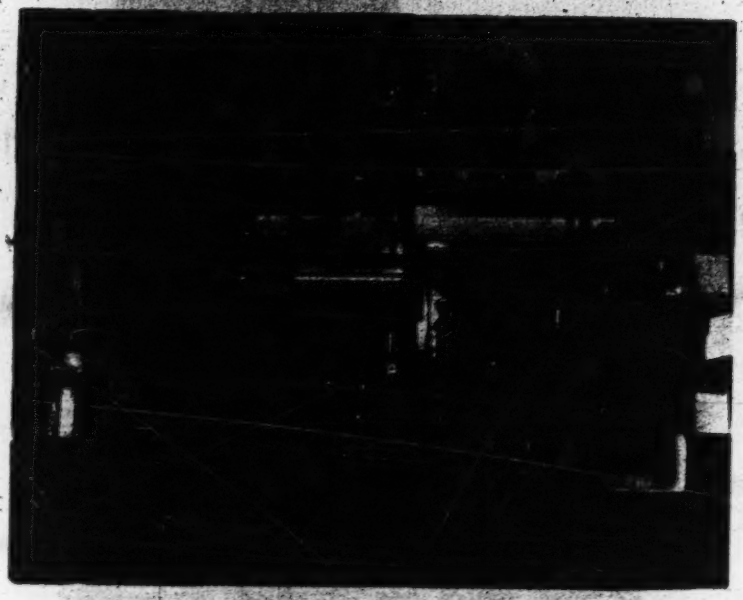
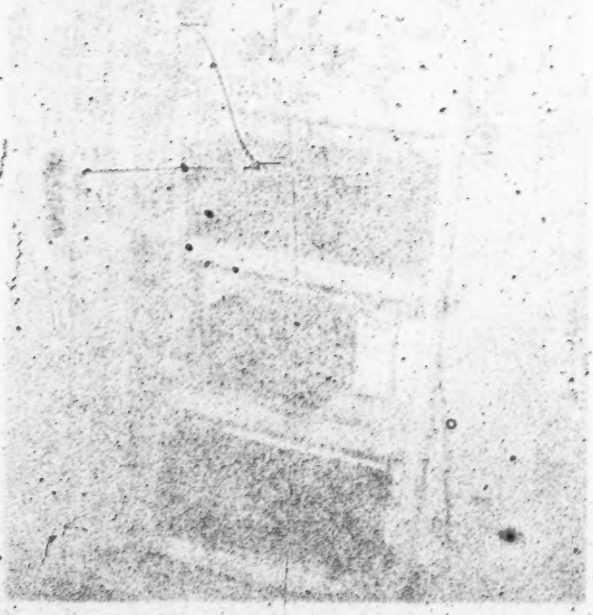
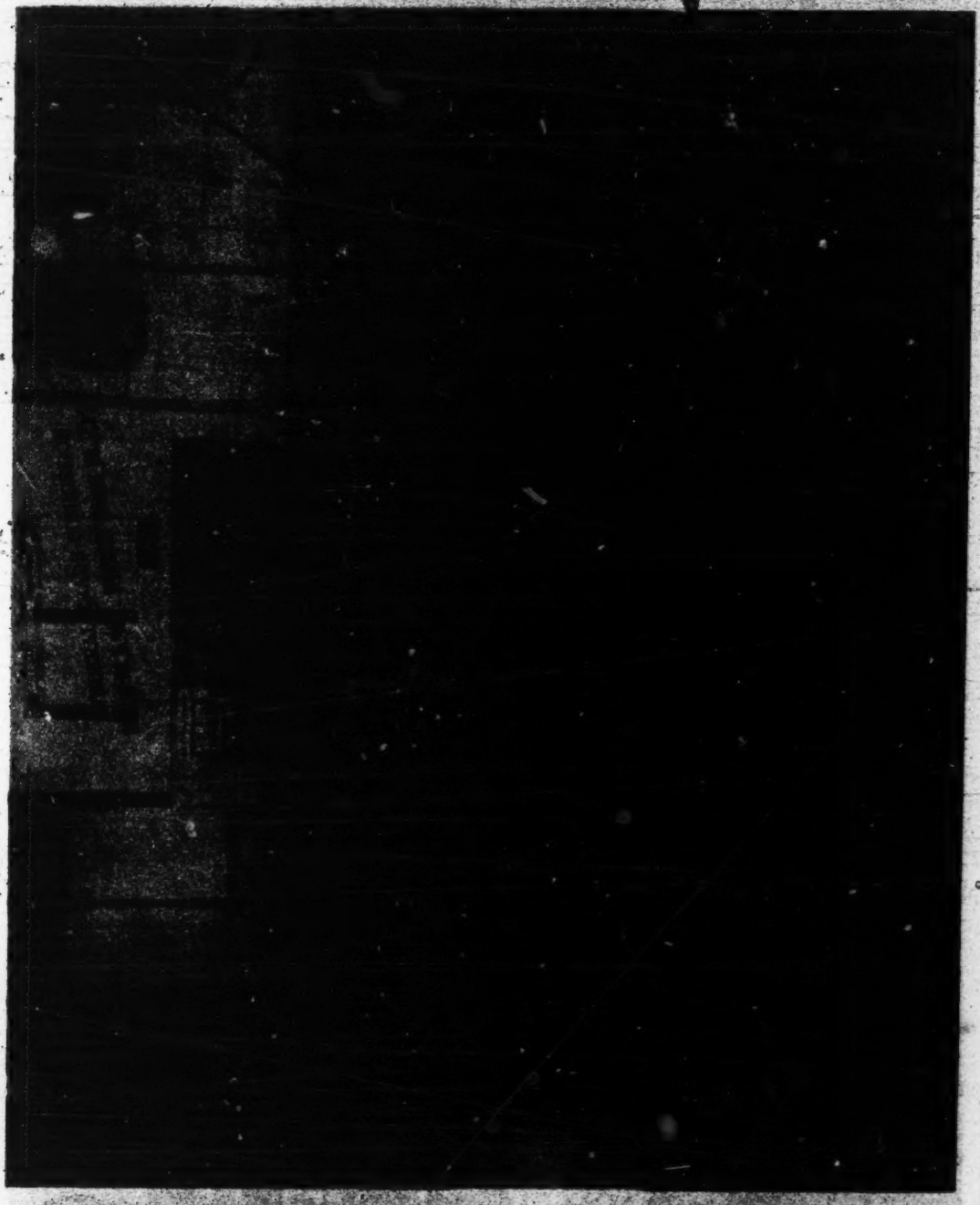


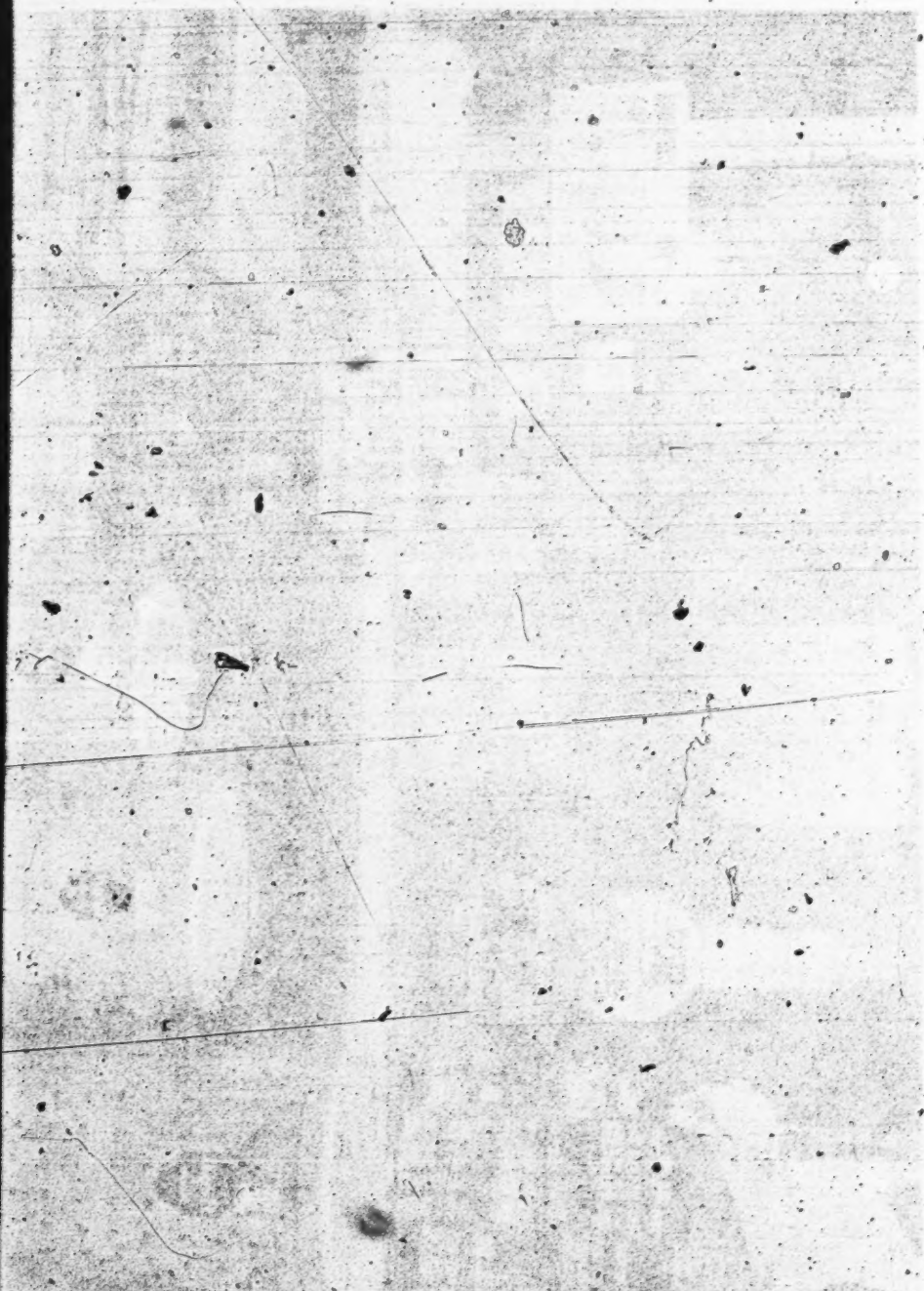
JAX 540

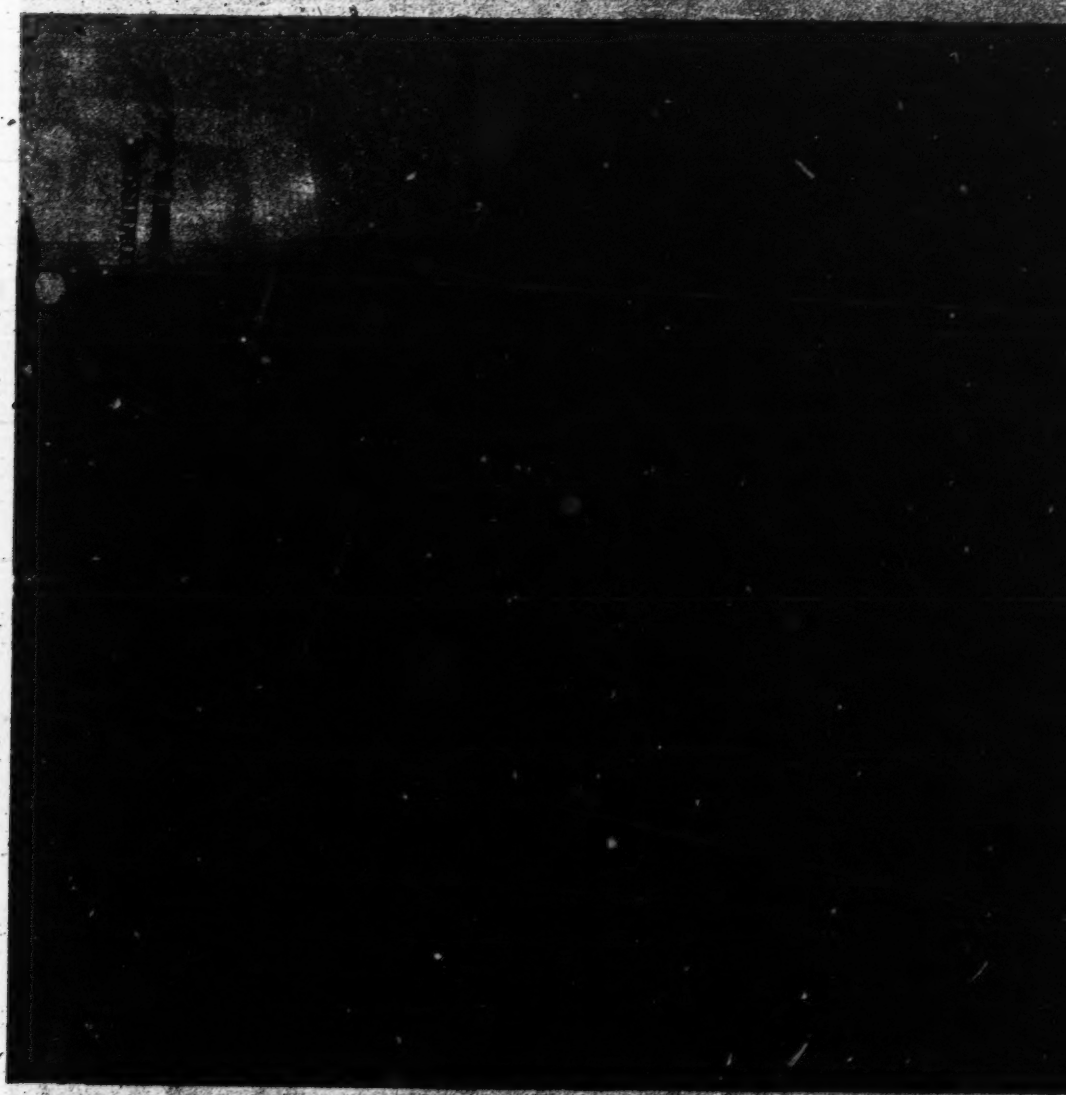
Respondents' Exhibit 71



JAX 541
Respondents' Exhibit 72A







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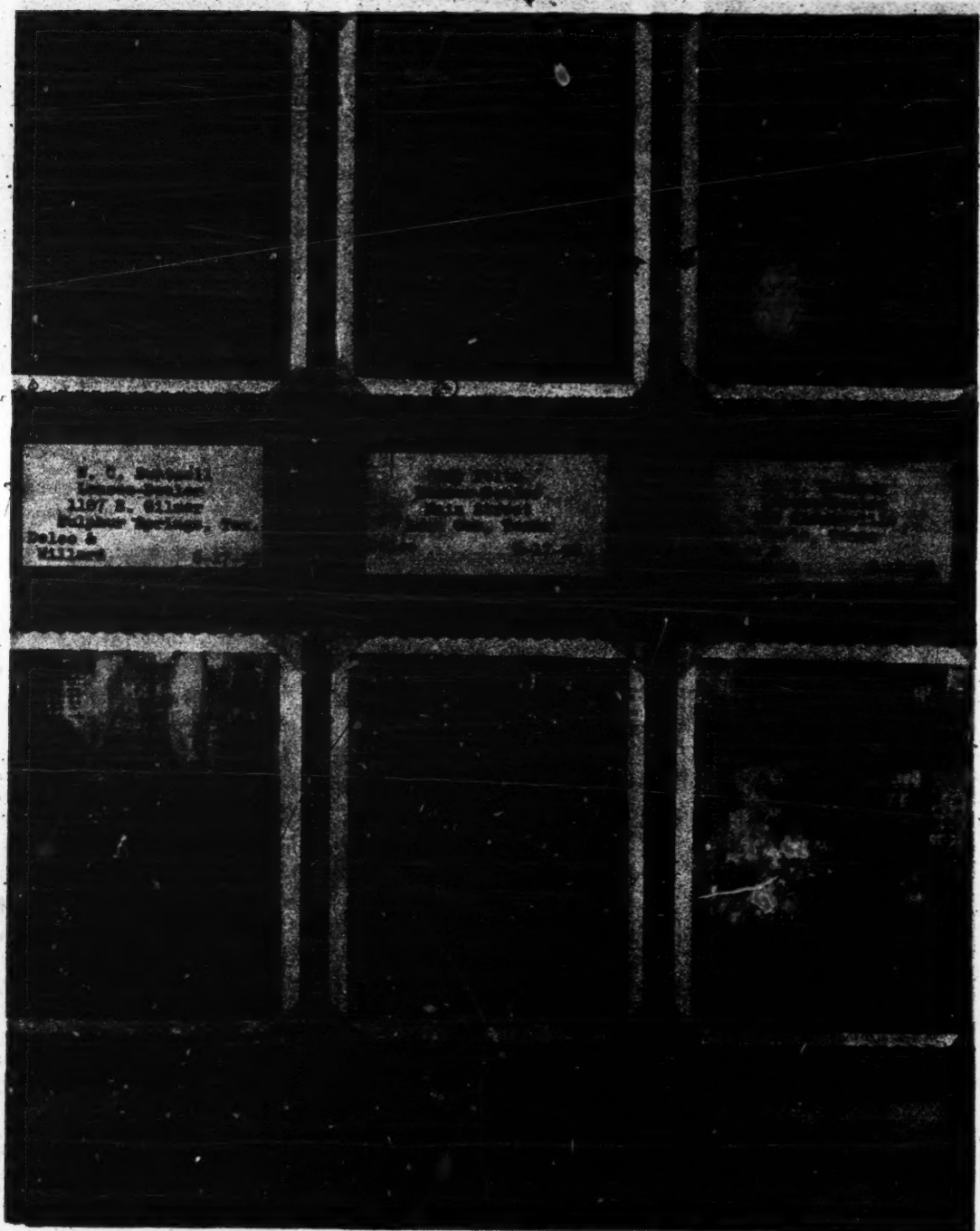
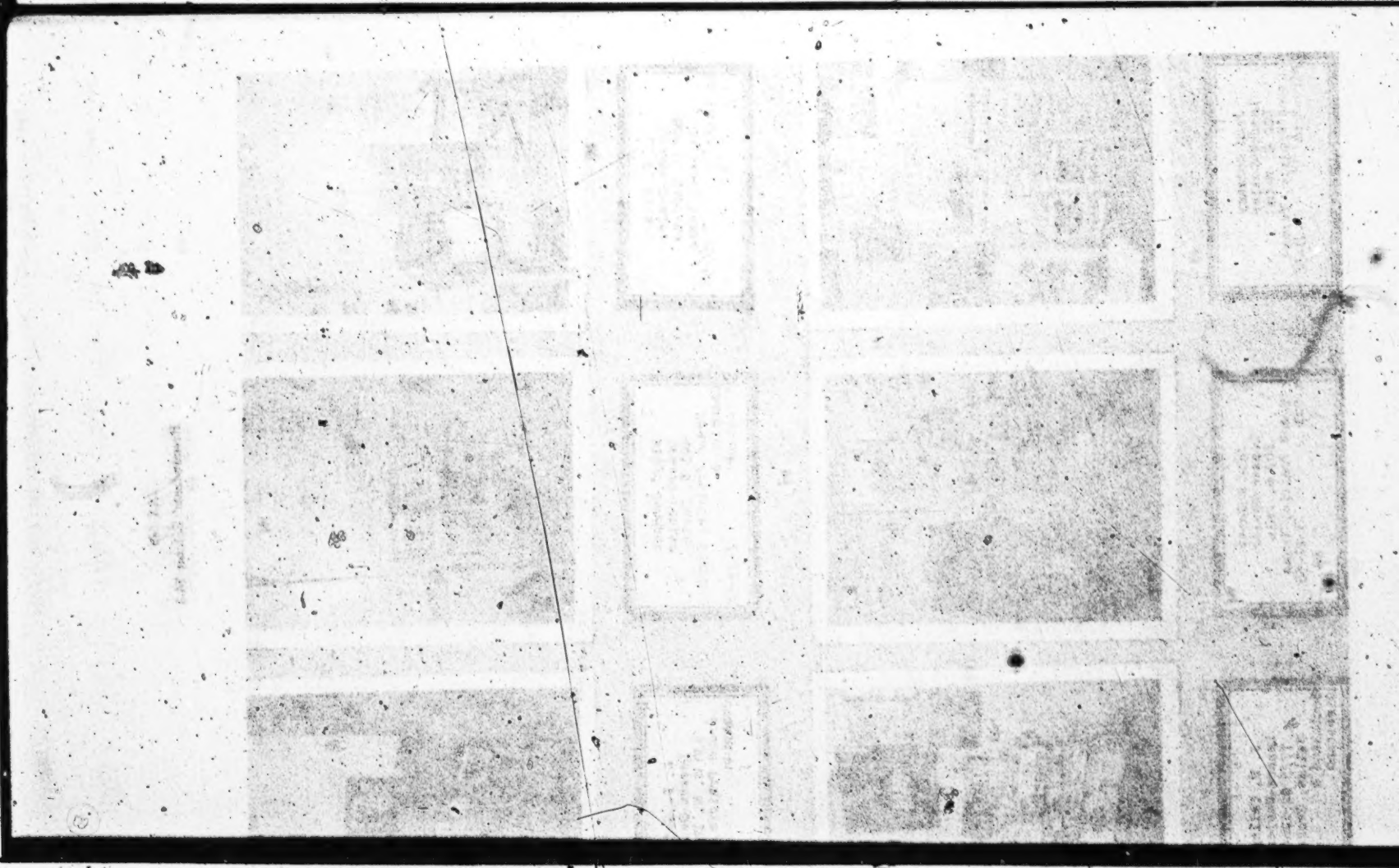
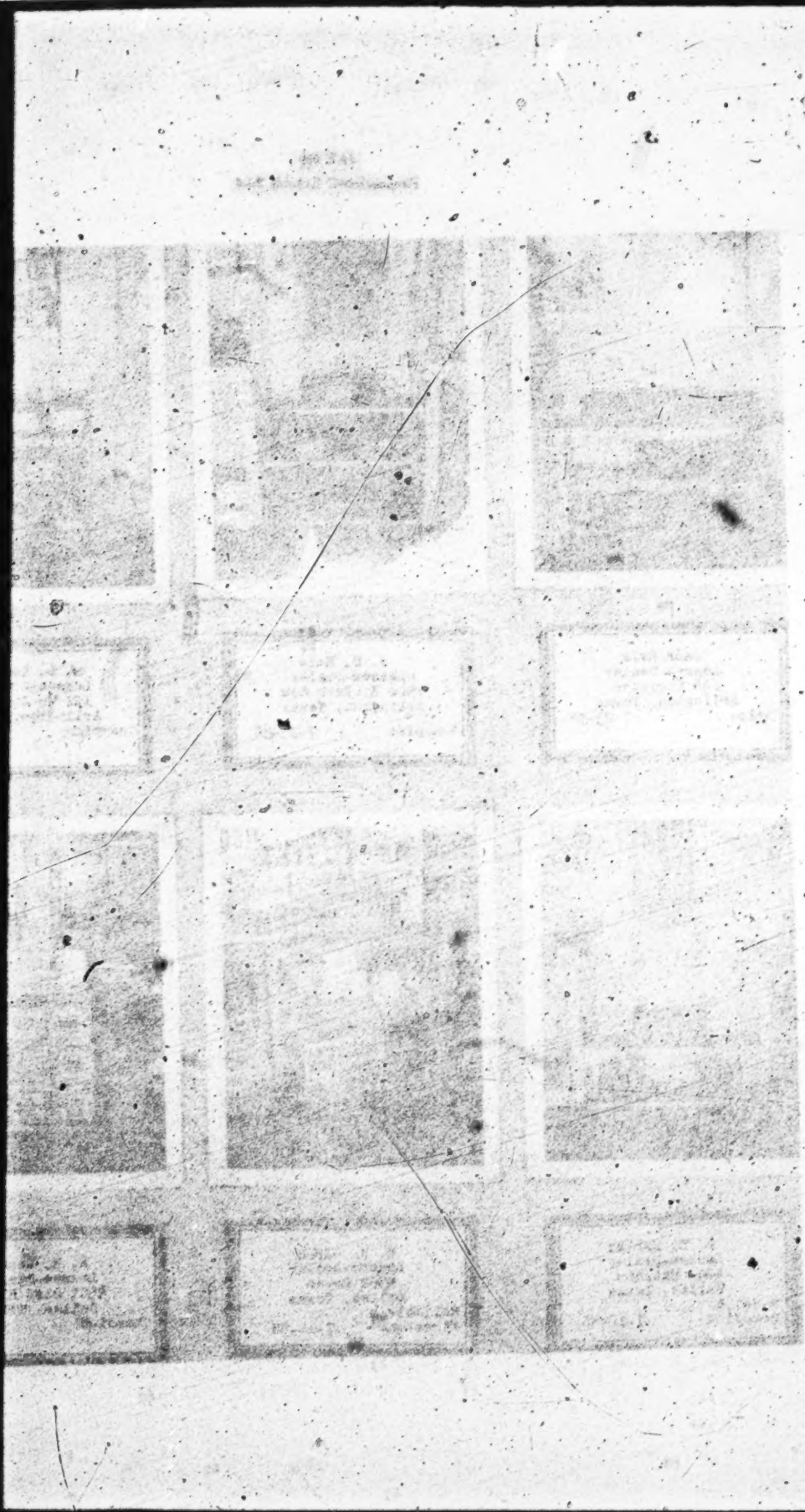
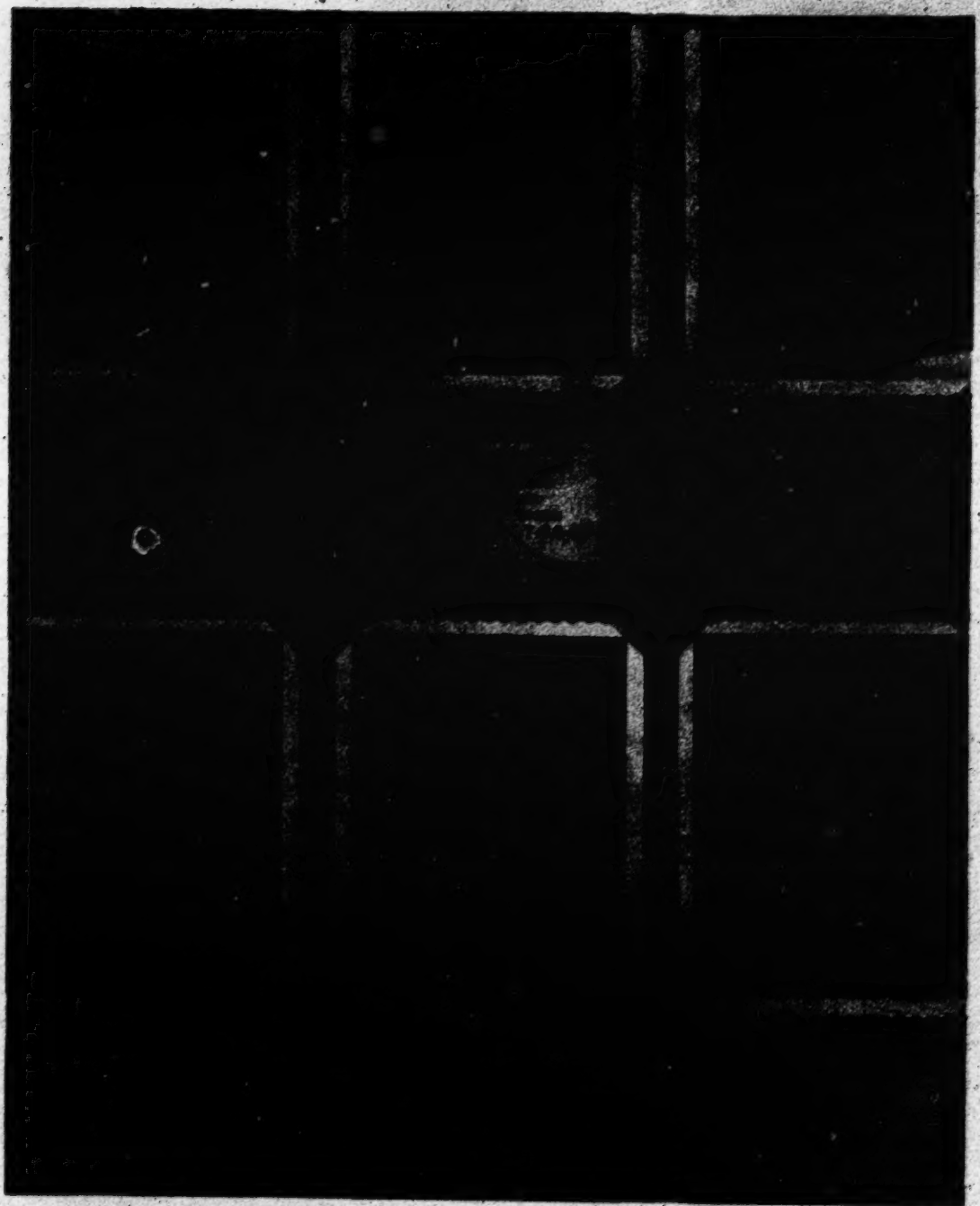
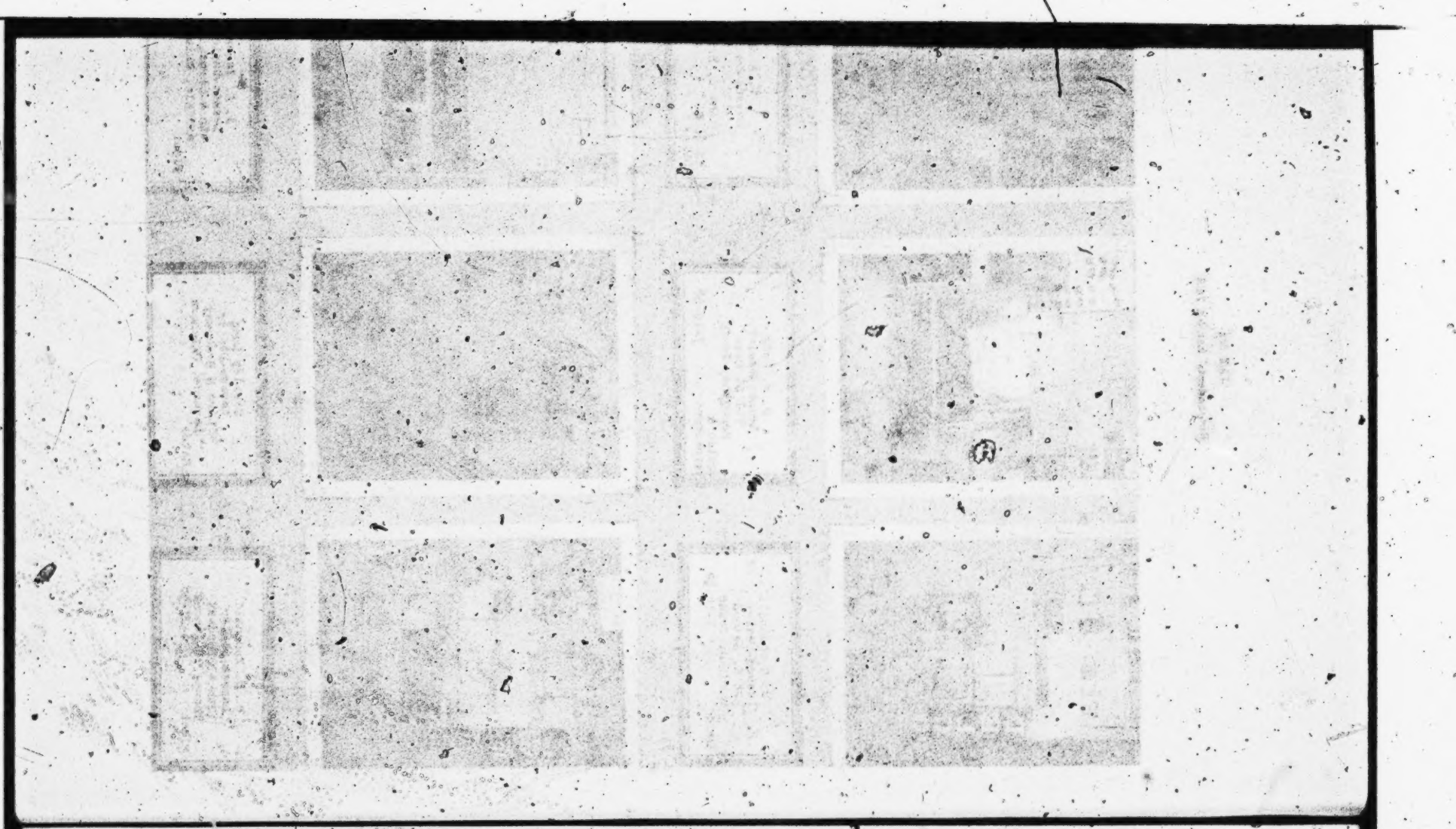
FAX NO.
Respondent Exhibit 245





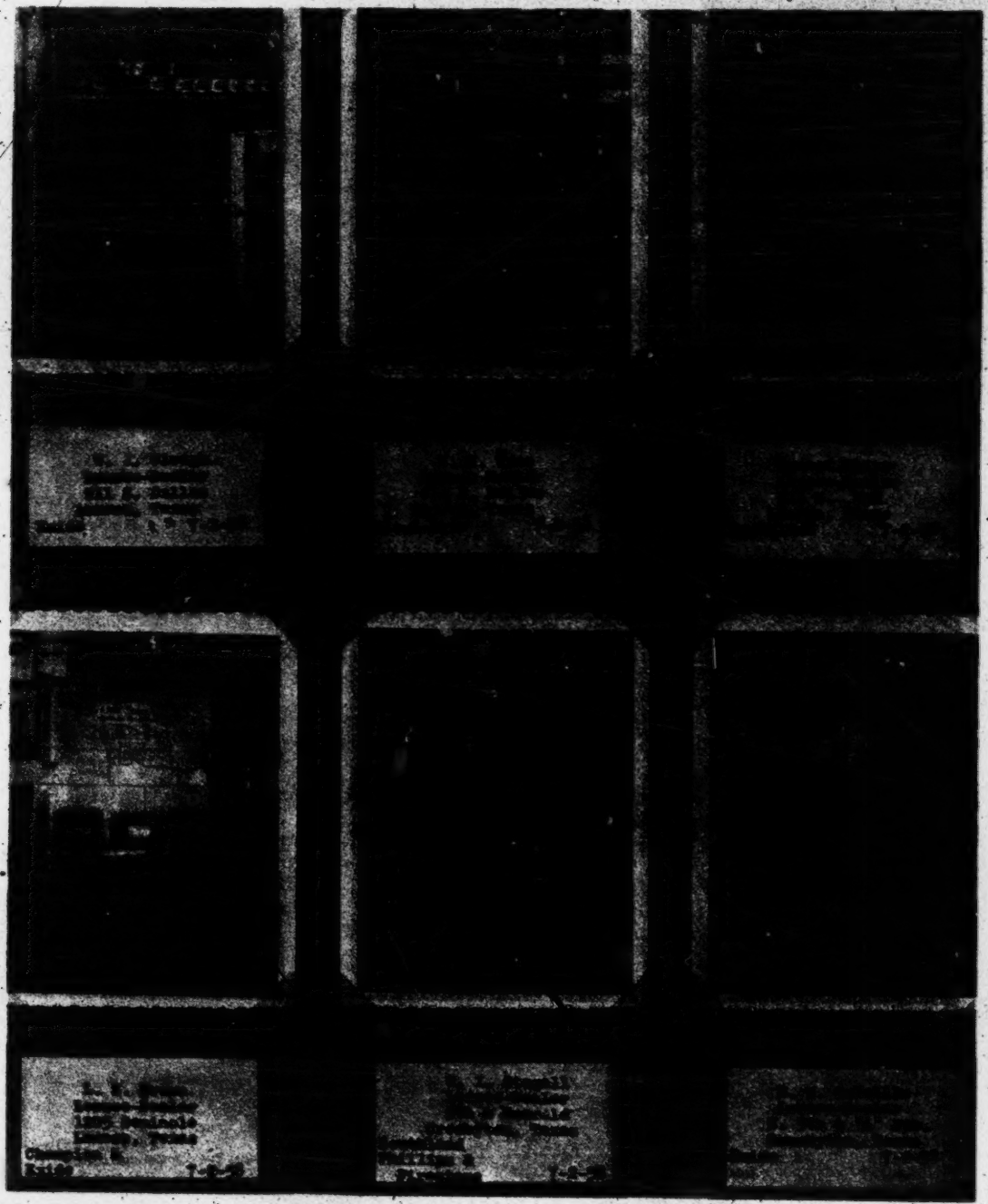


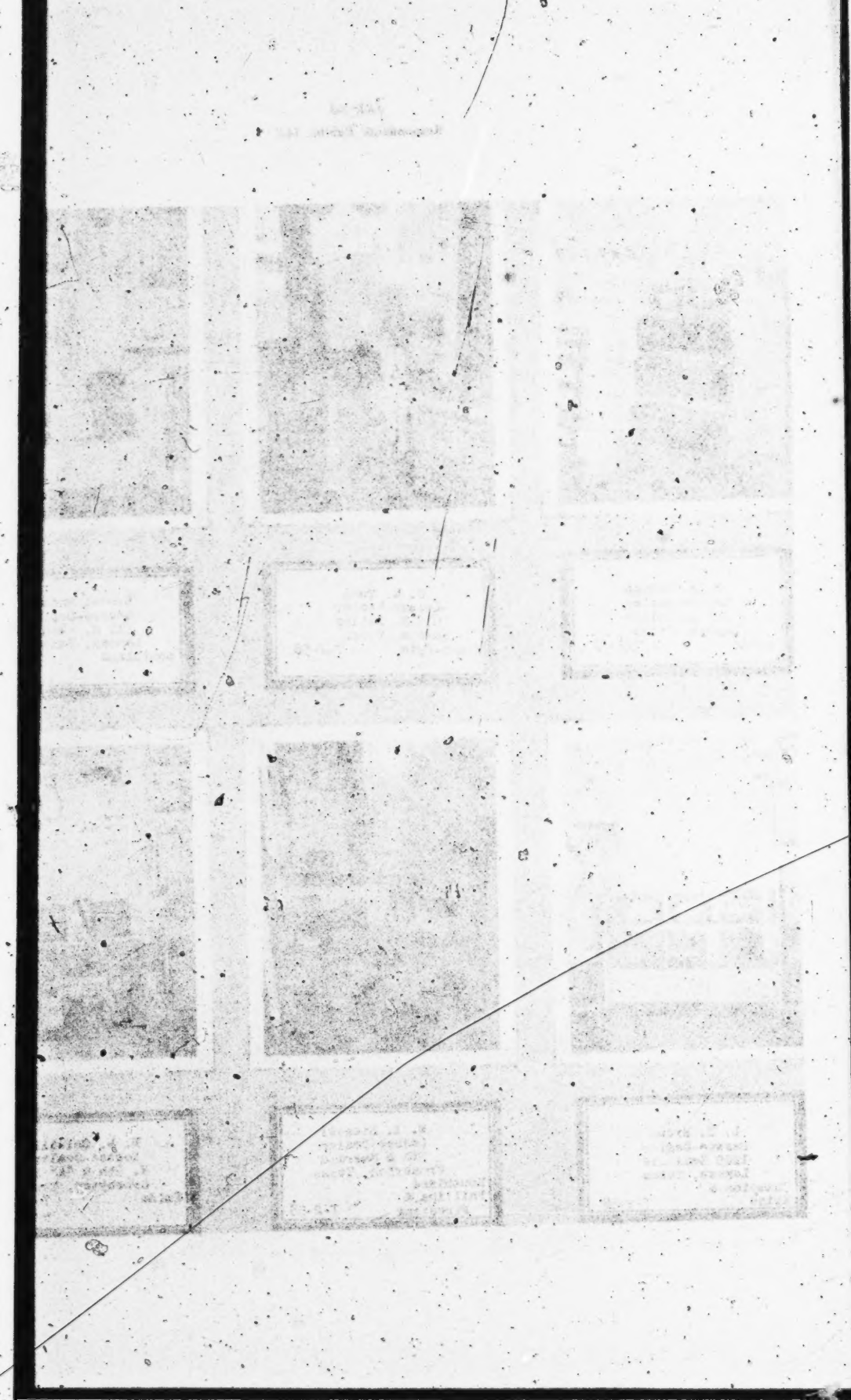


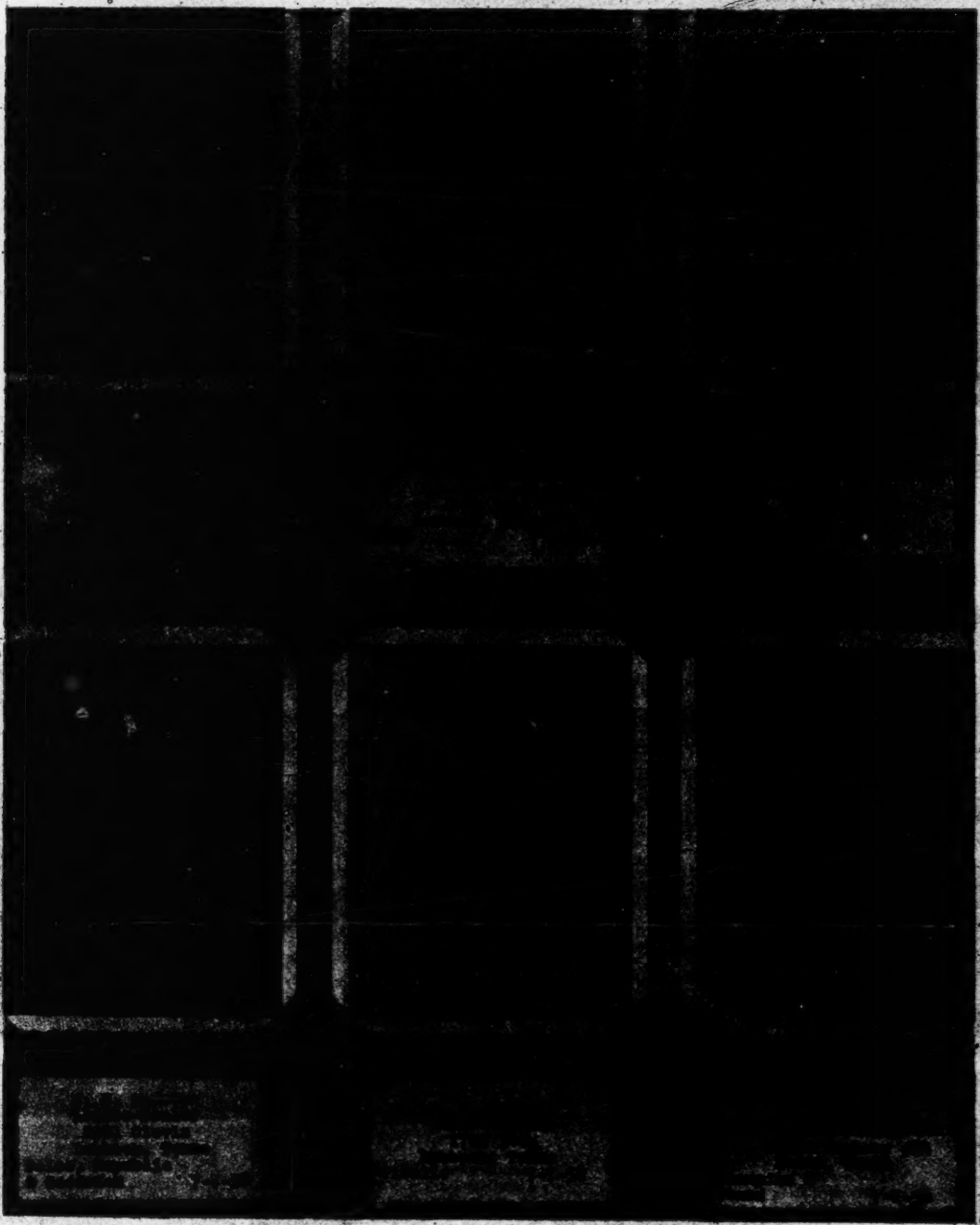


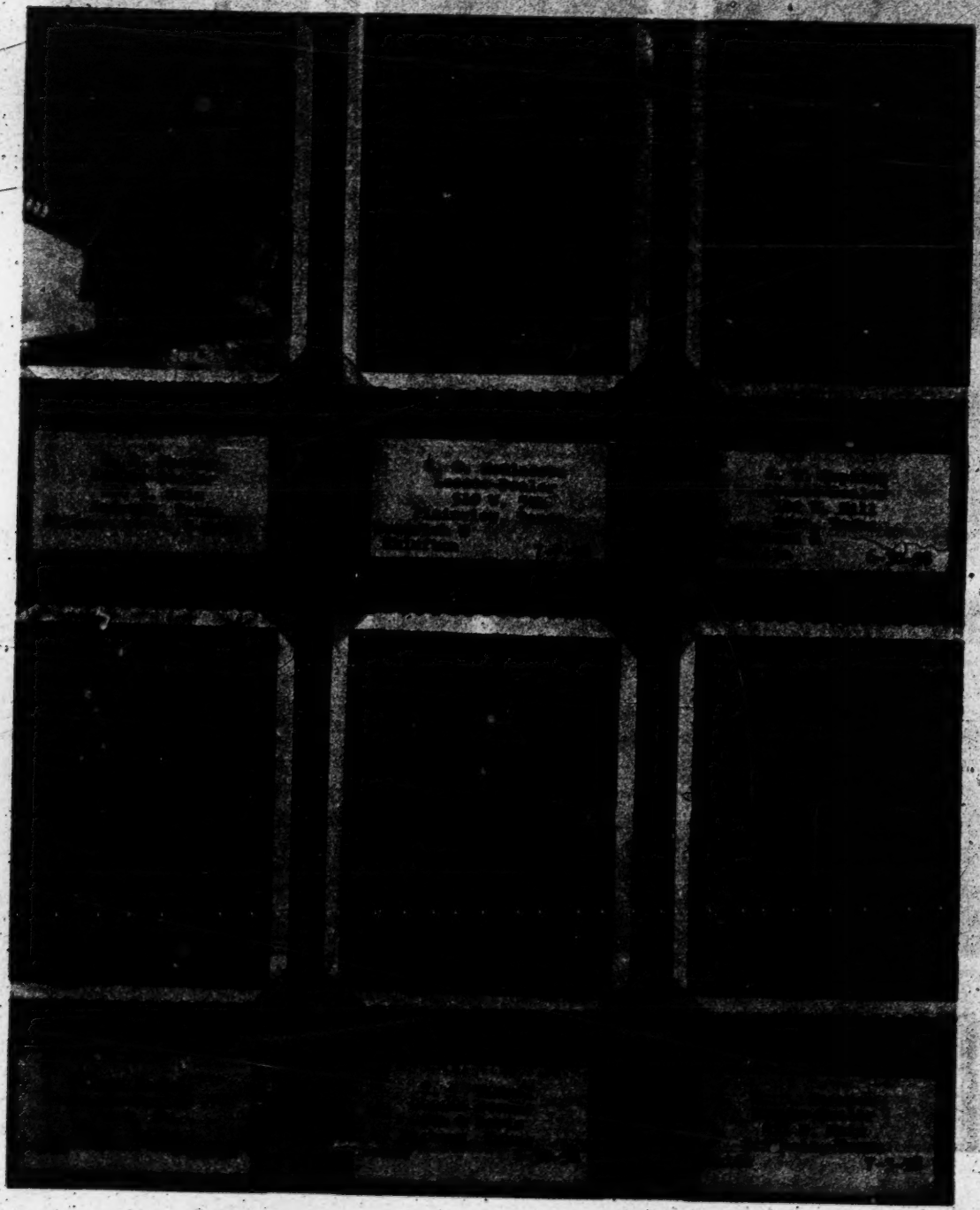
JAX 330

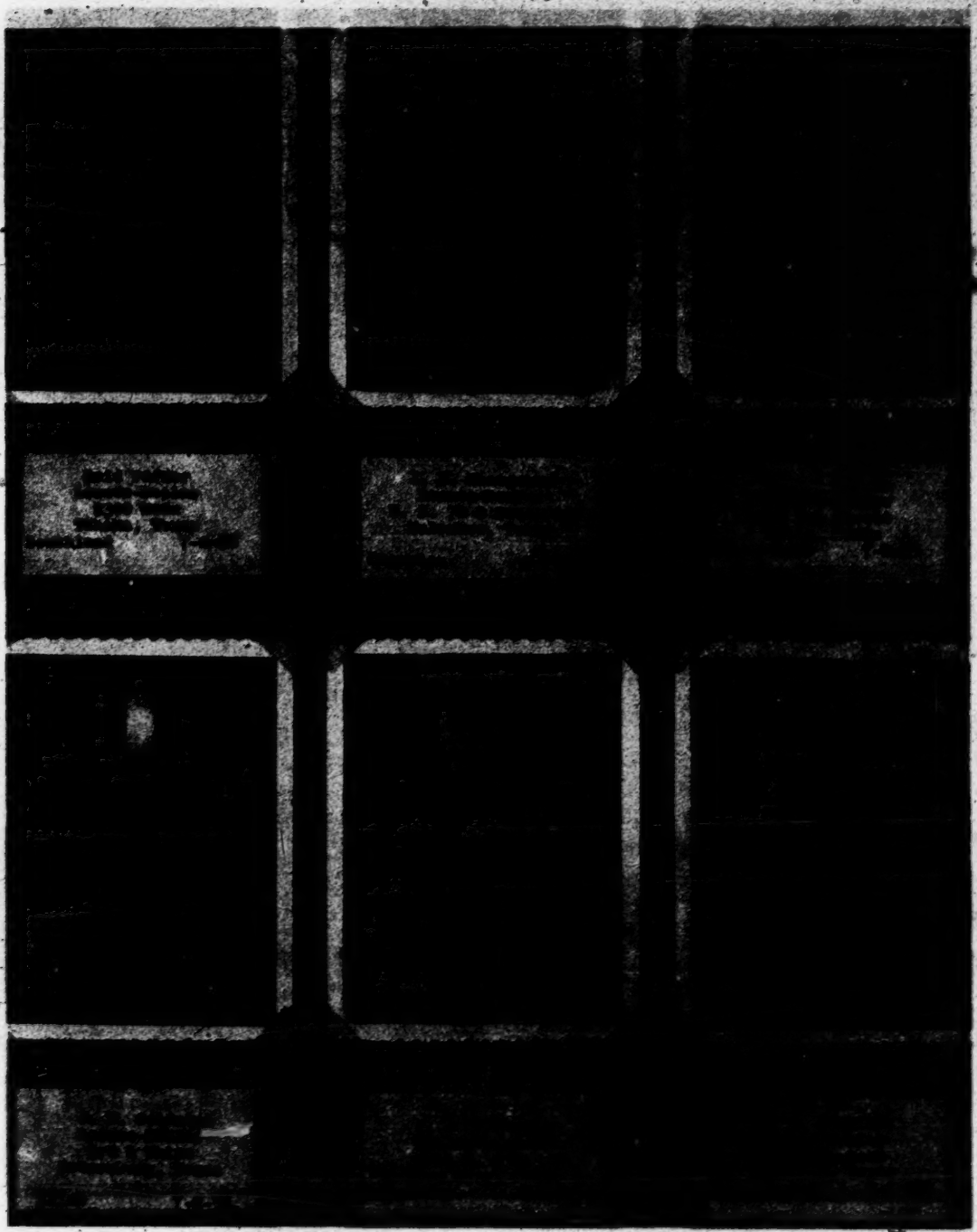
Respondents' Exhibit 747

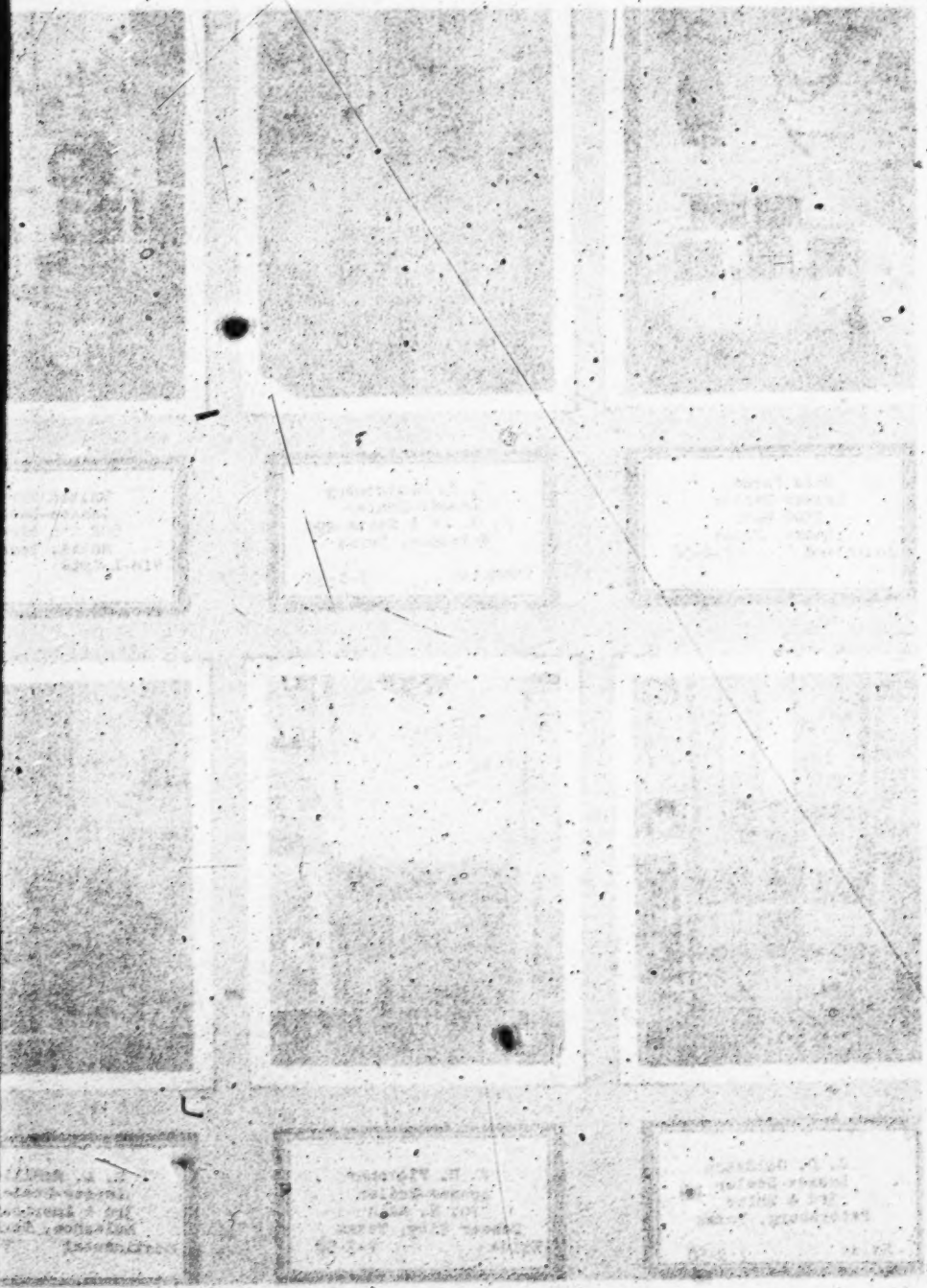


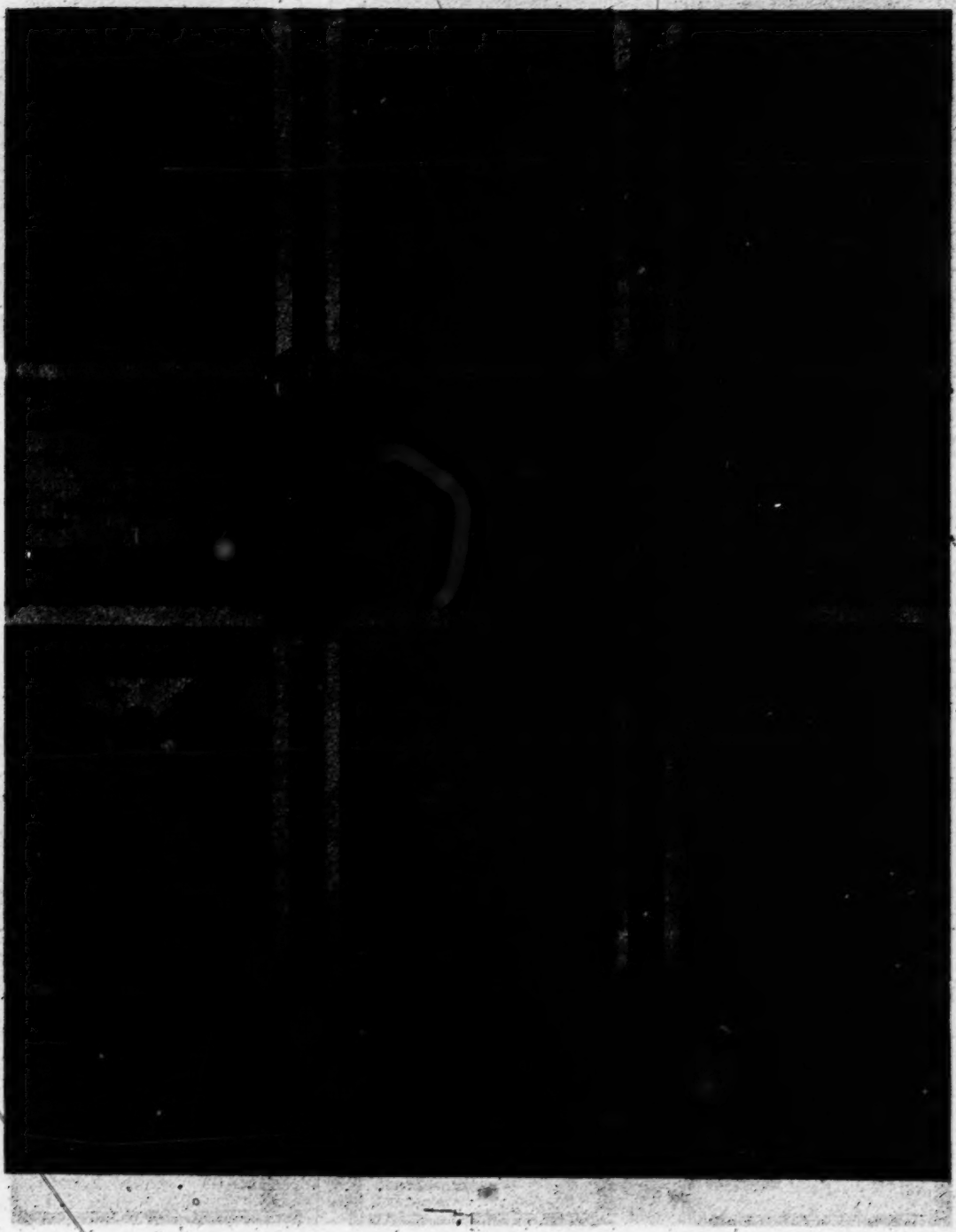


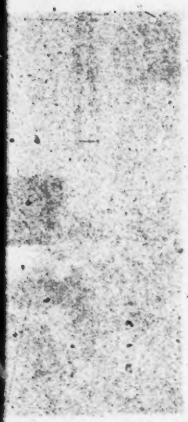
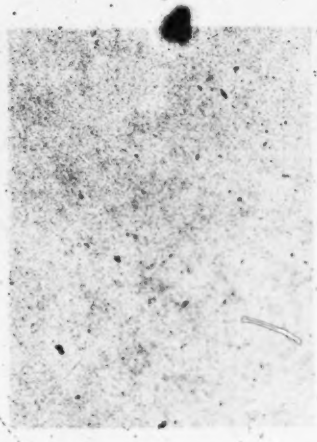
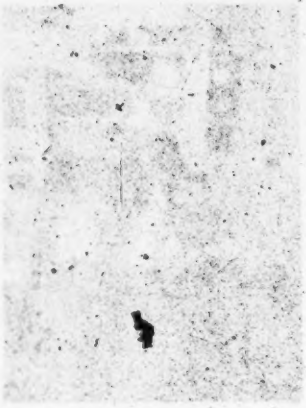
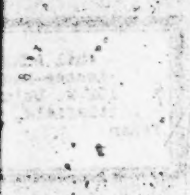


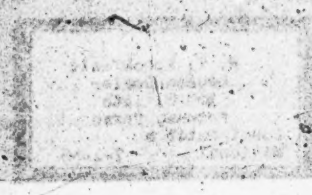




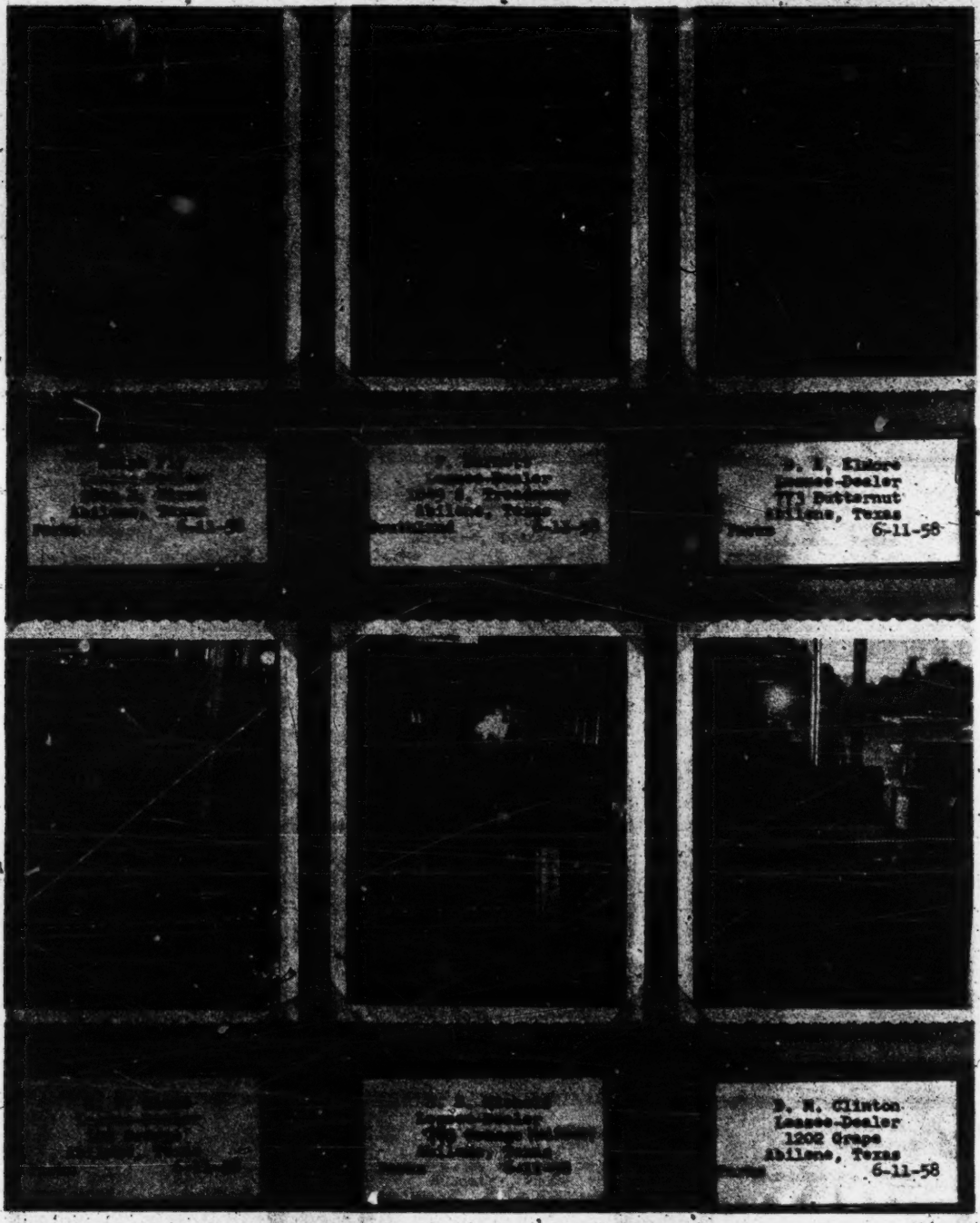




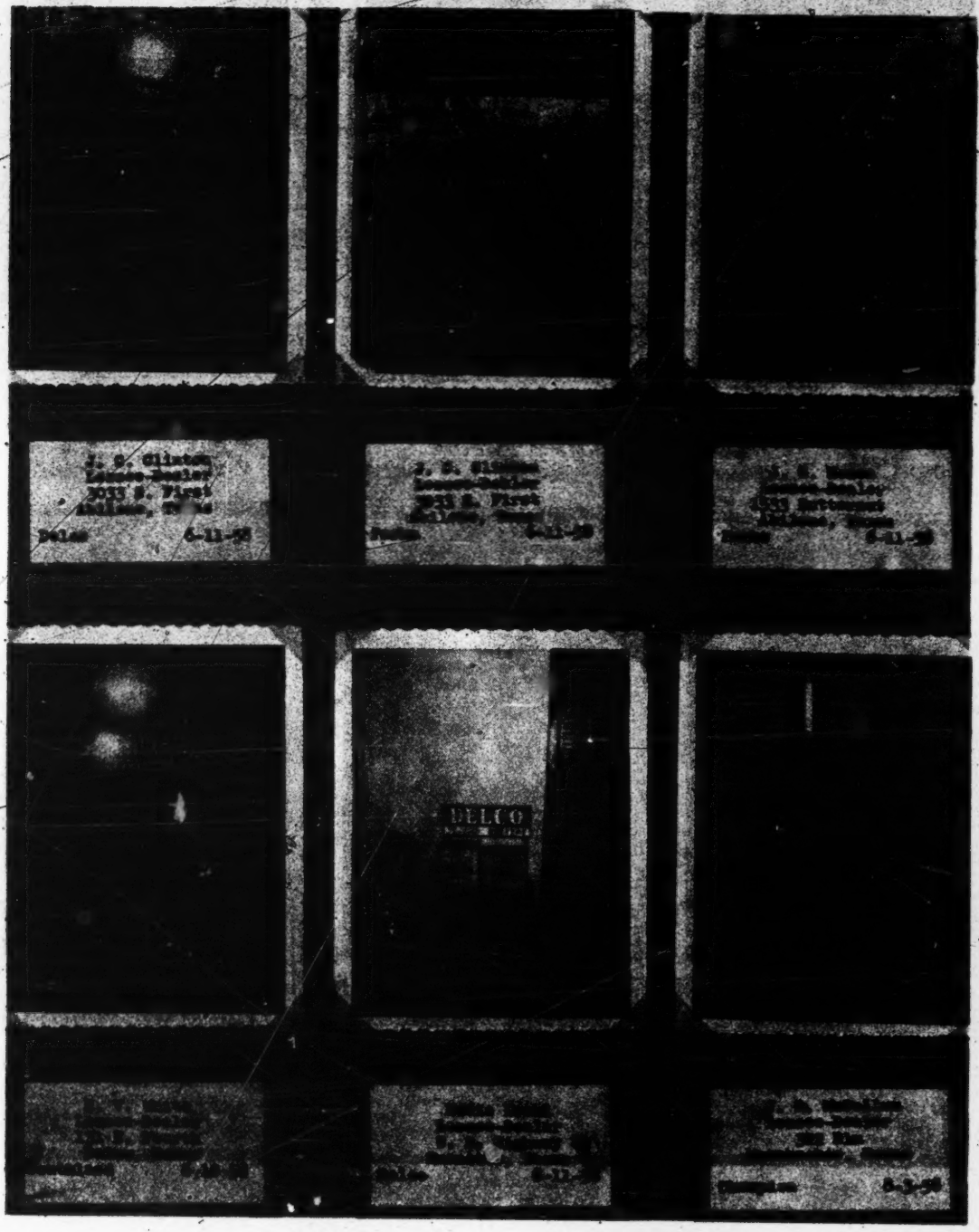


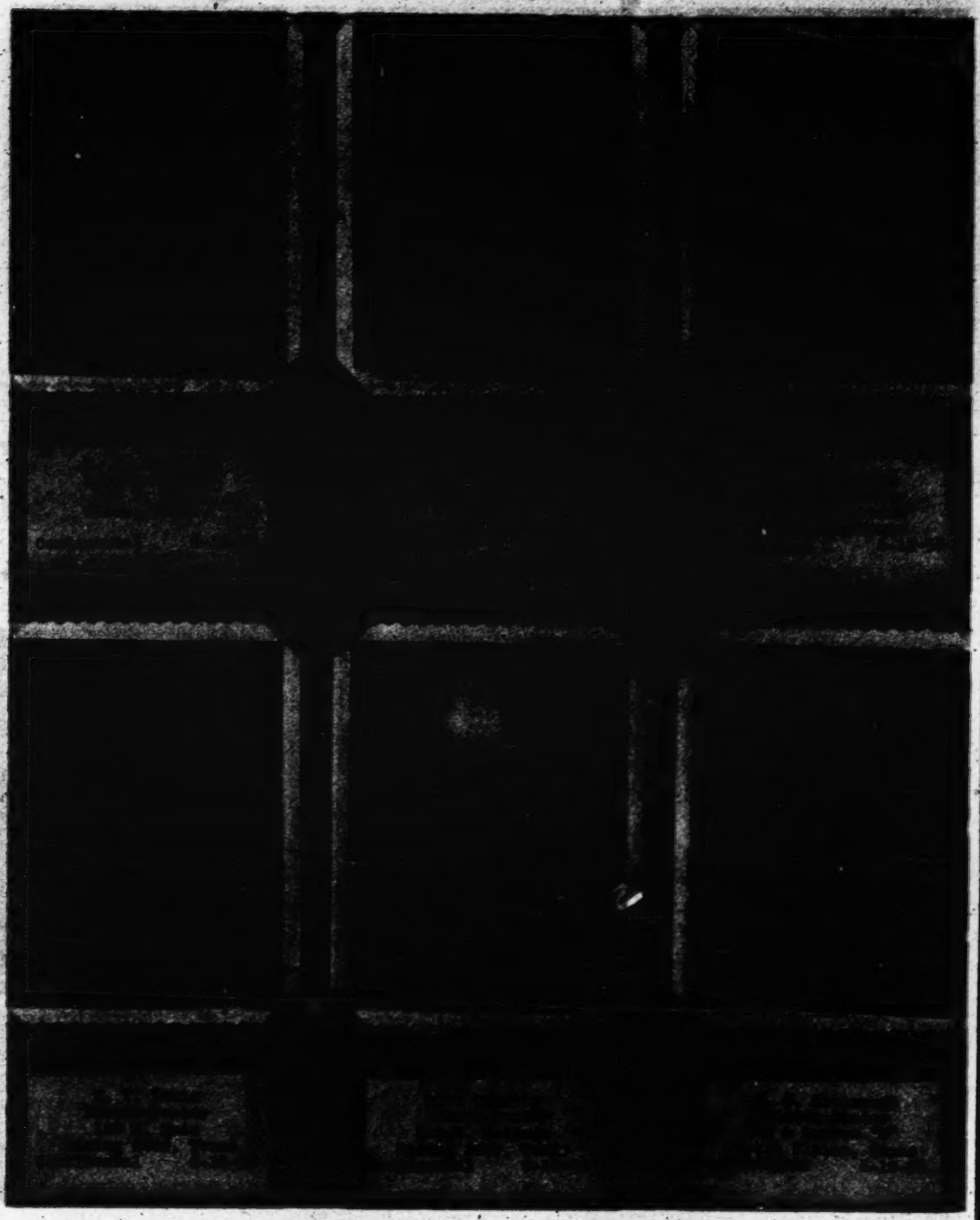
JAX 88,
Respondents' Exhibit 74-12

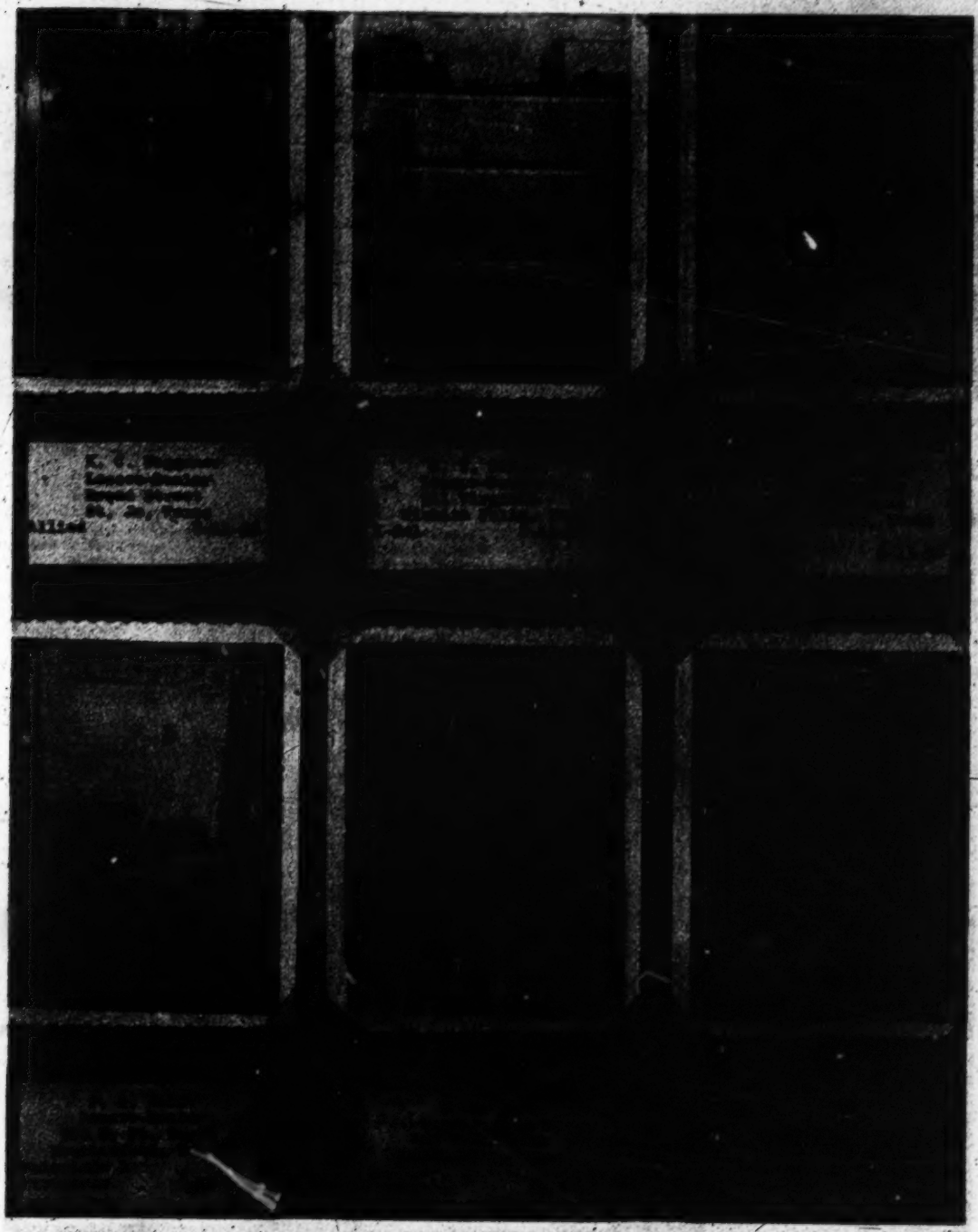


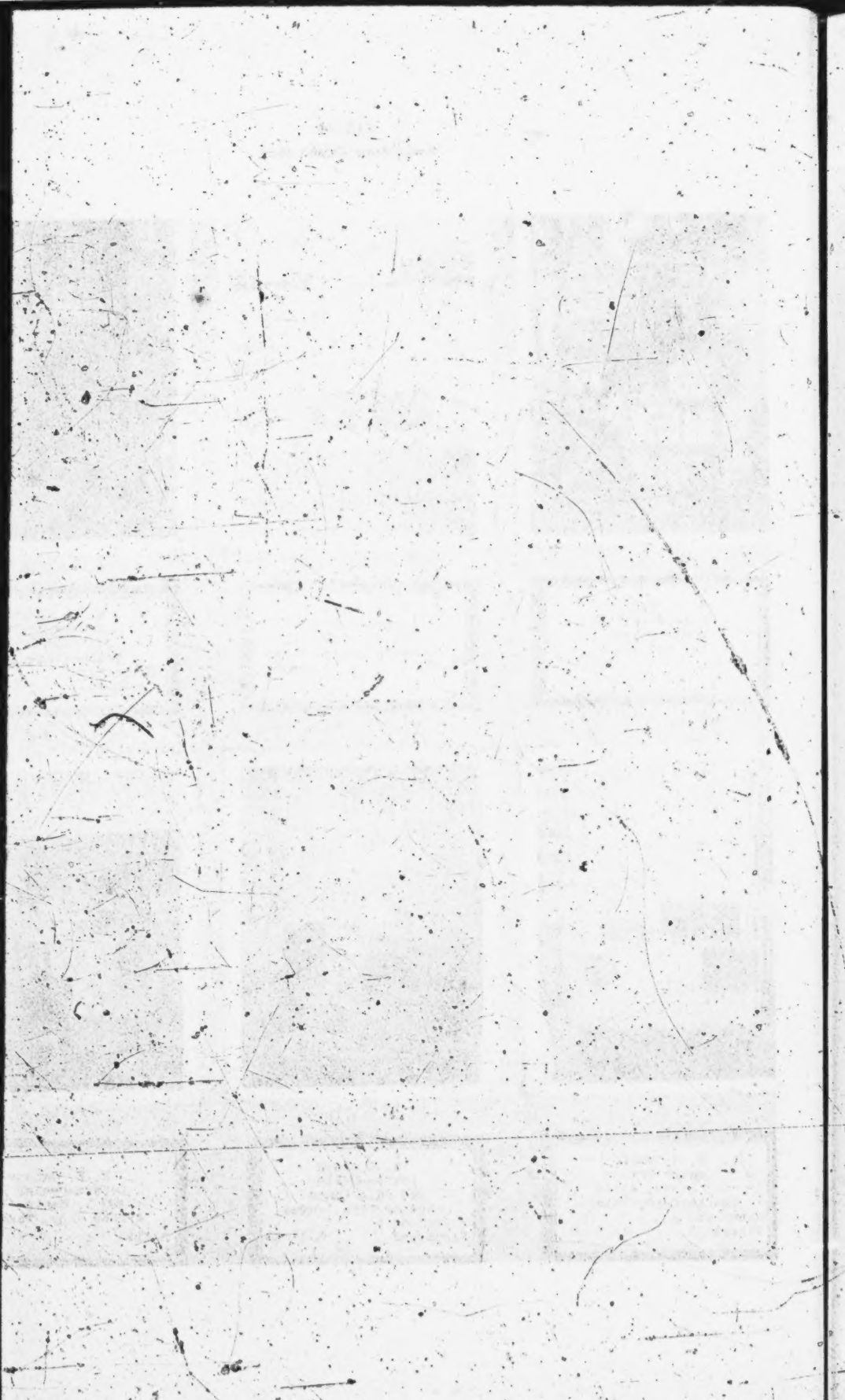
JAX 560

Respondents' Exhibit 74-14









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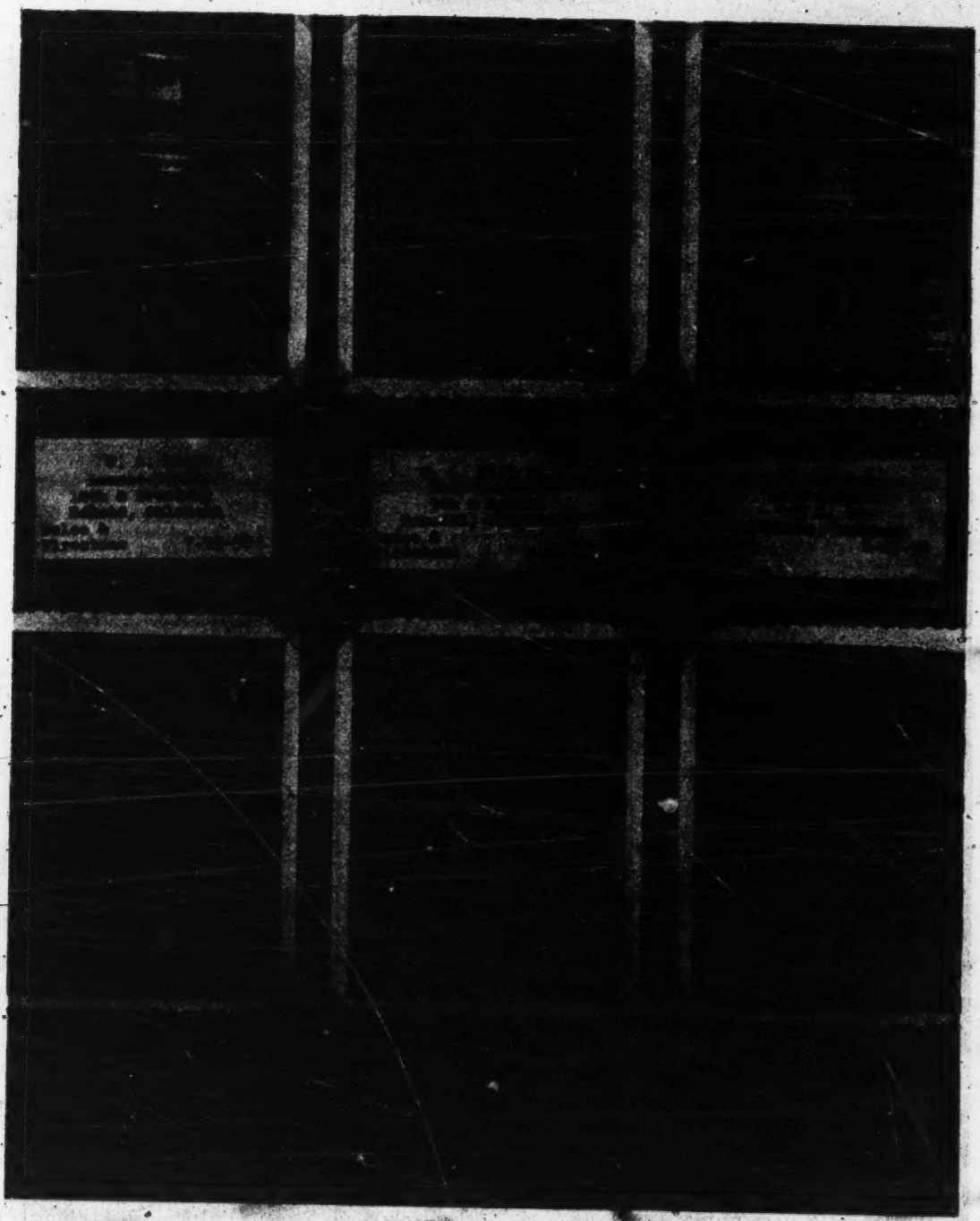
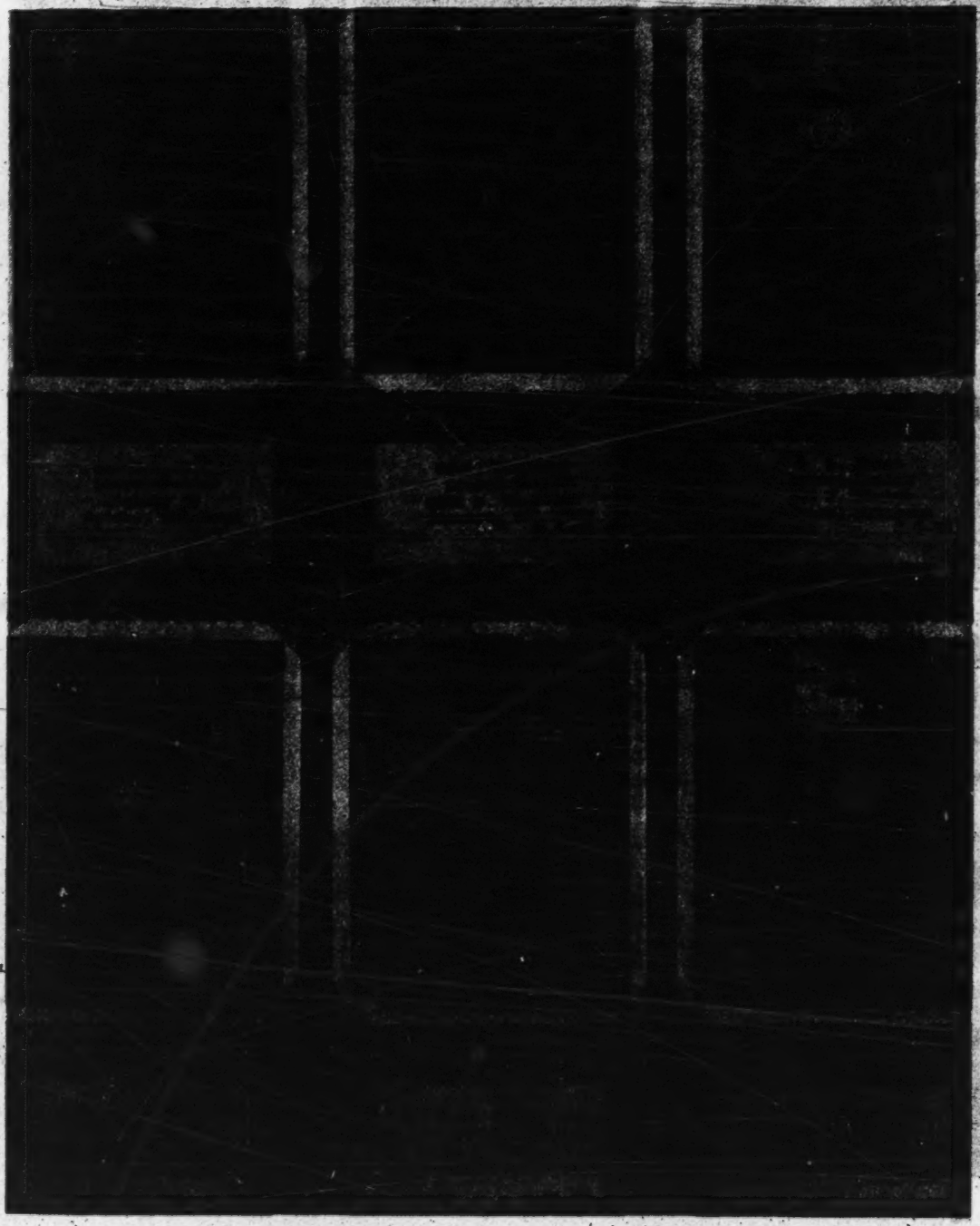
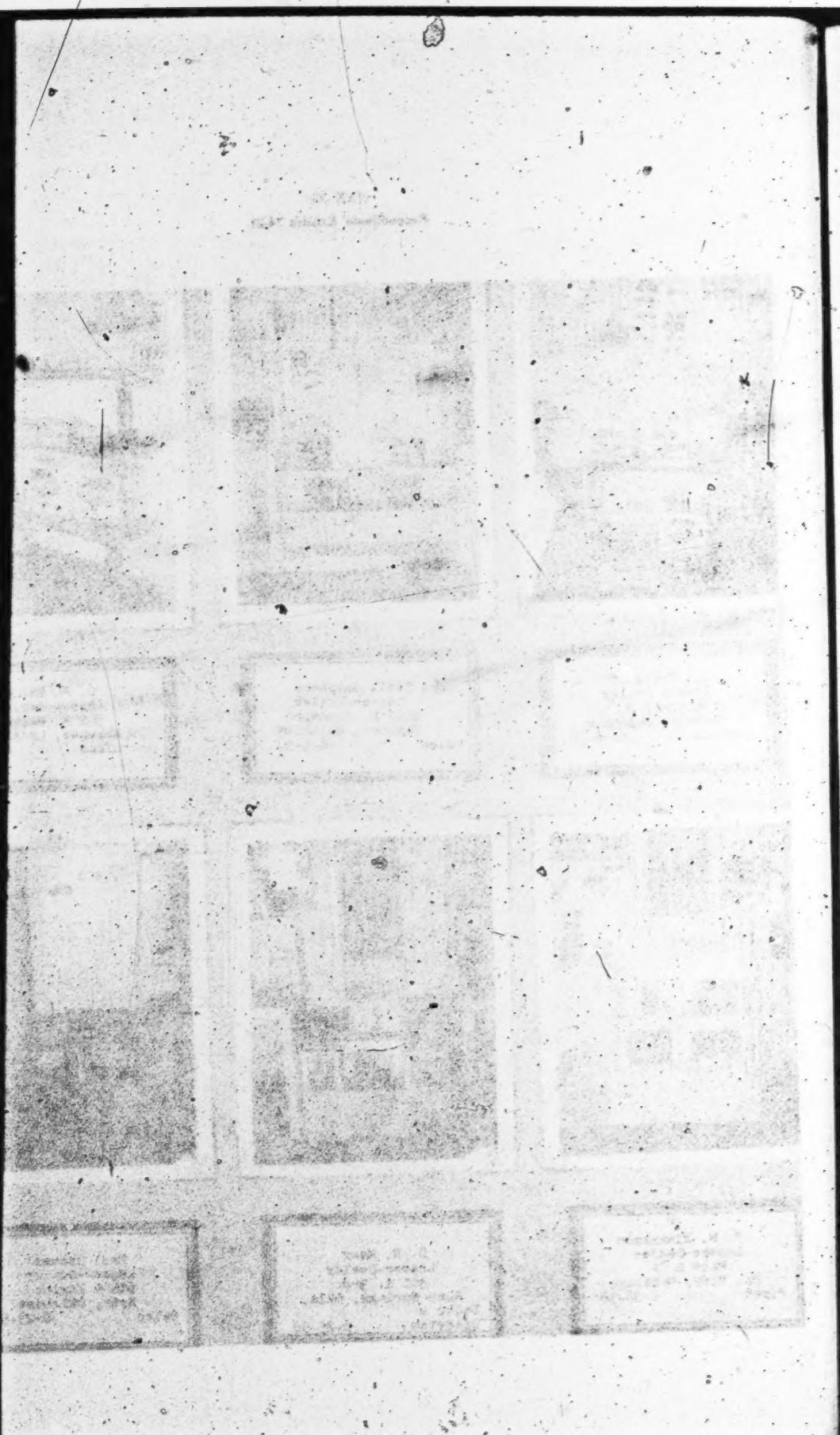
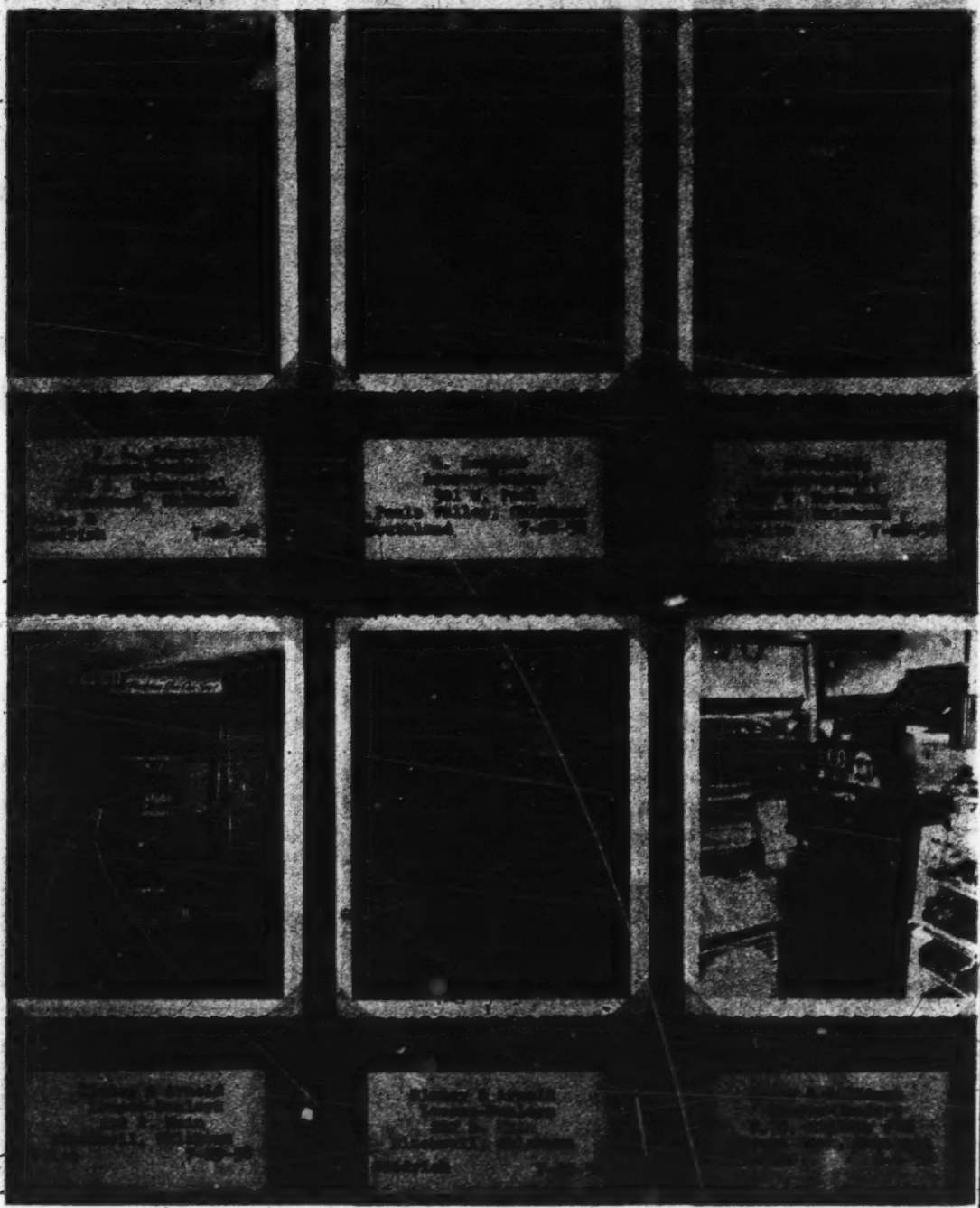
JAX 36
Respondent's Exhibit 74-B



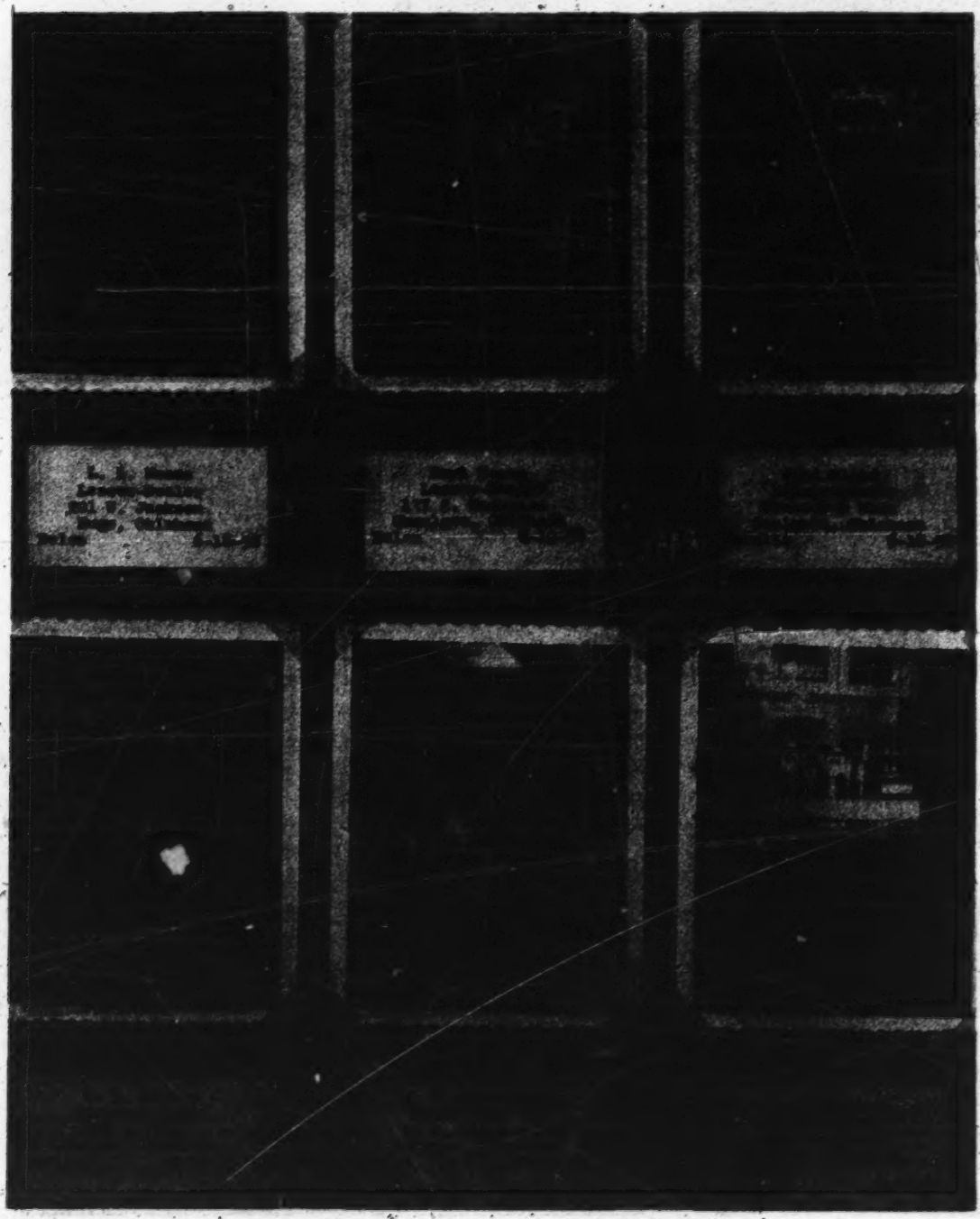


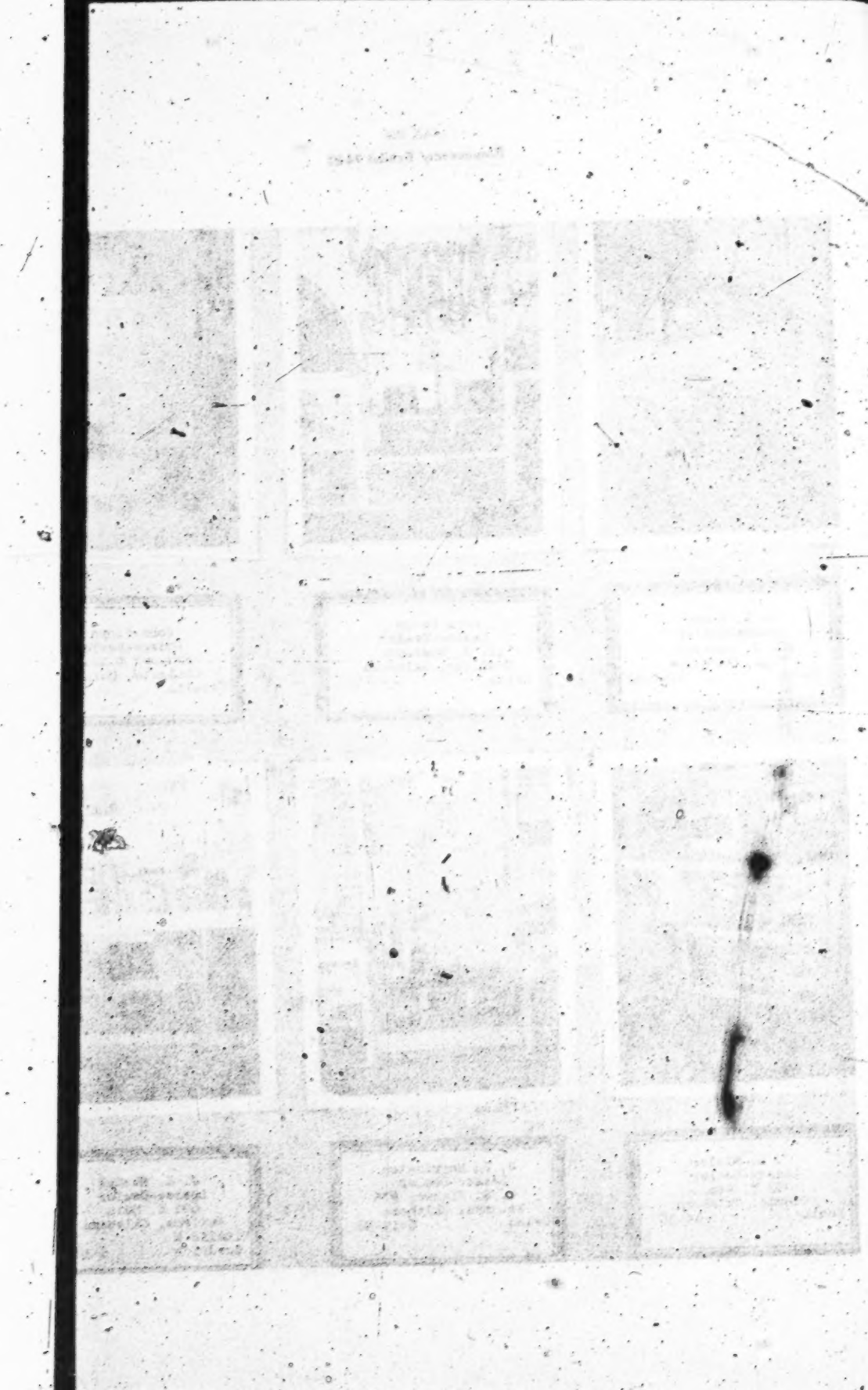


JAX 288
Respondents' Exhibit 76-C



JAX 500
Superseded Edition 74-23





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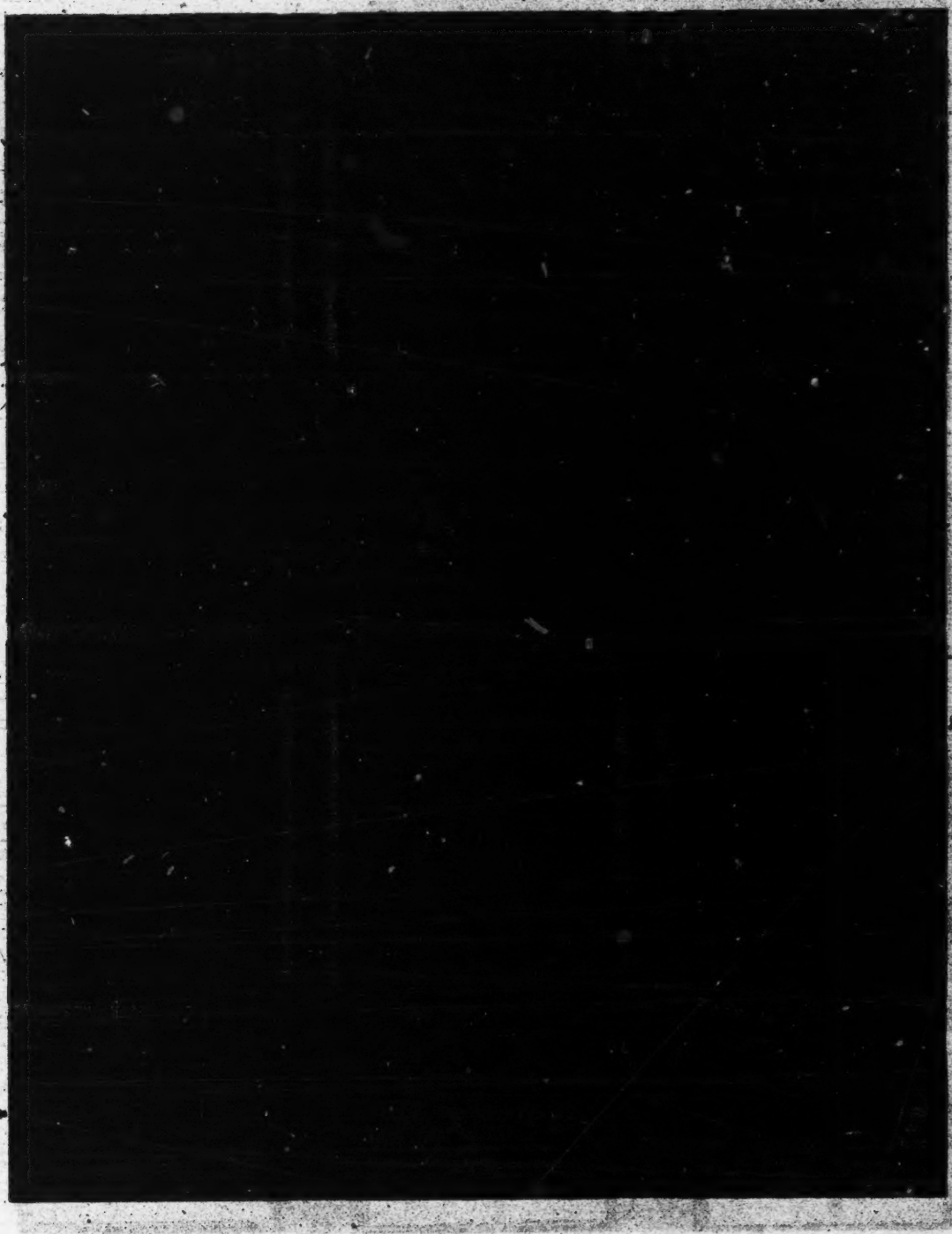

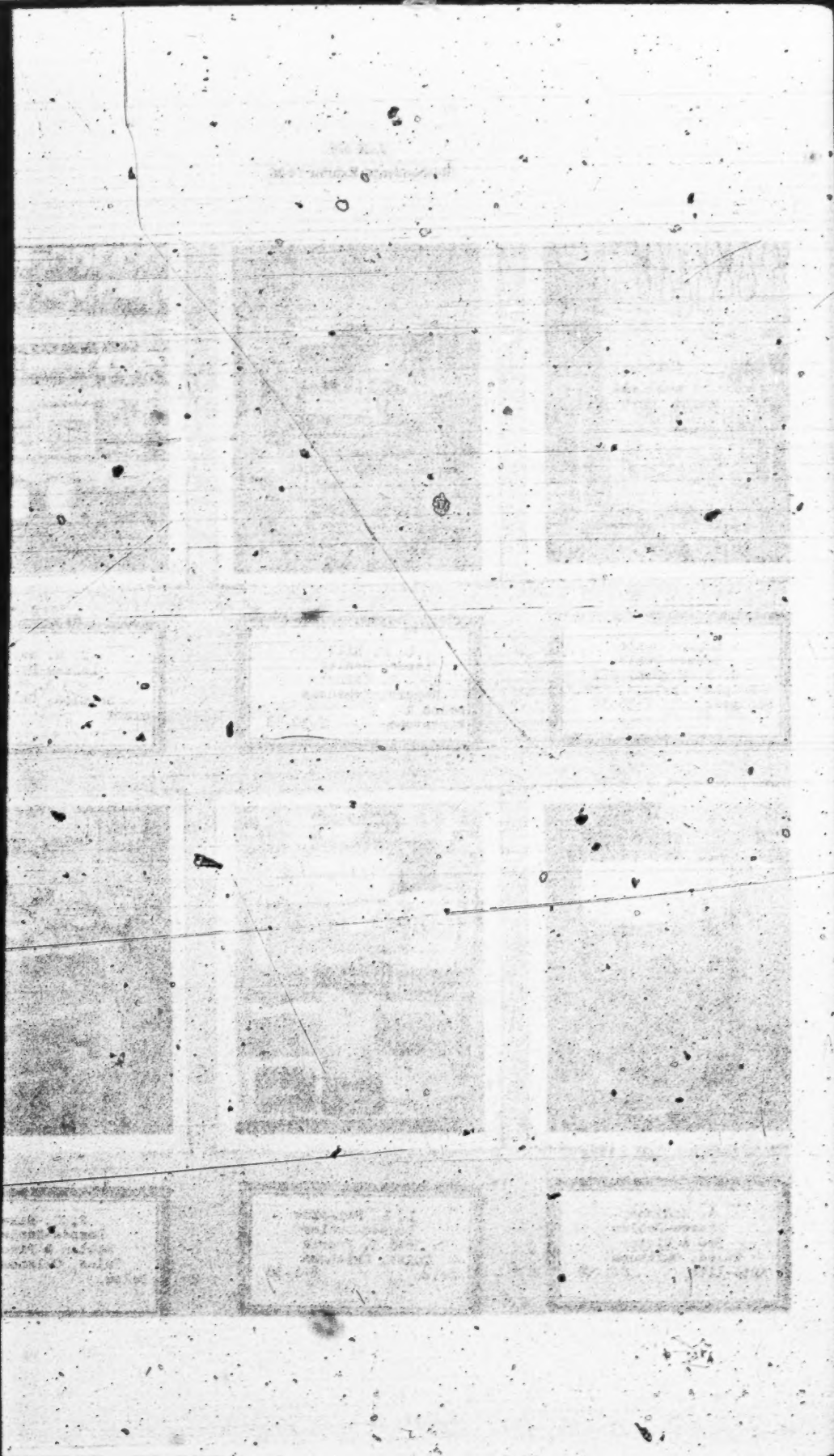

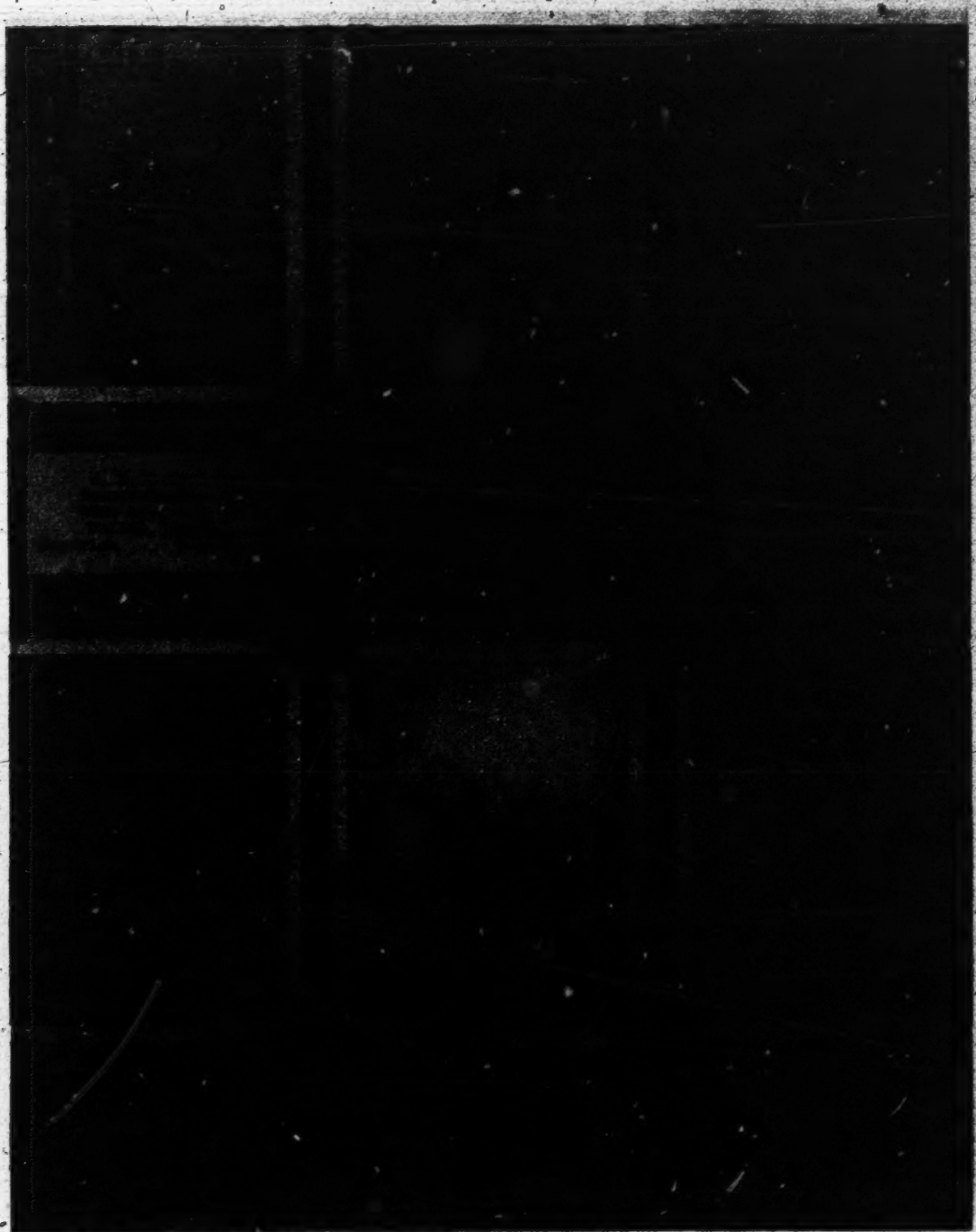

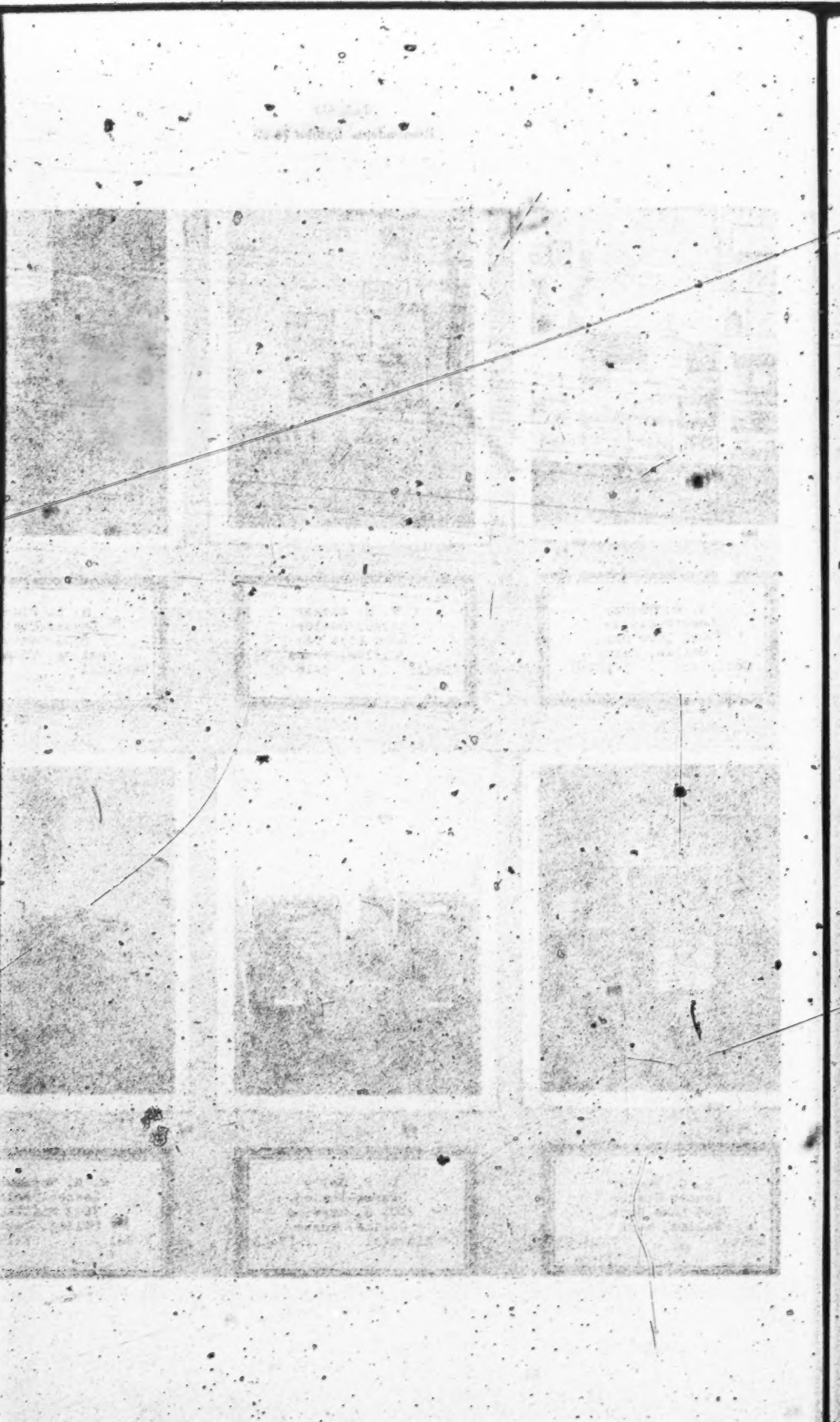

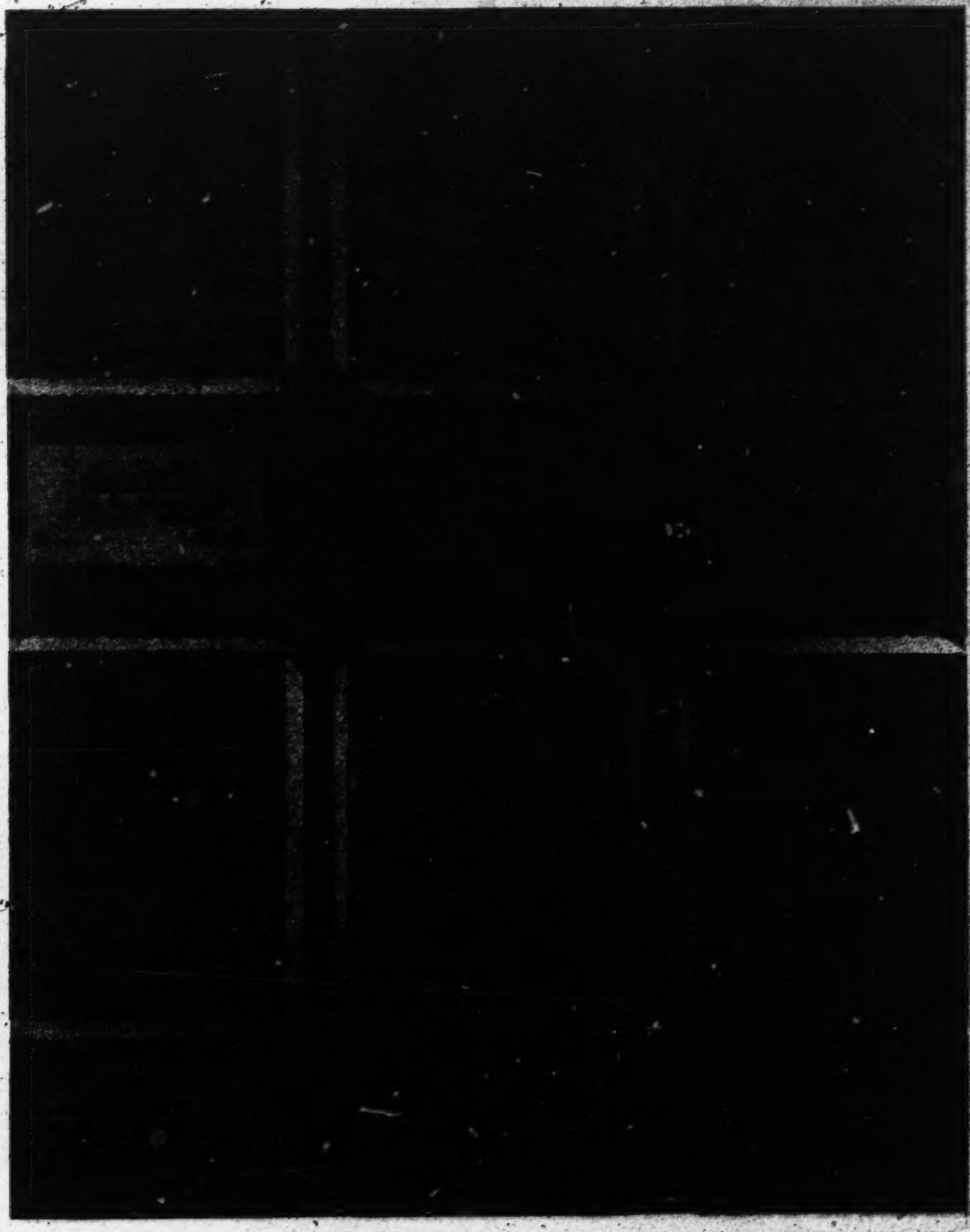

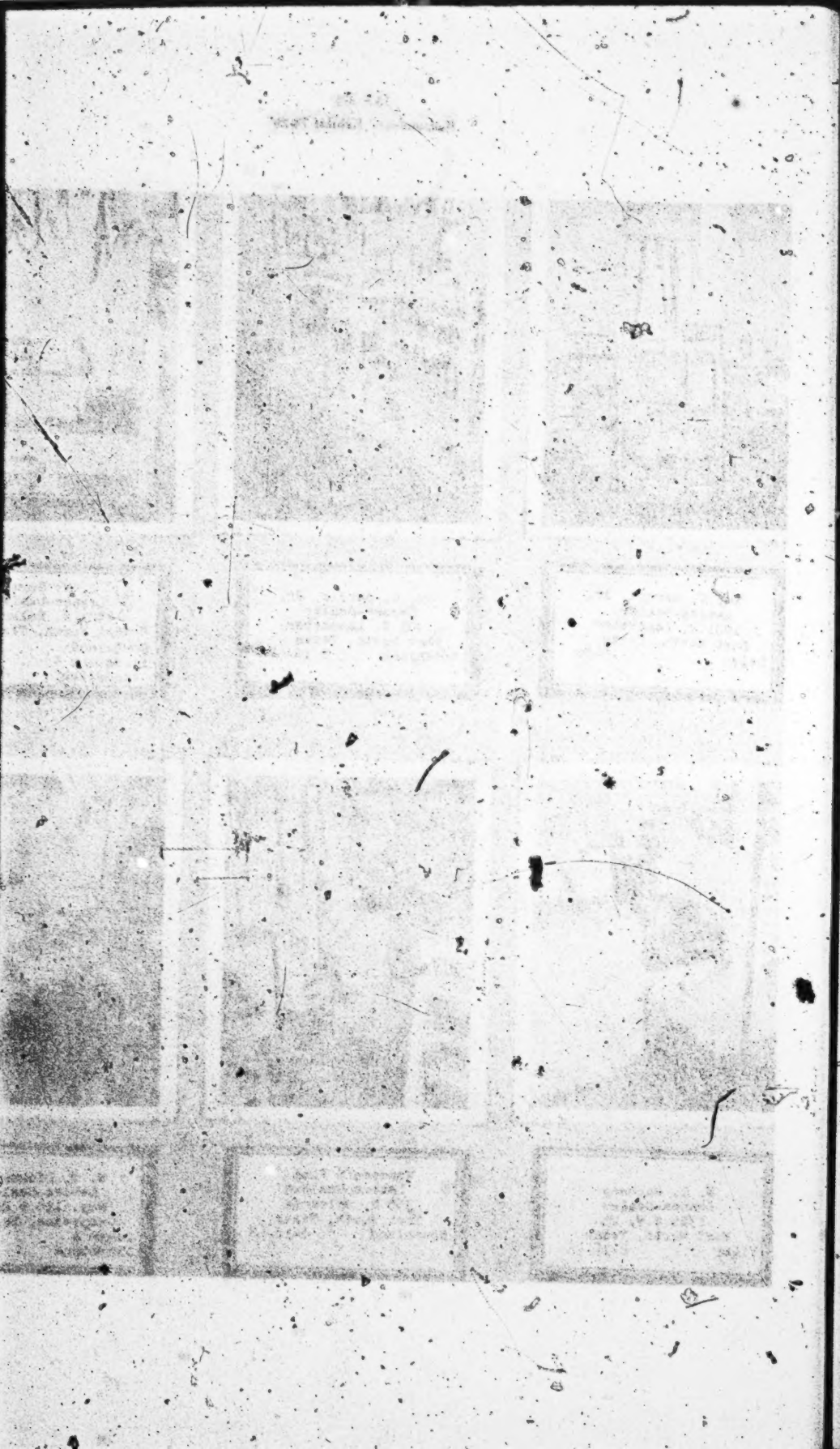

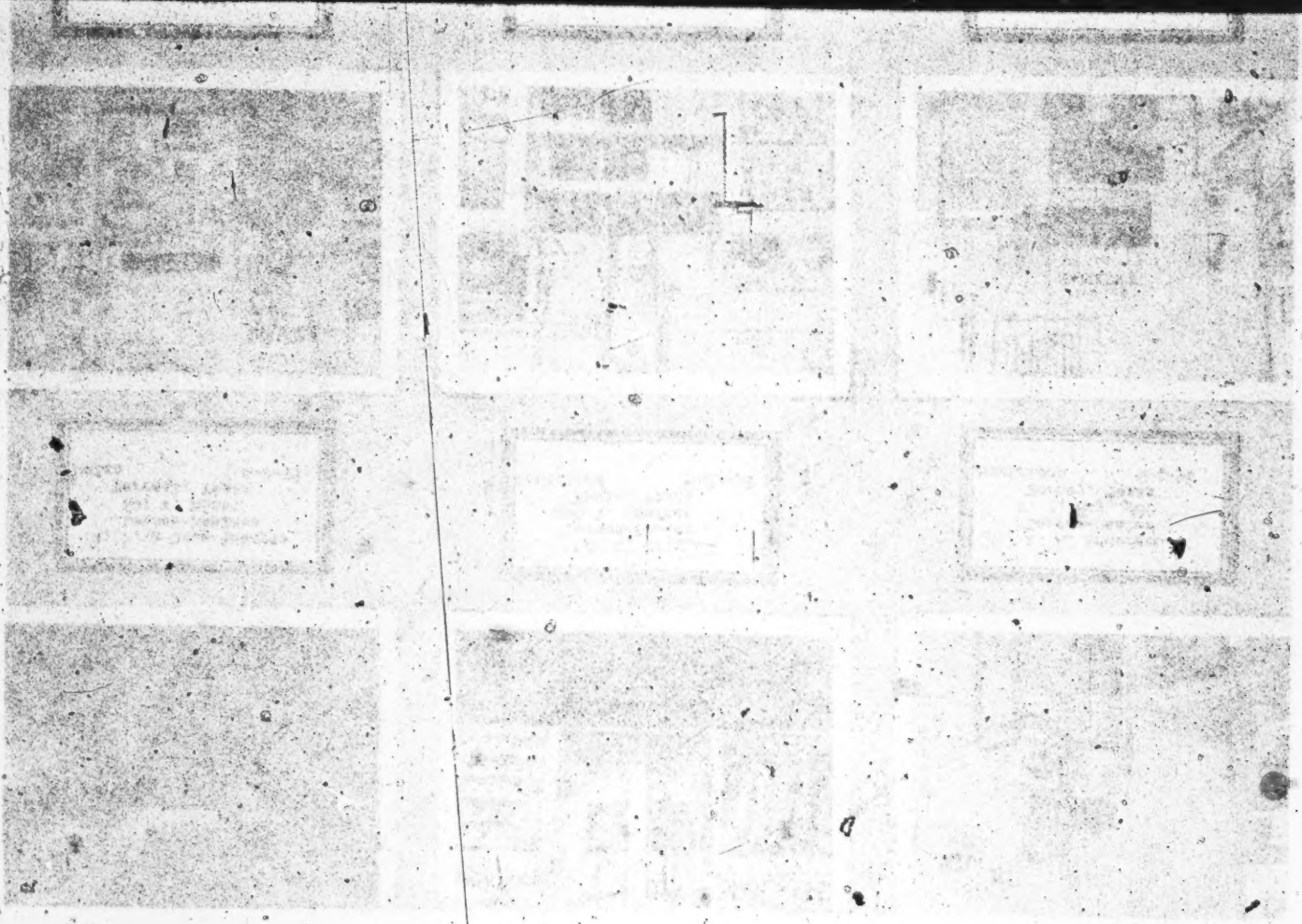

JAX 875
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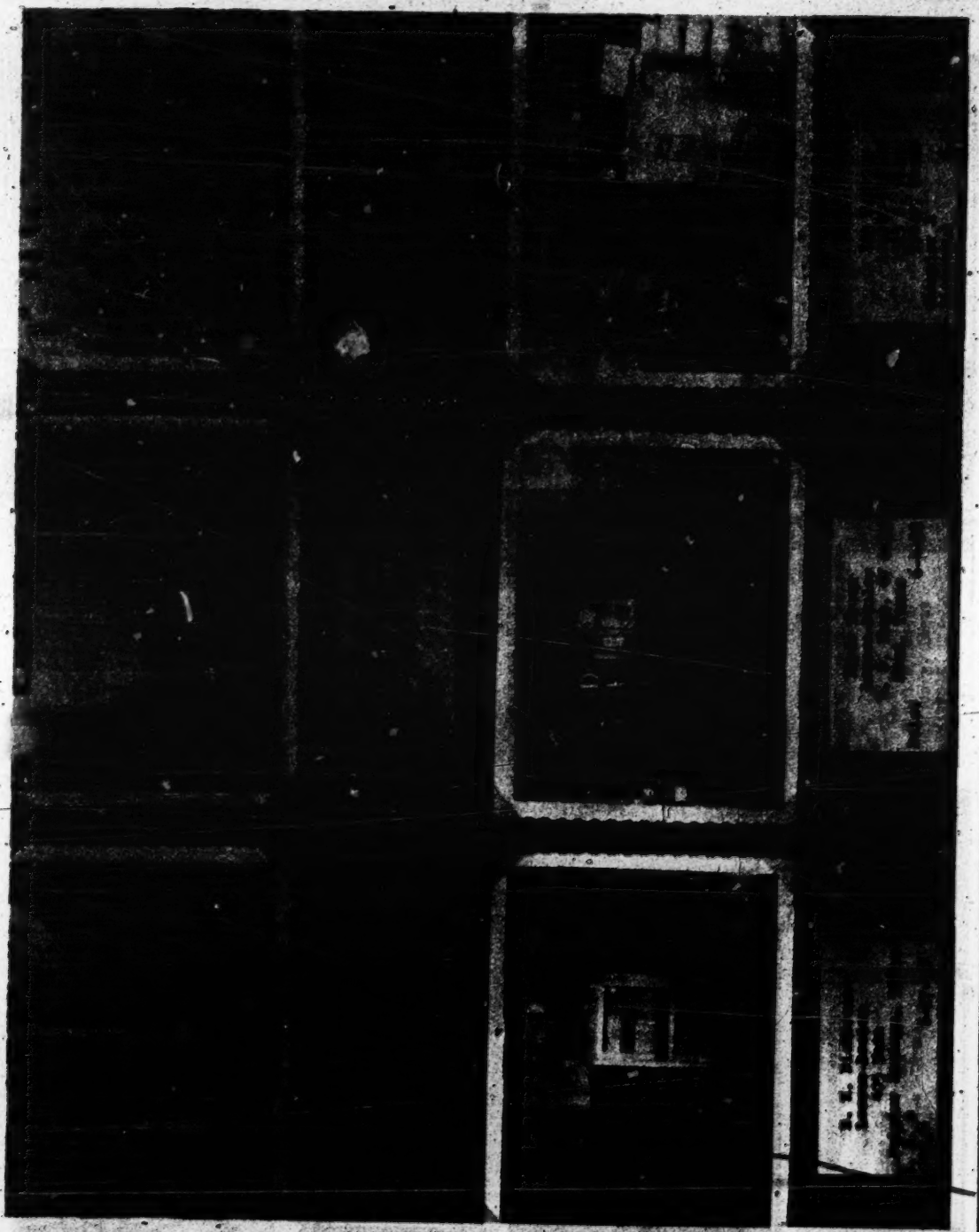
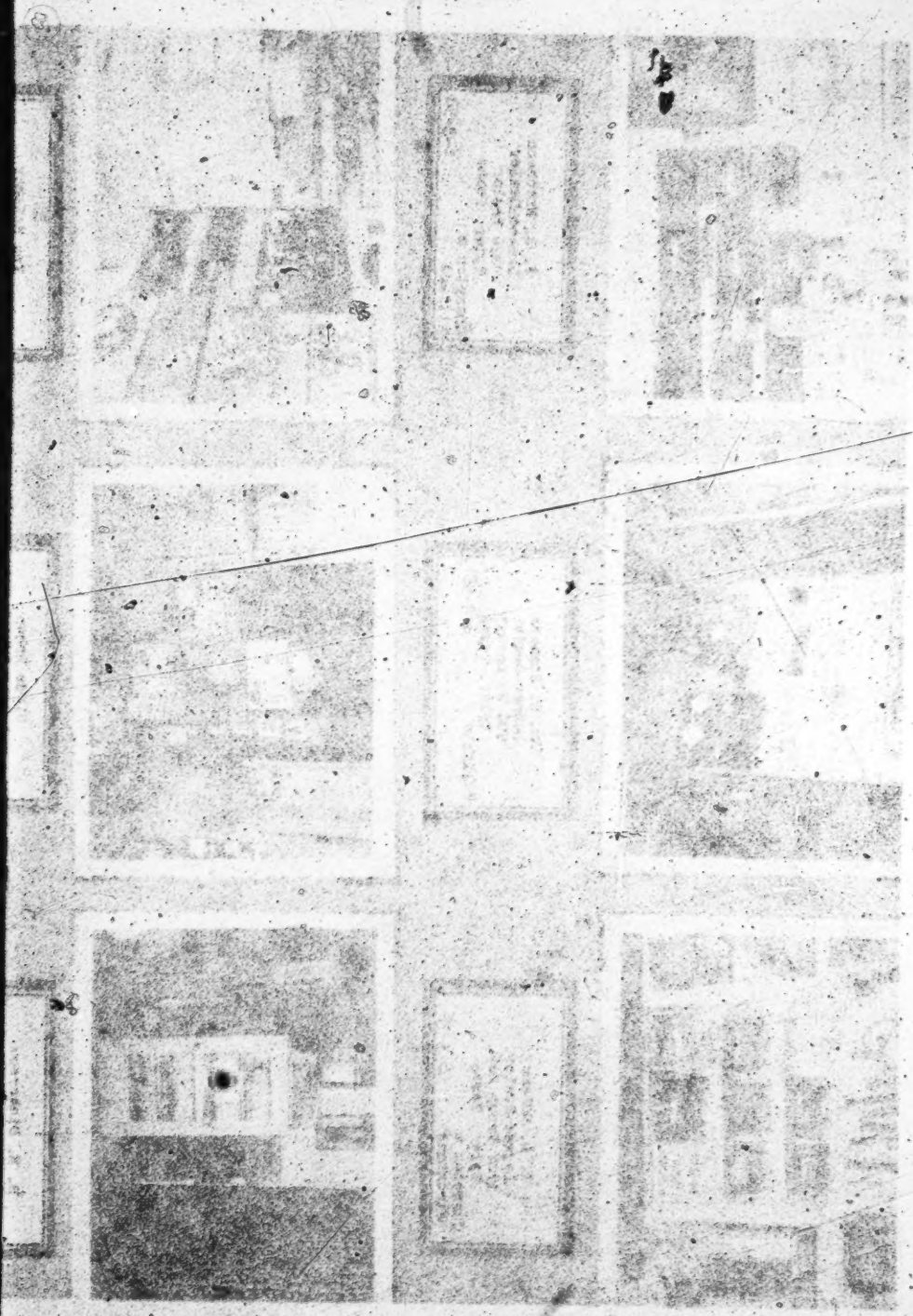
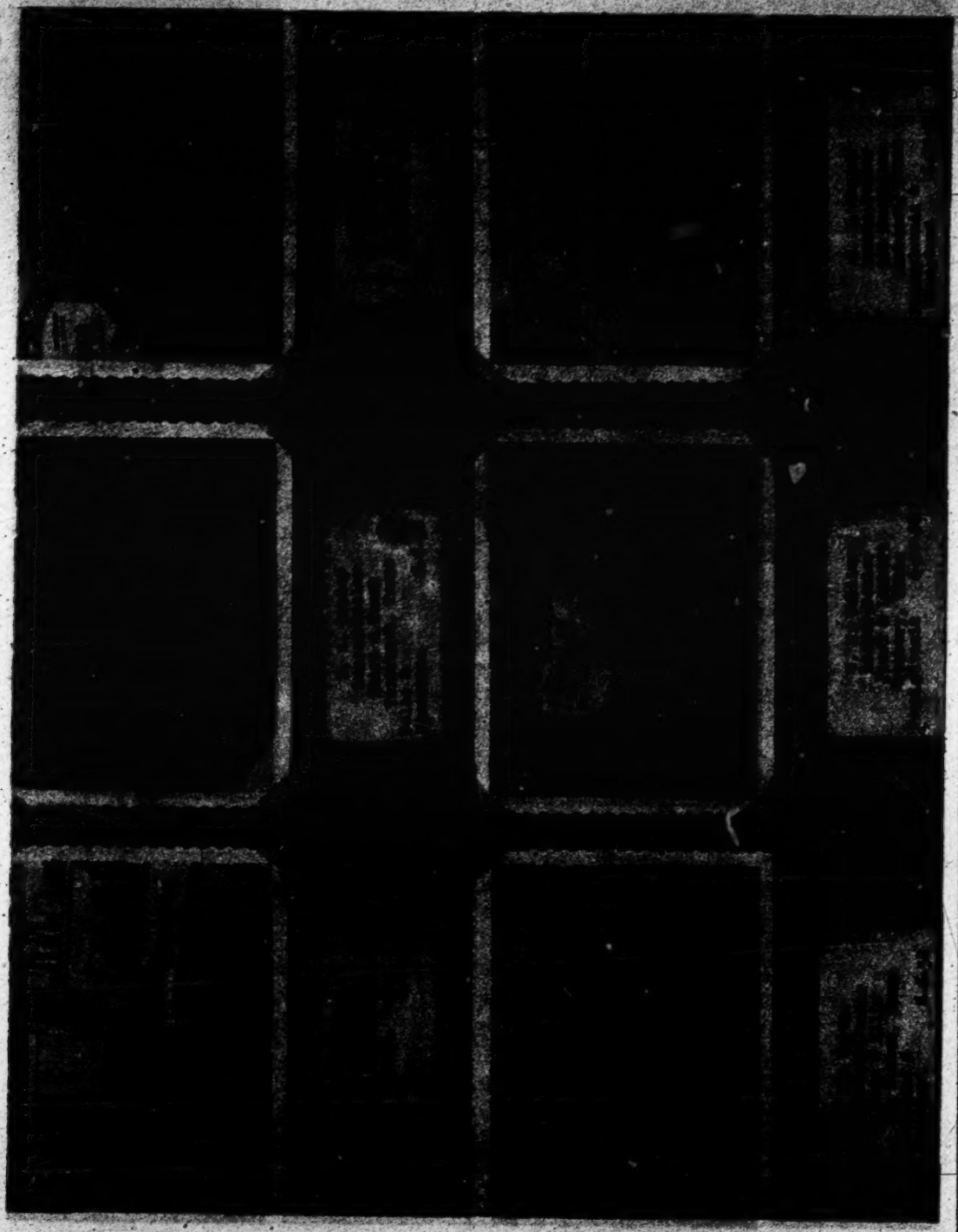
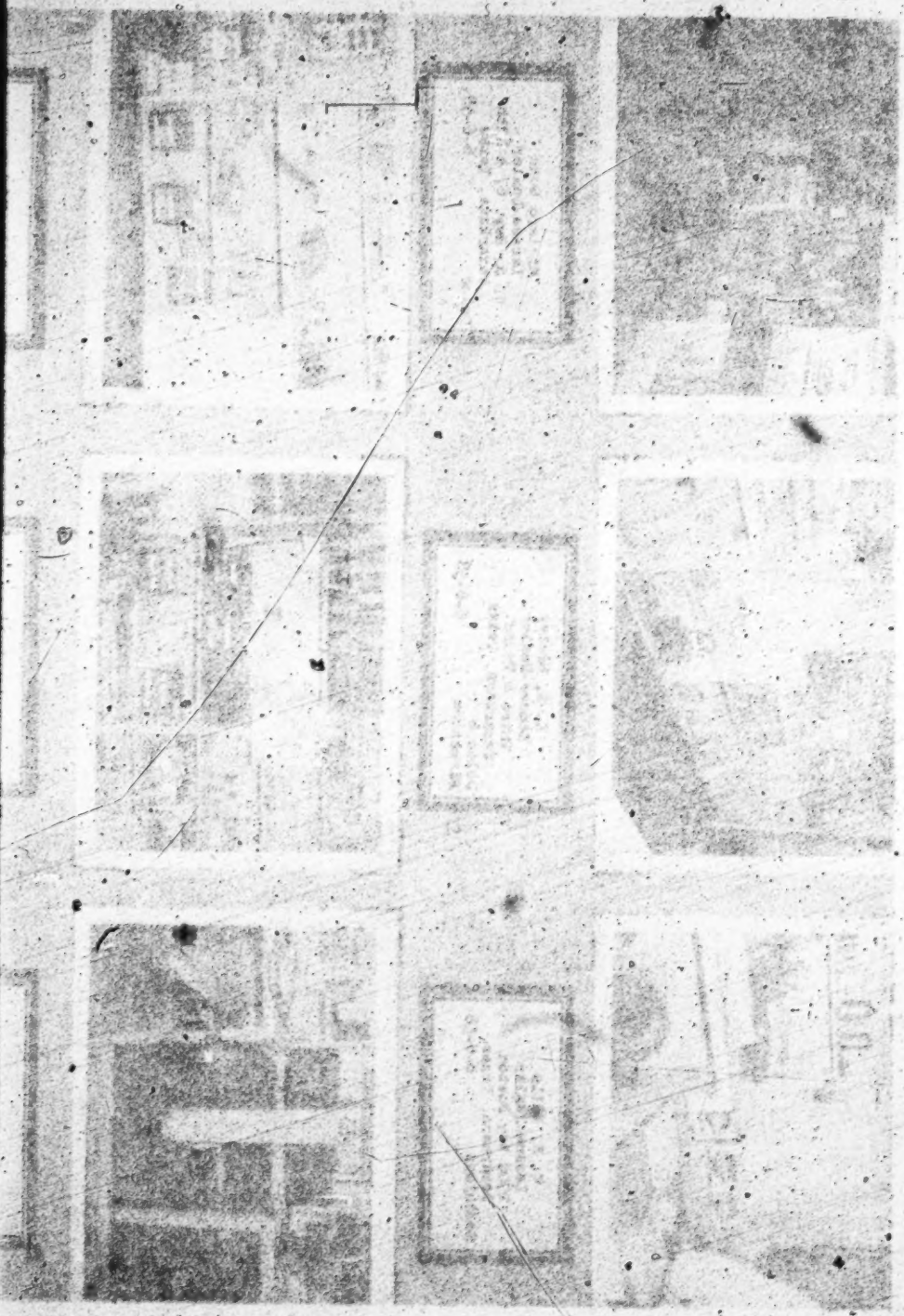
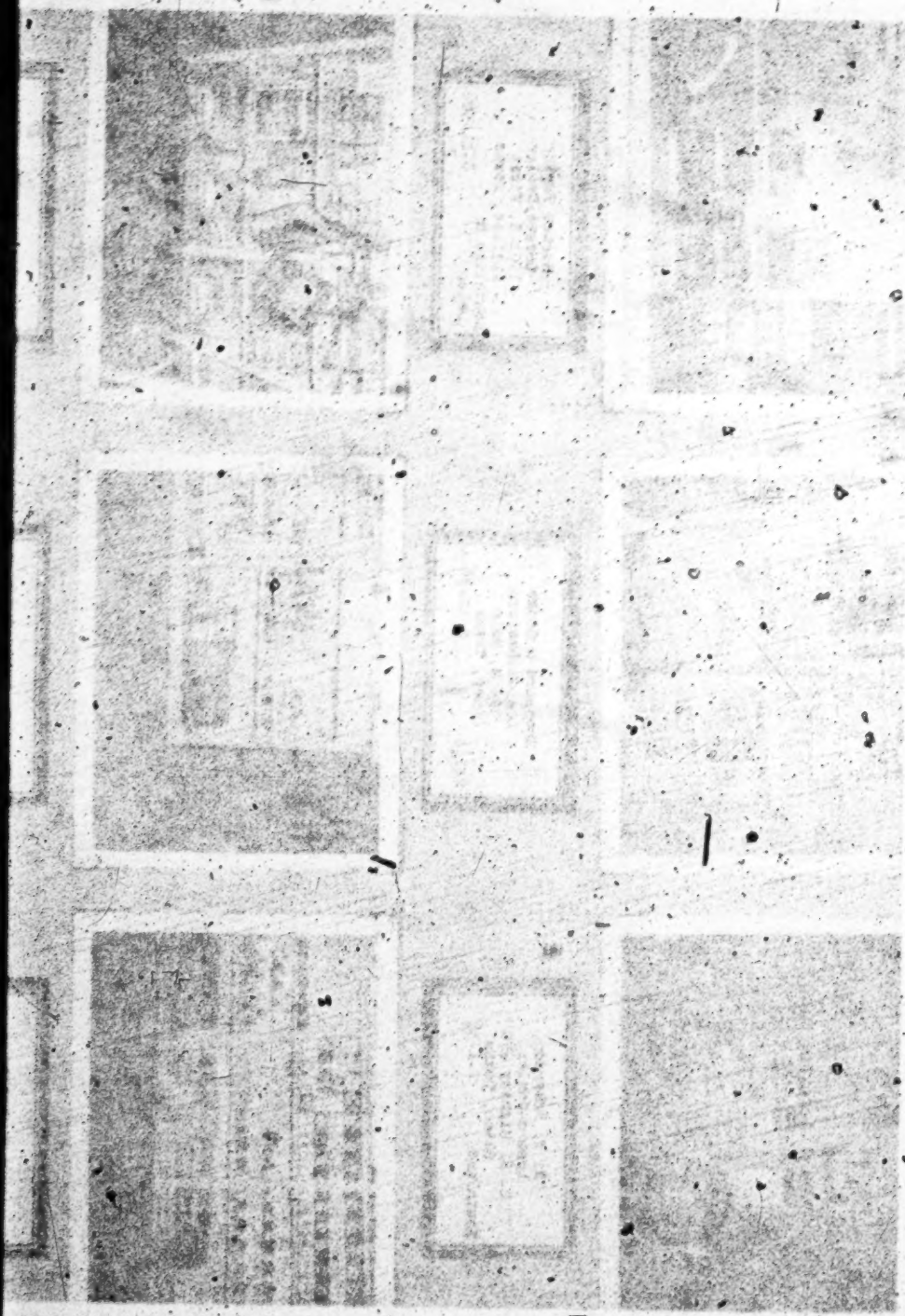






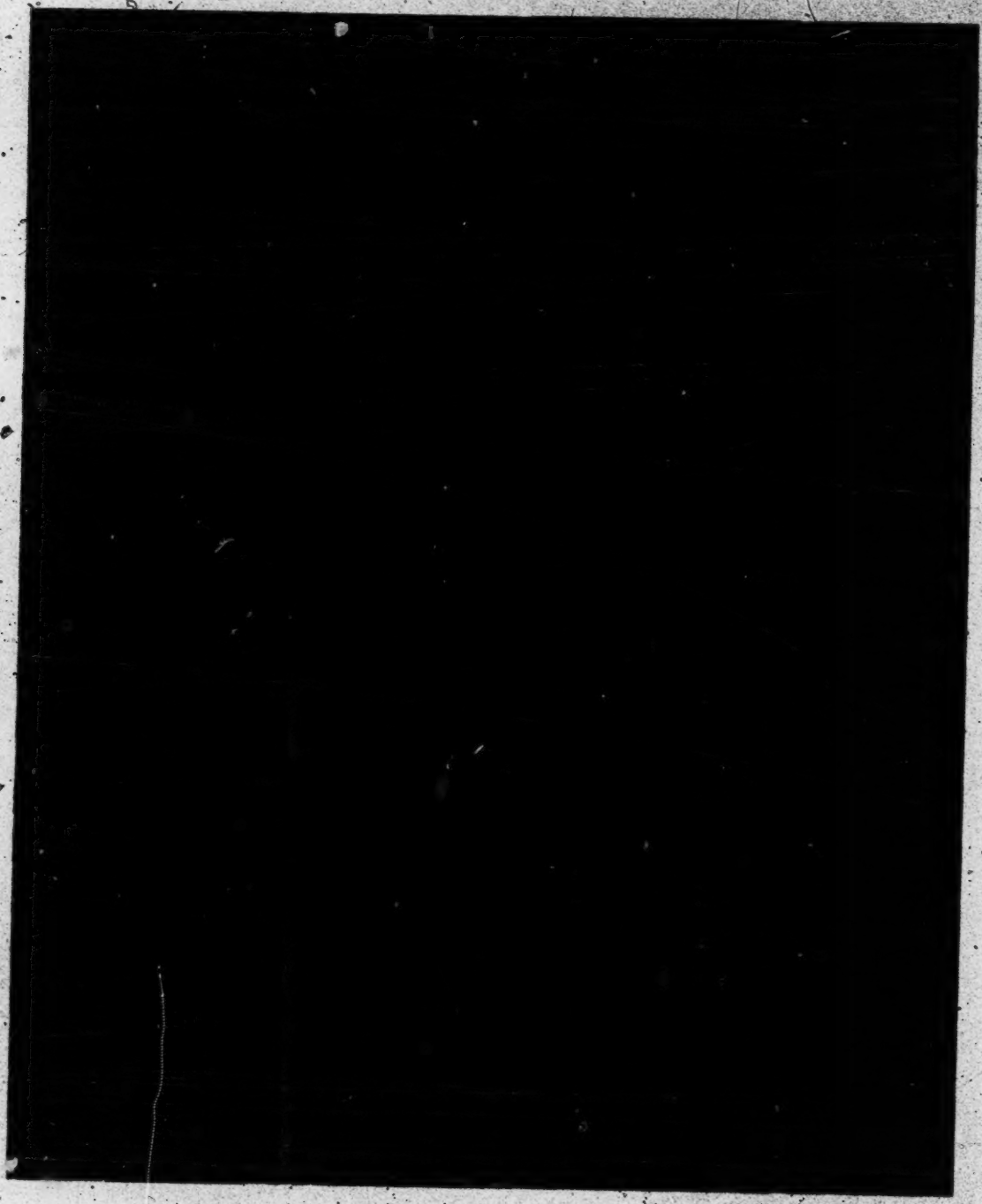




JAX 381
Respondent's Exhibit 74-38

[redacted]

Respondents' Exhibit 74-37



JAX 583

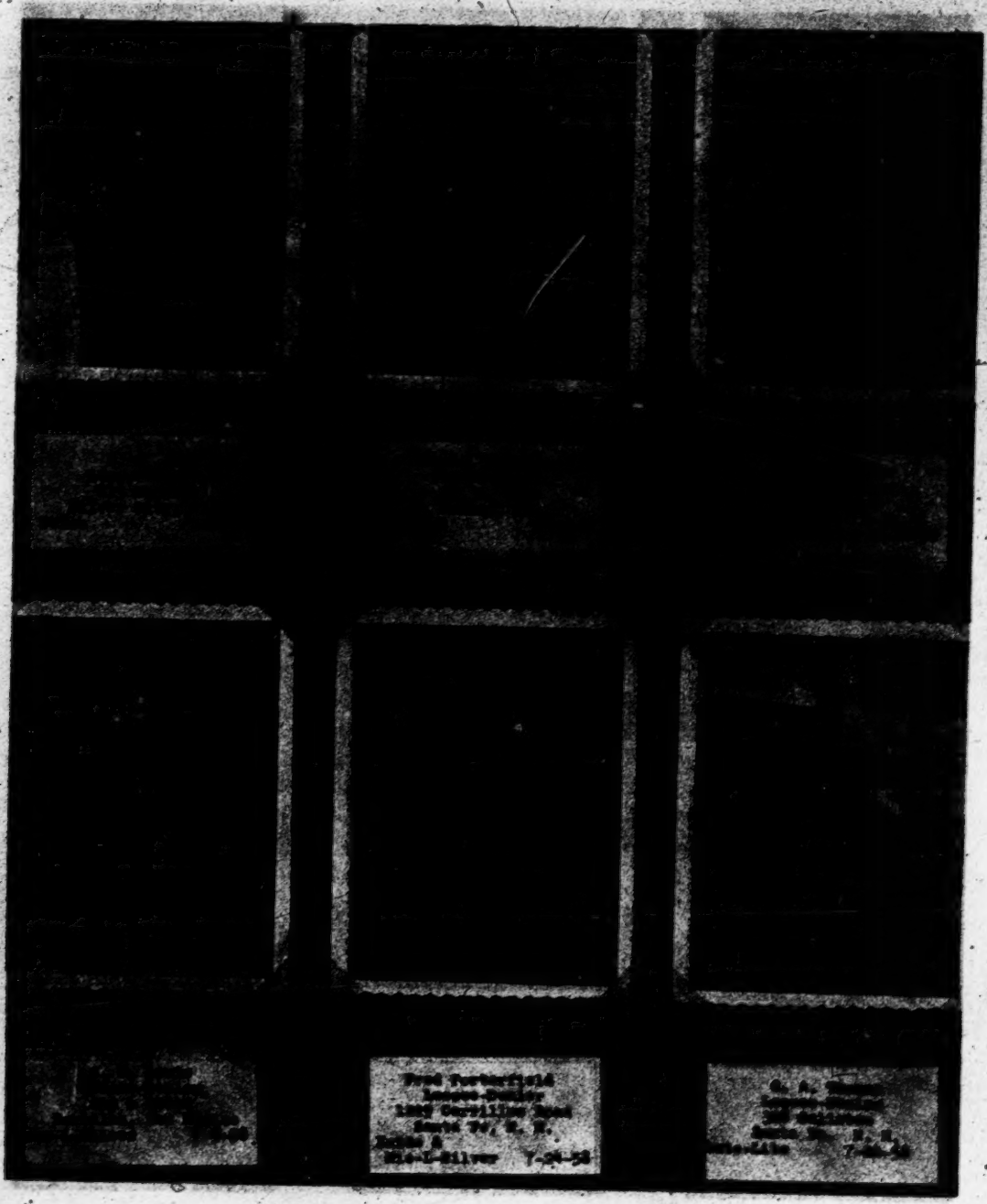
Respondents' Exhibit 74-37

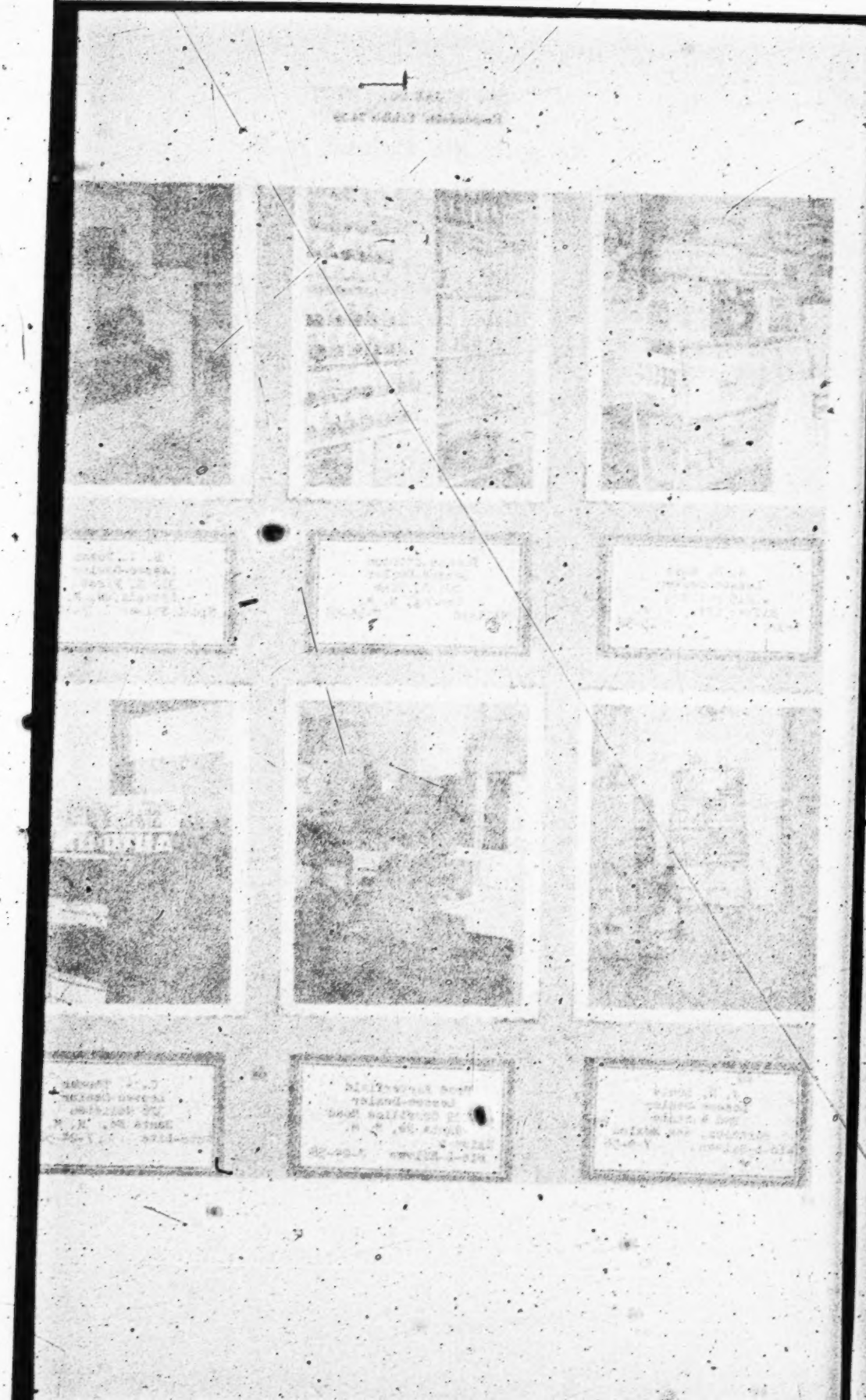
JAX 584

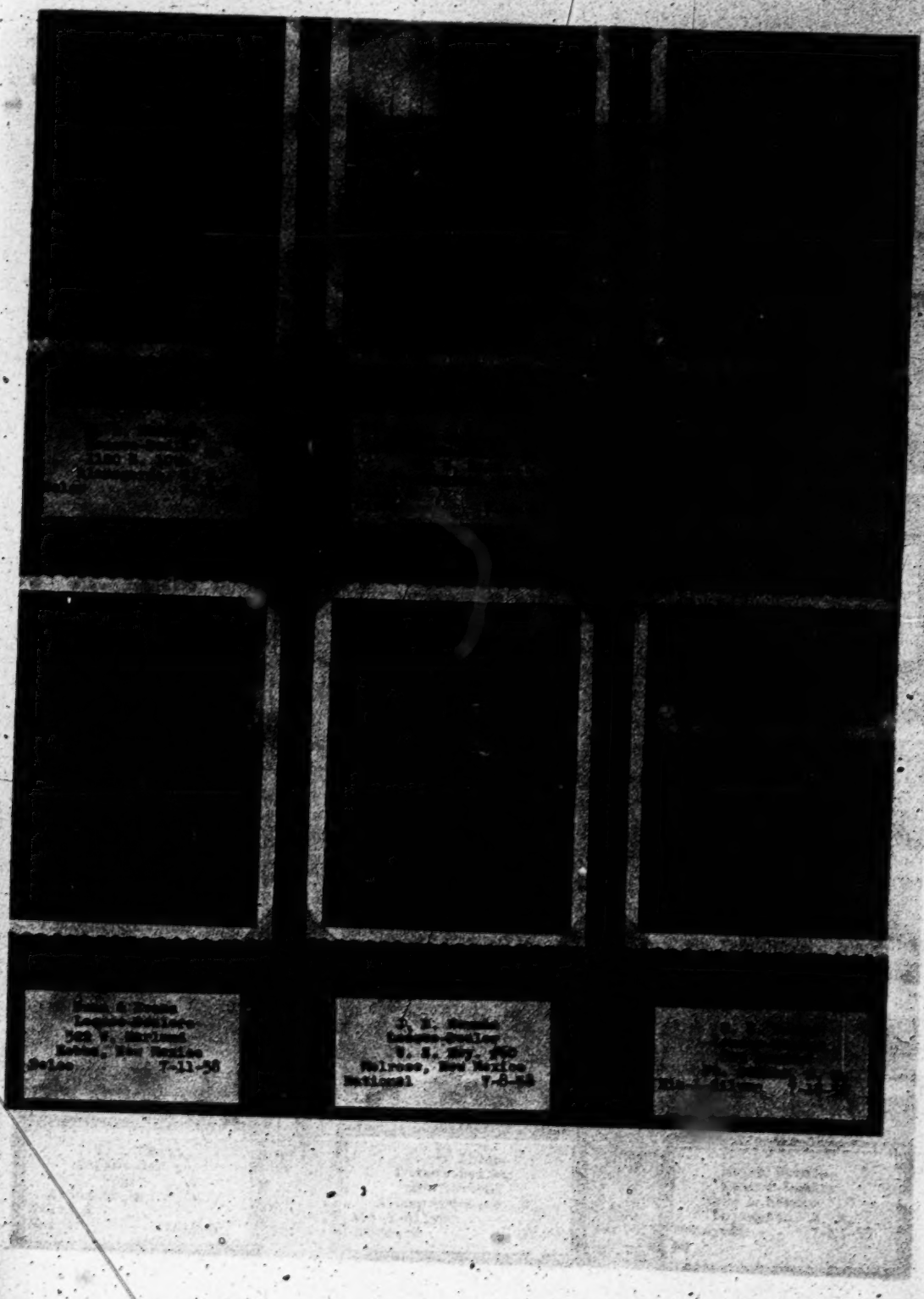
Respondents' Exhibit 74-38

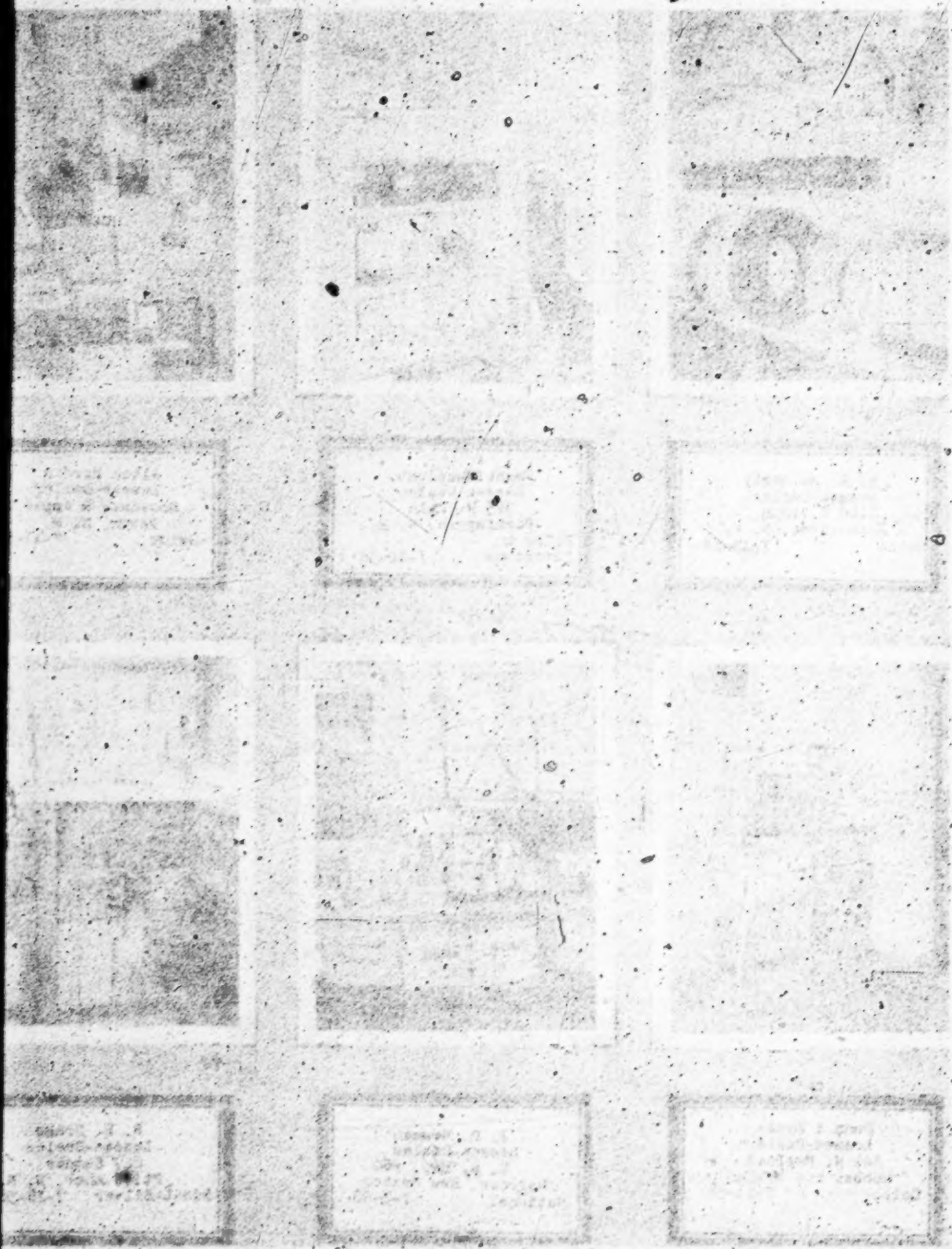
JAX 384

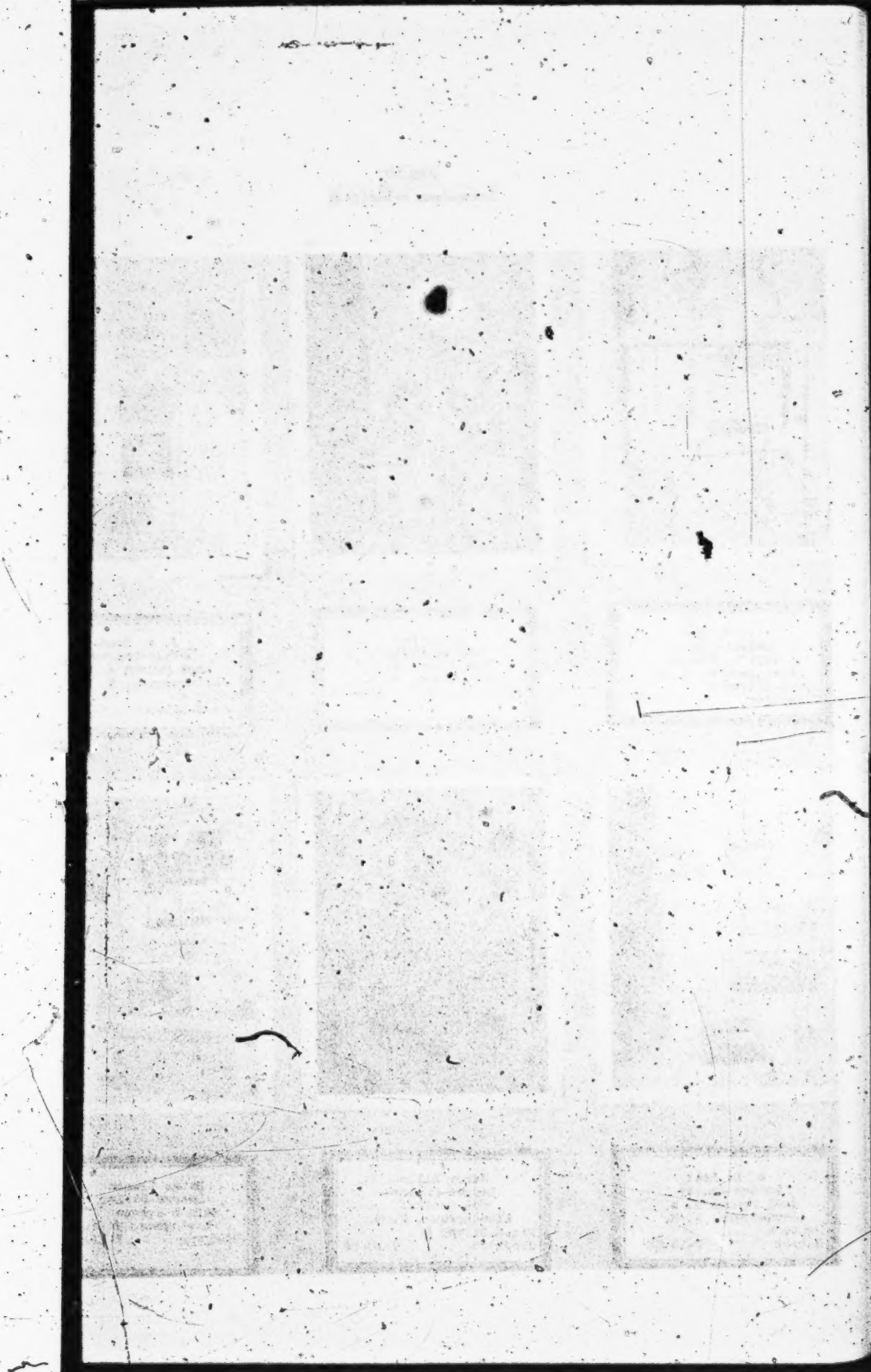
Respondents' Exhibit 74-38

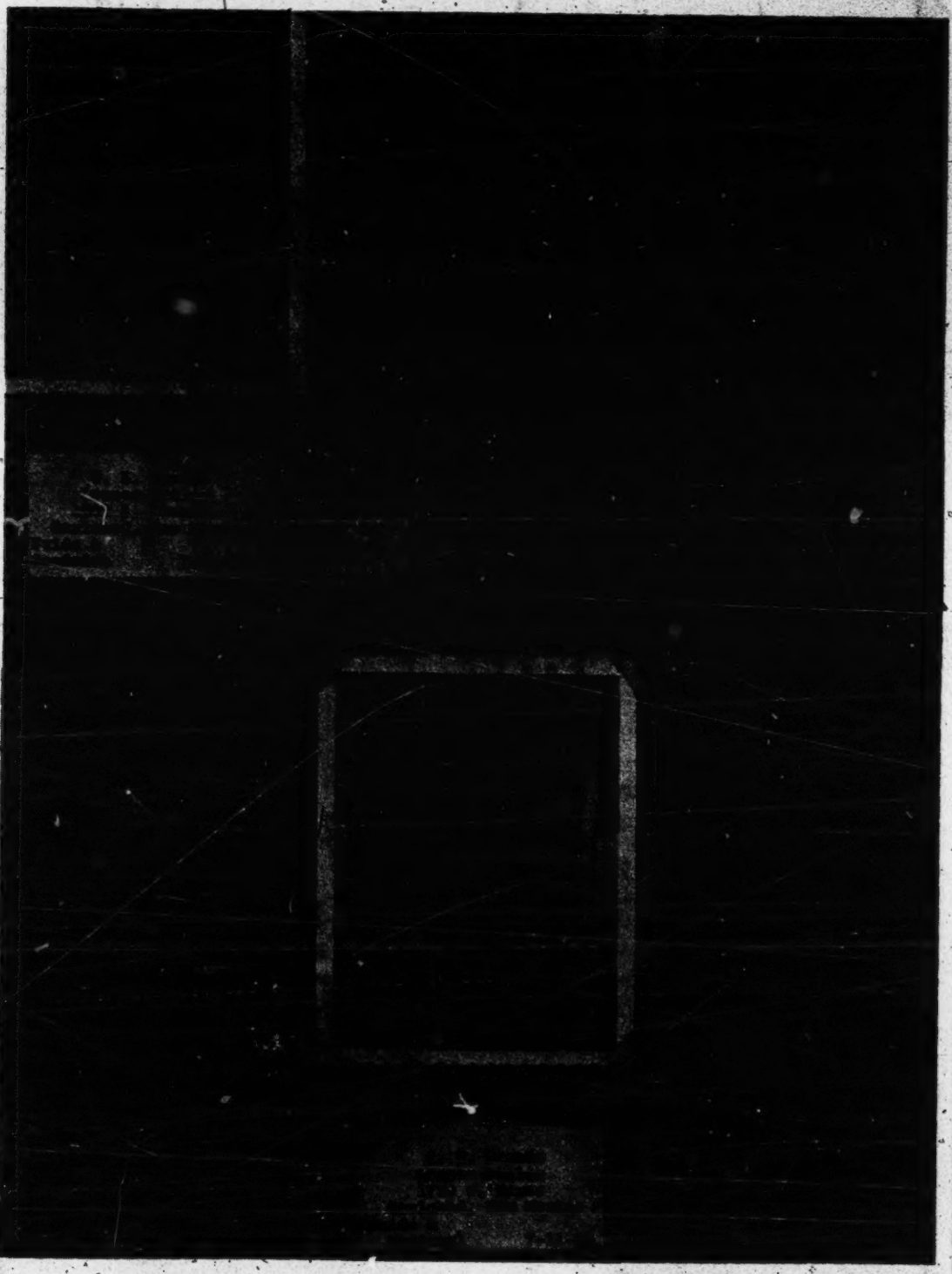












Texas Group Establishes Units in Over 100 Towns

BROWNWOOD, Texas—Since it received its charter on August 28, 1949, with 52 Brown County charter members, the Texas Service Station Association has grown to a state-wide organization with local units in more than 100 towns and cities, the association stated following its second annual directors meeting.

"During that two-year period," stated the association, "with one full-time field man and another less than half time, it has established local units in more than one hundred cities and towns, from Dalhart and Perryton to Brownsville, and from Odessa to Orange. It is in 15 of the 21 congressional districts, with thousands of members.

Bob Fulgham of Fort Worth was elected president of the association at the annual meeting. Other officers elected were: Ray J. Schweers, San Antonio, first vice president; Raymond Baker, Brownwood, second vice president, and Howard E. Harlowe, Brownwood, secretary-treasurer.

Also elected were 21 directors, one from each congressional district where the association has membership and six directors at large. The bylaws provide that until the organization is established in each congressional district, directors at large shall be chosen from the county of the home office, but as it is established in a new congressional district one director at large shall resign and his place be filled by a director from the new district.

Directors elected were: Bob Kavanaugh, Port Author; E. B. Yale, Tyler; Lawrence Miller, Galveston; O. M. Branyon, Austin; Ronald Copeland, Waco; Dick Knight, Fort Worth; Bob Biggs, Wichita Falls; Royal Bates, Alice; H. O. Wilson, San Benito; W. G. Keeler, Midland; Bill Stockton, Abilene; Lloyd Kuntz, Pampa; Glen Woody Lubbock; Ray Schweers, San Antonio, and Odis Cox, Brady.

Directors at large, all from Brownwood, elected were: L. A. C. York, W. R. Curbo, Guy Keeler, E. O. Petross; E. W. Vardman, and Howard E. Harlowe.

Lottery Laws Thwart Opening Day Prizes

SIKESTON, Mo. — Plans to give away product price during the grand opening of Jay and Jim's "66" Service Station in this area on Route 66 had to be cancelled because of state lottery laws, but opening-day customers came in for a real bargain anyhow.

To get town-people acquainted with the new station the owners gave motorists a lubrication job with a purchase of $2 or more during the outlet's grand opening.

Station Changes Hands

ULYSSES, Kan. — Virgil Deal, owner of the Deal Service Station here, has sold his business to the Smith-Craig Motors firm of Liberal, Kan. The new owners have placed Chet Hockensmith in charge as manager of the local station which carries a complete line of Texaco products, and offers service and parts for cars.

Boosts GAS Sales Overnight!

Written Money-Back Guarantee

The best talked station gets the business. You can do the same with PUR-I-LITE, the glamorous automatic fluorescents that are sold on a written guarantee to increase your business satisfactory within 3 days or you may return the lights for full refund. 3 year guarantee to users two years old, yet have one PURI-LITE has ever returned. Increases in patronage of stores as high as 600% are directly traceable to these lights.

And NOW! Beat your competition to the punch. Offer your patrons lights that give 30 times the light at half the cost. It's the talk and sharpest advertising you can buy. You can't afford

W. H. Long Co. — 100 W. Illinois St. Chicago 10, Illinois Est. 1911

Please send FREE Catalog, Prices and details of your Written Money-Back Guarantee.

Name .....

Address .....

City ..... State .....

Subsidiary Distributor For Canadian Open

Minckler Elected WOGA President

LOS ANGELES — Robert L. Minckler, president of General Petroleum Corp., has been elected to his second term as president of the Western Oil and Gas Association.

L. L. Aubert, president of the Bankline Oil Co., was elected first vice president by the board and Charles S. Jones, president of Richfield Oil Corp., was elected second vice president. L. K. Whittier, vice president of the Belridge Oil Co., was re-elected treasurer and John M. Peirce was re-elected vice president and general manager.

Thirty-one incumbent members of the board were re-elected and Lowell Stanley, chairman of the board of directors of the Jergins Oil Co., Long Beach, was elected to replace the late C. M. Cotton.

Mechanic Buys Business

MOUNT VERNON, Mo. — Gray's Service Station in this area has been taken over from Elmo Gray by Curtis Jackson. Until his purchase of the Mobil gas and car repair outlet, Mr. Jackson worked as a mechanic for Mr. Gray. The name of the station has been changed to Jackson's 166 Service.

Pay Toilet Locks for SERVICE STATION REST ROOMS

1. Create revenue that will help defray expenses of maintaining proper rest room conditions.
2. Ensure your customers utmost privacy.
3. Enable you to keep your rest room facilities cleaner and more sanitary.

For details—Write

Universal Manufacturing Co., Inc.
Box 2335-A Youngstown, Ohio

Aero-Seal ASSORTMENT KIT

Any customer is glad to pay the few pennies extra for the extra security . . . the extra long life . . . of Aero-Seal Precision Worm-Drive Hose Clamps. These few pennies add up to handfuls of cash profit for you. We make them to fit your cars with Aero-Seal dealers just like you.

STAINLESS STEEL BANDS

USE AGAIN AND AGAIN

BRISTOL CORPORATIONS INC.

SELL IT ← THROUGH A SMALL CLASSIFIED ADVERTISEMENT IN THE GASOLINE RETAILER

"Like the Auto-Lite salesman says . . . Ignition Engineered Auto-Lite Spark Plugs are a complete line for maximum profits. Since taking on the line I've found that's true. Believe me, it's a great line and a great deal."

RAY W. TOSCH
8315 Preston Rd., Dallas, Texas

"Everywhere I go I see Auto-Lite Spark Plug advertising—in newspapers, magazines, on the radio and even television. That's the kind of backing a dealer likes to get—the kind that really helps him sell."

ROBERT W. MILLER
10324 Burbank Blvd., No. Hollywood, Calif.

Packard says . . .

"AUTO-LITE SPARK PLUGS are the best ever!"

"There's real advanced engineering behind the Auto-Lite Spark Plug line. Take the Resistor plug, for instance. It's been proven right and it's still unmatched in the industry."

EDDIE MEYER
5740 Chippewa, St. Louis, Mo.

"Auto-Lite Spark Plugs are tops in quality. My customers like 'em, I like 'em and automotive engineers must like 'em, too. They put 'em in as original equipment. That makes Auto-Lite easy to sell."

FRANK S. MILIGAN
7402 Third, Detroit, Michigan

DALLAS
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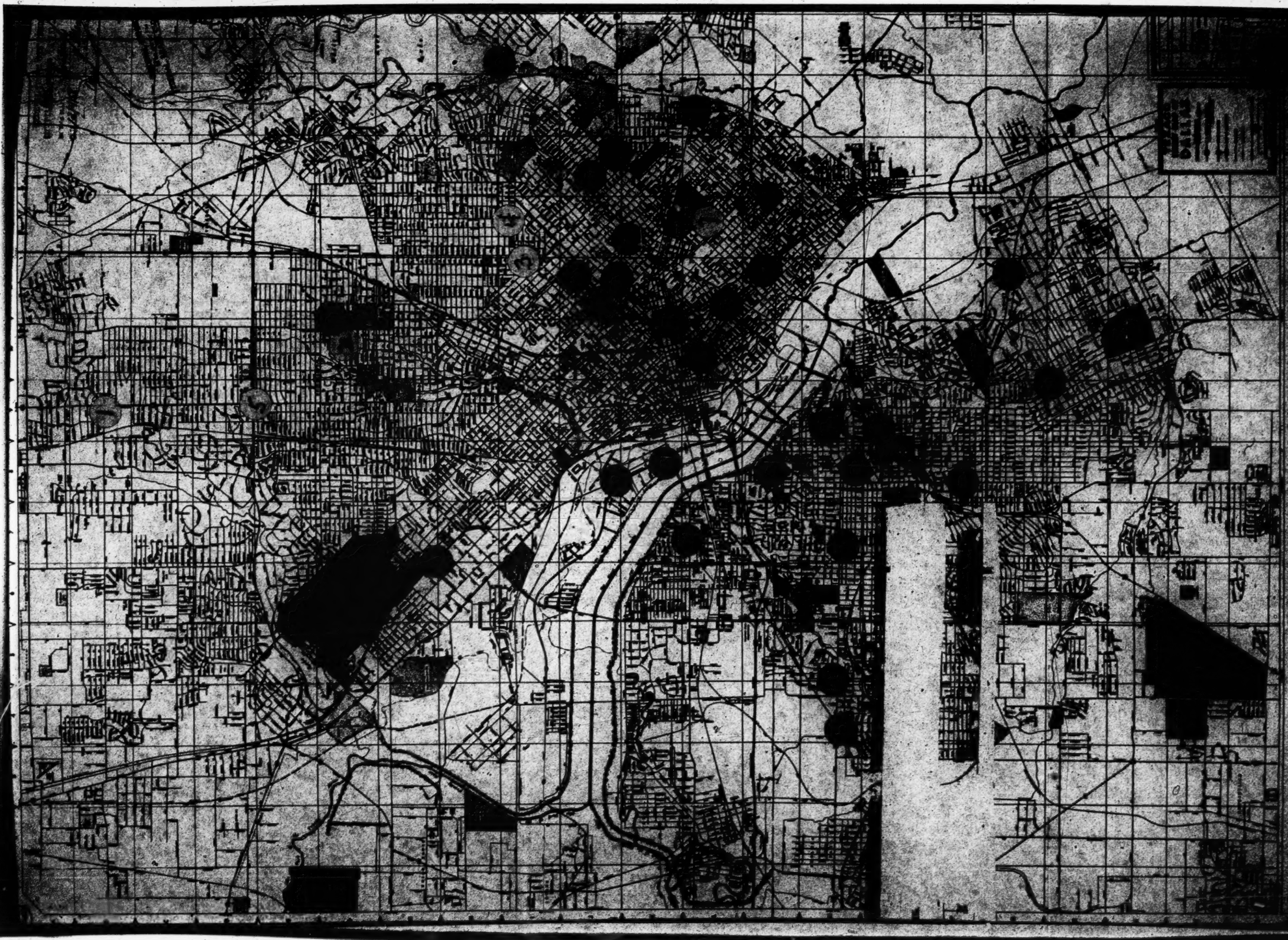
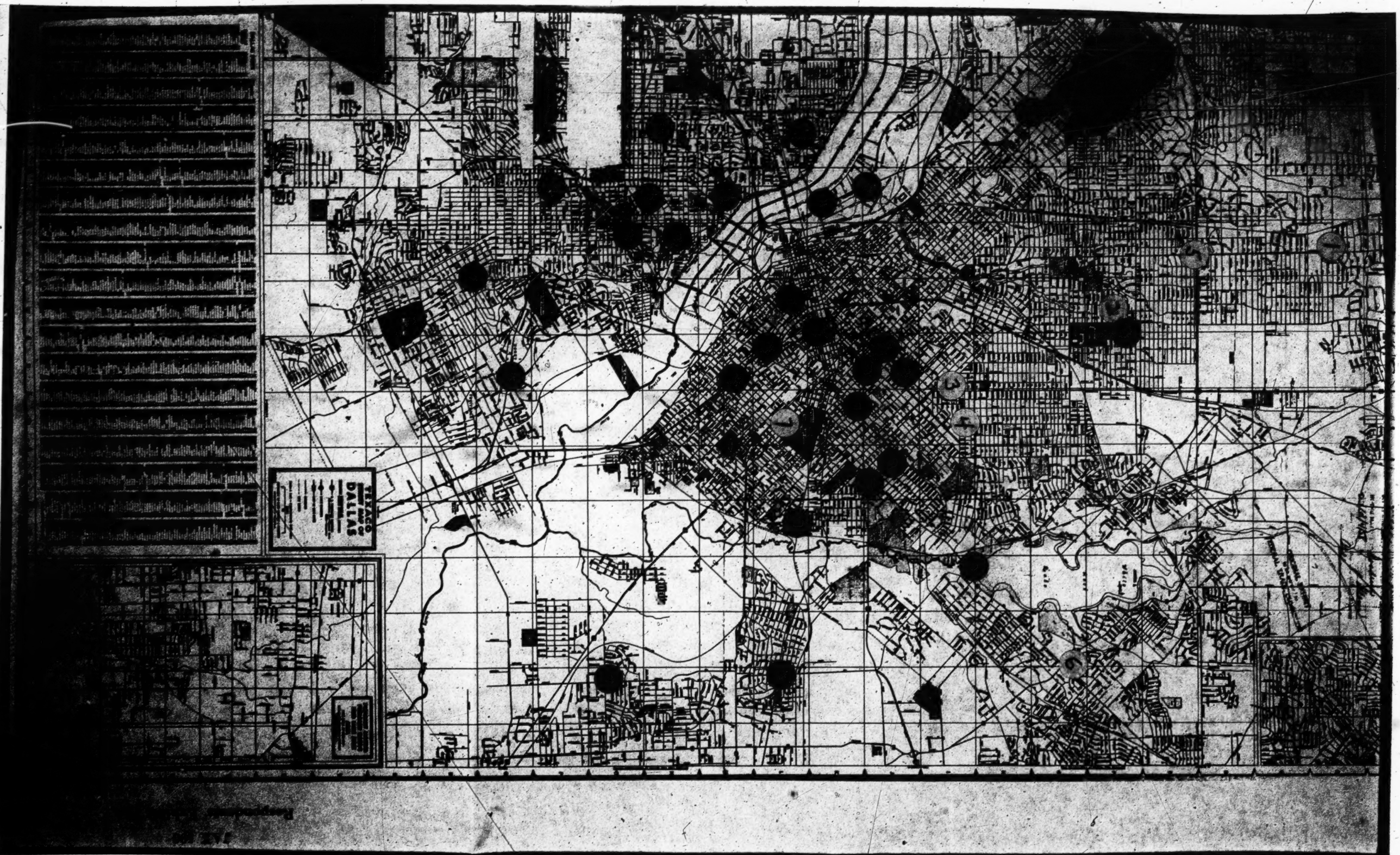
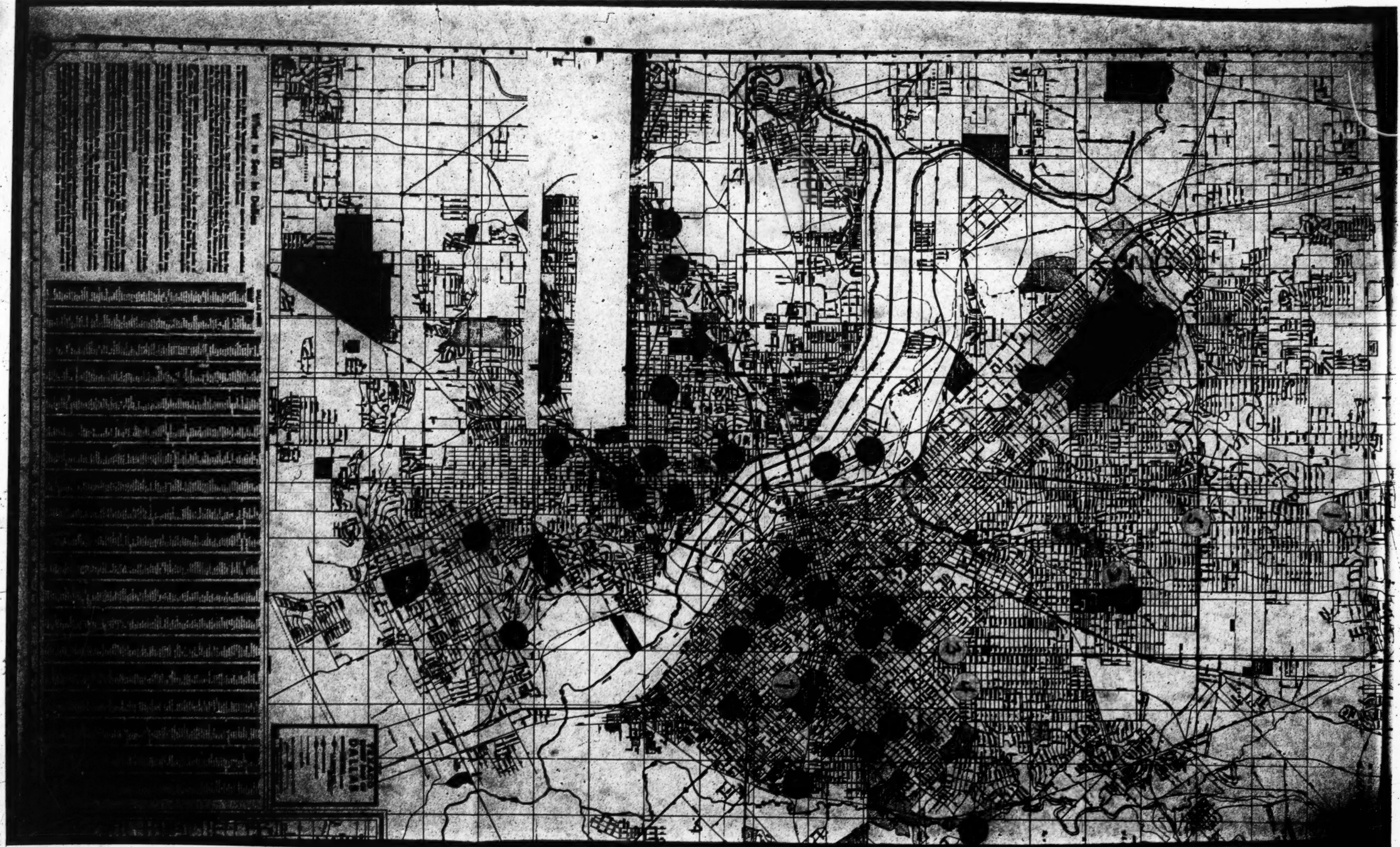
TEXACO
DALLAS




TEXACO
DALLAS



"M" - Testimony that dealer attended Texaco dealer meeting.

"S" - Testimony that complaining witness sold to dealer.

"D" - Testimony that dealer displayed non-sponsored TBA.

"U" - Testimony that dealer understood The Texas Company TBA policy.

With respect to photographs in evidence "I" indicates page on which respondent's exhibit identified and "A" indicates page on which respondent's exhibit admitted.

ORIGINAL EXHIBIT
to be returned to
FEDERAL TRADE COMMISSION

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 RESPONDENT'S EXHIBIT NO. 79-B

JAX 301

Respondents' Exhibit 75B

"M" - Testimony that dealer attended Texaco dealer meeting.

"N" - Testimony that complaining witness sold to dealer.

"O" - Testimony that dealer displayed non-approved TBA.

"P" - Testimony that dealer understood The Texas Company TBA policy.

With respect to photographic in evidence in Indicates page on which respondent's exhibit identified

ON "A" Indicates page on which respondent's exhibit identified.

JAX 592

Respondents' Exhibit 79C

DALLAS DIVISION

"A" (YELLOW DOTS)

	NAME	ADDRESS
1.	Walter B. Apple	Preston Road & Royal Lane Dallas, Texas
2.	B. S. Colgin	6634 Snider Plaza Dallas, Texas
3.	Howard Rush	Greenville & Ross Dallas, Texas
4.	Russell Tableman	Lewis & Skilman Dallas, Texas
*5.	Ray W. Tosch	Preston Road and Berkshire, Dallas, Texas
6.	Jack Wilkie	9507 Garland Road Dallas, Texas
7.	C. W. Williams	Forest & Fourth Dallas, Texas

*Also displayed other than Firestone or Goodrich TBA. (TR.1707).

FEDERAL TRADE COMMISSION
DOCKET NO. 6415 EXHIBIT NO.

JAX 5[illegible]

Respondents' Exhibit 79D

"B" (RED DOTS)

	NAME	ADDRESS	TRANSCRIPT REFERENCE	
9.	Kenneth Heth	3800 West Davis Dallas, Texas	TR 3623 TR 3626 TR 3631	(P) (D) (M)
10.	Charles W. Moore	1623 Chase Street Dallas, Texas	TR 3643-4 TR 3646-7 TR 3651	(P) (D) (M)
11.	Orville L. Jernigan	800 South Ervay Dallas, Texas	TR 3657-8 TR 3664-5 TR 3667	(P) (D) (M)
12.	W. R. Cornett	Tyler and Davis Dallas, Texas.	TR 1718 TR 1727	(S) (S)
13.	O. C. Mann	Ewing and Clarendon Dallas, Texas	TR 1718	(S)
15.	Billie Flippin	1407 No. Zangs Dallas, Texas (same as #10)	TR 1729	(S)
16.	Emory Johnson	1000 No. Industrial Dallas, Texas	TR 1722	(S)
17.	Mullins' Eastside	Crawford & Jefferson Dallas, Texas	TR 1707-8	(S)
18.	P. F. Reynolds	Dallas, Texas	TR 1709 TR 1712-[illegible]	(S) (S)
19.	W. E. Drumgold	Lancaster and Oakley Dallas, Texas	TR 1710	(S)
20.	E. L. Stewart	Beacon and Linley Dallas, Texas	TR 1700-1	(S)
21.	Lee Jolly	Corinth and Harwood Dallas, Texas	TR 1574 TR 1574	(S) (D)
22.	J. B. Talley	7726 Garland Dallas, Texas	RX 74 (3)	
23.	A. B. Bables	4903 Hatcher Dallas, Texas	RX 74 (4)	
24.	C. R. Burch	4502 Bryan Dallas, Texas	RX 74 (4)	
25.	H. H. Nabors	4501 E. Side Dallas, Texas (same as #17)	RX 74 (4)	

FEDERAL TRADE COMMISSION

DOCKET NO. 6[illegible] EXHIBIT NO.

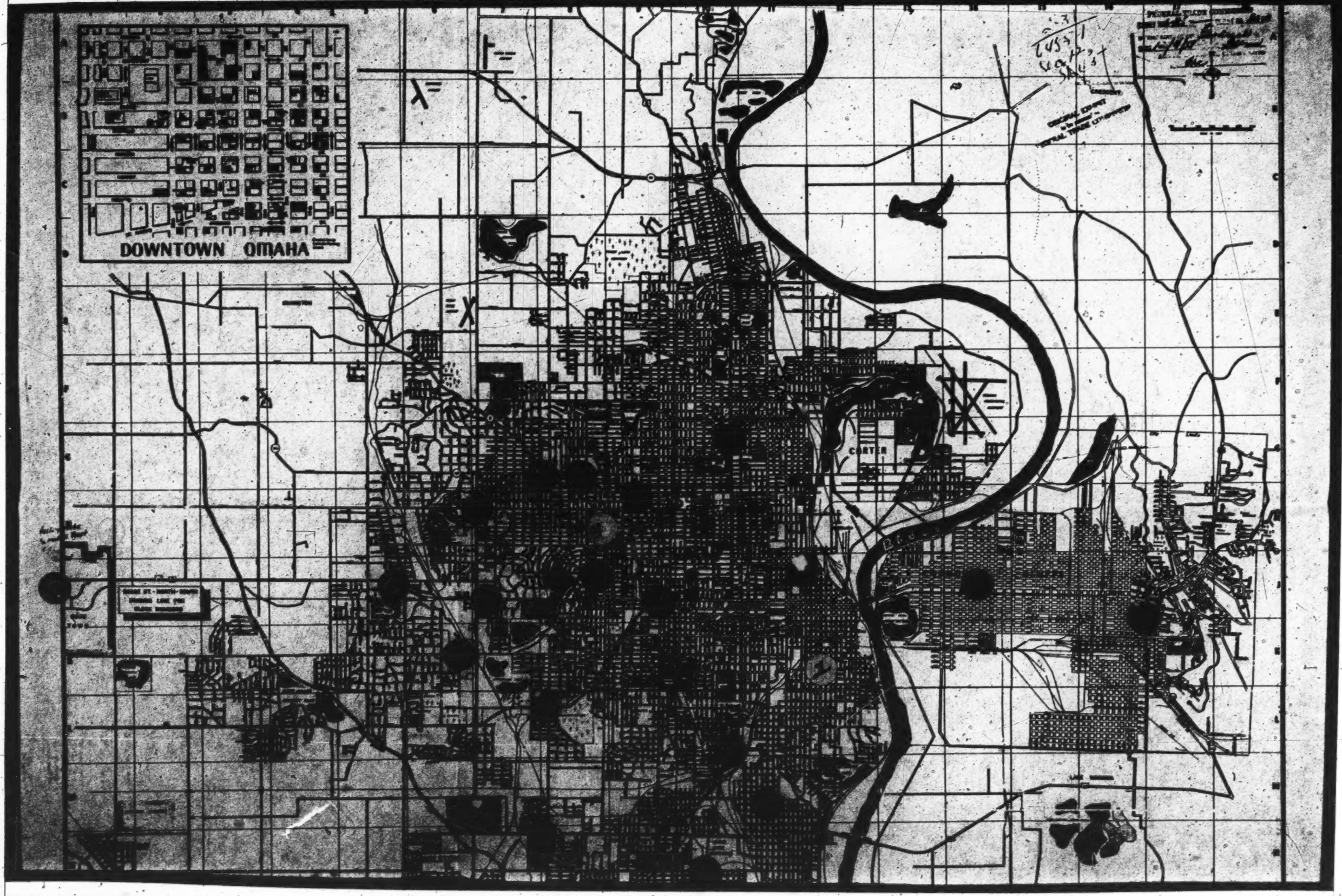
56

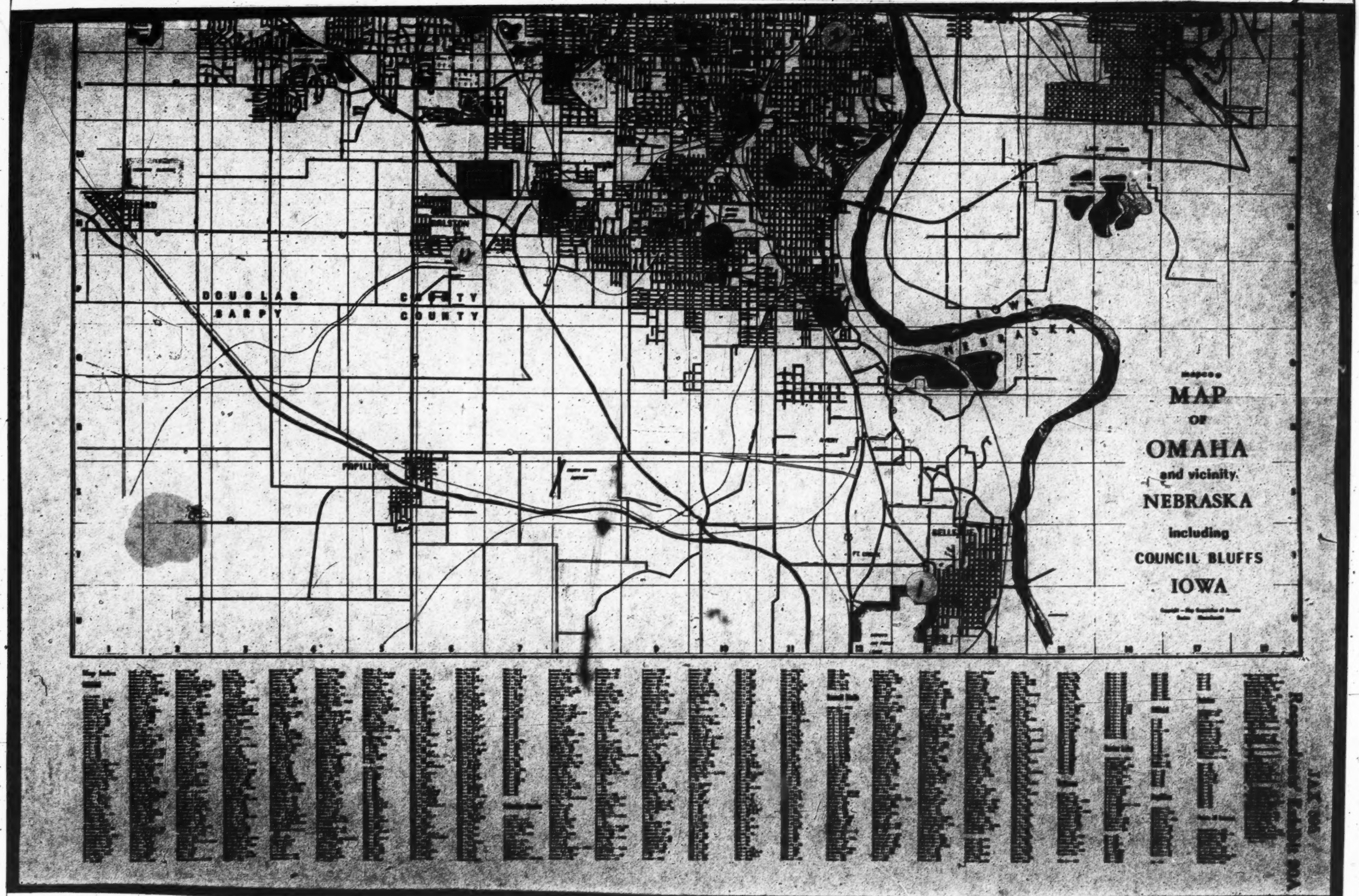
JAX 504

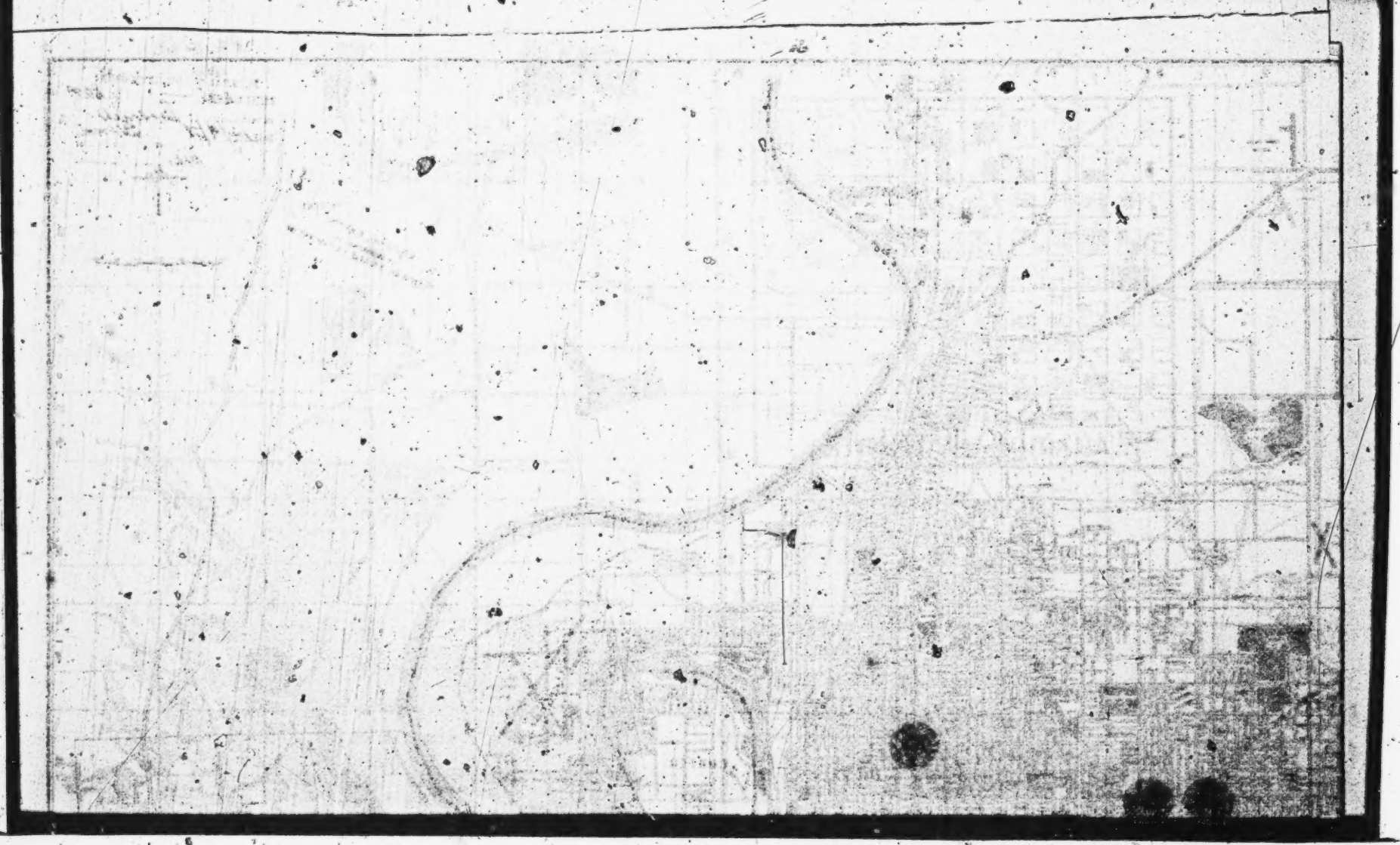
Respondents' Exhibit 79E

	NAME	ADDRESS	TRANSCRIPT REFERENCE
26.	W. D. Tacker	4022 Live Oak Dallas, Texas	RX 74 (27)
27.	R. L. Place	2501 Canton Dallas, Texas	RX 74 (27)
28.	H. C. Fowler	7035 Lake June Dallas, Texas	RX 74 (27)
29.	L. P. Jolly	2107 S. Harwood Dallas, Texas (same as #21)	RX 74 (27)
30.	R. H. Norsworthy	7003 Military Dallas, Texas	RX 74 (27)
31.	R. L. Greer	901 N. Haskell Dallas, Texas	RX 74 (28)
32.	Doug Lee	5601 E. Grand Dallas, Texas	RX 74 (28)
33.	Carlan & Johnson	1901 Forest Dallas, Texas	RX 74 (28)
34.	C. A. Hobbs	6617 Hillcrest Dallas, Texas	RX 74 (28)
35.	Sam Hill	1819 S. Beckley Dallas, Texas	RX 74 (28)
36.	H. B. Peterman	6302 Denton Drive Dallas, Texas	RX 74 (30)
37.	C. T. Braly	717 Singleton Dallas, Texas	RX 74 (34)
38.	D. M. Byers	900 E. Jefferson Dallas, Texas	RX 74 (34)
39.	J. C. Warwick	2923 W. Davis Dallas, Texas	RX 74 (34)
40.	Geo. F. Smith	1636 N. Industrial Dallas, Texas	RX 74 (36)

FEDERAL TRADE COMMISSION
DOCKET NO. 6185 EXHIBIT NO.
57


DOWNTOWN OMAHA
CARTER


DOUGLAS
SARPY
COUNTY
PAPILLION
IOWA
NEBRASKA
MAP
OF
OMAHA
and vicinity.
NEBRASKA
including
COUNCIL BLUFFS
IOWA



Respondents' Exhibit 80B

FEDERAL TRADE COMMISSION

OMAHA MILEAGE TABLE

The approximate mileage from Omaha to the major locations of the United States.

Location	Miles
Akron, Ohio	830
Albany, N. Y.	1285
Albuquerque, N. Mex.	885
Asheville, N. C.	1055
Atlanta, Ga.	1025
Atlantic City, N. J.	1265
Augusta, Ga.	1195
Baltimore, Md.	1140
Binghamton, N. Y.	1190
Birmingham, Ala.	935
Bismarck, N. Dak.	605
Boise, Idaho	1315
Boston, Mass.	1450
Buffalo, N. Y.	995
Butte, Mont.	895
Charlotte, N. C.	1175
Chattanooga, Tenn.	905
Cheyenne, Wyo.	500
Chicago, Ill.	485
Cincinnati, Ohio	700
Cleveland, Ohio	815
Colo. Spra., Colo.	630
Columbia, S. C.	1225
Columbus, Ohio	765
Dallas, Tex.	695
Davenport, Iowa	315
Denver, Colo.	555
Des Moines, Iowa	140
Detroit, Mich.	745
Dubuque, Iowa	330
Duluth, Minn.	535
El Paso, Tex.	1105
Erie, Pa.	915
Evansville, Ind.	635
Ft. Wayne, Ind.	625
Frankfort, Ky.	740
Fredericton, N. B.	1820
Grand Rapids, Mich.	680
Harrisburg, Pa.	1125
Helena, Mont.	1190
Houston, Tex.	925
Indianapolis, Ind.	590
Jackson, Miss.	895
Jacksonville, Fla.	1350
Jefferson City, Mo.	360
Kansas City, Mo.	210
Lansing, Mich.	670
Little Rock, Ark.	620
Los Angeles, Calif.	1705
Louisville, Ky.	710
Memphis, Tenn.	680
Miami, Fla.	1685
Milwaukee, Wis.	505
Mpls.-St. Paul, Minn.	380
Montreal, Que.	1325
Nashville, Tenn.	785
New Haven, Conn.	
New Orleans, La.	1010
New York, N. Y.	1925
Norfolk, Va.	1320
North Platte, Neb.	285
Okla. City, Okla.	490
Ottawa, Ont.	1255
Peoria, Ill.	375
Philadelphia, Pa.	1215
Phoenix, Ariz.	1390
Pierre, S. Dak.	405
Pittsburgh, Pa.	920
Portland, Me.	1525
Portland, Oreg.	1795
Pueblo, Colo.	515
Quebec, Que.	1450
Raleigh, N. C.	1245
Rapid City, S. Dak.	530
Richmond, Va.	1225
Rochester, N. Y.	1065
St. Louis, Mo.	435
Salt Lake City, Utah	980
San Antonio, Tex.	970
San Diego, Calif.	1775
San Francisco, Calif.	1745
Santa Barbara, Calif.	1800
Santa Fe, N. Mex.	970
Savannah, Ga.	1030
Seattle, Wash.	1825
Spokane, Wash.	1520
Springfield, Ill.	420
Springfield, Mo.	385
Syracuse, N. Y.	1150
Tampa, Fla.	1505
Toledo, Ohio	710
Topeka, Kans.	170
Toronto, Ont.	975
Tulsa, Okla.	410
Vancouver, B. C.	1900
Washington, D. C.	1150
Wichita, Kans.	315
Wilmington, N. C.	1375
Winnipeg, Man.	670

JAX 597

Respondents' Exhibit 80C

"M" - Testimony that dealer attended Texaco dealer meeting.

"S" - Testimony that complaining witness sold to dealer.

"D" - Testimony that dealer displayed non-sponsored TBA.

"P" - Testimony that dealer understood The Texas Company TBA policy.

With respect to photographs in evidence "I" indicates page on which respondent's exhibit identified and "A" indicates page on which respondent's exhibit admitted.

ORIGINAL EXHIBIT
to be returned to
FEDERAL TRADE COMMISSION
DOCKET NO. 6485
80-C

JAX 508

Respondents' Exhibit 80D

OMAHA

"A" (YELLOW DOTS)

	NAME	ADDRESS
1.	*Wilmer Cressman	Bellevue, Nebraska
2.	**Stan's Texaco	13th & Williams Omaha, Nebraska
3.	***Wager Texaco	1540 North Saddle Creek Omaha, Nebraska
4.	Beaver Texaco	Ralston, Nebraska

*Also sold other than Firestone and Goodrich TBA (TR 1408).

**Also sold other than Firestone and Goodrich TBA (TR 1195-6-1204).

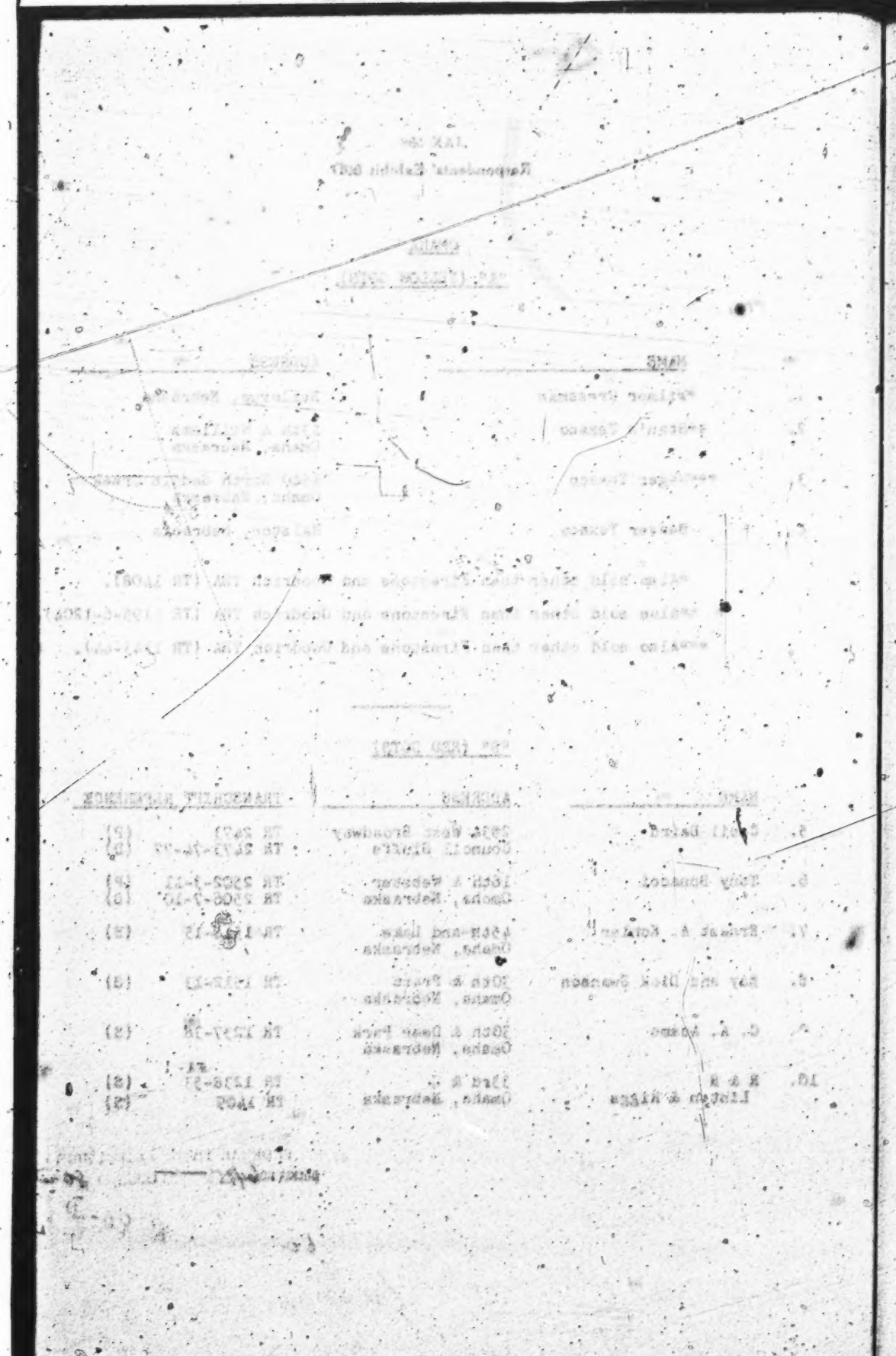
***Also sold other than Firestone and Goodrich TBA (TR 1343-44).

"B" (RED DOTS)

	NAME	ADDRESS	TRANSCRIPT REFERENCE
5.	Cecil Baird	2934 West Broadway Council Bluffs	TR 2473 (P) TR 2473-74-77 (D)
6.	Tony Bonacci	16th & Webster Omaha, Nebraska	TR 2502-3-11 (P) TR 2506-7-10 (D)
7.	Ernest A. Kohler	45th and Lake Omaha, Nebraska	TR 1514-15 (S)
8.	Ray and Dick Swanson	30th & Pratt Omaha, Nebraska	TR 1512-13 (S)
9.	C. A. Acamo	30th & Deer Park Omaha, Nebraska	TR 1237-38 (S)
10.	R & R Linton & Riggs	33rd & Q Omaha, Nebraska	TR 1238-53 (S) TR 1409 (S)

FEDERAL TRADE COMMISSION
DOCKET NO. 6415 EXHIBIT NO. 80-D

60 - R 80-D



JAX 399

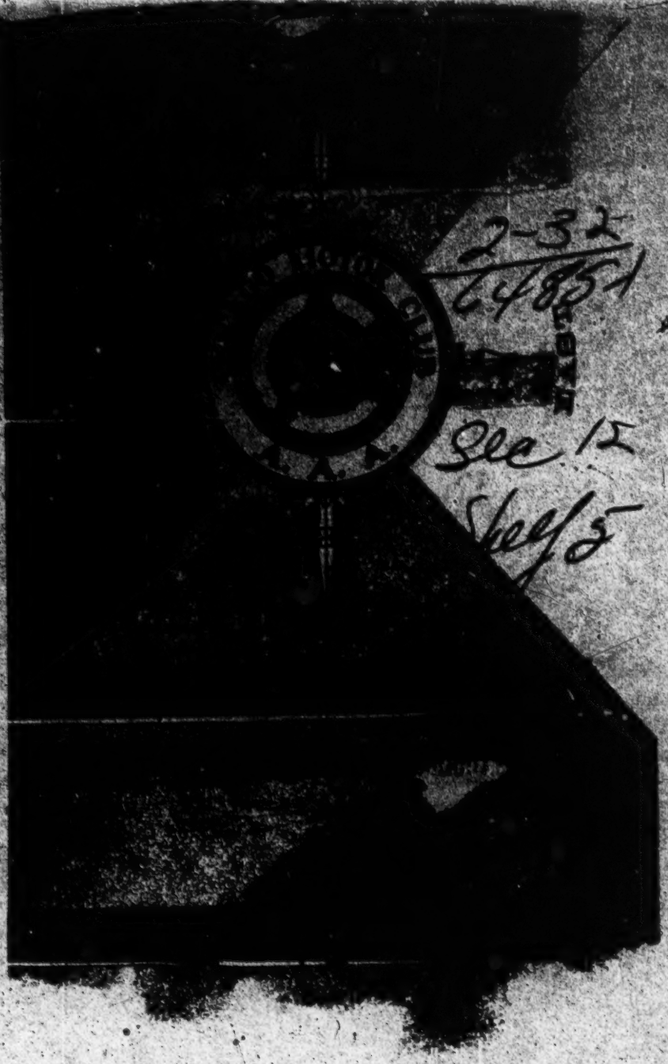
Respondents' Exhibit 80E

NAME	ADDRESS	TRANSCRIPT REFERENCE	
11. Thomas L. Houlton	41st & Dodge Omaha, Nebraska	TR 1325	(S)
12. Leon Pearson	54th & Military Omaha, Nebraska	TR 1324-25 TR 1400	(S) (S)
13. H. F. Smiley	50th & Underwood Omaha, Nebraska	TR 1342-48 TR 2412 TR 2414-16-17-2444	(S) (P)* (D)
14. Darrel L. Whitney	70th & Dodge Omaha, Nebraska	TR 1326-1345 TR 1402	(S) (S)
15. Charles Cox	13th and Harrison Omaha, Nebraska	TR 1358-1372 TR 1373	(S)
16. Fred Tex	60th and L Omaha, Nebraska	TR 1371	(S)
17. Clarence F. Carroll (Formerly R+H)	60th and Center Omaha, Nebraska	TR 1197	(S)
18. Peter R. Dall	75th and Pacific Omaha, Nebraska	TR 1197- TR 1207-8	(S)
19. Edward P. Schulte	61st & Military Omaha, Nebraska	TR 1380-90	(S)
20. Ted Carroll	Valley, Nebraska	TR 1396-7	(S)
21. Eckberg & Bobbett	86th & Dodge Omaha, Nebraska	TR 1393-94	(S)
22. Jansen Bros.	72nd & Blondo Omaha, Nebraska	TR 1399-1400	(S)
23. Harley J. Fischer	24th and G Omaha, Nebraska	TR 1410 and 1448	(S)
24. John L. Crookham	Main & Pearl Council Bluffs, Iowa	TR 1425	(S)
25. Ed Goldap	60th & Center Omaha, Nebraska (same as #17)	TR 1431	(S)

*Identified FORM LETTER "P" at TR 2411-12.

80-E

2-32
C4851
See 15
Sheet 5



CHICAGO

and vicinity

ROAD MAP

Reproduction

CHICAGO

and vicinity

ROAD

JAX 600
Respondents' Exhibit 61A

CHICAGO
and vicinity
ROAD MAP

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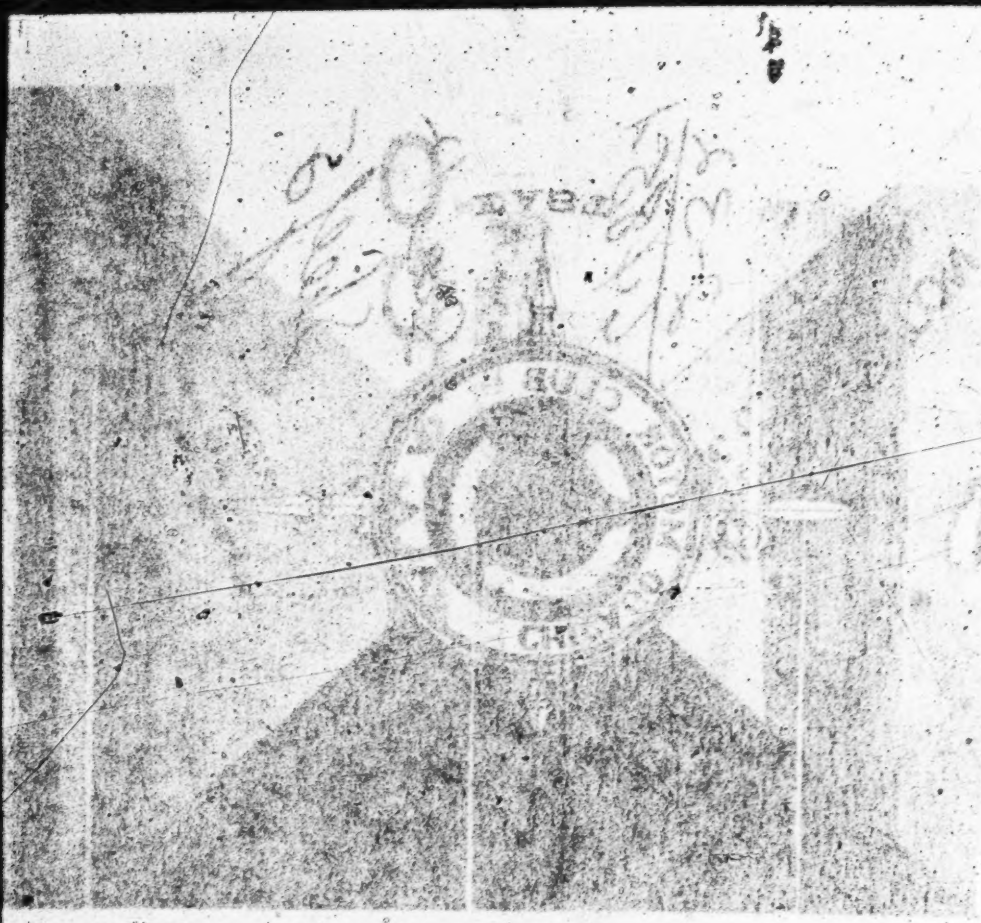
and



JAX 601

Respondents' Exhibit 81B

ORIGINAL EXHIBIT
to be returned to
FEDERAL TRADE COMMISSION

"M" - Testimony that dealer attended Texaco dealer meeting.

"S" - Testimony that complaining witness sold to dealer.

"D" - Testimony that dealer displayed non-sponsored TBA.

"P" - Testimony that dealer understood The Texas Company TBA policy.

With respect to photographs in evidence "I" indicates page on which respondent's exhibit identified and "A" indicates page on which respondent's exhibit admitted.

FEDERAL TRADE COMMISSION
DOCKET NO. 6715 RESPONDENT EXHIBIT NO.

JAX 602

Respondents' Exhibit 81C

CHICAGO DIVISION

"A" (YELLOW DOTS)

NAME	ADDRESS
1. Edward H. Ruszkowski	6930 West Cermak Berwyn, Illinois
2. *Charles D. Curletti	87th & Loomis Chicago, Illinois
3. Albert Feller	2834 Irving Park Chicago, Illinois
4. Andrew Gumbar	5550 North Ashland Chicago, Illinois
5. Bernard Kolon	7001 South Western Chicago, Illinois
6. McWhinney	70th & Western Chicago, Illinois
7. Peterson Service Station	1723 Irving Park Chicago, Illinois
8. Lou Peting	9500 Yates Chicago, Illinois
9. Bob Sterns Service Station	92 Green Bay Road Winnetka, Illinois

*Also sold other than Firestone and Goodrich TBA (TR 766).

FEDERAL TRADE COMMISSION
DOCKET NO. 6415 EXHIBIT NO. 81-C

JAK 902

Respondents' Exhibit 81D

"B" (RED DOTS)

NAME	ADDRESS	TRANSCRIPT REFERENCE
10. Norman L. Jacobson	119th & Western Blue Island, Illinois	[illegible]
11. Joseph Novak, Jr.	74th & Morgan Chicago, Illinois	[illegible]
12. John Nemec	8500 South Racine Chicago, Illinois	[illegible]
13. John Nemec	8956 South Ashland Chicago, Illinois	TR 2784-90-91-92-D
14. Vince Allen	Pennsylvania & Glenwood Glen Ellyn, Illinois	TR 716-17-815 (S) TR 2618(P) 2625 (M) TR 2620-22 (D) [illegible]
15. Arthur Hull	Damen & Rogers Chicago, Illinois	TR 716-19 (D)
16. Richard Busse	592 Northwest Hwy. DesPlaines, Illinois	TR 813-14 (S)
17. Herb Felthouse	16th & Lombard Cicero, Illinois	TR 882 (D)
18. Cole Brothers	2205 So. Mannheim Rd. Westchester, Illinois	TR 878-79 (S)
19. Garfield Texaco	1536 West Garfield Chicago, Illinois	TR 886 (S)
20. Edward Menger	Wolf & Butterfield Hillside, Illinois	[illegible]
21. Edward Malinowski & Stanton Dusak (Eddie & Stans)	400 West Madison St. Oak Park, Illinois	TR 873-5 (S) TR 2636-40-41 (D) [illegible]
22. Dan Papich	Cass & Naperville Rd. Westmont, Illinois	TR 876 (S)
23. Pete's Texaco	Butterfield & Rte. 83 Elmhurst, Illinois	TR 875 (S)
24. John Saagen	1201 South Fifth Ave. Maywood, Illinois	TR 876 (S)
25. Howard Mecher	Kinzie & Lawrence Chicago, Illinois	TR 932 (S)

[illegible] COMMISSION
DOCKET NOS. [illegible] RESPONDENT EXHIBIT NO. 81-D

CF

1-31-D

JAX 6th

Respondents' Exhibit 81E

	NAME	ADDRESS	TRANSCRIPT REFERENCE	
26.	Harold Gervais & Bernard Hoekstra (Harney & Harolds's)	103rd & Rhodes Chicago, Illinois	TR 777	(S)
27.	John Benson	79th & Paxton Chicago, Illinois	(TR 757-8 (TR 802	(S)
28.	Emil Biersychudek	120th & Halsted Chicago, Illinois	TR 758-9	(S)
29.	Gerald Carlton	95th & Bell Chicago, Illinois	TR 759-60	(S)
30.	Joseph Debulski	103rd & Michigan Chicago, Illinois	TR 768-9	(S)
31.	Benjamin Douglas	29th & South Parkway Chicago, Illinois	TR 769-70	(S)
32.	Charles Goff	71st & Indiana Chicago, Illinois	TR 772	(S)
33.	Leon Sider	67th & Jeffrey Chicago, Illinois	TR 773-4	(S)
34.	William Jamison	75th & Indiana Chicago, Illinois	TR 778	(S)
35.	George M. Messinger	98th & Kedsie Chicago, Illinois	TR 780	(S)
36.	Harold Peuts	63rd & Honore Chicago, Illinois	TR 794	(S)
37.	Thomas Stonier	99th & Cicero Chicago, Illinois	TR 896	(S)
38.	Asbury-Oakton Texaco	446 Asbury Evanston, Illinois	Ex. 148 Z (1)	
39.	Orville Baumann	4000 Dempster Skokie, Illinois	Ex. 148 L	
40.	Herb Bolte	925 Noyes Street Evanston, Illinois	Ex. 148 T TR 2649 (P)-2651 (D)	
41.	William Cargill	Milwaukee Avenue & Dundee Road Wheeling, Illinois	Ex. 148 Y	
42.	Michael Gorum	9555 Crawford Skokie, Illinois	Ex. 148 N	

FEDERAL [illegible] 646 81-E

1-11-E

JAX 605

Respondents' Exhibit 81F

	NAME	ADDRESS	TRANSCRIPT REFERENCE
43.	Frank G. Habjan (Midge's Texaco)	650 Waukegan Road Deerfield, Illinois	Ex. 148 X
44.	Sid Kick	800 North Milwaukee Libertyville, Illinois	Ex. 148 S
45.	James Hoult (Jim's Texaco Service)	Grand & Route 63 Gurnee, Illinois	Ex. 148 D
46.	John Kircher	6001 Dempster Avenue, Morton Grove, Illinois	Ex. 148 Q
47.	William Luby	803 Greenbay Road Wilmette, Illinois	Ex. 148 B
48.	Patrick Dell Grasie	3003 Central Street Evanston, Illinois	Ex. 148 P TR 2819-20-30 (P) TR 2822-23-25 (D) TR 2831-32 (M)
49.	Joseph Renick	Lewis & Belvidere Waukegan, Illinois	Ex. 148 G
50.	Ross Rittenhouse	29th & Sheridan Zion, Illinois	Ex. 148 C TR 2601-2 (P) TR 2604-5 (D) TR 2625 (M)
51.	Gilbert Sage	Greenwood Ave. & Sheridan Road Waukegan, Illinois	Ex. 148 H
52.	John Shannon	307 South Milwaukee Libertyville, Illinois	Ex. 148 R
53.	Bill Starovich	1240 Waukegan Road Glenview, Illinois	Ex. 148 M
54.	Steve's Texaco	Buckley, Morrow & Green Bay Road Shields Township (North Chicago)	Ex. 148 F
55.	William Zimmer	Grand & Ash Streets Waukegan, Illinois	Ex. 148 E
5	M & N Texaco William V. McCracken	304 East Central Villa Park, Illinois	(TR 880 (I) (TR 2334 (A) (Ex 11 TR880(I); TR2334(A)
57.	Herb Felthouse	16th & Lombard Cicero, Illinois	(TR 2758 (A) (Ex 46 A-C
58.	Philip Lowe	32nd & Michigan Chicago, Illinois	(TR-2761 (A) (Ex 47 A-B

JAX 006

Respondents' Exhibit 81G

	NAME	ADDRESS	TRANSCRIPT REFERENCE	
59.	Schon's Texaco	79th & Yates Chicago, Illinois	(TR 2764 (Ex 40 A-C	(A)
60.	Bruno's Texaco	Cermak & Clinton (same as #1)	(TR 2766 (Ex 41 A-D	(A)
61.	Newbauer's Texaco	87th & Loomis (same as #2)	(TR 2768 (Ex 50	(A)

A'51-G

FEDERAL TRADE COMMISSION

DATE 6/15 81-B

17

JAX 607

Respondents' Exhibit 82

COMPARATIVE DATA "C" AND "D" TBA ACCOUNTS
1956 Vs. 1957

Data	"C" Accounts 1957	"C" Accounts 1956	"C" Accounts Change	"D" Accounts 1957	"D" Accounts 1956	"D" Accounts Change
Number of Accounts	11,658	14,116	19.04%	17,706	16,141	(8.85%)
% Accounts to Total	40.11%	46.69%	6.54%	59.89%	53.35%	(6.54%)
Total Gasoline Volume	100.00%	131.62%	31.62%	100.00%	97.66%	(2.34%)
% Gasoline to Total	64.08%	70.66%	6.58%	35.92%	29.34%	(6.58%)
Sponsored TBA to Total	70.75%	79.60%	8.85%	29.25%	20.40%	(8.85%)

Source Data: CX-119 for number of dealers.

CX-211 for gasoline volume.

CX-213 for TBA purchases.

FEDERAL TRADE COMMISSION
DOCKET NO. 6485
EXHIBIT NO. 82
DATE 12/4/58
OFFICIAL REPORTER

9114

JAX 606

Respondents' Exhibit 83

B.F.Goodrich Tire Company
A Division of The B.F.Goodrich Company
Akron, Ohio

December 2, 1958

FEDERAL TRADE COMMISSION
DOCKET NO. 6415
IN THE MATTER OF
DATE 8/4/59 Gassaway Blazey
ACCT. ... CO., OFFICE ...
BY ...

ANALYSIS OF
TIRE AND TUBE SALES
THE TEXAS COMPANY AND THE CONTINENTAL OIL COMPANY
YEARS 1954, 1955, 1956, 1957

Oil company distributor and service station accounts are carried on The B.F.Goodrich Company Factory books, Zone books, B.F.Goodrich Store books and independent B.F. Goodrich dealer books. Summaries of accounts carried by B.F.Goodrich Store and independent B.F.Goodrich dealers and sent to Akron show the total tire and tube business without detail as to type, i.e., passenger or non-passenger. On the other hand, copies of the individual invoices to distributors and service stations carried on B.F.Goodrich Factory and Zone books are sent to Akron Sales Accounting Department. These invoices are keypunched as to customer number and class of merchandise and the figures below represent an analysis of this business:

	Total Tire and Tube Sales Through All BFG Outlets	Tire & Tube Sales Recorded On Zone & Factory Books	Size of Sample	Passenger Tires Incl. in Sample	Passenger Tires in Sample
Texas Company					
Year 1954	$11,535,527	$7,696,831	67%	$5,543,255	72%
1955	13,972,793	8,733,912	63	6,309,018	72
1956	14,383,409	8,333,831	58	6,002,576	72
1957	14,467,510	7,053,219	49	5,137,473	73
Continental Oil Company					
Year 1954	$5,328,882	$4,142,823	78%	$2,953,396	71%
1955	6,413,852	5,144,167	80	3,584,729	70
1956	5,911,274	4,675,157	79	3,263,552	70
1957	5,613,348	4,409,586	79	3,177,326	72

T. M. Blazey
Chief Accountant

sg

9115

JAX 006

Respondent's Exhibit 82

B.F.Goodrich Tire Company

Akron, Ohio

December 2, 1938

3115

JAX 600

Respondents' Exhibit 84A

Table 1

SALES OF TBA UNDER COMMISSION PLAN TO TEXACO STATIONS AND DISTRIBUTORS
Actual and Adjusted for Price Change

	Total TBA	
	Current Dollars	CONSTANT 1948 Dollars
	---- (000 $) ----	
	(1)	(2)
B. F. Goodrich		
1948	8,738	8,738
1949	8,408	8,377
1950	11,921	10,896
1951	11,406	9,049
1952	12,748	10,322
1953	13,925	11,317
1954	14,823	12,093
1955	17,934	15,817
% Increase		
1955 over 1948	105.3	84.7
Firestone		
1948	25,482	25,482
1949	19,796	20,242
1950	29,185	25,841
1951	25,854	20,488
1952	29,560	24,128
1953	31,000	25,660
1954	30,744	24,874
1955	35,581	26,348
% Increase		
1955 over 1948	39.7	3.8
Combined		
1948	34,187	34,187
1949	28,196	28,619
1950	40,104	36,901
1951	37,260	29,547
1952	42,306	34,450
1953	44,925	37,177
1954	45,567	36,970
1955	53,496	39,863
% Increase		
1955 over 1948	56.5	16.6

Column 1 - TBA sales for 1952-1955 shown in Exhibits CX114 and CX118. For prior years, Goodrich data from CX138 and Firestone data from CX115-in-Docket Number 6487.

Column 2 - First step in deflating total TBA involved breaking down total current dollar TBA into the following categories: tires and tubes, batteries, all other accessories. These three categories were then deflated by appropriate components (see Table II for explanation of deflation techniques and data) of the Bureau of Labor Statistics Wholesale Price Index. Actual data for tires and tubes available for entire period. Actual data for batteries and for other accessories not available prior to 1955. Sales of batteries for years 1948-1954 were estimated by assuming the average of 1955-1953 ratio of batteries to total TBA applied to earlier years. For period 1948-1954 other accessories is the residual obtained by deducting tires and tubes and batteries from total TBA. Column 2, then, represents the sum of the deflated data for (1) tires and tubes, (2) batteries, and (3) other accessories.

Economics Department
11-8-58

FEDERAL TRADE COMMISSION
DOCKET NO. 6487 EXHIBIT NO. 84-A
IN THE MATTER OF Goodrich
DATE 12/5/58 WITNESS Goodrich
Ace Reporting Co., Official Reporters
BY [signature]

2114

JAX 610

Respondents' Exhibit 84B

Table II

COMPONENTS OF BUREAU OF LABOR STATISTICS
WHOLESALE PRICE INDEX USED TO DEFLATE TBA SALES

	Tires and Tubes 1/		Batteries 2/		All Commodities, except Farm and Foods 3/	
	1947-49=100	1948=100	1947-49=100	1948=100	1947-49=100	1948=100
1947	99.4		98.5		95.3	
1948	101.8	100.0	102.9	100.0	103.4	100.0
1949	98.8	97.1	108.5	105.4	101.3	98.0
1950	113.6	111.6	96.8	94.1	105.0	101.5
1951	133.8	131.5	109.5	106.4	118.9	115.1
1952	129.8	127.5	110.0	106.9	113.2	109.5
1953	127.3	126.0	107.9	104.9	114.0	110.3
1954	130.6	128.3	104.2	101.3	114.5	110.7
1955	144.9	142.3	104.6	101.7	117.0	113.2

1/ Bureau of Labor Statistics index of wholesale prices of tires and tubes prepared on a base 1947-49=100, published in Business Statistics, 1957 Biennial Edition, U.S. Department of Commerce, p. 31. Converted to base 1948=100 by Economics Department.

2/ BLS index of wholesale prices of automotive batteries prepared on a base 1947-49=100. Indexes for years 1948-1950 in BLS Prices and Price Relatives for Individual Commodities in the Revised Index, 1947-49, Group II - Machinery and Motive Products, p. 11-48. For years 1951-1953 in BLS Prices and Price Relatives for Individual Commodities, 1951-53, Group II - Machinery and Motive Products, p. 11-48. For years 1954 and 1955 in BLS Bulletin #1181 Wholesale Prices and Price Indexes, 1954-56, p. 309. Converted to base 1948=100 by Economics Department.

3/ BLS index of wholesale prices of all commodities other than farm products and foods prepared on a base 1947-49=100, published in Business Statistics, 1957 Biennial Edition, U.S. Department of Commerce, p. 28. Converted to base 1948=100 by Economics Department. Because of the numerous items that make up Other Aggregates and because of their highly diverse nature, this index deemed the most appropriate deflator.

Economics Department
11-7-58

JAX 611

Respondents' Exhibit 84C

FILED, TRADE COMMISSION

6495

Docket 50

Table III

INDEXES OF DEFLATED TOTAL TBA SALES UNDER COMMISSION PLAN TO TEXACO DEALERS AND DISTRIBUTORS vs. INDEXES OF TEXACO DIVISION AUTOMOTIVE GASOLINE SALES, OF U. S. PASSENGER CAR REGISTRATIONS AND OF PASSENGER-CAR MILES TRAVELED

	Deflated Total TBA (1948=100) (1)	Division Automotive Gasoline Sales (1948=100) (2)	Passenger Car Registrations (1948=100) (3)	Passenger Car-Miles Traveled (1948=100) (4)
1948	100.0	100.0	100.0	100.0
1949	84.8	103.8	109.3	107.1
1950	107.9	109.8	120.8	113.7
1951	86.4	116.1	128.0	122.6
1952	100.9	120.4	131.4	126.3
1953	108.7	123.1	139.3	136.2
1954	106.1	127.5	146.4	140.9
1955	116.6	137.5	156.3	152.5

Column 1 - Index computed by Economics Department from data for Goodrich and Firestone combined shown in Column 2 of Table I.

Column 2 - Index computed by Economics Department from actual data compiled by Texaco Sales Department, Form S-1220. Annual Division Automotive Gasoline Sales, in thousands of gallons, follow: 1948 - 3,037,871; 1949 - 3,153,272; 1950 - 3,334,708; 1951 - 3,526,445; 1952 - 3,666,871; 1953 - 3,740,205; 1954 - 3,873,887; 1955 - 4,176,581.

Column 3 - Index computed by Economics Department basis passenger car registrations data compiled by Bureau of Public Roads, published in Automobile Facts and Figures, 1957 Edition, p. 18. Actual passenger car registration totals, in thousands of cars, follow: 1948 - 32,361; 1949 - 36,483; 1950 - 40,254; 1951 - 42,683; 1952 - 43,618; 1953 - 46,460; 1954 - 48,490; 1955 - 52,126. Data at year end.

Column 4 - Index computed by Economics Department basis Bureau of Public Roads data on total passenger car-miles traveled, published in Automobile Facts and Figures, 1957 Edition, p. 66. Actual car-miles traveled, in billions of car-miles, follow: 1948 - 319,743; 1949 - 342,478; 1950 - 363,613; 1951 - 392,121; 1952 - 410,187; 1953 - 435,361; 1954 - 450,606; 1955 - 487,540. While these are the actual figures released by BPR they represent, to be precise, the Bureau's estimates.

Economics Department
11-7-58

D118

JAX 812

Respondents' Exhibit 840

Supplementary Table I

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 EXHIBIT NO.

CURRENT DOLLAR TBA SALES AND CONSTANT DOLLAR TBA BY GOODRICH AND FIRESTONE COMBINED PER 1,000 GALLONS OF GASOLINE SALES--TEXACO "C" ACCOUNTS

	Current Dollar TBA (000 $)	Constant Dollar TBA (000 $)	Gasoline Sales (000 Gallons)	Current Dollar TBA Per 1,000 Gallons of Gasoline Sales	Constant Dollar TBA Per 1,000 Gallons of Gasoline Sales
	(1)	(2)	(3)	(4)	(5)
1946	12,804	12,804	1,079,240	$11.86	$11.86
1949	10,782	11,064	1,185,664	9.09	9.33
1950	15,078	14,479	1,323,680	11.84	10.94
1951	16,225	12,248	1,517,864	10.10	8.13
1952	19,643	16,106	1,682,202	11.68	9.57
1953	22,676	18,861	1,799,464	12.60	10.48
1954	24,141	19,726	1,867,634	12.93	10.56
1955	25,900	21,791	2,048,822	14.12	10.64

Column 1 - Data for 1951-1955 shown in Exhibit CX1130 and CX1131. For years 1946-1950 data obtained from Texaco Sales Department, Form S-1913.

Column 2 - The technique and price indexes used to convert current dollar TBA sales, shown in Column 1 this table, to a constant 1948 dollar basis are identical with those used to deflate total TBA sales by Goodrich and Firestone combined to all Texaco stations and distributors. See note to Column 2 of Table I and Table II, including notes, for explanation of technique and appropriate price indexes used in deflating.

Column 3 - "C" account gasoline sales for 1952-55 from Exhibit CX1131, which shows gasoline sales in barrels. Figures converted to gallons by Economics Department. For years 1946-51 from Annual Report of Texaco Sales Department.

Column 4 - Obtained by dividing current dollar TBA (Column 1) by thousands of gallons of gasoline sales (Column 3).

Column 5 - Obtained by dividing constant dollar TBA (Column 2) by thousands of gallons of gasoline sales (Column 3).

Economics Department
11-7-56

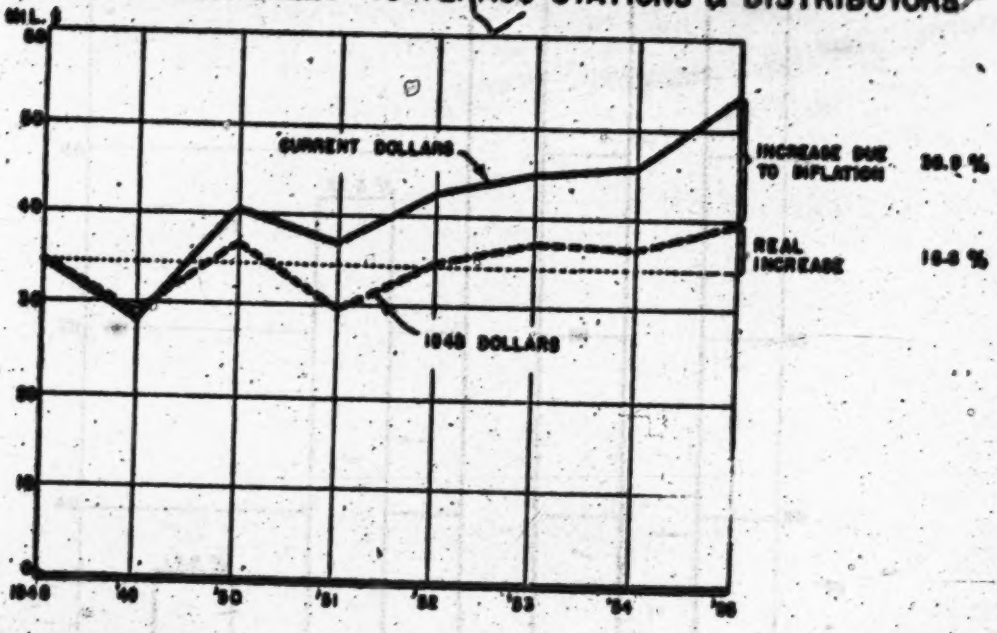
JAX 613

Respondents' Exhibit 85A

FEDERAL TRADE COMMISSION
DOCKET NO. 6485 ET AL. NO. 85-A
IN THE MATTER OF Goodrich Firestone
DATE 12/5/58
ACE REPORTING CO., Official Reporters
By Ace

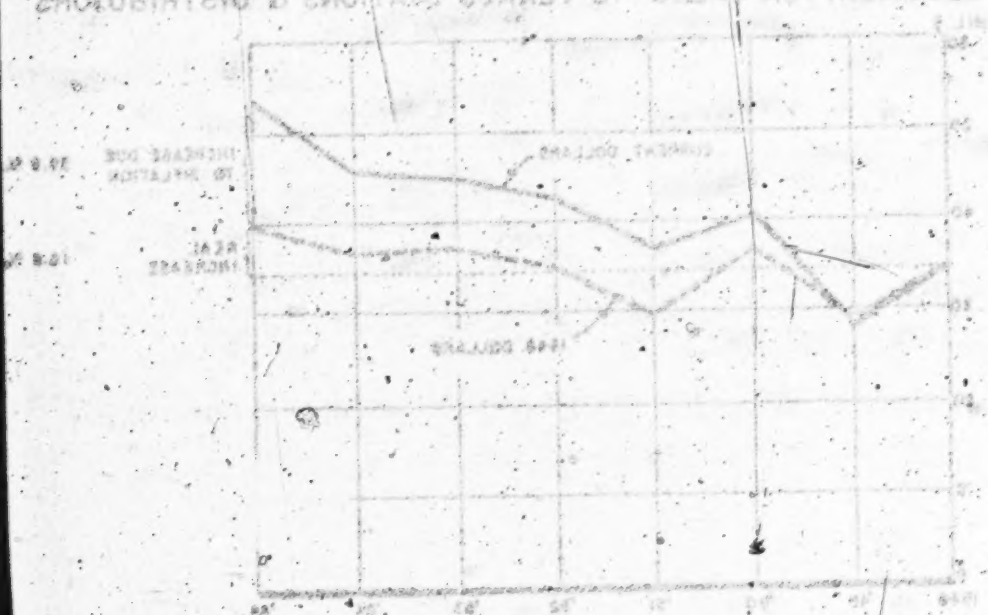
CHART X

INFLATION IS MAJOR FACTOR BEHIND ADVANCE IN DOLLAR VOLUME OF COMBINED FIRESTONE & GOODRICH TBA SALES TO TEXACO STATIONS & DISTRIBUTORS



SOURCE: TABLE X

ECONOMICS DEPARTMENT



JAX 614

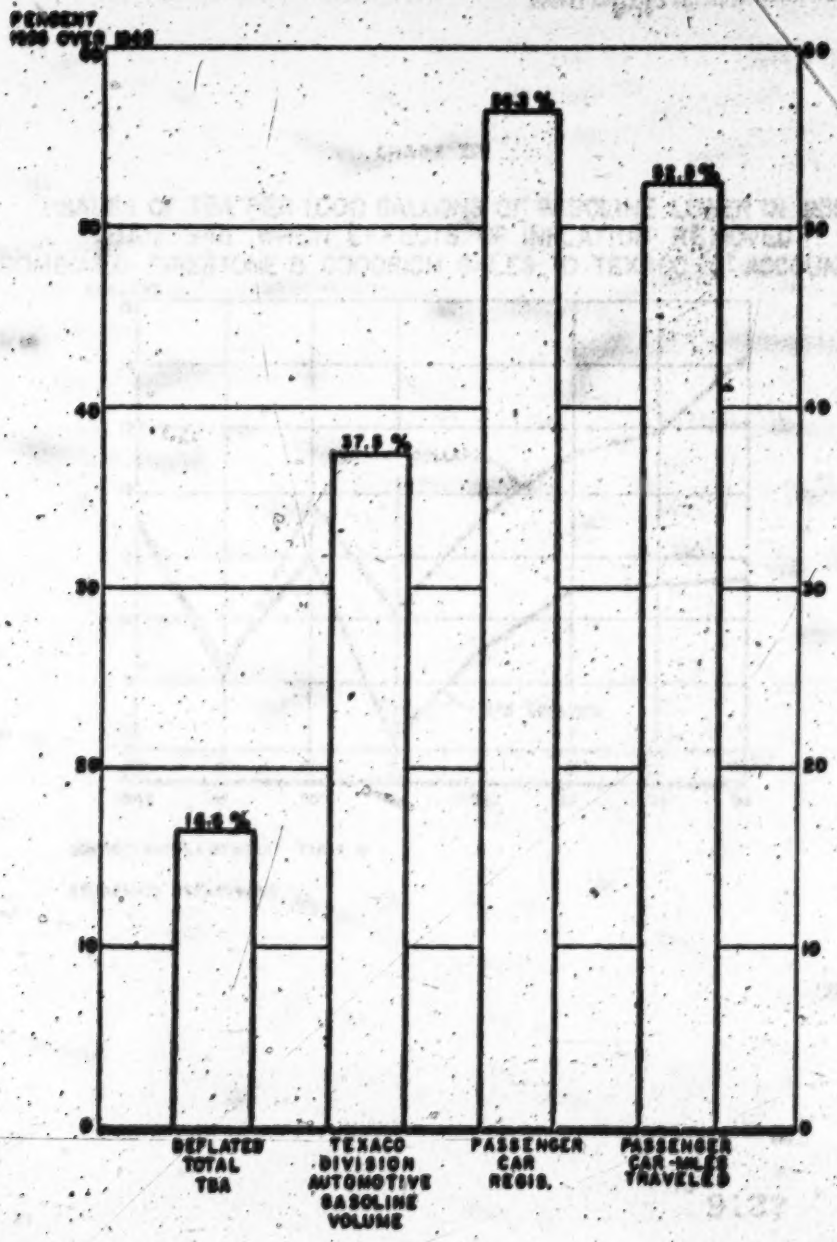
Respondents' Exhibit 88B

CHART XI

FEDERAL TRADE COMMISSION

DOCKET NO. 6445

TEXACO GASOLINE SALES & PASSENGER CAR REGISTRATIONS & USE INCREASED MORE RAPIDLY THAN COMBINED FIRESTONE & GOODRICH TBA SALES (DEFLATED) TO TEXACO STATIONS & DISTRIBUTORS



SOURCE: TABLE XIX

ECONOMICS DEPARTMENT

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JAX 613

Respondents' Exhibit 88C

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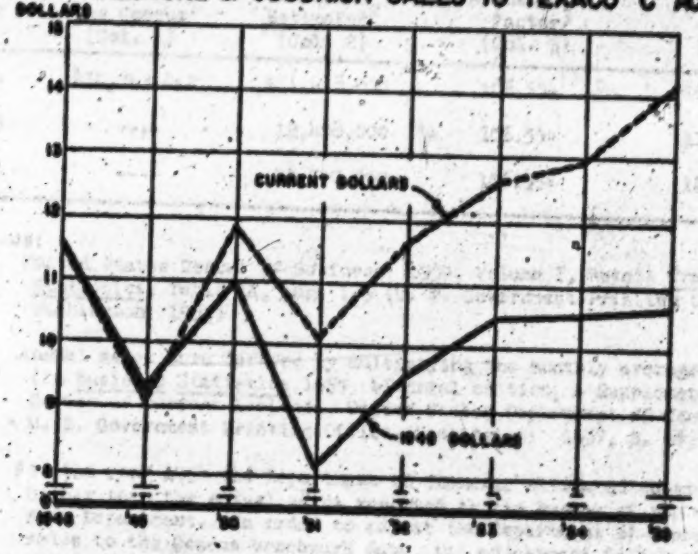
FEDERAL TRADE COMMISSION
DOCKET NO. 6485 RESPONDENT EXHIBIT NO.

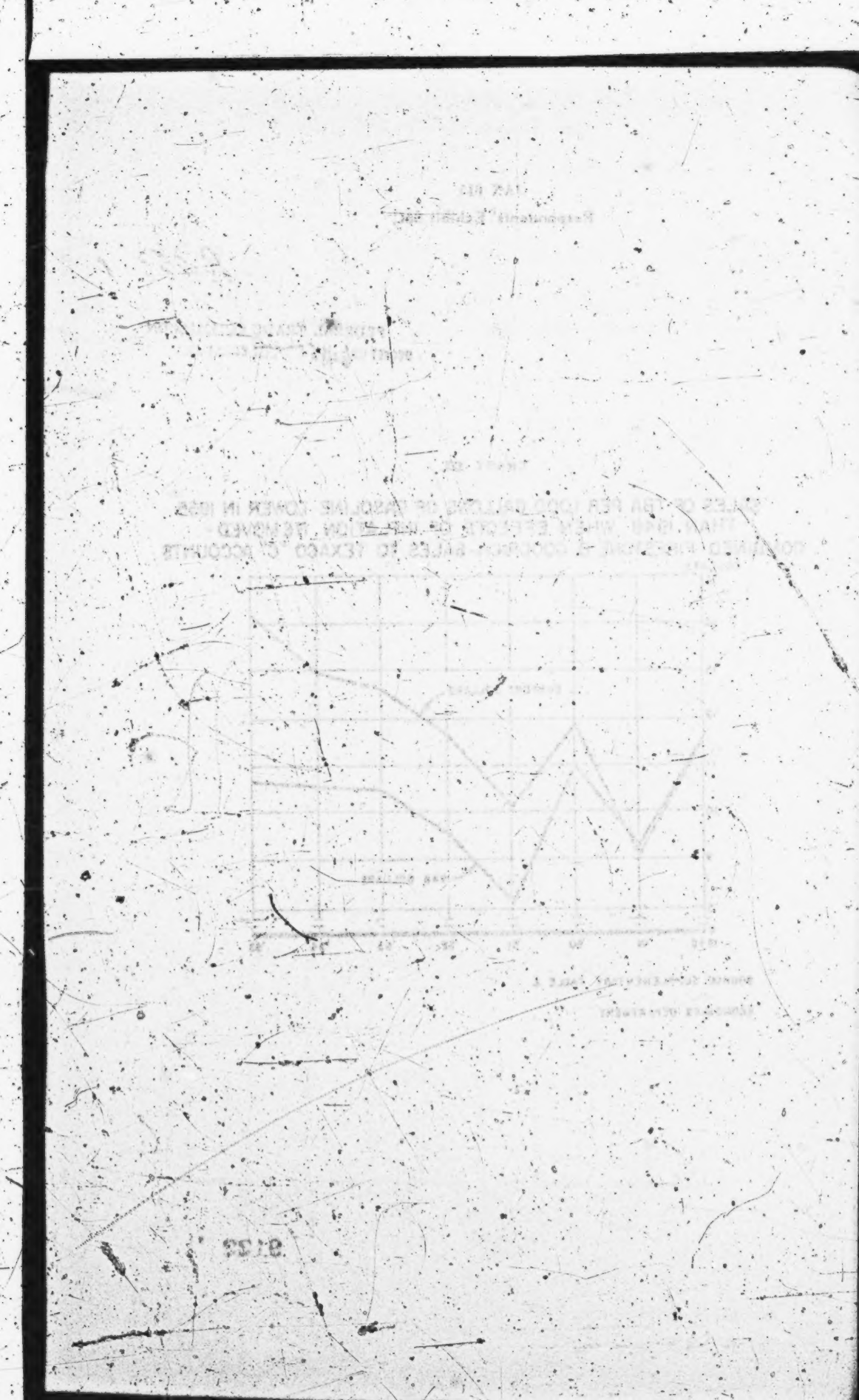
CHART XII

SALES OF TBA PER 1,000 GALLONS OF GASOLINE LOWER IN 1955 THAN 1948 WHEN EFFECTS OF INFLATION REMOVED - COMBINED FIRESTONE & GOODRICH SALES TO TEXACO "C" ACCOUNTS



SOURCE: SUPPLEMENTARY TABLE 2

ECONOMICS DEPARTMENT



JAX 616

Respondents' Exhibit 86A

Introduced

COMPUTATION OF TBA SALES, AT STATION COST, PER 1,000 GALLONS OF GASOLINE SOLD BY GASOLINE SERVICE STATIONS, UNITED STATES, 1954-1956

Table 1

Annual Sales of Gasoline Service Stations: Department of Commerce Estimates Adjusted to Census of Business Benchmark Data,

(amounts in thousands of dollars)

Year	Sales as Reported by the Census[1] (Col. 1)	Department of Commerce Estimates[2] (Col. 2)	Adjustment Factor[3] (Col. 3)	Adjusted Sales[4] (Col. 4)
1954	$10,743,812	$11,448,000	106.554	$10,743,812
1955	----	12,408,000	106.554	11,644,800
1956	----	13,740,000	106.554	12,894,870

Sources:

1. United States Census of Business: 1954, Volume I, Retail Trade--Summary Statistics, Table 1A, page 1-5 (U. S. Government Printing Office, Washington: 1957)

2. Annual sales were derived by multiplying the monthly average as reported (in Business Statistics, 1957 biennial edition, A Supplement to the Survey of Current Business, United States Department of Commerce, U. S. Government Printing Office, Washington: 1957, p. 46) by 12.

3. For the year 1954 the Department of Commerce estimated sales were 6.554% higher than the actual sales reported by the Bureau of the Census of the same Department. In order to adjust the Department of Commerce estimated sales to the Census benchmark data, the adjustment factor of 106.554% which was computed for the year 1954 was used.

4. Data in column 2 adjusted by figures in column 3. The data in column 4 represent estimates of gasoline service station sales on a basis consistent with the actual figures as reported on a comparable basis by the Census of Business for the year 1954.

FEDERAL TRADE COMMISSION
DOCKET NO. 4[illegible] EXHIBIT NO. 86A
IN THE MATTER OF [illegible]
DATE 1/7/58 WITNESS [illegible]
ACE REPORTING CO., Official Reporters
By [illegible]

9123

JAX 617

Respondents' Exhibit 86B

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COMPUTATION OF TBA SALES, AT STATION COST, PER 1,000 GALLONS OF GASOLINE SOLD BY GASOLINE SERVICE STATIONS, UNITED STATES, 1954-1956

Table 2

Average Retail Price per Gallon of Automotive Gasoline at Gasoline Service Stations.

Year	Regular Grade Gasoline			Premium Grade Gasoline			Weighted Average Price[5] (Col. 7)
	Average Price[1] (Col. 1)	Per Cent of Total Gallonage[2] (Col. 2)	Weight[3] (Col. 3)	Average Price[4] (Col. 4)	Per Cent of Total Gallonage[2] (Col. 5)	Weight[4] (Col. 6)	
1954	$ .2904	68.8	2.205	$ .3204	31.2	1.000	$ .2998
1955	.2907	68.6	2.185	.3207	31.4	1.000	.3001
1956	.2997	68.1	2.135	.3297	31.9	1.000	.3093

Sources:

1. Consist of simple averages of first-of-month prices in 50 representative U. S. cities and include gasoline taxes in order to make the data comparable with those reported by the U. S. Census of Business in which the sales of gasoline service stations include all such taxes. For the years 1954 and 1955, from Petroleum Facts and Figures, Twelfth Edition 1956 (published by American Petroleum Institute), p. 309; for the year 1956 from National Petroleum News Factbook (A McGraw-Hill Publication) Mid-May 1957-58, page 187. The same prices, but exclusive of taxes, are published in Business Statistics, 1957 Biennial Edition, A Supplement to the Survey of Current Business, U. S. Department of Commerce, p. 174.
2. Data in Table 2A, Col. 3, subtracted from 100.
3. Weight used in computing the weighted average price is based on a weight of 1.000 for premium gasoline. Computed by dividing the per cent of total gallonage for regular gasoline by the corresponding per cent for premium gasoline. Thus, for 1954, 68.8 divided by 31.2 = 2.205.
4. Based on information for price differentials between regular and premium grades of gasoline obtained through independent research.
5. Weighted average price for all gasoline sold by gasoline service stations. Computed by multiplying the price for each grade by the corresponding weight, adding the totals, and dividing the overall total by the sum of weights. Thus, for 1954, $0.2904 times 2.205 plus $0.3204 times 1 = $0.9607, divided by 3.205 (2.205 plus 1) = $0.2998.

FEDERAL TRADE COMMISSION
DOCKET NO. 6711 EXHIBIT NO. 86-B

JAX 618

Respondents' Exhibit 88C

Table 2A

PER CENT OF PREMIUM AUTOMOTIVE GASOLINE TO TOTAL GALLONAGE OF AUTOMOTIVE GASOLINE SOLD DURING THE YEARS 1954-1956
(Thousands of Gallons)

As Reported by the Ethyl Corporation and Used for Computations of Data in Table 2

Year	Total[1] (Col. 1)	Premium[1] (Col. 2)	Non-Premium[2] (Col. 3)	Premium, Per Cent of Total[1] (Col. 4)
1954	46,394,232	14,457,078	31,937,154	31.2
1955	49,707,335	15,617,114	34,090,221	31.4
1956	51,836,225	16,534,751	35,301,474	31.9

Sources: 1. Table entitled "U. S. Yearly Gasoline Sales 1936-1956" published by the Ethyl Corporation in Yearly Report of Gasoline Sales, 1956, page 4.
2. Data in Col. 1 less data in Col. 2.

Computed Per Cent of Premium Automotive Gasoline to Total Gallonage of Automotive Gasoline Sold by Retail Outlets Including Gasoline Service Stations: 1954-1956

Year	Estimated Reseller Volume of Non-Premium Gasoline*	Adjusted Total Automotive Gasoline Sales**	Adjusted Premium, Per Cent of Total***
1954	23,952,866	38,409,944	37.6
1955	25,567,666	41,184,780	37.9
1956	26,476,106	43,010,857	38.4

* Estimated reseller volume at 75% of total non-premium gasoline shown in Col. 3 of main table above. This estimate was arrived at, on an extremely conservative basis, in the light of the following data. First, gasoline consumption by motor trucks and buses were computed to be 27.0% of total consumption by U. S. motor vehicles in 1954 and 26.4% in 1955 (from data in Petroleum Facts and Figures, Twelfth Edition, 1956, published by American Petroleum Institute, page 82). Motor trucks and buses, with few exceptions, use non-premium or regular grade gasoline and they purchase about one-half direct. Second, direct purchases of substantial quantities of non-premium gasoline are made for a number of other purposes, a few of which are given here like those made by Class I railroads (46,815,258 gallons in 1954 and 47,756,016 gallons in 1955, Ibid., page 93); for farm consumption (6,775,000,000 gallons in 1953, Ibid., page 84); by the U. S. Army for use in continental United States (123,858,000 gallons in 1954 and 116,411,400 gallons in 1955, Ibid., page 96). In the light of this, it is clear that the Ethyl percentages used are an irreducible minimum in order to avoid resort to incomplete and fragmentary data for the making of more relevant but inaccurate computations.

** Data in preceding column plus data in Col. 2 of main table above.

*** Data in Col. 2 of main table above as a percentage of data in preceding column of this computation.

FEDERAL TRADE COMMISSION
DOCKET NO. 6144 RESPONDENTS EXHIBIT NO. 88C

9125

FAX 016

Respondents' Exhibit 85C

JAX 619

Respondents' Exhibit 619

COMPUTATION OF TAX SALES, AT STATION COST, PER 1,000 GALLONS OF GASOLINE SOLD BY GASOLINE SERVICE STATIONS, UNITED STATES, 1954-1956

Table 3

Automotive Gasoline Sales by Gasoline Service Stations

(amounts in thousands of dollars)

Year	Total Sales of Service Stations[1] (Col. 1)	Gasoline Sales of Service Stations		Average Price per Gallon[4] (Col. 4)	Gasoline Sales in Thousands of Gallons[5] (Col. 5)
		Ratio to Total Sales[2] (Col. 2)	Amount[3] (Col. 3)		
1954	$10,743,812	67.3	$7,230,385	.2998	24,115,089
1955	11,644,800	66.8	7,778,726	.3001	25,920,447
1956	12,894,870	66.3	8,549,299	.3093	27,640,799

Sources:

1. From Table 1, Column 4.
2. In 1948 the ratio of gasoline sales to total sales of gasoline service stations was 70.3% (Census of Business: 1948, Volume II, p. 21.02). The remaining 29.7% of the total sales was made up of the sale of lubricants (6.8%), fuel oil (2.0%); services like washing and greasing (5.4%); tires, batteries and accessories (9.1%), and all other sales and services (6.4%).

   According to the Bureau of the Census, the 1948 gasoline sales ratio "was a reduction from the proportion of such sales in 1939, when gasoline accounted for 75 percent of the sales of gasoline service stations with sales of $20,000 or more each, and 77 percent of the sales of smaller stations." (Census of Business: 1948, Volume II, Retail Trade--General Statistics, Part 2, p. 35). On the basis of this information from the most authoritative source available it was concluded that the proportion of gasoline sales to total sales of gasoline service stations would probably decline at the rate of .5% of total sales annually, which would make this percentage 3 points lower in 1954 - the next Census year for which no such data were collected.
3. Derived by applying the ratio shown in column 2 to the data in column 1.
4. From Table 2, column 7.
5. Data in Col. 3 divided by data in Col. 4.

FEDERAL TRADE COMMISSION
DOCKET NO. 615 RESPONDENT'S EXHIBIT NO. 619

JAX 620

Respondents' Exhibit 86F

COMPUTATION OF THE SALES, AT STATION COST, PER 1,000 GALLONS OF GASOLINE SOLD BY GASOLINE SERVICE STATIONS, UNITED STATES, 1954-1956

Table 4

Average Automotive Gasoline Gallonage of Gasoline Service Stations

Year	Total Gasoline Sold By Service Stations (Thousands of Gallons)[1] (Col. 1)	Number of Service Stations[2] (Col. 2)	Average Gallonage per Station[3] (Col. 3)
1954	24,118,029	181,747	132,701
1955	25,920,447	182,097	142,344
1956	27,640,799	182,447	151,500

Sources: 1. From Table 3, Col. 5.

2. For 1948 and 1954 the data reported by the Census (United States Census of Business: 1954, Volume I, Retail Trade--Summary Statistics, Table 1B for 1948, page 1-7 and Table 1A for 1954, page 1-5, U. S. Government Printing Office, Washington: 1957,) on a comparable basis showed 179,647 service stations for 1948 and 181,747 stations for 1954--an increase of 2,100 stations. Assuming the increase to be constant, it would mean a net addition at the rate of 350 stations per year, thus making the number of stations 350 higher in 1955 than the actual figure shown by the Census for 1954 and by another increment of 350 stations for 1956. See also National Petroleum News Factbook, (a McGraw-Hill Publication), Mid-May 1957-58, page 208 estimating 182,090 stations for 1955 and 182,440 for 1956.

3. Data in Column 1 divided by data in Column 2, multiplied by 1,000 (since figures in Col. 1 are in thousands of gallons).

FEDERAL TRADE COMMISSION
DOCKET NO. 6[illegible] EXHIBIT NO. 86-F

CONSUMPTION OF TBA SALES, AT STATION COST, PER 1,000 GALLONS OF GASOLINE SOLD BY GASOLINE SERVICE STATIONS
UNITED STATES, 1954-1956

Table 5

Total Replacement Domestic Market for New Tires and Tubes, at Wholesale Prices (Dealer or Station Cost Basis)
(Based on an Analysis of Total Tire and Tube Sales for Passenger Cars)

Year	New Tire Shipments (units)[1] (Col. 1)	Average Wholesale Price Per Tire[2] (Col. 2)	New Tire Shipments[3] (dollars) (Col. 3)	New Inner Tube Shipments (units)[1] (Col. 4)	Average Wholesale Price Per Tube[2] (Col. 5)	New Inner Tube Shipments[4] (dollars) (Col. 6)	Total Wholesale Value of Domestic Replacement Passenger Car New Tires and Tubes (Col. 7)
1954	47,043,543	$13.41	$630,853,912	29,869,016	$1.71	$51,076,017	$681,929,929
1955	50,124,361	14.70	736,828,401	27,174,923	1.88	51,088,855	787,917,256
1956	53,164,815	15.30	813,421,670	26,270,021	2.02	53,065,442	866,487,112

Sources: 1. Automotive News 1958 Almanac (The Newspaper of the Industry), Detroit, April 28, 1958, page 78.

2. From Col. 5 (for Tires) and Col. 6 (for Tubes) of Table 5A.

3. Derived by multiplying the data in Col. 1 by the price per tire shown in Col. 2.

4. Derived by multiplying the data in Col. 4 by the price per tube shown in Col. 5.

5. Sum of data in Col. 3 and in Col. 6.

JAX 621
Respondents' Exhibit 86H

Respondents' Exhibit 6H

[illegible]

JAX 6[illegible]

Respondents' Exhibit [illegible]

Table [illegible]

COMPUTATION OF WHOLESALE PRICE PER PASSENGER CAR REPLACEMENT TIRE AND TUBE, RESPECTIVELY, DEALER OR STATION OUTLET SALES: 1948 and 1954-1956

Year	Index of Wholesale Prices: Passenger Car Tires 1947-49=100[1] (Col. 1)	Passenger Car Tires 1954=100[2] (Col. 2)	Passenger Car Tubes 1947-49=100[1] (Col. 3)	Passenger Car Tubes 1954=100[2] (Col. 4)	Wholesale Price per Tire[3] (Col. 5)	Wholesale Price per Tube[4] (Col. 6)
1948	102.8	73.6	98.3	97.3	$10.10	$1.66
1954	134.9	100.0	101.0	100.0	13.81	1.71
1955	147.9	109.6	111.1	109.6	15.13	1.88
1956	153.9	114.1	119.4	118.0	15.75	2.02

Sources:

1. For 1948, "Prices and Price Relatives for Individual Commodities in the Revised Index 1947-50, Group 7 — Rubber and Products," issued February 1952, pages 07-2 and 07-3; for 1954-1956, "Prices and Price Indexes 1954-56," (A Reprint from BLS Bulletin No. 1214) Group 7--Rubber and Rubber Products, page 84, Bureau of Labor Statistics, U. S. Department of Labor.
2. Computed by converting the indexes in the preceding column into that of 1954 as 100.
3. Computed by applying the index in Col. 2 to the $13.81 price per tire determined for 1954 as shown below.
4. Computed by applying the index in Col. 4 to the $1.71 price per tube determined for 1954 as shown below.

COMPUTATION OF 1954 PRICE TO DEALERS OF A REPLACEMENT PASSENGER CAR TIRE AND TUBE

	Number	Total Value	Price per Unit
1. Total factory shipments in 1954:[a]			
a. Passenger car pneumatic tires	70,718,000	$983,630,000	$13.91
b. Passenger car inner tubes	38,090,000	74,118,000	1.95
2. Average price per tire at retailer's cost, assuming a gross margin for wholesaling of 17% of selling price[b] ($11.43 divided by 83% and multiplied by 100)			$13.81
3. Average price per tube at retailer's cost, assuming a gross margin for wholesaling of 17% of selling ($1.42 divided by 83% and multiplied by 100)			$ 1.71

a. Census of Manufactures, 1954, Advance Report Series MC-30-3, Tires and Inner Tubes Industry, Table 3.

b. Percentage was determined after consultation with economic personnel of several tire and rubber companies and after careful study of all available data on the subject. That this is an extremely conservative figure can be seen from the fact that in 1954 the operating expenses of tire and tube wholesalers were reported by the Census to be 22.3% of sales (1954 Census of Business, Volume IV, Wholesale Trade-Area Statistics, U. S. Government Printing Office, 1956, p. 1-3).

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Respondents' Exhibit 801

Table 2

CALCULATION OF HOLOSTAN'S PRICE PER PASSENGER CAR REPLACEMENT TIRE AND TUBE, HYPOTHETICALLY, SEALED OR STATIONARY COST BASIS: 1948 and 1958-1958

Year	Index of Wholesale Prices: Passenger Car Tires (Col. 1)	Index of Wholesale Prices: Passenger Car Tubes (Col. 2)	Index of Wholesale Prices: Industrial Commodities (Col. 3)	Holostan Wholesale Prices Per Price Per Tire[a] (Col. 4)	Holostan Wholesale Prices Per Price Per Tube[b] (Col. 5)	Holostan Wholesale Prices Per Price Per Tube[c] (Col. 6)
1948	102.0	75.6	98.5	97.3	10.14	1.66
1954	131.9	100.8	101.2	100.0	13.41	1.71
1957	147.3	109.6	111.1	109.8	14.10	1.80
1958	153.9	114.1	112.4	113.0	15.30	2.02

Sources:

a. For 1948, "Prices and Price Relatives for Individual Commodities in the Revision Index 1947-49, Group 1 -- Rubber and Products," issued February 1954, pages 6-8 and 61-3; for 1954-1958, "Prices and Price Indexes, 1958," pages 6-8, Bureau of Labor Statistics No. 1226) Group 7--Rubber and Rubber Products, page 29), Bureau of Labor Statistics, U. S. Department of Labor.

b. Computed by converting the indexes in the preceding column into that of 1948 as 100.

c. Computed by applying the index in Col. 3 to the $13.41 price per tire during for 1954 as shown above.

d. Computed by applying the index in Col. 3 to the $1.71 price per tube during for 1954 as shown below.

CALCULATION OF 1958 PRICE TO DEALERS OF A REPLACEMENT PASSENGER CAR TIRE AND TUBE

	Number	Total Value	F.O.B. Plant Price per Unit
1. Factory shipments in 1958:			
a. Passenger car domestic tires	75,712,000	$857,258,000	$11.32
b. Passenger car inner tubes	72,020,000	$123,000	1.72
2. Average price per tire at retailer's door, assuming a gross margin for wholesaling of 17% of selling price[a] ($11.32 divided by 83% and multiplied by 100).....			$13.64
3. Average price per tube at retailer's door, assuming a gross margin for wholesaling of 17% of selling price ($1.72 divided by 83% and multiplied by 100).....			$ 2.07

---

a. Census of Manufactures: 1958, Advance Report Series MC-30-3, Tires and Inner Tubes Industry, Table 3.

b. Percentage was determined after consultation with research personnel of several tire and rubber companies and after careful study of all available data on the subject. That this is an extremely conservative figure can be seen from the fact that in 1958 the operating expenses of tire and tube wholesalers were reported by the Census to be 22.1% of sales (1958 Census of Business, Volume IV, Wholesale Trade--Area Statistics, U. S. Government Printing Office, 1956, p. 1-3).

Federal Trade Commission

JAX 213

Respondents' Exhibit 213

FEDERAL TRADE COMMISSION

DOCKET NO. [illegible]

COMPUTATION OF TBA SALES, AT STATION COST, PER 1,000 GALLONS OF GASOLINE SOLD BY GASOLINE SERVICE STATIONS, UNITED STATES, 1939-1956

Table 6

Total TBA Sales, At Station Cost, By Gasoline Service Stations
(Based on an Analysis of Total Tire and Tube Sales for Passenger Cars)

Year	Total Wholesale Value of Domestic Replacement Passenger Car New Tires and Tubes[1] (Col. 1)	Share Accounted for by Gasoline Service Stations		Ratio of TBA and Tires Sales to Total Sales	Value of TBA Sales at Gasoline Service Stations
		Per Cent (Col. 2)	Amount (Col. 3)	(Col. 4)	(Col. 5)
1954	$681,989,989	42.83	$292,079,359	46.6%	$[illegible],771
1955	707,317,256	42.83	337,484,[illegible]	46.6%	[illegible],813
1956	666,487,118	42.83	371,116,[illegible]	46.6%	[illegible],065

Sources:

1. From Table 5, last column.
2. In connection with the 1948 Census of Retail Trade, 77.5% of the business volume reported by gasoline service establishments and business other than commodities or merchandise lines. In this breakdown were included sales of $258,525,000 in tires (new and used) and $111,337,000 in accessories and accessories. (United States Census of Business: 1948, Volume II, p. 21.02). When adjusted for the 8.5% of the volume that was not known how to merchandise line, on the assumption that the 77.5% of the volume was certainly representative of the total, the sales of tires (new and used) amounted to $273,020,518 and of batteries and accessories they were $117,618,000, with a total TBA volume of $615,653,332. In terms of station cost, total TBA sales, based on an average gross margin of 29% of selling price, amounted to $437,113,866 ($615,653,332 x 71%) and sales of tires and tubes, based on an average gross margin of 26% of selling price, amounted to ($273,020,518 x 74%). This means that sales of tires and tubes, $201,979 were 42.83% of total domestic replacement passenger car tire and tube sales in 1948 (41,895,434 tires as shown in Automotive News 1949 Almanac, at $10.34 per tire as shown in Col. 5 of Table 5, [illegible] Almanac at $1.66 per tube as shown in Col. 5 of Table 5, or [illegible] of the $476,539,180).
3. Data in Col. 1 times the percentage in Col. 2.
4. Derived by dividing the cost of sales of tires and tubes by the total of sales of total TBA for the year 1948 [illegible] information is available from official sources ($201,107,179 divided by $[illegible] and applying such percentage to the data for the years 1954-1956.
5. Data in Col. 3 times the percentage shown in Col. 4.

Horsepedan' Exhibn 801

CONSUMPTION OF TEA ROLES, AT SHAITEN COST, PER 1,000 CALORIES OF CRACKLING BOID BY
CRACKLING ELEVATIONS, SHAITEN QUARTER, 1774-1778

Table 6

Total TEA Roles, by Selection Cost, by Cracking Service Stations
(Based on an Analysis of Total Tire and Tube Sales for Passenger Cars)

Year	Total Wholesale Value of Domestic Replacement Passenger Car New Tires and Tubes Sales (Col. 1)	Share Accounted for by Cracking Service Stations for Cash (Col. 2)	Accounts (Col. 3)	Ratio of Tires and Tube Sales to total TEA Sales (Col. 4)	Total TEA Sales by Cracking Service Stations (Col. 5)
1770	$621,340,259	42.8%	$270,270,759	46.6%	$125,352,771
1772	787,312,476	42.8%	337,146,421	46.6%	157,177,811
1774	844,457,114	42.8%	371,132,430	46.6%	172,872,016

Sources:

1. From Table 3, last column.
2. In connection with the land values of Retail Trade, 97.3% of the business volume reported by Specialty service establishments was driven down by commissions or merchandising allure. In this breakdown were included sales of $250,000,000 in tires (new and used) and $121,321,000 in batteries and accessories. (United States Census of Business: 1948; Volume II, p.21.00).
3. Based on data for the volume that was not broken down by merchandise line, on the assumption that the 97.3% of the volume was certainly representative of the total, the sales of tires (new and used)accounted for $272,840,312 and of batteries and accessories they were $115,912,820, with a total TEA volume of $615,691,132. In terms of selling cost, total TEA sales, based on an average gross margin of 40% of selling price, amounted to $317,113,560 (($615,691,132 x 72%) and sales of tires and tubes, based on an average gross margin of 36% of selling price, amounted to $250,107,179 ($272,840,312 x 72%). This means that sales of tires and tubes, at cost, were 42.3% of total domestic replacement passenger car tire and tube sales in 1948 ($41,295,4.3- tires as shown in Automotive News 1954 Almanac at $16.19 per tire as shown in Col. 3 of Table 3, plus 34,021,3.7- tubes shown in the Almanac at $1.66 per tube as shown in Col. 5 of Table 3, or a total of $47,316,730).
4. Line (3 Col. 3 times the percentage in Col. 5.
5. Derived by dividing the cost of sales and taxes by the cost of sales of total TEA, for the year 1948 for which such information is available from official sources ($250,107,179 divided by $317,113,560) and applying such percentage to the data for the years 1950-1978.
6. Line (4 Col. 3 times the percentage shown in Col. 5.

[illegible] OF THE SIZES, AT RETAIL COST, PER 1,000 GALLONS OF
[illegible] SOLD BY GASOLINE SERVICE STATIONS, UNITED STATES, 1954-1956

Table I

Number of Gasoline Service Stations Handling Tires & Tubes and Number of Stations Handling Batteries and Automotive Accessories

Year	Total Number of Service Stations[1]	Not Handling Automotive[2]	Stations Handling Automotive[3]	Stations Handling Tires & Tubes		Stations Handling Batteries and Accessories	
				Number	Per Cent of Total[3]	Number	Per Cent of Total[3]
	(Col. 1)	(Col. 2)	(Col. 3)	(Col. 4)	(Col. 5)	(Col. 6)	(Col. 7)
1954	182,747	9,021	8,671	126,255	68.4	135,491	74.4
1955	182,091	9,826	9,476	127,844	70.2	138,385	76.0
1956	182,147	10,615	10,265	131,705	72.2	141,186[4]	77.5

Sources: 1. From Table 8, Col. 2.
2. For 1955 and 1955, from Petroleum Facts and Figures, Twelfth Edition, 1956, page 277; for 1956, from National Petroleum News Factbook (A McGraw-Hill Publication), Mid-May 1957-58, page 28b.
3. Computed by subtracting from the data in Col. 2 the difference between the data in Col. 1 for the current year then those for the preceding year.
4. Computed by adding to the number for the preceding year the additional stations formed from a computation based on the assumption, first that 60.7% of the establishments combined Tires and Tubes and 70.1% of them handled Batteries and Accessories--the same proportion as obtained for all service stations in 1948--and, second, that 97% of the newly established stations would be handling the products.
Starting with 178,847 service stations in 1954 as per Census figures and allowing an annual net addition of 350 stations, and using data for some previous years (1,000 in 1953, 1,000 in 1952, 1,000 in 1951, 1,000 in 1950, 1,000 in 1949, and 1,000 in 1948) to estimate the number of stations handling tires and tubes and those handling batteries and accessories, respectively, for each of the years until the 1954 Census figure of 126,255 and 135,491 stations handling Tires and Tubes and Batteries and Accessories, respectively, were obtained. To each of the years until the 1956 Census figure of 131,705 and 141,186 stations handling Tires and Tubes and Batteries and Accessories, 185,255 stations handling these and taking out 130,797 stations handling Tires and Tubes and 140,550 stations handling Batteries and Accessories.
5. Derived by dividing the figures in the preceding columns by the figure in Col. 1.

FEDERAL TRADE COMMISSION
[illegible]

COMPARATIVE OPERATING STATISTICS, ST. REGIS PAPER CO., AND LOUISIANA-PACIFIC CORP.
DOMESTIC PULP & PAPER MILLS OWNED, MILLED WOODS, 1974-1978

Table 1

Number of Operating Pulping, Paper and Paperboard Mills, and Number of Employees

Year	Pulping Capacity (Col. 1)	Paper and Paperboard Capacity (Col. 2)	Pulping Capacity as Percent of Paper and Paperboard Capacity (Col. 3)	Number of Employees (Col. 4)	Number of Employees per Mill (Col. 5)
	Short Tons	Short Tons			
1974	8,401	13,253	63.4	13,549	1,935
1975	8,401	13,253	63.4	13,549	1,935
1976	8,502	13,484	63.0	13,365	1,909
1977	10,065	14,464	69.6	14,464	2,066
1978	10,065	14,464	69.6	14,464	2,066

Sources: Cols. 1, 2, 3, 4, and 5: Lockwood's Directory of the Paper and Allied Trades, 1974-1978 (Vance Publishing Corporation, Chicago, Illinois). Number of employees for 1977 and 1978 estimated by assuming that the number of employees per mill remained the same as in 1976.

Notes: Col. 1: Capacity of pulping machinery in operation or ready for operation during the year. Capacity is the maximum production that can be maintained over a considerable period of time during which the equipment is in operation for the number of hours per day, days per week, and weeks per year that is common for the industry. Col. 2: Capacity of paper and paperboard machinery in operation or ready for operation during the year. Capacity is the maximum production that can be maintained over a considerable period of time during which the equipment is in operation for the number of hours per day, days per week, and weeks per year that is common for the industry. Col. 3: Col. 1 divided by Col. 2. Col. 4: Number of employees in the establishments operating pulping machinery during the year. Col. 5: Col. 4 divided by Col. 1.

JAX 705

Respondents' Exhibit No.

FEDERAL TRADE COMMISSION

DOCKET NO. ... FILED ... NO. ...

COMPUTATION OF TBA SALES, AT STATION COST, PER 1,000 GALLONS OF GASOLINE SOLD BY GASOLINE SERVICE STATIONS, UNITED STATES, 1954-1956

Table 8

Average Sales of Tires & Tubes and Average Sales of Batteries & Accessories per Gasoline Service Station Handling Specified Line

(Based On An Analysis of Total Tire and Tube Sales for Passenger Cars)

Year	Tires and Tubes			Batteries and Accessories		
	Total Sales by Service Stations (Col. 1)	Number of Stations Handling (Col. 2)	Average Sales per Station (Col. 3)	Total Sales by Service Stations (Col. 4)	Number of Stations Handling (Col. 5)	Average Sales per Station (Col. 6)
1954	$292,070,589	124,255	$2,350.57	$113,482,182	155,497	$ 729.80
1955	337,464,961	127,844	2,639.66	385,312,892	138,389	2,784.35
1956	371,116,430	131,705	2,817.79	425,735,696	141,486	3,009.89

Sources:

1. From Table 6, Col. 3
2. From Table 7, Col. 4
3. Data in Col. 1 divided by data in Col. 2.
4. Computed from data in Table 6 (data in Col. 4 less data in Col. 3).
5. From Table 7, Col. 6.
6. Data in Col. 4 divided by data in Col. 5.

8432

CIRCULATION OF TAX SALES, AT STATED DATE, PER 1,000 GALLONS OF
GASOLINE SOLD BY GASOLINE SERVICE STATIONS, UNITED STATES, 1934-1936

Table 8

Average Sales of Tires & Tubes and Average Sales of Accessories per Gasoline Service Station Handling Specified Line

(Based On An Analysis of Total Tire and Tube Sales For Passenger Cars)

Year	Tires and Tubes			Batteries and Accessories		
	Total Sales by Service Stations (Col. 1)	Number of Handling Stations (Col. 2)	Average Sales per Station (Col. 3)	Total Sales by Service Stations (Col. 4)	Number of Stations Handling (Col. 5)	Average Sales per Station (Col. 6)
1934	$250,070,549	124,295	$2,012.27	$133,452,182	123,407	$1,081.18
1935	337,484,901	127,844	2,639.66	185,312,852	128,385	1,708.34
1936	374,116,430	131,703	2,817.79	423,733,634	141,456	2,994.89

Sources:

1. From Table 6, Col. 3
2. From Table 7, Col. 4
3. Data in Col. 1 divided by data in Col. 2.
4. Computed from data in Table 6 (data in Col. 4 less data in Col. 3).
5. From Table 7, Col. 5.
6. Data in Col. 4 divided by data in Col. 5.

JAX 227

Respondents' Exhibit No.

FEDERAL TRADE COMMISSION

JAX 227

Respondents' Exhibit No.

FEDERAL TRADE COMMISSION

Table 9

TBA Sales at Station Cost per 1,000 Gallons of Gasoline Sold, Gasoline Service Stations, United States, 1954-1956

TBA DATA BASED ON AN ANALYSIS OF TOTAL TIRE AND TUBE SALES FOR PASSENGER CARS ONLY

Year	Average Sales per Station of: Tire and Tubes[1] (Col. 1)	Batteries and Accessories[2] (Col. 2)	Total TBA Products[3] (Col. 3)	Gasoline (Gallons)[4] (Col. 4)	TBA Sales per 1,000 Gallons[5] (Col. 5)
1954	$3,350.57	$2,461.18	$5,811.75	138,701	$36.46
1955	2,639.66	2,764.33	5,403.99	146,344	36.10
1956	2,617.79	2,994.89	5,612.68	151,900	36.37

Sources:
1. From Table 8, Col. 3.
2. From Table 8, Col. 5.
3. Sum of the data in the preceding two columns.
4. From Table 4, Col. 3.
5. Data in Col. 3 divided by data in Col. 4. These estimates are, as pointed out at many places, at station cost, i.e., at prices paid by gasoline service stations to suppliers.

(a) Fiscal year ends October 31.

(b) Fiscal year ends November 30.

(c) Fiscal year ends September 30.

SOURCE: Basic data from Standard & Poor's Corporation, Standard Corporation Descriptions, 1956.

JAX 9T

Respondents' Exhibit No.

FEDERAL TRADE COMMISSION

DOCKET NO. [illegible] EXHIBIT NO. 57

IN THE MATTER OF [illegible]

DATE 4/16/57 WITNESS [illegible]

ACE REPORTING CO., Inc.

By

PERCENTAGE INCREASE IN NET SALES, 1955 OVER 1948, FOR SPECIFIED TIRE AND RUBBER MANUFACTURERS.

Net Sales of Specified Tire and Rubber Manufacturers, 1955 Compared with 1948
(Amounts are in thousands of dollars)

	1948	1955	Percent Change 1955 from 1948
Cooper Tire & Rubber Co.	$ 7,773	$ 23,628	+204.1
General Tire & Rubber Co. (b)	105,908	297,731	+179.2
Mansfield Tire & Rubber Co.	28,670	74,256	+160.0
Dayton Rubber Co. (a)	27,328	69,150	+153.0
Armstrong Rubber Co. (c)	33,[illegible]	68,[illegible]	+107.2
Goodyear Tire & Rubber Co.	704,976	1,378,176	+ 95.4
B. F. Goodrich Co.	419,739	736,017	+ 75.3
Firestone Tire & Rubber Co. (a)	631,858	1,118,870	+ 77.1
Mohawk Rubber Co.	8,[illegible]	13,[illegible]	+ 68.1
Seiberling Rubber Co.	28,414	46,[illegible]	+ 61.8
United States Rubber Company	573,033	926,[illegible]	+ 61.6
Corduroy Rubber Co.	4,880	7,[illegible]	+ 50.7
Lee Rubber & Tire Corp. (a)	35,702	45,912	+ 28.6

(a) Fiscal year ends October 31.

(b) Fiscal year ends November 30.

(c) Fiscal year ends September 30.

SOURCE: Basic data from Standard & Poor's Corporation, Standard Corporation Descriptions, 1956.

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Net Sales of Specified Tire and Rubber Manufacturers, 1955 Compared with 1948
(Amounts are in thousands of dollars)

	1948	1955	Percent Change 1955 from 1948
Cooper Tire & Rubber Co.	$ 7,771	$ [illegible],658	+204.1
General Tire & Rubber Co.*(b)	105,908	[illegible],731	+179.2
Goodyear Tire & Rubber Co.	98,878	[illegible],556	+160.0
Dayton Rubber Co. (a)	27,328	99,150	+152.9
Armstrong Rubber Co. (c)	23,208	58,982	+107.2
Goodyear Tire & Rubber Co.	768,878	1,372,176	+ 94.1
B. F. Goodrich Co.	418,798	[illegible],017	+ 79.9
Firestone Tire & Rubber Co. (a)	633,858	1,114,870	+ 75.8
Mohawk Rubber Co.	8,862	14,330	+ 68.9
Seiberling Rubber Co.	28,418	45,987	+ 61.8
United States Rubber Company	573,033	926,185	+ 61.5
Goodyear Rubber Co.	4,880	7,305	+ 49.7
Lee Rubber & Tire Corp. (a)	35,702	45,912	+ 28.6

(a) Fiscal year ends October 31.

(b) Fiscal year ends November 30.

(c) Fiscal year ends September 30.

SOURCE: Basic data from Standard & Poor's Corporation, Standard Corporation Descriptions, 1956.

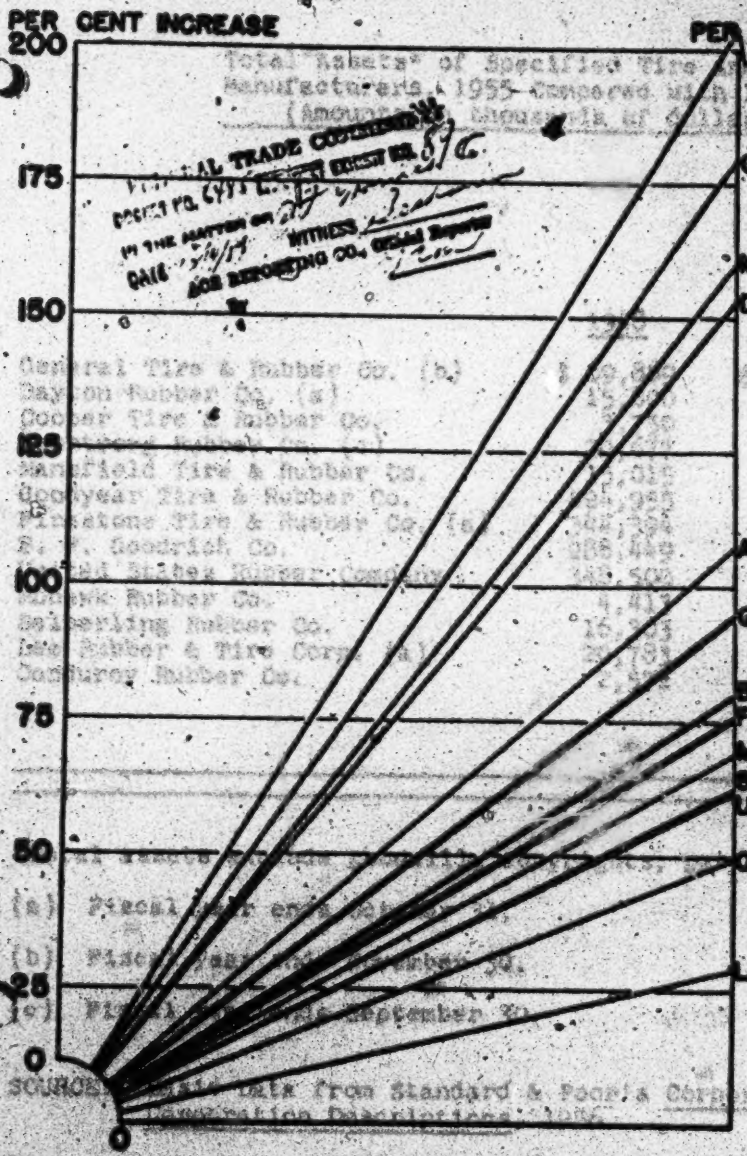
JAX 639

Respondents' Exhibit 89

JAX 639

Respondents' Exhibit 89

PERCENTAGE INCREASE IN NET SALES, 1955 OVER 1948, FOR SPECIFIED TIRE AND RUBBER MANUFACTURERS



SOURCE: [illegible] data from Standard & Poor's Corporation, Standard [illegible]

FEDERAL TRADE COMMISSION
DOCKETED CX# 1 EXHIBIT NO. 89-C
IN THE MATTER OF
DATE 7/6/61 WITNESS
ACE REPORTING CO., Official Reporters
By

9133

PERCENTAGE INCREASE IN NET SALES, 1955 OVER 1948, FOR SPECIFIED TIRE AND RUBBER MANUFACTURERS

JAX 600

Respondents' Exhibit No.

FEDERAL TRADE COMMISSION
DOCKET NO. (4), EXHIBIT NO. 10 G.
IN THE MATTER OF D.F. Kincaid
DATE 1/9/57 WITNESS
ACE REPORTING CO.

PERCENTAGE INCREASE IN TOTAL ASSETS WITHIN 1948, FOR SPECIFIED TIRE AND RUBBER MANUFACTURERS

PER CENT INCREASE

200

175

150

125

100

75

50

25

0

GENERAL (1956)

DAYTON (1956)

COOPER (1956)

ARMSTRONG (1956)

MANSFIELD (1956)

GOODYEAR (1956)

FIRESTONE (1956)

GOODRICH (1956)

MOHAWK (1956)

SEIBERLING (1956)

LEE (1956)

CORDUROY (1956)

Total Assets* of Specified Tire and Rubber Manufacturers, 1955 Compared with 1948
(Amounts in thousands of dollars)

	1948	1955	Percent Change 1955 from 1948
General Tire & Rubber Co. (b)	$ 69,889	$183,844	+163.0
Dayton Rubber Co. (a)	15,800	40,031	+153.4
Cooper Tire & Rubber Co.	3,720	9,220	+147.8
Armstrong Rubber Co. (c)	20,677	43,078	+108.4
Mansfield Tire & Rubber Co.	15,015	30,771	+104.9
Goodyear Tire & Rubber Co.	424,955	754,681	+ 77.6
Firestone Tire & Rubber Co. (a)	345,104	638,441	+ 85.0
B. F. Goodrich Co.	260,149	474,000	+ 82.2
United States Rubber Company	348,300	614,000	+ 76.3
Mohawk Rubber Co.	4,413	7,778	+ 76.2
Seiberling Rubber Co.	16,103	28,356	+ 76.1
Lee Rubber & Tire Corp. (a)	20,783	36,618	+ 76.2
Corduroy Rubber Co.	2,578	4,538	+ 76.0

*Total assets exclude goodwill, copyrights, patents and trademarks.

(a) Fiscal year ends October 31.

(b) Fiscal year ends November 30.

(c) Fiscal year ends September 30.

SOURCE: Basic Data from Standard & Poor's Corporation, Standard Corporation Descriptions, 1956.

TOTAL ASSETS EXCLUDE GOODWILL, COPYRIGHTS, PATENTS, AND TRADE MARKS.

DLY2

9136

FEDERAL TRADE COMMISSION
DOCKET NO. ( ) : IN THE MATTER OF
DATE ... WITNESS ...
ACE REPORTING CO. Official Reporter
BY ...

Total Assets* of Specified Tire and Rubber Manufacturers, 1955 Compared with 1948
(Amounts in thousands of dollars)

	1948	1955	Percent Change 1955 from 1948
General Tire & Rubber Co. (b)	$ 69,889	$193,264	+176.5
Dayton Rubber Co. (a)	15,600	40,021	+153.8
Cooper Tire & Rubber Co.	3,750	9,250	+146.7
Armstrong Rubber Co. (c)	20,017	43,059	+115.2
Mansfield Tire & Rubber Co.	15,015	30,773	+104.9
Goodyear Tire & Rubber Co.	424,955	785,691	+ 84.9
Firestone Tire & Rubber Co. (a)	344,394	635,465	+ 84.5
B. F. Goodrich Co.	288,449	507,239	+ 76.1
United States Rubber Company	346,500	575,917	+ 66.2
Mohawk Rubber Co.	4,413	6,990	+ 58.3
Seiberling Rubber Co.	16,303	24,342	+ 49.3
Lee Rubber & Tire Corp. (a)	20,783	29,910	+ 43.9
Cornhiny Rubber Co.	2,372	3,412	+ 40.4

*Total assets exclude goodwill, copyrights, patents and trademarks.

(a) Fiscal year ends October 31.

(b) Fiscal year ends November 30.

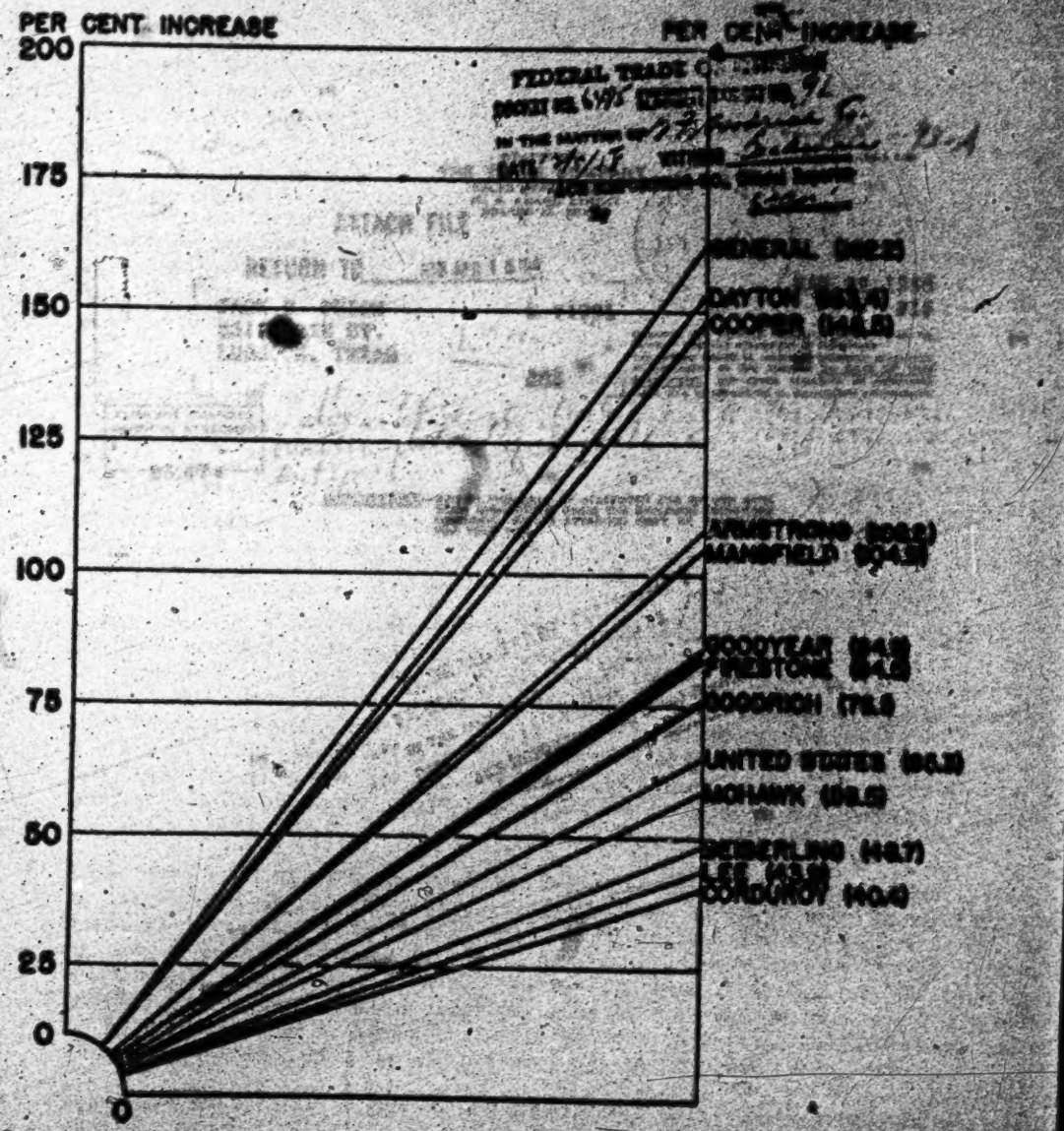
(c) Fiscal year ends September 30.

SOURCE: Basic data from Standard & Poor's Corporation, Standard Corporation Descriptions, 1956.

JAX 670

Respondents' Exhibit 81

PERCENTAGE INCREASE IN TOTAL ASSETS, 1963 OVER 1948, FOR SPECIFIED TIRE AND RUBBER MANUFACTURERS



TOTAL ASSETS EXCLUDE GOODWILL, COPYRIGHTS, PATENTS, AND TRADE MARKS.

9137

PERCENTAGE INCREASE IN TOTAL ASSETS, 1955 OVER 1948, FOR SPECIFIED TIRE AND RUBBER MANUFACTURERS

21,77

JAX 62

Respondents' Exhibit 62C

THE TEXAS COMPANY

[redacted] - 37th Street
Lubbock, Texas
May 7, 1950

Mr. [redacted] H. Payne
Assistant Division Manager
Sales Department
The Texas Company
Dallas 2, Texas

Dear Mr. Payne:

I realize now that what I did wrong I wrote [redacted] on the statement which was [redacted] that Mr. [redacted] and I had traded [redacted] but we [redacted] and I have never had trading [redacted]

But happened was that in [redacted] I was [redacted] and I was [redacted] I would get good [redacted] try one because I had [redacted] time to examine the advice. I took the tire with the understanding that they would guarantee it.

I run the tire 8 weeks and part of [redacted] by there and left it a [redacted] my wheel and tire. I was [redacted] would be $7.50 on another [redacted] approximately 27.00 or 28.00 [redacted] I did recall the start [redacted] and I can buy the same [redacted] any service stations as I tell them I had been [redacted] still feel that way.

I had been trading with Walter Isham paying cash and using my courtesy cards, my wife traded there altogether, averaging $6.00 to $8.50 a month counting car & grease jobs, etc. I'm through now though, because apparently Walter has got big ideas and don't be bothered with an individual customer who has traded with him off and on for several years. He rip two tires, I traded one off last week and the new one will be the first one I've started off on anything but Humble in 15 years; but I've switched to Gulf because there is a station about two blocks down from Walter's place on 34th street and it is pretty handy there.

I realize that these things do not concern The Texas Company however you appear control them and that is just as it should be. I sincerely hope that Walter wakes up before it is too late someday because I've always had a high regard for him.

Sincerely,

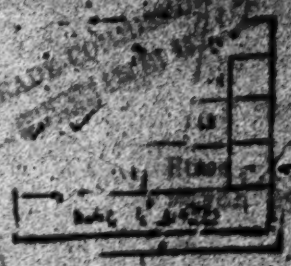
[redacted]

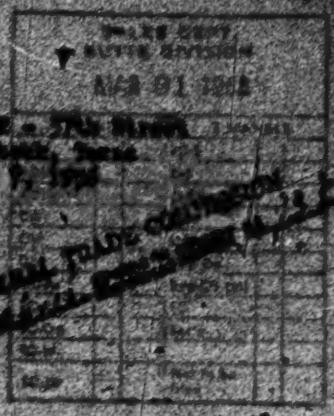
Lubbock, Texas

THE TEXAS COMPANY

ATTACH FILE

RETURN TO





Mr. J. E. Caldwell

Mr. J. E. Payne
Assistant Division Manager
Sales Department
The Texas Company
Dallas 8, Texas

Dear Mr. Caldwell:

I very greatly appreciate your letter in response to the

I realize now that what I did when I wrote the notation on the statement which was returned to you was unfilled for on my part. However I feel that Mr. Lehon didn't treat me fairly at all and by rights we both have quit trading with him.

What happened was that in February I had a tire which I had to replace. I was thinking in terms of a new tire because I travel all the time. However, the great man waiting on me at Walker's told me that I would get the same service from a Goodyear or Firm a new tire - which I personally disliked, but Walter backed him up and said they would stand behind it and guarantee that I would get good service from it. I decided then if they were that good I'd try one because I had three other tires and if this one and it would be a good thing to compare the service. I took the tire with the understanding that they would guarantee it.

I ran the tire 6 weeks and part of the third thing off of it, so I took it by there and left it - expecting a fair allowance. When I went back to get my wheel and tire, I was told that the tire especially were not and the mileage would be 37.50 on another tire. I am sure they have records to show that approximately 17,000 of 18,000 was the life that I got out of the tire. I did recall the exact mileage, but the comparison, I think, is enough - and I can buy the same quality tire for less from [illegible] practically any service station so I felt that I had been discriminated thoroughly and I still feel that way.

I had been getting gas [illegible] and using my courtesy cards, my wife traded there although my average was 30.00 to 35.00 a month running such a great deal, etc. I've known a few months, however, apparently Walter has gotten big ideas and don't be believed with my additional business and has treated him off and on for several years. He and the boys, I guess can get back and the one who will be the first one I've changed out on anything and therefore is 15 years) but I've noticed in only business there is a similar attitude down from Walter's place on [illegible] and it is costing many dimes.

I realize that these things do not concern the Texas Company however you could control them and that is just as it should be. I sincerely hope that Walter wakes up before it is too late because they always are a delight for me to [illegible] him.

Yours very truly,

J. E. Caldwell

JAX 082

Respondent's Exhibit 92C

2312 - 17th Street
Lubbock, Texas
May 7, 1958

Mr. J. R. Payne -
Assistant Division Manager
Sales Department
The Texas Company
Dallas 2, Texas

Dear Mr. Payne:

I realize now that what I did when I wrote the notation on the statement which was returned to you was unsalled for on my part. However I feel that Mr. Lyman didn't treat me fairly at all and my wife and I both have quit trading with him.

What happened was this: In February I had a tire which I had to replace. I was thinking in terms of a new tire because I travel 2[illegible] the time. However the young man waiting on me at Walter's told me that I would get the same service from a recap or from a new tire - which I certainly doubted, but later bowled him up and said they would stand behind it and guarantee that I would get good service from it. I decided then if they were that good I'd try one because I had three other new ones on the car and it would be a good time to compare the service. I took the tire with the understanding that the would guarantee it.

I ran the tire [illegible] and part of the tread along off of it, so I took it by there and left it - expecting a fair adjustment. When I went back to get my wheel and tire, I was told that the tire was half worn out and the adjustment would be $7.80 on another recap - or on a new tire they would sell me one for approximately $7.00 or $8.00. The tire had been run approximately 6000 miles I did recall the exact mileage, but I've forgotten. I didn't want a recap - and I can buy the same quality tire for less from a [illegible]-zone also, practically my service station; so I felt that I had been flim-flammed thoroughly and I still feel that way.

I had been trading with Walter Lyman paying cash and using my courtesy cards, my wife traded there, averaging $40.00 to $50.00 a month counting we & grease jobs, $[illegible]. I'm through now though, because apparently Walter has got [illegible] and can't be bothered with an individual customer who has traded with him off and on for several years. We've traded one off last week and the new one will be the first one I've started off on anything but Havoline in 15 years, but I've switched to Ours because there is a station about two blocks from Walter's place on 34th street and it is pretty handy there.

I realize that these things do not concern the Texas Company because you operate control them and that is just as it should be. I sincerely hope that Walter wakes up before it is too late because I've always had a high regard for him.

Sincerely,

Jack E. Price

JAX 022

Respondent's Exhibit # 6

FEDERAL TRADE COMMISSION
DOCKET NO. 6-6-(1)

Howe, Idaho
March 29, 1938

Mr. I. H. Caldwell
The texas Company
P.O.Box 1278
Butte, Montana

Dear Mr. Caldwell:

I very greatly appreciate your letter in response to the letter I wrote you concerning a tire.

The brand name of the tire is U S Royal - Wet adwell

I feel that I am at approximately a $25.00 loss.

Thanking you again, I am

Sincerely yours,

Everett Olsen, Pub.
Howe School
Howe, Idaho

Everett Olsen

ps Am enclosing your letter for reference.

9142

Respondents' Exhibit 570

FEDERAL TRADE COMMISSION
DOCKET NO. [illegible] RESPONDENTS EXHIBIT NO. [illegible]

SALES DEPT.
BUTTE DIVISION
MAR 31 1958

Howe, Idaho
March 29, 1958

Mr. I. H. Caldwell
The Texas Company
P.O.Box 1278
Butte, Montana

Dear Mr. Caldwell:

I very greatly appreciate your letter in response to the letter I wrote you concerning a tire.

The brand name of the tire is U.S Royal - Pet sewall

I feel that I am at approximately a $25.00 loss.

Thanking you again, I am

Sincerely Yours,

Everett Adams, Prin.
Howe School
Howe, Idaho

Everett Adams

In Re: Exhibit 570

9142

JAX 42
Respondents' Exhibit 8301

THE TEXAS COMPANY

May 27, 1958

Mr. Everett L. Odoms, Principal
Howe School
Howe, Idaho

Dear Mr. Odoms:

Reference is made to previous correspondence concerning the 15 x 1600 tire which you purchased in the summer of 1957 from the G & M Auto Service in La Grande, Oregon.

We have a detailed report from our Seattle office, and based upon the information furnished, it appears the tire in question was a recap and dealer Woodell so advised you at the time of the sale. According to Mr. Woodell's records, the recap tire sold for $16.00, and he advised you there was no guarantee on a used recap tire.

Furthermore, Mr. Woodell stated he wrote to you and explained that he did not guarantee the tire and would be unable to make any adjustment.

It appears this sale was fully explained to you before the purchase, and it was handled in a businesslike manner.

We greatly appreciate your business and are sorry such an incident occurred.

Yours very truly,

THE TEXAS COMPANY

T. H. CALDWELL

2113

Respondent's Exhibit 0311

THE TEXAS COMPANY

Mr. Everett L. Odom, Principal
Rose School
Rose, Idaho

Dear Mr. Odom:

Reference is made to yesterday's correspondence con-
cerning the 15 x 1500 tire which you purchased in the summer
of 1937 from the C. R. Auto Service in La Grande, Oregon.

We have a detailed report from our Seattle office,
and based upon the information furnished, it appears the tire
in question was--recap and dealer records so indicate--
the time of the sale. According to Mr. Goodlife's records
the recap tire sold for $15.00, and he advised you there was
no guarantee on a used recap tire.

Furthermore, Mrs. Goodlife stated he wrote to you
and explained that as old and questionable the tire and would
be unable to make any adjustment.

It appears this data was fully explained to you
before the purchase, and it was handled in a businesslike
manner.

We greatly appreciate your business and are sorry
such an incident occurred.

Yours very truly,

THE TEXAS COMPANY

M. H. CALDWELL

MHC:EKK

FAX 6M

Respondents' Exhibit 97A

TBA Newsletter 50

N E W Y O R K D I V I S I O N

FEDERAL TRADE COMMISSION
DOCKET NO. 6074
IN THE MATTER OF
FIRESTONE TIRE & RUBBER CO.
DATE 1/27/61 REPORTER

New York 17, N.Y., July 1, 1952

IMPORTANT ITEM

FIRESTONE TO MARKET NEW DRI-CHARGED BATTERY EARLY THIS FALL.

To give you complete data regarding this new revolutionary unit, we show below questions and answers covering its amazing story - READ CAREFULLY.

1. Q - What is the Firestone Dri-Charged Battery?

   A - A Firestone Dri-Charged Battery is a revolutionary new storage battery for cars, trucks, tractors and for all applications in connection with the starting and operation of combustion engines.

2. Q - What is new about the Firestone Dri-Charged battery?

   A - The new battery is (1) a "dry" battery when it is manufactured, when it is shipped, and when it is delivered to the retailer's shop; (2) the new battery is "born" the moment the acid is added just a few minutes before it is placed in the consumer's car ---the first day in the life of the new Firestone Dri-Charged battery is used in the operation of the vehicle.

   (Up to this time, the life of modern storage batteries began at the factory. The acid in the battery began its attack on the plates before the new batteries left the manufacturers. The life continued to seep out of the batteries in warehouses and in the hands of dealers where they often remained on shelves for months before actual sale.)

3. Q - How is it possible to manufacture the new Dri-Charged battery?

   A - The development of (1) a new glass (diatomaceous-earth-fiberglass composition) separator and (2) a tough (polyethylene plastic) that is impervious to acid and a container for the indefinite holding and storage of acid, make the new battery possible. The Dri-Charged separators stay at top strength until acid is added--for months and even years. The new acid containers, shipped separately to dealers, will hold the acid at full strength indefinitely.

9253

JAX 6Dm

Respondent's Exhibit 87A

TBA Newsletter

N E W Y O R K D I V I S I O N

New York 17, N.Y., July 1, 1952

IMPORTANT NEWS

FIRESTONE TO MARKET NEW DRI-CHARGED BATTERY EARLY THIS FALL.

To give you complete data regarding this new revolutionary unit, we show below questions and answers covering its amazing story - READ CAREFULLY!

1. Q - What is the Firestone Dri-Charged Battery?

A - A Firestone Dri-Charged Battery is a revolutionary new storage battery for cars, trucks, tractors and for all applications in connection with the starting and operation of combustion engines.

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(Up to this time, the life of modern storage batteries began at the factory. The acid in the batteries began its attack on the plates before the new batteries left the manufacturers. The life continued to seep out of the batteries in warehouses and in the stocks of dealers where they often remained on shelves for months before actual sale.)

3. Q - How is it possible to manufacture the new Dri-Charged battery?

A - The development of (1) a new glass (diatomaceous-earth-fiberglass composition) separator and (2) a bottle (polyethylene plastic) that is impervious to acid and a container for the indefinite holding and storage of acid, make the new battery possible. The Dri-Charged separators stay at top strength until acid is added--for months and even years. The new acid containers, shipped separately to dealers, will hold the acid at full strength indefinitely.

DEC 23

JAX 425

Respondents' Exhibit 97B

FEDERAL TRADE COMMISSION

-2-

4. Q - Will the Dri-Charged battery perform the same as an ordinary battery after being put into service?

A - After acid is added to a Dri-Charged battery it operates in exactly the same manner as a wet battery. However, since it is absolutely fresh and has the new type separator, the life is greater than the ordinary battery.

5. Q - Will the Dri-Charged battery require the addition of distilled water as frequently as a regular battery?

A - The amount of water that must be added to any battery in service is dependent only on the amount of charge which the battery receives. There is no difference in operation of the new Dri-Charged battery after acid has been added.

6. Q - Will the Dri-Charged battery with special processed plates deteriorate as quickly from lack of water as the present battery?

A - After the Dri-Charged battery is put into service, it operates in the same manner as a wet charged battery and, therefore, may be damaged by failure to add water when necessary, the same as a wet battery.

7. Q - Will the Dri-Charged battery last as long as the ordinary battery?

A - The Firestone Dri-Charged battery will last longer than the ordinary battery. All Dri-Charged batteries are guaranteed for three months longer than the ordinary battery. All of the life built into the Dri-Charged battery is used by the consumer.

8. Q - How much more will a Dri-Charged battery cost?

A - Since Dri-Charged batteries will last longer than ordinary batteries and have a three months' longer guarantee, the cost per month of service is less than the ordinary battery.

CUSTOMER COST PER MONTH COMPARISON

Type	List	Dry Charged C/P Month	Serv. Units	List	Wet Charged C/P Month	Serv. Units
SP171	$29.45	$ .89	33	$27.95	$ .93	30
SP192	33.00	1.00	33	31.50	1.05	30
SP192D	34.75	1.05	33	33.25	1.11	30
LD151	23.75	1.06	21	21.25	1.18	18
LD171	25.25	1.25	21	24.75	1.37	18
LD172D	27.00	1.28	21	25.50	1.41	18
LD172F	26.00	1.24	21	24.50	1.36	18
LD192L	26.75	1.27	21	25.25	1.40	18

9259

6. Q - Will the Dri-Charged battery perform the same as an ordinary battery after being put into service?

A - After acid is added to a Dri-Charged battery it operates in exactly the same manner as a wet battery. However, since it is absolutely fresh and has the new type separator, its life is greater than the ordinary battery.

5. Q - Will the Dri-Charged battery require the addition of distilled water as frequently as a regular battery?

A - The amount of water that must be added to any battery in service is dependent only on the amount of charge which the battery receives. There is no difference in operation of the new Dri-Charged battery after acid has been added.

6. Q - Will the Dri-Charged battery with special processed plates deteriorate as quickly from lack of water as the present battery?

A - After the Dri-Charged battery is put into service, it operates in the same manner as a wet charged battery and, therefore, may be damaged by failure to add water when necessary, the same as a wet battery.

7. Q - Will the Dri-Charged battery last as long as the ordinary battery?

A - The Firestone Dri-Charged battery will last longer than the ordinary battery. All Dri-Charged batteries are guaranteed for three months longer than the ordinary battery. All of the life built into the Dri-Charged battery is used by the consumer.

8. Q - How much more will a Dri-Charged battery cost?

A - Since Dri-Charged batteries will last longer than ordinary batteries and have a three months' longer guarantee, the cost per month of service is less than the ordinary battery.

CUSTOMERS COST PER MONTH OF PARISON

Type	List	Dry Charged 6/12 Month	Serv. Units	Wet Charged List	Wet Charged 6/12 Month	Serv. Units
5P17L	629.15	$ .89	33	$27.95	$ .93	30
5P19S	33.00	1.00	33	31.50	1.05	30
5P19SD	36.75	1.05	33	33.25	1.11	30
1D15L	22.75	1.04	21	21.35	1.18	18
1D17S	26.25	1.25	21	25.75	1.37	18
1D17SD	27.00	1.28	21	25.50	1.41	18
1D17F	26.00	1.24	21	24.50	1.36	18
1D19L	26.75	1.27	21	25.25	1.40	18

JAX ext

Respondents' Exhibit No.

FEDERAL TRADE COMMISSION

-3-

Group #1	Cost Per Month		Group #2	Cost Per Month	
	MFT	RMT		MFT	RMT
SP171	$ .96	$ 1.23	SP192	$1.00	$1.05
LD151	1.08	1.18	LD172	1.25	1.37

Reference: 1. M. Prentiss
2. W. Bennett
3. M. Monroe
4. D. Brown

Gentlemen:

In another letter today we advised two of these gents [illegible] Gulf Coast territory, and D. F. Cowrich were now announced their duties covered on take effect at the part time.

A copy of the contract has been mailed by Cowrich to all of our representatives with instructions as they can secure insurance by familiarizing with all details and call the information on to the field organizations. All Cowrich District personnel have been alerted and will contact every dealer for whom fire and tube require work.

The 1976 program contains some new features on value protection which should be of very attractive to dealers. The elimination of materially reduces repair problems to owners of older structures by giving total protection during the first year and partial during second, and subject to first year only [illegible] groups only.

Please let your District know to cooperate with Cowrich in securing the complete of this plan to all dealers.

Yours very truly,

70

Group #1	Coat Per Pound		Group #2	Coat Per Pound	
	Dry	Wet		Dry	Wet
[illegible]	$ .89	$ .93	[illegible]	$1.00	$1.05
[illegible]	1.08	1.18	[illegible]	1.25	1.37

[illegible]

New York, N. Y., December 1, 1933

Messrs. J. K. Pannill
L. P. Raymond
D. E. Monroe
I. S. Morgan

Gentlemen:

In another letter today we advise you of Firestone's 1934 Spring Latin- Tire Lillin- ion, and B. F. Goodrich have now announced their Latin[illegible] Program to take effect at the same time.

A copy of the [illegible] has been mailed by Goodrich to all of our Representatives (the precaution) so they can become thoroughly familiar with all details and pass the information on to the field organization. All Goodrich district personnel have been alerted and will canvass every dealer for their tire and tube requirements.

The 1934 Program contains some new features on price protection which should make it very attractive to dealers. The elimination of uncertainty regarding possible loss on account of price decreases or special sales promotional events should encourage dealers to [illegible] during [illegible].

Please ask your Divisions to cooperate with Goodrich in bringing the advantages of this plan to all dealers.

Yours very truly,

A. L. GARDNER, JR.

WMcK:D

LVK:MD

cc: Kaleta - Pannill - Raymond - Murdock
Dealer Service Representatives - Milligan

MAX Inc

Recommendations Explained

Dear [illegible], [illegible] January 1, 1919

[illegible]

Delivered by: A. [illegible]
B. M. Aspinwall
C. D. Conroe
D. G. Corrigan

Gentlemen:

In another letter today we enclosed you an original and [illegible]
[illegible] Coolidge Chain, and Mr. A. Corrigan have
now completed their [illegible] to take effect at the same
time.

Each of the [illegible] has been called by Corrigan
to all of the following [illegible] to them each [illegible]
[illegible] together with all details pre-[illegible] action
on the [illegible] of resolutions. All [illegible] letter [illegible]
have been elected and will [illegible] every [illegible] for [illegible] life
and take [illegible] vote.

[illegible] For [illegible] reasons [illegible] new [illegible] to [illegible]
[illegible] we did [illegible] it very [illegible] to decline. The
[illegible] of [illegible] [illegible] [illegible] idea [illegible]
of [illegible] [illegible] [illegible] [illegible] [illegible] events should
occur [illegible] to [illegible] [illegible] [illegible].

In [illegible] [illegible] [illegible] to [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] to all [illegible]

Yours very truly,

[illegible]

JAX CW

Respondents' Exhibit 100

THE TEXAS COMPANY New York 17, N.Y., January 26, 1954

T.B.A. PROGRAM
B. F. GOODRICH
1954 MERCHANDISING PROGRAM
TEXACO STATIONS

FEDERAL TRADE COMMISSION
DOCKETED
IN THE MATTER OF
DATE
ARC ELECTRIC CO., INC. ET AL.
BY

To: Zone Managers
Merchandising Salesmen
General Salesmen

Gentlemen:

The B. F. Goodrich Company recently announced what we believe to be the most outstanding dealer promotional program ever put forth by any tire company.

Included in the program are some really effective direct mail pieces, attractive display material, individual service station objectives and prizes.

Complete details of this program will be explained by the Goodrich salesman or supply point representative.

Your help and cooperation is going to be necessary, and I am asking each of you to put your shoulder to the wheel so that each of your dealers may not only do a better T.B.A. job but also increase their petroleum sales.

Yours very truly,

R. L. SAUNDERS, JR.

LVK:MD

cc: I.Lewis - RHMarshall - JBreiner - RGMurdoch
Dealer Service Representatives - RWWilson

9063

Respondent's Exhibit 100

THE TEXAS COMPANY New York 17, N.Y., January 26, 1951

T.C.A. PROGRAM
R. F. DOCUMENTS
1951 ADVERTISING PROGRAM
TEX.CO STATIONS

To: Zone Managers
Merchandising Salesmen
General Salesmen

Gentlemen:

The B. F. Goodrich Company recently announced what we believe to be the most outstanding dealer promotional program ever put forth by any tire company.

Included in the program are some really effective direct mail pieces, attractive display material, individual service station objectives and prizes.

Complete details of this program will be explained by the Goodrich salesman or supply point representative.

Your help and cooperation is going to be necessary, and I am asking each of you to put your shoulder to the wheel so that each of your dealers may not only go a better T.C.A., but has increased their petroleum sales.

Yours very truly,

R. L. SANDERS, JR.

LVK:MD

cc: Inlovia - McIntyhall - Streiner - McGurdock

Dealer Service Representatives - McMillon

0273

JAX 611

JAX 611 Respondents' Exhibit 101B

Respondents' Exhibit 101A

-101-B

PUROLATOR PRODUCTS, INC.

MANUFACTURERS OF FILTERS

TELEPHONE
DALTON 8-4000
CABLE ADDRESS
MOTORINE

October 27th,
1955

Mr. H. Wolfe,
Texas Oil Company,
Chrysler Building,
New York, New York.

Dear Harris:

I thought you would be interested in seeing a copy of the winners in our Purolator Seal of Protection Campaign, which we finished a couple of months ago. All of the winners got a $25.00 War Bond for their efforts in helping to sell more filters.

Yours very truly,
PUROLATOR PRODUCTS, INC.

James B. Lightbown
General Sales Manager
After-Market Division

FEDERAL TRADE COMMISSION
FILED
OCT 31 1955
ACCOUNTING DEPT.

9265

C231

TAX 649

Respondents' Exhibit 101A

PURO-LATOR PRODUCTS, INC.

MANUFACTURERS OF FILTERS

October 27th,
1952

Mr. M. Wolfe,
Texas Oil Company,
Chrysler Building,
New York, New York.

Dear Myrtle:

I thought you would be interested in seeing a copy of the stamps in our Purolator Bond of Protection Campaign, which is finished a couple of months ago. All of the stamps got a $20.00 War Bond for their efforts in helping to sell more filters.

Yours very truly,
PURO-LATOR PRODUCTS, INC.

M
J
E
L
R

James B. Lighthouse
General Sales Manager
After Market Division

101-B

Respondents' Exhibit 102A

TEXACO OIL COMPANY — FEDERAL TRADE COMMISSION
DOCKET NO. [illegible] — RESPONDENT'S EXHIBIT NO. 101A

August 20, 1948.

Mr. Louis M. Faber
[illegible]
512 North 16th Street
[illegible], Wisconsin

Dear Mr. Faber:

Since the last time I saw you [illegible] upon your [illegible] me the policy of The Texas Company with respect to the [illegible] stories [illegible] and stated that [illegible] you had of an adverse nature was in con- [illegible] the Donald [illegible] Service Station at 60th and [illegible], Wisconsin.

[illegible] we have a definitely established policy in our [illegible] Company which prohibits the [illegible] of influence or pres- [illegible] with respect to his purchases of TEXACO merchandise. I was [illegible] with this report and [illegible] to investigate it immediately. This was done [illegible] and for your information [illegible] my findings.

Our Representative in charge of the Milwaukee [illegible] is one of [illegible] reasonable men and in [illegible] policies thoroughly. I found, as you [illegible] Texaco [illegible] [illegible] time and further that he still sells them. [illegible] accessories [illegible] Great Northern [illegible] representative undoubt- [illegible] to Mr. O'Connell as he might to any other Texaco dealer, that [illegible] be more profitable [illegible] some national brands of acces- series, and in this case [illegible] that Mr. O'Connell [illegible] the matter with [illegible]

3265

(JAX 642 continued on next page)

NY	Harry Baum Brooklyn, N.Y.	Pres	Donald E. Hay Hardwick, Vermont	Pres	Willis Harding Brailsford Dearborn 6, Michigan
Chic	John H. Glaser, Sr. Brentwood 17, Mo.	Pres	Lawrence Lindsey Western Pueblo, Colo.	Pres	Michael Galanis, Jr. Fairview, Mass.
NY	James Imsdale Paterson, N.J.	Pres	Edwin M. Briggs Montclair, N.J.	Pres	George Allen Douglas Teaneck, N.J.
Chic	Robert Warren Bartholomew Elgin, Ill.	V.P.	Bob B. Cheriant Kosciusko, Miss.	Pres	Aaron Sanders Austin 2, Texas
NY	Paul Yura Syosset, N.Y.	Pres	Thomas Albert Ascher Rothindale, Minn.	Pres	Jack Bayer Brooklyn, N.Y.
NY	John H. Cozen Kingston, N.Y.	Pres	Dale Arthur Davis Cumby 3, Texas	Pres	Philip Guglielmi Lexington, N.Y.
Nor	Sydney Hartley Smith Washington, D.C.	NY	Alfonso C. Colangelo or Henry J. Colangelo Marion, Pa.		
Minn	Kenneth H. Bostock Mankato, Minn.	NY	Raphael Thaler Paterson, N.J.		
La	George Fukushima Los Angeles 6, Calif.	Pres	Luther T. Hallsbrough Amarillo, Tex.		
NY	Peter Keller Plains, Pa.	NY	James Fuller Verona, N.J.		
La	Gerald E. Anderson, Sr. Tucson, Ariz.	Nor	James Paris Throckmorton Richmond, Texas		
N.D.	Alton E. Atkinson Merrillan, Wis.	Nor	Vincent Kinnavian Ashland, Penna.		
Minn	Charles O. McCaughey Madison, Wisc.	Chic	Wilbur E. Stocks Beardstown, Ill.		
Ark	Robert E. Barnfield Calera, Alabama	Ark	David Lamar Wilson, Sr. Rockmart, Ga.		
Denv	Verne E. Anderson Denver 22, Colo.	NY	Steven Andrew Huber Dunkirk, N.Y.		
Chic	Everett J. Lorenzen Gilman City, Mo.	Pres	Ben A. King Martin [illegible]		
Chic	Richard Joseph Zdrazenski Kalamazoo, Mich.	Ind	Alfred E. Dorr Greenwich, Ohio		
Pres	John Bertsch, Jr. Derby, Conn.	NY	Joseph M. Tantillo New Rochelle, N.Y.		
Pres	Raymond F. or M. Matilda Kalcevich Boise, Idaho	Ind	Nathan H. Sanders Youngstown 12, Ohio		

Respondents' Exhibit 1018

TEXACO OIL COMPANY

Harry Bean
Brooklyn, N.Y.

John H. Glaser, Jr.
Brentwood 17, Mo.

James Leonold
Veterans, N.J.

Robert Warren Partholomew
Elgin, Ill.

Paul Yura
Syracuse, N.Y.

John H. Dasso
Kingston, N.Y.

Sydney Bentley Smith
Washington, D.C.

Kenneth M. Peebles
Memphis, Minn.

George Pumphrey
Los Angeles 6, Calif.

Peter Seller
Plains, Pa.

Darrell T. Anderson, Jr.
Tucson, Ariz.

Alton H. Atkinson
Merrifield, Ala.

Charles O. McCaughey
Madison, Wisc.

Robert S. Burchfield
Calera, Ala.

Verne B. Anderson
Casper 80, Colo.

Everett T. Lawrence
Olean City, Pa.

Richard Joseph Zakrzewski
Kalamazoo, Mich.

John Berchtel, Jr.
Derby, Conn.

Raymond H. Orr
V. Lucille Patterson
Hugo, Idaho

Donald R. Ray
Barre(illegible, Vermont

Lawrence Lindsey Weeden
Pueblo, Colo.

Edwin M. Bridge
Montclair, N.J.

Bob B. Durham
Roswell, N.Mex.

Thomas Albert Amber
Bubbleneck, Miss.

Jack A. Burr Davis
Omaha 7, Nebr.

Alfredo C. Colangelo or
Henry T. Colangelo
Morton, Pa.

Federal Dealer
Paterson, N.J.

Walter E. Hollabaugh
Austin, Tex.

Jesse Foster
Vernon, N.J.

Jesse Paris Throckmorton
Richmond, Va.

Vincent Sinkevics
Ashland, Penna.

Milton O. Brooks
Pendleton, Ill.

David Leroy Milam, Sr.
Hewberry, S.C.

Steven Andrew Bauer
Scranton, N.Y.

Ken A. King
Austin 3, Texas

Alfred B. Barr
Cincinnati 25, Ohio

Joseph N. Pepitello
New Rochelle, N.Y.

Walter C. Chambers
Youngstown 10, Ohio

Willis Harding Brailsford
Tarboro 6, Montgom

Michael Opalenik, Jr.
Fairview, Mass.

George Allen Douglas
Teaneck, N.J.

Aaron Sanders
Austin 8, Texas

Jack Pacyr
Brooklyn, N.Y.

Philip Gagliardi
Lockport, N. Y.

3305

Respondents' Exhibit 102A

(9266)

August 20, 1948.

Mr. Louis M. Faber
Retail Gasoline Dealers Association
519 North 16th Street
Milwaukee, Wisconsin

Dear Lou:

When last I saw you in Washington you discussed with me the policy of The Texas Company with respect to the sale of accessories through service stations and stated that the only report you had of an adverse nature was in connection with the Don O'Connell Service Station at 60th and Vleit, Wauwatosa, Wisconsin.

Because we have a definitely established policy in our Company which prohibits the exerting of influence or pressure on any dealer with respect to his purchases of TBA merchandise, I was rather concerned with this report and determined to investigate it immediately. This was done and for your information I give you my findings:

Our Representative in charge of the Milwaukee area, Mr. Blackburn, is one of our most dependable men and understands our policies thoroughly. I found, as you indicated, that Mr. O'Connell had been selling Great Northern batteries for some time and further that he still sells them. In discussing accessory sales our Representative undoubtedly pointed out to Mr. O'Connell, as he might to any other Texaco dealer, that his business might be more profitable if he handled some nationally advertised brands of accessories, and in this case we are advised that Mr. O'Connell called in the Firestone salesman to discuss the matter with

(JAX 642 *continued on next page*)

him. Our people did not indicate in any way that the handling of Firestone merchandise or any other kind of merchandise had any bearing on Mr. O'Connell's contractual or lease agreements with us. I further learn that as a result of an agreement between Mr. O'Connell and Firestone he enjoys a very favorable price on Firestone batteries and that he is well pleased with his arrangement.

Early this spring The Texas Company made some improvements at this service station including new fluorescent lighting and a complete set of counters in the salesroom for the purpose of displaying automobile accessories. Several lines of TBA merchandise are on display and a casual review shows Gates fan belts, Dole thermostats, Durkee inner radiator cleaner, Zecol polish, Richardson fishing rods and a number of other items, which would hardly indicate that Mr. O'Connell is anywhere near 100% Firestone or 100% anything else.

Respondents' Exhibit 102B

(9267)

Incidentally I understand that the Firestone sales organization have been pursuing a very vigorous sales drive in the Milwaukee area, but there has been no connection in this work between the Firestone organization and The Texas Company. Frankly, we being a nationwide Company ourselves, and advertising our products on a national basis, feel there is some advantage to Texaco dealers handling accessories that are likewise nationally advertised, but we have neither the right nor the desire to dictate in any way what brands a Texaco dealer shall handle. We believe that he will increase his profits by handling tires, tubes and accessories and we encourage him in this. Our men may suggest certain brands of accessories to handle, but if a man goes beyond a suggestion or if he uses pressure or threats to have his suggestion followed he is liable to immediate dismissal from our service.

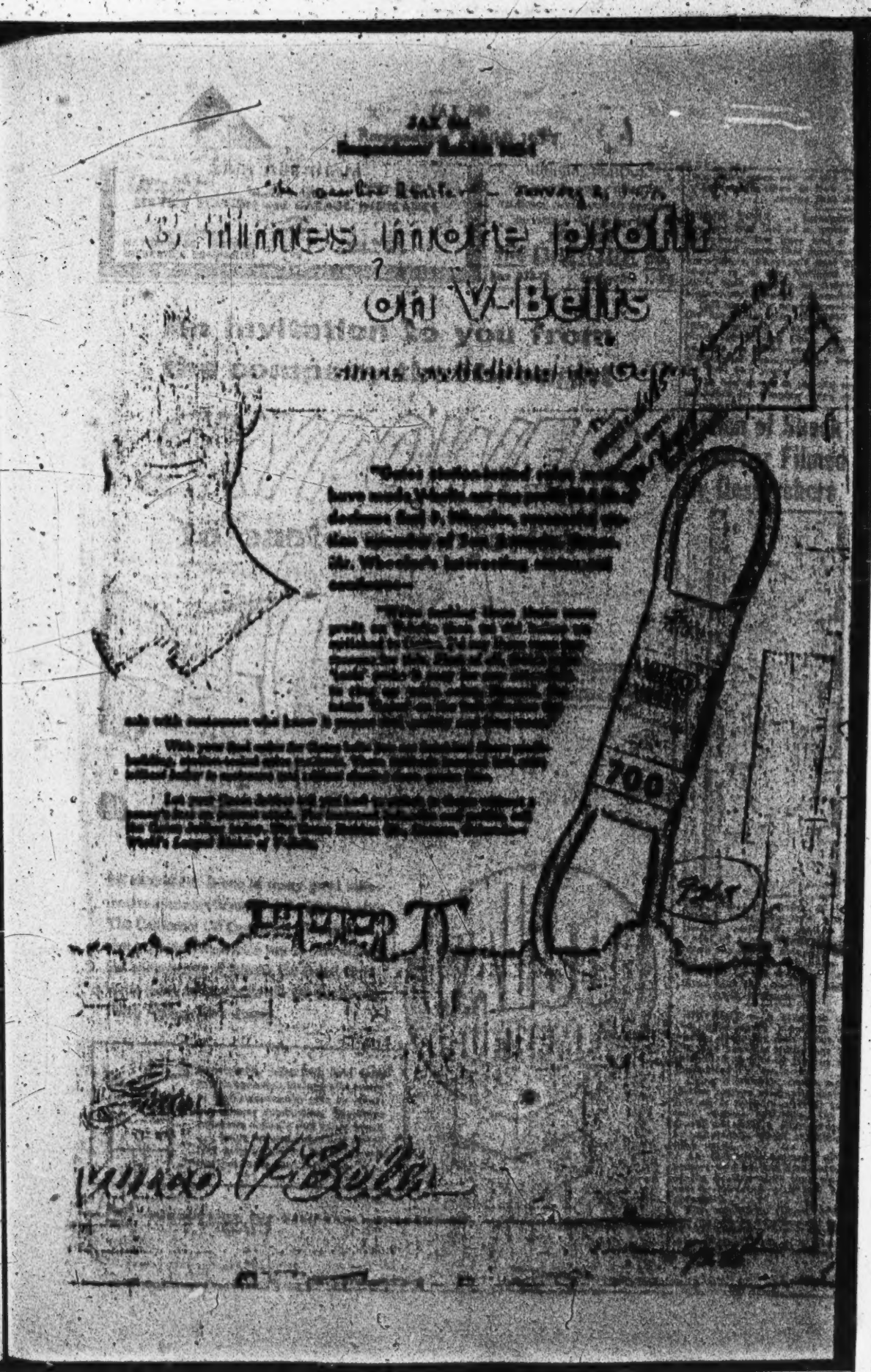
We have not discussed this complaint with Mr. O'Connell because I felt you would not want it so, but I suggest that you ought to know our Mr. Blackburn who would, I am sure, be very happy to discuss our general policy with you and talk about any specific cases you have in mind.

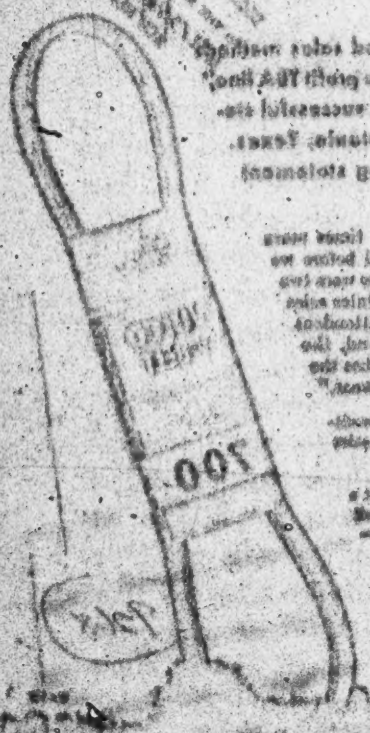
I know that you have a very friendly feeling for The Texas Company and because you were interested enough to report this case to me I thought you would like to know what my investigation developed. We want to be fair with our dealers at all times and if on occasion a misunderstanding exists we want to know about it. For that reason I appreciate your talking to me on this matter.

Sincerely yours,

Signed: Walter Hochuli

WH—FD
SCB-PHS-AGH (Blind)

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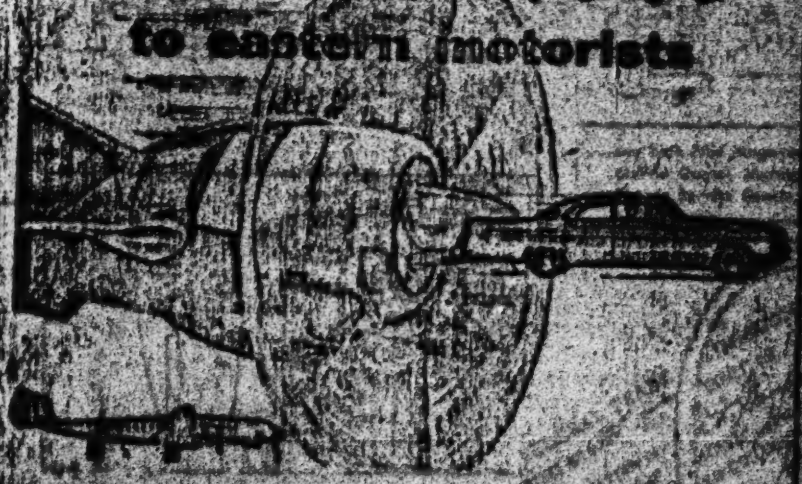
An invitation to you from
the company that brought

SKYPOWER

to eastern motorists



SERVICE STATION and GARAGE INSURANCE

An invitation to you from
the company that brought

SKYPOWER

to gasoline immortals

SKYPOWER is one of many great automotive achievements to the history of The California Oil Company. This progressive organization invites you to investigate the superiority of Calnal brand. Write today to The California Oil Company, Perth Amboy, New Jersey.

CALSO

THE INSURANCE CO.

"Our V-belt sales soared after switching to Gates"

Gates Vulco V-Belts

JAX 616
Responsive Exhibit 1041

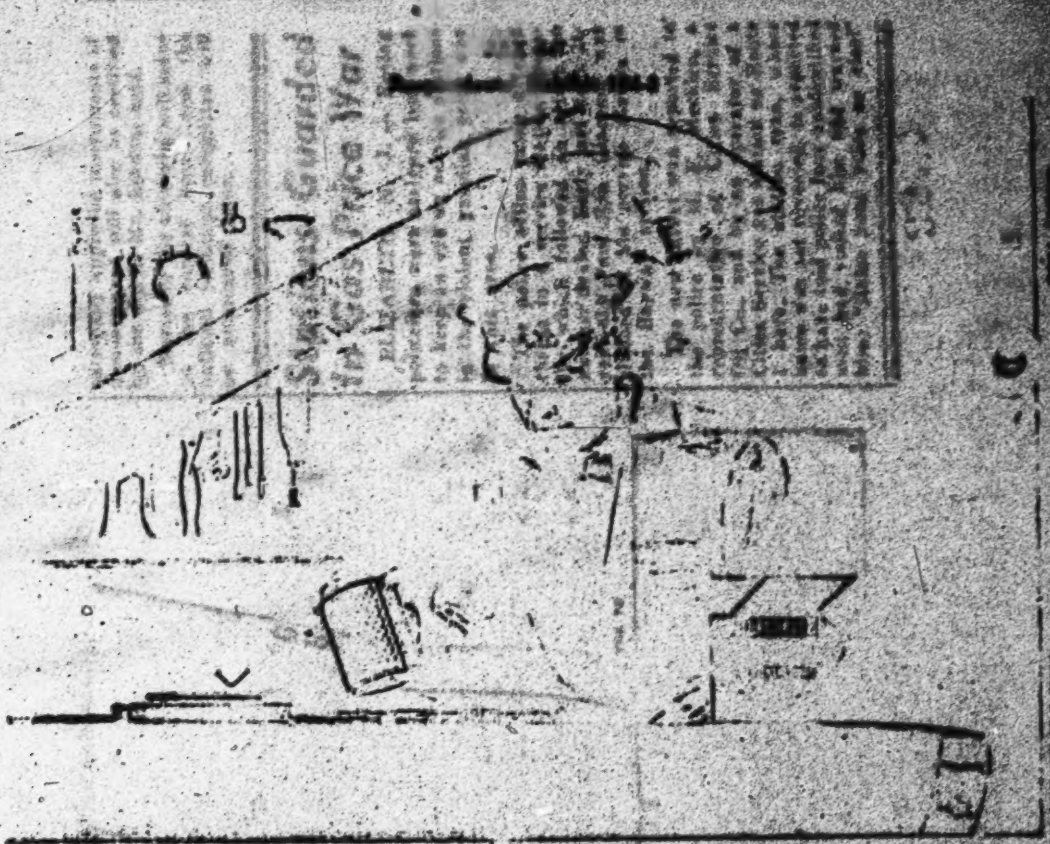
"Our V-belt sales soared after switching to Gates"

The Gates Rubber Co., Denver, Colorado

Gates Vulco V-Belts

JAX 648

Respondents' Exhibit 105

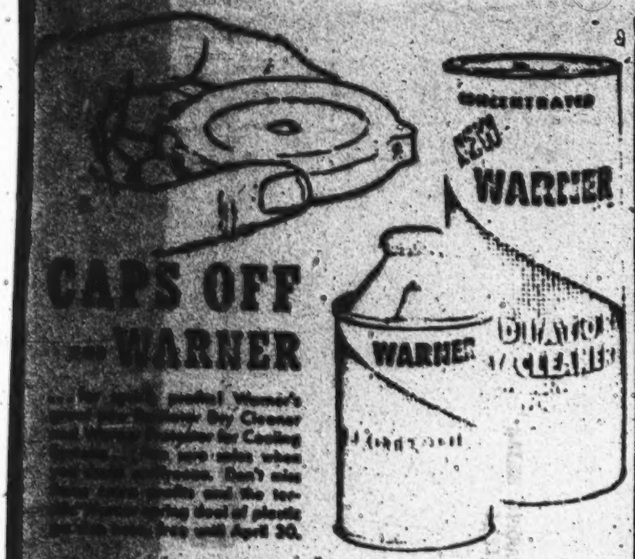


For clean oil all the time

... call for HASTINGS

9271

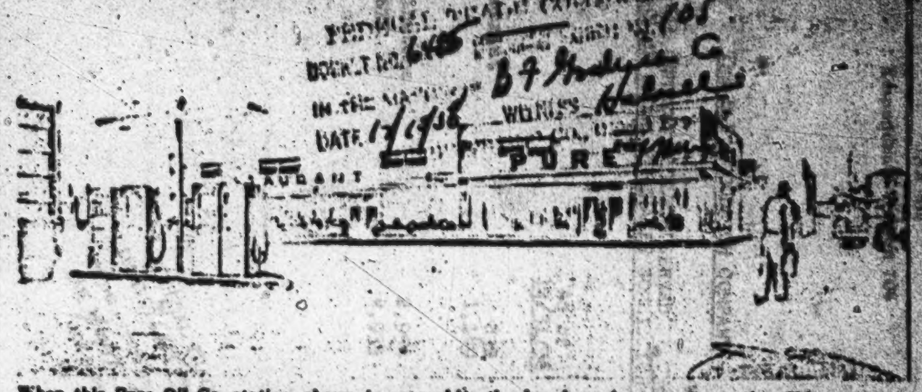
Hastings Oil Filter Cartridges keep oil clean from filter change to filter change*



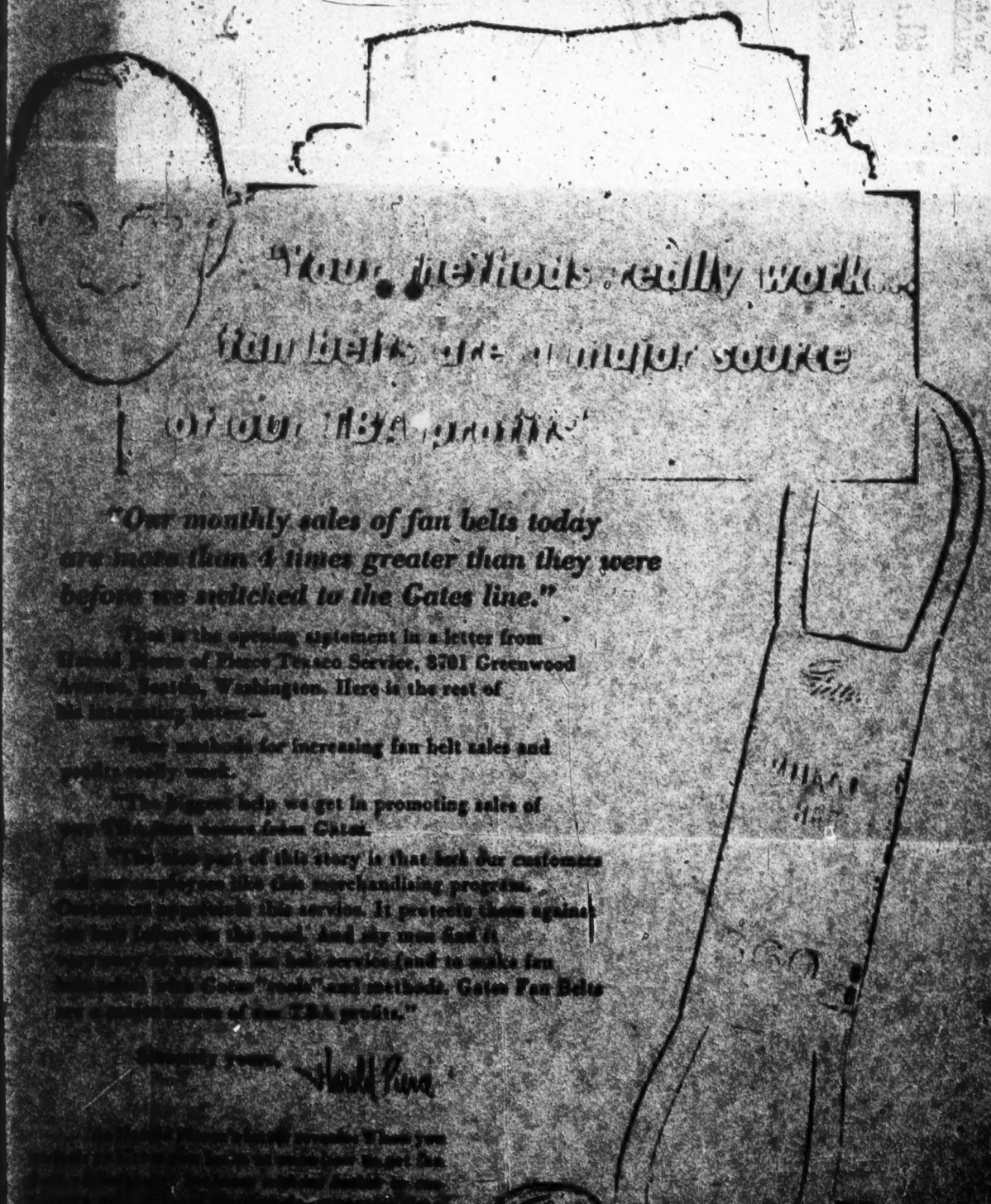
CAPS OFF — WARNER

...COMPANY • 920 S. Michigan Ave., Chicago 5, Ill.

Architect's Drawing of New Pure Oil Truck Station



When this Pure Oil Co. station, shown in an architect's drawing, is opened at the Chicago Stock Yards, it will be one of the nation's most completely equipped truck stations. It is expected to be in operation this summer. Around-the-clock service will be provided. It will feature a 65-person capacity restaurant, a large lounge and 20 individual sleeping rooms, all air-conditioned. A 90-foot lubrication pit will be long enough to accommodate two truck-trailer units at one time. It will become part of a chain of Pure Oil truck stations that extends from Florida to Minnesota.



"Our monthly sales of fan belts today are more than 4 times greater than they were before we switched to the Gates line."

That is the opening statement in a letter from ... of Bauer Texaco Service, 8701 Greenwood ..., Seattle, Washington. Here is the rest of the interesting letter:—

"Your methods for increasing fan belt sales and ... work.

"The biggest help we get in promoting sales of ... comes from Gates.

"The best part of this story is that luck for customers ... like this merchandising program. ... this service. It protects them against ... on the road. And why more fan ... for this service (and to make fan ... Gates "tools" and methods. Gates Fan Belts ... of our T&A profits."

Sincerely yours, Hank Bauer

AAA to Continue Contest Board Under New Plan

WASHINGTON — The American Automobile Association is going to continue activities of its contest board except in competitive racing.

Andrew J. Kerkeil, AAA president, announced that the board and national technical committees have been reorganized to provide the automotive industry and general public with "the services, guidance, timing and technical service."

Until the end of 1955 the AAA contest board will be governed only by sanctions ... in the United States, but will ... over ... in competitive ... power and ... and highway safety.

In ... the ... of the ... the ... will ... the ... and ... of ... and ... and ... and

JAN 625
Respondents' Exhibit 106

R-106-2d

THE B.F. GOODRICH COMPANY

THE NUMBER OF OIL COMPANY OUTLETS SERVED BY THE B.F. GOODRICH TIRE COMPANY ON WHOSE PURCHASES COMMISSION WAS PAID

The Texas Company	As of 12/31/56	As of 12/31/57
Direct:		
Factory or District	838	714
Through BFGS	1,149	1,189
Indirect:		
Through Distributors	2,954	3,156
TOTAL OUTLETS	4,935	5,059

SALES OPERATING DEPARTMENT
1/31/58

3273

JAX 650

Respondents' Exhibit 109A

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of

THE B. F. GOODRICH COMPANY,
a corporation, and

THE TEXAS COMPANY,
a corporation.

DOCKET NO. 6485.

FEDERAL TRADE COMMISSION
Docket No. 6485 Exhibit No. 109A
In the Matter of: B. F. Goodrich
Date: 7/26/62 Witness: Reporter:

To HONORABLE EARL J. KOLB, Hearing Examiner

Respondents move for the issuance of subpoenas duces tecum, for the reasons stated in the annexed statement, returnable the 30th day of July, 1962, addressed to the companies listed on Exhibits annexed hereto, requiring the production by said companies of records reflecting the following information:

(1) With respect to the companies listed on Exhibit A, the actual sales figures for new replacement tires sold by each of the corporations listed in the years 1951 through 1956.

(2) With respect to the companies listed on Exhibit B, all contracts and agreements, memoranda thereof, or other writings showing or relating to or reflecting arrangements whereby commissions on sales of tires, and/or batteries,

Respondents' Exhibit 109A

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of

P. P. CORPORATION COMPANY,
a corporation, and

THE PEPPO COMPANY,
a corporation.

DOCKET NO. 6485.

JAX 831
Respondents' Exhibit 1698

FEDERAL TRADE COMMISSION
Docket No. 6915 RESPONDENT'S EXHIBIT No. 1698

and/or accessories were paid directly or indirectly to any oil company, of any distributor of oil company products, or any dealer in oil company products for the years 1950-1956.

We also request the issuance of 20 subpoenas ad testificandum in blank to be filled in by applicant by July 20, 1962.

Dated: July 19, 1962.

Amzy B. Stead
James O. Sullivan

Royall, Koegel, Harris & Caskey
by Kenneth C. Royall

Frederick W. P. Lorensen
Attorneys for Plaintiff
Texaco Inc.

White & Case
By Edgar E. Barton

Attorneys for Plaintiff
The B. F. Goodrich Company

FEDERAL TRADE COMMISSION
RECEIVED

-2-

and/or accessories were paid directly or indirectly to any oil company, or any distributor of oil company products, or any dealer in oil company products for the years 1950-1956.

We also request the issuance of 20 subpoenas ad testificandum in blank to be filled in by applicant by July 20, 1958.

Dated: July 19, 1958.

Respectfully submitted,

Royall, Koegel, Wells & Caskey
By Kenneth C. Royall

James O. Sullivan
Amy S. Steed

Attorneys for Plaintiff
The B. F. Goodrich Company

Frederick W. P. Lorenzen
Attorneys for Plaintiff
Texaco Inc.

Hall & Cleve
By Edgar E. Barton

6231

JAX 682

Respondents' Exhibit 169C

EXHIBIT A

FEDERAL TRADE COMMISSION

Docket No. 6415 Exhibit No. 169-C

CORPORATION

Goodyear Tire & Rubber Company
Akron
Ohio

Firestone Tire and Rubber Company
1200 Firestone Parkway
Akron 17, Ohio

Sears, Roebuck and Co.
925 South Homan Avenue
Chicago 7, Illinois

United States Rubber Company
1230 Avenue of the Americas
New York 20, New York

Montgomery Ward & Co., Incorporated
619 West Chicago Avenue
Chicago 7, Illinois

The General Tire & Rubber Company
1708 Englewood Avenue,
Akron 9, Ohio

Armstrong Tire & Rubber Company
475 Elm Street
West Haven 16, Connecticut

Lee Rubber & Tire Corp.
Conshohocken,
Pennsylvania

Gulf Oil Corporation
Gulf Tire & Supply Company, a
wholly owned subsidiary
Gulf Building
Pittsubrgh 30, Pennsylvania

Seiberling Rubber Co.
Akron 9,
Ohio

Socony Mobil Oil Company, Inc.
150 East 42nd Street
New York 17, New York

Dunlop Tire & Rubber Corp.
Buffalo
New York

Mansfield Tire & Rubber Company
315 Newman Street
Mansfield, Ohio

Dayton Corp.
333 West First Street
Dayton 1, Ohio

Cooper Tire & Rubber Co.
Findlay
Ohio

Western Auto Supply Company

Atlas Supply Company

Respondents' Exhibit 1986

EXHIBIT A

Goodyear Tire & Rubber Company
Akron
Ohio

Firestone Tire and Rubber Company
1200 Firestone Parkway
Akron 17, Ohio

Sears, Roebuck and Co.
925 South Homan Avenue
Chicago 7, Illinois

United States Rubber Company
1230 Avenue of the Americas
New York 20, New York

Montgomery Ward & Co., Incorporated
619 West Chicago Avenue
Chicago 7, Illinois

The General Tire & Rubber Company
1708 Englewood Avenue,
Akron 9, Ohio

Armstrong Tire & Rubber Company
575 Elm Street
West Haven 16, Connecticut

Lee Rubber & Tire Corp.
Conshohocken,
Pennsylvania

Gulf Oil Corporation
Gulf Tire & Supply Company, a
wholly owned subsidiary
Gulf Building
Pittsburgh 30, Pennsylvania

Goodyear Tire & Rubber Company
Akron
Ohio

Firestone Tire and Rubber Company
1200 Firestone Parkway
Akron 17, Ohio

Sears, Roebuck and Co.
925 South Homan Avenue
Chicago 7, Illinois

United States Rubber Company
1230 Avenue of the Americas
New York 20, New York

Montgomery Ward & Co., Incorporated
619 West Chicago Avenue
Chicago 7, Illinois

The General Tire & Rubber Company
1708 Englewood Avenue,
Akron 9, Ohio

Armstrong Tire & Rubber Company
575 Elm Street
West Haven 16, Connecticut

Lee Rubber & Tire Corp.
Conshohocken,
Pennsylvania

Gulf Oil Corporation
Gulf Tire & Supply Company, a
wholly owned subsidiary
Gulf Building
Pittsburgh 30, Pennsylvania

Sunbarling Rubber Co.
Akron 9,
Ohio

Socony Mobil Oil Company, Inc.
150 East 42nd Street
New York 17, New York

Dunlop Tire & Rubber Corp.
Buffalo
New York

Mansfield Tire & Rubber Company
515 North Sixth
Mansfield, Ohio

Dayton Corp.
333 West First Street
Dayton 1, Ohio

Cooper Tire & Rubber Co.
Findlay
Ohio

Western Auto Supply Company

Atlas Supply Company

JAX 883
Respondents' Exhibit 188D

FEDERAL TRADE COMMISSION
Docket No. 6747 Respondents' Exhibit No. ...

EXHIBIT B

CORPORATION

The General Tire & Rubber Company
1708 Englewood Avenue
Akron-9, Ohio

Armstrong Tire & Rubber Company
475 Elm Street
West Haven 16, Connecticut

Lee Rubber & Tire Corp.
Conshohocken
Pennsylvania

Seiberling Rubber Co.
Akron 9
Ohio

Dunlop Tire & Rubber Corp.
Buffalo
New York

Mansfield Tire & Rubber Company
515 Newman Street
Mansfield, Ohio

Dayton Corp.
333 West First Street
Dayton 1, Ohio

Cooper Tire & Rubber Co.
Findlay
Ohio

JAX 8m

Respondent's Exhibit 10SD

FEDERAL TRADE COMMISSION

RESPONDENT'S EXHIBIT NO. [illegible]

EXHIBIT B

CORPORATION

The General Tire & Rubber Company
1708 Englewood Avenue
Akron 9, Ohio

Armstrong Tire & Rubber Company
275 Elm Street
West Haven 16, Connecticut

Lee Rubber & Tire Corp.
Cohasset Road
Conshohocken
Pennsylvania

Goodyear Tire & Rubber Co.
Akron 9
Ohio

Gates Rubber Co.
Denver
Colorado

Dunlop Tire & Rubber Corp.
Buffalo
New York

Mansfield Tire & Rubber Company
515 Newman Street
Mansfield, Ohio

Dayton Corp.
333 West First Street
Dayton 1, Ohio

Cooper Tire & Rubber Co.
Findlay
Ohio

8333

JAX 654

'Respondents' Exhibit 109E

FEDERAL TRADE COMMISSION

Docket No. 6785 RESPONDENT'S EXHIBIT No. 1095

not official transcript

REASONS FOR GRANTING MOTIONS FOR SUBPOENA

JAX

Respondents' Exhibit 109F

FEDERAL TRADE COMMISSION

Docket No. 7211 Exhibit No. 109F

MR. SULLIVAN: If your Honor please, I am speaking this morning because I feel that I have been intimately thrown into the position of TEXACO and as counsel for TEXACO I think I can fairly state to you, your Honor, exactly how we find ourselves today. I feel that there have been some remarks made during the course of this week, your Honor, that might imply that Respondents have been employing dilatory tactics in connection with these hearings.

Under the circumstances pregent here in this remand we firmly believe that such remarks are wholly unwarranted.

Consider for a minute the posture, if you will, that TEXACO finds itself in. For reasons which have been expressed to your Honor we believe that the Commission's remand order in this proceeding is illegal, and we have fought desperately in several courts and indeed are still fighting in courts today to establish the point that our basic rights have been violated.

Having no alternative we have appeared at this hearing to defend against what we believe would be further evidence on the rather all-encompassing issue here of competitive affects.

Now, instead of a proffer of evidence through the mouths of witnesses which we are convinced we would have been able to meet through and destroy through cross-examination we were met we feel with an unprecented extension of the doctrine of official notice. This we believe has had the undouted effect of shifting the entire burden of proof and

8035

Respondents' Exhibit 1087

FEDERAL TRADE COMMISSION

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Under the circumstances present here in this record we firmly believe that such remarks are wholly unwarranted.

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Now, instead of a proffer of evidence through the mouths of witnesses which we are convinced we would have been able to meet through and destroy through cross-examination we were met we feel with an unprecedented extension of the doctrine of official notice. This we believe has had the

FEDERAL TRADE COMMISSION
Docket No. 8779 Exhibit No. 109G

the burden of going forward with these hearings to the Respondents.

Now, this we contend is completely foreign to the American system of jurisprudence.

On July 17, after the Commission counsel in support of this complaint rested his case, TEXACO informed your Honor that it would require at least until July 23 at 10 a.m. in which to make a determination as to whether or not it would rebut the 3 tables from the Firestone case.

Our position with respect to the 3 tables has been explained in detail to your Honor on July 16 and July 17. However, so there can be no mistake, TEXACO believes that to admit compounded hearsay against a respondent without any foundation testimony whatsoever and without the right of cross-examination and the consequent shifting of the entire burden of proof contravenes all applicable Constitutional and statutory requirements.

Now, the first table of which your Honor has taken official notice purports to show the arrangement between 18 oil companies and some 11 tire companies with respect to the marketing of "private brand tires" under the "purchase-resale plan."

Now, the second table purports to show the products offered for sale by 18 rubber companies, and the third table based upon a survey taken by individuals unknown who never appeared in Court purports to show replacement tire purchases by automobile owners in 1954.

This collection of hearsay material which was rightly

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This collection of hearsay material which was rightly

Respondents' Exhibit 109H

FEDERAL TRADE COMMISSION

DOCKET No. 6485 RESPONDENT'S EXHIBIT No. 109H

described as being worthless and unreliable by the Commission counsel in the Firestone case has now been officially noticed pursuant to what we contend is an illegal remand which call for the taking of evidence on market data from which an assessment might be made as to the competitive affects of the sales commission plan.

Now, it is TEXACO's position that the sum total of the 3 tables adds up to zero when measured against any probative evidence standard.

However, TEXACO is entitled to a reasonable opportunity to make a determination as to whether it will exercise its undouted right to introduce rebuttal evidence. We could go two ways on rebuttal evidence, as I see it, your Honor.

We could attempt to introduce or proffer to your Honor what we believe would be equally unreliable and meaningless, statistics culled from various sources, various periodicals and so forth, or, a rebuttal could consist of a frontal attack on the statistics and each of them which were officially noticed by your Honor.

Now, considering the fact that the motion askin- your Honor to take official notice was not received until July 11 and was not granted in part at least until July 18, we believe that the essence of fair play and due process calls for reasonable opportunity to make a decision in this matter. It is not a decision that can be made in 48 hours. It is a decision we believe which requires mature reflection.

Now, if we decide to rebut it is our present judgment that an effective rebuttal would require the production of

Respondents' Exhibit 109H

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We could attempt to introduce our proffer to your Honor what we believe would be equally verifiable and meaningless, statistics culled from various sources, various periodicals and so forth, or, a rebuttal could consist of a frontal attack on the statistics and each of them which were officially noticed by your Honor.

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Now, if we decide to rebut it in our present judgment that an effective rebuttal would require the production of

documents from and the taking of testimony from many, if not all, of the companies listed on the 3 tables.

Now, to illustrate, if we attempt to and decide to attack the accuracy of Table No. 3, the survey, which purports to reflect replacement tire purchases in the year 1954, we find this your Honor: We find that to our knowledge there is no other comparable survey in existence for the year 1954, and we also find, if your Honor please, through inquiries that the information, the exact figures or nearly exact figures which would be required in order to rebut this table, are considered by the tire companies, small and large, as trade secrets, which we are informed they will not voluntarily divulge.

Now, this means that if we determine on this course we are going to be forced to request the issuance of subpoena duces tecum and subpoenas ad testificandum to individuals in and to all of the companies listed on the exhibits in an attempt to obtain accurate ~~information~~ figures.

Now, this, of course, unfortunately would be an immense and a time-consuming undertaking, but it would be an undertaking, your Honor, which is not of our making. In addition, if we determine to make a rebuttal as to the other companies we would give serious consideration to the presentation of testimony, documentary and otherwise, as to the sales commission plans which other companies, tire companies, that is, such as Generd, Seiberging, Dayton, Lee, Gates and Dunlop have with other oil companies.

To illustrate further, we must consider the

documents from and the taking of testimony from many, if not all, of the companies listed on the 3 tables.

Now, to illustrate, if we attempt to and decide to attack the accuracy of Table No. 3, the survey, which purports to reflect replacement fire purchases in the year 1954, we find this your Honor: We find that to use our knowledge there is no other comparable survey in existence for the year 1954, and we also find, if your Honor please, through inquiries that the information, the exact figures or nearly exact figures which would be required in order to vount this table, are considered by the fire companies, small and large, as trade secrets, which we are informed they will not voluntarily divulge.

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To illustrate further, we must consider the

Respondents' Exhibit 109J

FEDERAL TRADE COMMISSION
Docket No. 6455 RESPONDENTS Exhibit No. 109J

possibility of attempting to show through statistics, the overall effect of the sales commission method of distribution, and the steady decline in the market shares during the period from 1946 through 1961 by those tire companies which utilize the sales commission plan.

Now, the foregoing illustrations are meant your Honor to point up the enormous undertaking which we have been confronted with here and which has been thrust upon us by this shifting of the burden of the proof.

Now, the material of which I speak, your Honor, can not be obtained in some magic drawer or through the pushing of some automatic button. It is going to require a lengthy and costly production of material by process of this Court, and the further complication of making this decision is to whether or not we wish to undertake what would be a further expensive proceeding.

Now, I believe your Honor can see from the foregoing that it is an impossibility for TEXACO to proceed with such an immense undertaking at the very minimum until Monday morning at 10 o'clock. And we respectfully urge your Honor to put this matter over until Monday morning at 10 o'clock to give us this opportunity to come to this decision as to whether or not we are going to call for the issuance of all these subpoenas which is the only course apparently open to us.

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1049

FEDERAL TRADE COMMISSION, PETITIONER

v.

TEXACO, INC., AND THE B. F. GOODRICH COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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295-454—68——1

DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, TEXACO, INC., PETITIONER, v. FEDERAL TRADE COMMISSION, RESPONDENT AND THE B. F. GOODRICH COMPANY, PETITIONER, v. FEDERAL TRADE COMMISSION, RESPONDENT, 118 APP. D.C. 366, 336 F. 2D 754

(July 30, 1964)

Mr. Milton Handler, of the bar of the Court of Appeals of New York, pro hac vice, by special leave of court, New York City, with whom Messrs. James O. Sullivan and Frederick W. P. Lorenzen, New York City, were on the brief, for petitioner in No. 17915.

Mr. Edgar E. Barton, of the bar of the Court of Appeals of New York, pro hac vice, by special leave of court, New York City, for petitioner in No. 17923.

Mr. John F. Doyle, Washington, D.C., also entered an appearance for petitioner in No. 17923.

Mr. Alvin L. Berman, Atty., Federal Trade Commission, with whom Messrs. James McI. Henderson, Gen. Counsel, and Louis Russell Harding, Atty., Federal Trade Commission, were on the brief, for respondent in Nos. 17915 and 17923.

Before WILBUR K. MILLER, WASHINGTON and BURGER, Circuit Judges.

WILBUR K. MILLER, Circuit Judge.

Texaco, Inc. (formerly The Texas Company) and The B. F. Goodrich Company have filed separate petitions for review of an order of the Federal Trade Commission which was issued April 15, 1963, after proceedings which will be described. The cases were heard together and will be disposed of in a single opinion.

On January 11, 1956, after an investigation which began at least as early as 1952, the Federal Trade Commission issued a complaint against the petitioners charging them with violating Section 5 of the Fedearl Trade Commission Act, 15 U.S.C. § 45, by engaging in unfair methods of competition in interstate commerce. Specifically, the object of the Commission's attack was the implementation of a contract between the two companies, entered into in 1940, in which Texaco undertook, in

return for a commission to promote the sale of Goodrich tires, batteries and accessories (TBA) to its thousands of dealers in its petroleum products. It was alleged that Texaco has entered into a similar contract with Firestone Tire & Rubber Company.

The complaint stated that influence and control over the purchasing and marketing activities of its dealers has been and is being exercised by Texaco "by recommending, urging, persuading and causing them to purchase a substantial quantity of TBA products from Goodrich and Firestone, the sellers designated by it." The acts and practices of Goodrich and Texaco under the commission contract, the complaint said,

> "* * * have unduly frustrated, hindered, suppressed, lessened, restrained, prevented and eliminated competition in the sale of TBA products in commerce within the intent and meaning of the Federal Trade Commission Act; have the capacity and tendency to restrain unreasonably and have restrained unreasonably such commerce in said products; and constitute unfair methods of competition and unfair acts and practices, in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act."

Essentially, the complaint was that Texaco coerces its dealers, through economic pressure, to distribute Goodrich TBA and thus unfairly and unlawfully prevents Goodrich's competitors from selling TBA to Texaco's outlets.

Answers by the companies placed the essential allegations of the complaint in issue, after which evidentiary hearings were conducted over a period of nearly three years. They were concluded December 10, 1958. The examiner, in his initial decision issued October 23, 1959, found that Goodrich had not done anything to force Texaco outlets to buy its products; that there was neither charge nor proof that Goodrich had conspired with Texaco to restrain competition; and that the commissions paid by it under the contract were for substantial services rendered by Texaco in promoting the sale of its products. Accordingly, the initial decision of October 23, 1959, dismissed the complaint against Goodrich.

With respect to Texaco, the examiner found that the contracts between Texaco and its dealers do not contain any provision requiring the latter to purchase only Goodrich TBA. He said the commission paid to Texaco by Goodrich is based on mu-

stantial services rendered by Texaco in promoting the sale of Goodrich TBA, and added:

> "No inference or implication can be drawn, simply from the contractual relationship between Texas and its dealers, that the degree of control by Texas over its dealers is sufficient to force its dealers to purchase only sponsored TBA."

The examiner found, however, that

> "* * * the record in this proceeding *as a whole* indicates that coercion and pressure was [*sic*], in fact, brought on *a substantial number of dealers* to induce them to purchase sponsored TBA and to discontinue the purchase or display of non-sponsored items."[1] [Emphasis supplied.]

Pursuant to this, the examiner's initial decision of October 23, 1959, ordered Texaco to cease and desist from coercing its dealers into purchasing TBA from any particular supplier.

In keeping with the deliberate progress of this proceeding, the Commission did not act on the initial decision of October 23, 1959, until March 9, 1961. On that day it handed down an opinion in which it not only reversed the examiner's dismissal of Goodrich but also found

> "* * * that Texaco had sufficient economic power over its wholesale and retail petroleum distributors to cause them to purchase substantial amounts of sponsored TBA even without the use of overt coercive tactics * * *"

Proceeding from its assumption that Texaco had controlling economic power over its dealers, "even without the use of overt coercive tactics," the Commission said:

> "* * * the determination of whether Texaco's exercise of such economic power in favor of Firestone and Goodyear under the oil company's sales commission contracts with these rubber companies constitutes an unfair method of competition depends, therefore, upon *the*

[1] This was a rather extraordinary conclusion in view of the fact that not one of Texaco's more than 26,000 dealers was called to testify before the examiner in support of the complaint. The examiner based the statement on the testimony of five former Texaco dealers who said they had been coerced, although five other former dealers and 54 active dealers called by Texaco said they had never been coerced or influenced in any way as the Goodrich TBA.

competitive effects of these sales commission contracts; not upon whether Texaco has exercised its power to implement such contracts through the use of overt coercive tactics, or by more subtle, but equally effective, means.

"At issue in this litigation, then, is the legality of a particular method of distributing TBA used by respondents. A key fact in evaluating the competitive effects of respondents' use of the sales commission method of distributing TBA is the fact that Texaco has sufficient economic power with respect to its retail and wholesale petroleum distributors to cause them to purchase substantial quantities of the brand of TBA sponsored or sold by Texaco. But such economic power is a fact existing independently of any particular method of distributing TBA which Texaco may use. Whether the sales commission agreements between Firestone and Texaco and Goodrich and Texaco are unlawful must depend, therefore, upon the characteristics and the competitive effects of these sales commission agreements. For reasons set forth hereinafter, we conclude that this case must be remanded in order that market data may be introduced to show the competitive effects of Texaco's sales commission agreements with Goodrich and Firestone upon competing suppliers of tires, batteries and accessories at the manufacturing, wholesale and retail levels."

Having thus concluded that the legality of the sales commission agreements depends upon "the characteristics[2] and the competitive effects" of the agreements, the Commission closed its opinion by saying:

"However, the record in this case does not contain sufficient market data to enable the Commission to assess the competitive effects of the sales commission method of distributing TBA employed by these respondents. The case will be remanded to the hearing examiner for the taking of evidence indicating the competitive effects of the sales commission contracts at the manufacturing, wholesale and retail levels of TBA distribution."

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[2]The "characteristics" of the agreements were of course fully known to the Commission, which had before it their complete text.

More than a year after the remand of March 9, 1961,[1] the examiner conducted hearings from July 16 to July 19, 1962, at which the only proof introduced was in the form of exhibits received over the objection of the petitioners. A new initial decision was filed by the examiner September 24, 1962. In it he incorporated the findings of fact of his first initial decision and made additional findings of fact based on the record as supplemented after remand. The examiner noted that he was bound by the Commission's reversal of his dismissal of Goodrich, and by its finding that Texaco has sufficient economic power over its dealers to cause them to purchase substantial amounts of sponsored TBA, even without the use of coercive tactics. He concluded that

> "* * * the only issue left for consideration of the hearing examiner under the terms of the Commission's opinion and order of remand, is the competitive effects of the sales commission plan used by Goodrich with The Texas Company, and whether Texaco's exercise of such economic power in favor of Goodrich and Firestone under their sales commission contracts have sufficient competitive effect to constitute an unfair method of competition or an unfair act or practice."

The examiner disposed of the "only issue left for [his] consideration" by concluding that

> "The use of the sales commission plan of distribution of TBA by the respondents, The Texas Company and The B. F. Goodrich Company as herein found, has a tendency and capacity to restrict, restrain or lessen competition in the sale of TBA products and constitutes an unfair method of competition and an unfair act and practice in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act."

In obedience to the Commission's order on remand, the examiner abandoned his former position, held Goodrich as a respondent, and concluded:

> "The use of the sales commission method of distribution by Goodrich was designed to take advantage of the economic control which Texaco had over its dealers, and

[1] A part of this period was consumed in the petitioners' unsuccessful attempt to enjoin further hearings.

by such use, Goodrich was able to obtain an unfair advantage over its competitors in selling to Texaco stations and in addition, aided and abetted Texaco in removing from the open market a substantial number of new and established Texaco dealers by causing them to purchase Goodrich TBA exclusively or in substantial quantities, and thereby excluding competitors of Goodrich who might otherwise have been able to sell their TBA to a substantial number of such Texaco dealers."

Although he had the first time dismissed Goodrich, and had merely ordered Texaco to cease and desist from the coercive practices he had found from the testimony of five ex-dealers, this time the examiner entered a broad order as to both respondents. He ordered Texaco to cease and desist from entering into or continuing in effect any contract with Goodrich or any other rubber company or tire manufacturer, or any other supplier of tires, batteries or accessories, by the terms of which Texaco receives anything of value in connection with the sale of TBA to its dealers. The examiner ordered Goodrich to cease and desist from operating under its contract with Texaco and prohibited it from entering into a similar contract with any other marketing oil company.

The order of remand of March 9, 1961, was entered by a Commission composed of Chairman Kintner and Commissioners Secrest, Anderson and Kern. Accompanying it was the opinion to which we have referred, written by Chairman Kintner and concurred in by the other three members of the Commission. Shortly thereafter—on March 21, 1961—Earl W. Kintner was replaced as Chairman by Paul Rand Dixon, who had not been a member of the Commission theretofore. One of the acts of the new Chairman when he had been in office only a short time led to the phase of the proceeding which we shall now consider.

On February 18, 1963, before the Commission had acted on the examiner's new initial decision of September 24, 1962, Texaco filed a motion that Chairman Dixon withdraw from participation in the proceeding or that the Commission determine him to be disqualified. The basis of the motion was a speech made by Dixon before the National Congress of Petroleum Retailers, Inc., in Denver, Colorado, on July 25, 1961, while the case was pending before the examiner after remand and before any steps had been taken by him. In the course of his address,

according to a press release issued by the Commission itself, the then newly appointed Chairman of the Commission said:

> "Your problems are many, and many of them are the problems of the Federal Trade Commission, too, for the Commission is concerned with promoting fair competition. More particularly, many of your problems are ours because they arise from practices prohibited by two of the most important statutes administered by the Commission—discriminatory pricing, prohibited by the Robinson-Patman Act, and other unfair acts, practices, and methods of competition, prohibited by the Federal Trade Commission Act.
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> "We at the Commission are well aware of the practices which plague you and we have challenged their legality in many important cases.
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> "You know the practices—price fixing, price discrimination, and overriding commissions on TBA.
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> "You know the companies—Atlantic, Texas, Pure, Shell, Sun, Standard of Indiana, American, Goodyear, Goodrich, and Firestone.
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> * * * * *
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> "Some of these cases are still pending before the Commission; some have been decided by the Commission and are in the courts on appeal. You may be sure that the Commission will continue and, to the extent that increased funds and efficiency permit, will increase its efforts to promote fair competition in your industry."

The Commission denied the motion that it determine Chairman Dixon to be disqualified, and he declined to withdraw from participation. Instead, he took part in the entry of the order of April 15, 1963, more than two years after the remand, which adopted the examiner's initial decision and order of September 25, 1962, which, as we have seen, was adverse to Texaco and Goodrich and which is now under review. Before turning to the question whether the order of April 15, 1963, was supported by the record, we consider the propriety of Chairman Dixon's participation in that decision.

In *Gilligan, Will & Co.* v. *Securities and Exchange Comm'n*, 2 Cir., 267 F. 2d 461 (1959), the Commission, three days after

commencing proceedings, issued a press release stating in effect that Gilligan, Will & Co. and others had violated Section 5 of the Securities Act of 1933. Although the Second Circuit held that petitioners' failure to make timely objection had waived their right to assert the defect of prejudgment, the Court strongly disapproved of the Commission's behavior. It said, at pages 468–9:

> "* * * [T]he Commission's reputation for objectivity and impartiality is opened to challenge by the adoption of a procedure from which a disinterested observer may conclude that it has in some measure adjudged the facts as well as the law of a particular case in advance of hearing it.* * *"

In this case, a disinterested reader of Chairman Dixon's speech could hardly fail to conclude that he had in some measure decided in advance that Texaco had violated the Act.

We said in *Amos Treat & Co.* v. *Securities and Exchange Comm'n*, 113 U.S. App. D.C. 100, 107, 306 F. 2d 260, 267 (1962):

> "* * * [A]n administrative hearing of such importance and vast potential consequences must be attended, not only with every element of fairness but with the very appearance of complete fairness. Only thus can the tribunal conducting a quasi-adjudicatory proceeding meet the basic requirement of due process."

The administrative hearing in the present case was certainly as important as that in the *Amos Treat* case, and has perhaps even greater potential consequences. We conclude that Chairman Dixon's participation in the hearing amounted in the circumstances to a denial of due process which invalidated the order under review. If that were the only infirmity in the order, we should be constrained to remand the cases to the Commission for a *de novo* consideration in which Chairman Dixon does not take part. His Denver speech, made before the matter was submitted to the Commission but while it was before the examiner, plainly reveals that he had already concluded that Texaco and Goodrich were violating the Act, and that he would protect the petroleum retailers from such abuses.

But that is not all. The Supreme Court has said that in reviewing the substantiality of the evidence we must consider all the evidence including "the body of evidence opposed to the

Board's view." *Universal Camera Corp.* v. *N.L.R.B.*, 340 U.S. 474, 487–8, 71 S. Ct. 456, 465, 95 L. Ed. 456 (1951). Viewed in this way we are convinced that the order of April 15, 1963, is not supported by substantial evidence on the record as a whole. The order under review, as we have said, adopted the examiner's initial decision and order of September 24, 1962, after slight modification. In it, the Commission said:

> "Respondents contend that the tables, surveys, and matters officially noticed by the examiner on remand were improperly admitted both because they are inappropriate objects for official notice and because respondents were afforded inadequate opportunity to rebut them.
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> "It is not necessary to pass upon the correctness of these contentions, since the Commission excludes from its present decision any reliance upon the challenged evidence. It finds that the other evidence of record amply supports the conclusions and the order of the hearing examiner. The legal principles relevant to this decision need not be reexamined here because they are set forth at length in the opinions of the Commission in Goodyear Tire & Rubber Co., et al., Docket 6486, March 9, 1961, and Firestone Tire & Rubber Co., et al., Docket 6487, March 9, 1961. * * *"[1]

Thus, in its consideration of the revised initial decision and order, the Commission expressly disclaimed any reliance upon the evidence introduced after remand, and held that the evidence or record before the remand "amply supports the conclusions and order of the hearing examiner." This was the same record which the Commission on March 9, 1961, had said "does not contain sufficient market data to enable the Commission to assess the competitive effects of the sales commission method of distributing TBA employed by these respondents."

But, in successfully resisting an action in the District Court by Texaco and Goodrich to enjoin the remand, the new Commission contended that it "needed additional evidence in order to decide the issues presented." It asserted that the opinion of

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[1] It is perhaps not without significance that Commissioner Anderson, the only member of the Commission as constituted on April 15, 1963, who had participated in the remand of March 9, 1961, did not concur "for the reason that the command of the remand order of March 9, 1961, has not been met and complied with * * *."

March 9, 1961, ordering the remand showed that the Commission "is not seeking a retrial of matters already tried but rather envisions supplementary evidence on what it considered to be significant facts in any assessment of the competitive effects of the sales commission agreements * * *."

Despite these representations, the Commission on April 15, 1963, contrary to the former Commission's determination that the record did not justify such a finding, found the petitioners in violation of Section 5 of the Federal Trade Commission Act on the basis of that record. It adopted the examiner's revised order which prohibited Goodrich from entering into sales commission agreements with Texaco or any other marketing oil company, and prohibited Texaco from entering into such agreements with Goodrich or any other rubber company or tire manufacturer, or any other supplier of tires, batteries or accessories.

The new Commission placed itself in an anomalous position: first, it vigorously asserted (as the former Commission had held when it remanded the proceeding) that it could not find against the petitioners without additional evidence as to the competitive effects of the sales commission contracts; then, it decided that same issue against the petitioners without any consideration of the record made after remand, and without repudiating or even commenting upon its confessed inability to reach that issue previously.

Although the two Commissions reached diametrically opposite conclusions from the same record as to whether unfair competition had been shown, both based their action upon their conclusion that

> "Texaco has sufficient economic power over its wholesale and retail petroleum distributors to cause them to purchase substantial amounts of sponsored TBA *even without the use of overt coercive tactics.* * * *." [Emphasis supplied.][5]

[5] Although the examiner concluded in his first initial decision that the record "as a whole" indicated coercion had been brought on "a substantial number of dealers" (five former dealers out of many thousands of former and active dealers), the remanding Commission apparently did not regard such meager proof as convincing, for it expressly discarded it as a basis of decision, and concluded as stated in the text above that Texaco had controlling economic power over its dealers without the use of coercive tactics.

The examiner's first initial decision had not so concluded, but the remanding Commission's conclusion as to Texaco's economic power was parroted by him in his initial decision after remand. He added thereto the following

But neither Commission referred to any evidence in support of this finding, and neither made any finding of fact which would sustain a conclusion that Texaco had such economic power over its dealers, and we are unable to see substantial evidence on the record as a whole to sustain that conclusion. The Commission did not reject its examiner's statement that no inference can be drawn from the contracts between Texaco and its dealers that the former has sufficient economic power over the latter to force them to purchase only sponsored TBA. And it did not say (for there was no proof from which it could conclude) that Texaco's treatment of its dealers and their reaction indicated that Texaco had, or had attempted to exercise, the controlling economic power over its dealers that the Commission found. Indeed, the examiner found as a fact that Texaco's policy, announced to all its salesmen as long ago as June 1, 1948, is that it has neither the right nor the desire to dictate to the dealer or to influence him in any way as to the type of merchandise he should handle, or the source from which he should purchase it.* This finding was adopted by the Commission.

Consequently, we find no basis in the record for the Commission's conclusion that Texaco has controlling economic power over its dealers. The contracts with the dealers do not give rise to it, and it is the announced policy of Texaco to respect the independence of its dealers; as the evidence overwhelmingly shows, its practice has followed its policy. The mere

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sentence selected from another portion of the remanding Commission's opinion: "Such economic power exists independent of any particular method of distributing TBA which Texaco might use." This new conclusion was adopted by the Commission in its decision of April 15, 1963. Consequently, both Commissions concluded that Texaco had controlling economic power without the use of coercive tactics.

* Finding of Fact No. 8 in the examiner's post-remand initial decision is as follows:

"As a result of an antitrust suit filed against Standard Oil Company of California, Walter Hochuli, General Sales Manager of The Texas Company, on June 1, 1948, issued a so-called policy letter to the territorial managers, which was subsequently disseminated down the chain of command to salesmen. This letter advised the personnel that they were to consider a Texaco dealer as an independent businessman; that he should be encouraged to expand his business by purchasing TBA; that the personnel have a right to recommend certain lines, but that Texas has neither the right nor the desire to dictate to the dealer or to influence him in any way as to the type of merchandise he should handle, or the source from which he should purchase it; that the Texaco dealer must be permitted to operate as an independent businessman and anyone who violates this policy would be subject to immediate dismissal."

fact that Texaco is a giant corporation and the dealers are in the main small businessmen cannot be said to demonstrate controlling economic power over the latter, particularly when, as here, the evidence is to the contrary. We hold, therefore, that the Commission erred in concluding that Texaco has sufficient economic power over its dealers, without the use of coercive tactics, to cause them to buy substantial quantities of Goodrich TBA. We have already noted that the Commission did not find coercive tactics had been used, and that the record as a whole demonstrates the contrary.

From its unwarranted assumption that Texaco had such economic power, the Commission proceeded to the conclusion that the question whether the exercise of that power in Goodrich's behalf amounts to an unfair method of competition depends on the "competitive effects" of the sales commission agreements. It said that Texaco's controlling economic power is a "key fact" in evaluating the competitive effects of the sales commission contracts. Thus, the Commission itself said that the supposed need to examine the "competitive effects" was due entirely to its conclusion that Texaco not only had, but exercised, controlling economic power over its dealers without using coercive tactics. This conclusion was indeed the keystone of the Commission's ultimate decision, without which it cannot stand. That being true, our holding that there is not a substantial evidentiary basis in the record for the Commission's assumption that Texaco had and exercised coercive economic power causes its conclusion based thereon to collapse.

The Commission's sweeping order not only condemned the Texaco-Goodrich contract but also held illegal any sales commission arrangement between an oil marketing company and a TBA supplier. This either attributes to all such oil companies inherent controlling economic power over their dealers, or implies there is basic illegality in such arrangements. Our view is that, in any case, there must be substantial evidence on the whole record of the supposed economic power of the oil marketing company before a prohibiting order can be based upon it. As to the implication that sales commission agreements between oil companies and TBA suppliers are basically illegal regardless of their terms, we disagree. There is no reason to condemn such contracts unless they result in unfair competition. An oil marketing company's recommendation to its dealers that they purchase a particular line of TBA, even though it receives a

commission for doing so, is not incompatible with its primary business of selling petroleum products. The dealers, at least in the situation here involved, are quite free to accept or reject the recommendation, and to handle a different line if they think it would be more acceptable to their customers.

The Commission's broad order prohibited contracts for sponsorship of TBA sales to oil marketing company dealers only when the company receives compensation for the sponsorship. The vice found by the Commission in the arrangement seems therefore to be the payment of commissions. Yet the Commission adopted the findings of the examiner which described in detail the services performed by Texaco under its contract with Goodrich and also adopted his conclusion that

> "The consideration for the payment of a commission to Texas under the sales commission contract is based upon substantial services rendered by Texas in promoting the sale of Goodrich TBA to Texaco dealers and distributors."

We see nothing illegal or even unethical in the payment of commissions for such services, except in instances where an oil marketing company forces its dealers through coercive tactics or controlling economic power to buy the sponsored products. Neither of those influences was proved in this case, and it may not be presumed that either will exist in future similar situations.

After four years of preliminary investigation followed by eight years of litigation, including the remand for additional evidence said to have been necessary but never used, the Commission has not been able to show illegality in the Texaco-Goodrich contract of 1940. During that long period, the companies necessarily have devoted much time and money to their defense. Although the Commission must be allowed considerable leeway in developing a record, its efforts in this case—fruitless after a dozen years—have exceeded permissible limits and have had unreasonably harassing and oppressive effects upon the companies under attack. Because the Commission's drastic orders are not supported by the record as a whole and because of the undue protraction of the administrative process, we are of the opinion that this long drawn out proceeding should now be terminated. Accordingly, the order under review will be set aside, and the matter will be remanded to the Commission with instructions to dismiss the complaint.

It is so ordered.

WASHINGTON, Circuit Judge (concurring in part and dissenting in part):

I agree with the majority that Chairman Dixon's conduct disqualified him from participating in the Commission's order, and that the order must be set aside for that reason. I would not, however, dismiss the entire proceeding, either on the merits or because of the Commission's delays. I would remand for further consideration of the case by the Commission, without the participation of Chairman Dixon, and on a basis which I will outline later on.

I.

With reference to Chairman Dixon's conduct, I would add only this. Federal Trade Commissioners, like other adjudicators, are entitled to hold and express views on the laws they are charged with enforcing and applying. They "do not stand aloof on * * * chill and distant heights; and we shall not help the cause of truth by acting and speaking as if they do." [1] We do not equate impartiality with utter indifference. A judge does not deny litigants a fair hearing by sitting in a case "after he had expressed an opinion as to whether certain types of conduct were prohibited by law." [2] We do not expect a Trade Commissioner to be neutral on anti-monopoly policies.

A fair hearing is denied, however, if the administrative judge, prior to examining the evidence and findings, has indicated his belief that named individuals or firms are violating the statute, and the "guilt" or "innocence" of such parties depends on certain factual findings which are in dispute. Once an adjudicator has taken a position apparently inconsistent with an ability to judge the facts fairly, subsequent protestations of open-mindedness on his part cannot restore a presumption of impartiality. Whether justice was in fact done is not the issue; an administrative hearing "must be attended, not only with every element of fairness but with the very appearance of complete fairness." [3] We must presume that a fair hearing was denied [4] if a disinterested observer would have reason to believe that

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[1] CARDOZO, THE NATURE OF THE JUDICIAL PROCESS 168 (1921).

[2] *Federal Trade Commission v. Cement Institute*, 333 U.S. 683, at 703, 68 S. Ct. 793, 92 L. Ed. 1010 (1948).

[3] *Amos Treat & Co. v. Securities and Exchange Commission*, 113 U.S. App. D.C. 100, 107, 306 F. 2d 260, 267 (1962).

[4] "[J]ustice must satisfy the appearance of justice." *Offutt v. United States*, 348 U.S. 11, 14, 75 S. Ct. 11, 13, 99 L. Ed. 11 (1954).

the Commissioner had "in some measure adjudged the facts * * * of a particular case in advance of hearing it."

Chairman Dixon's speech leaves a clear impression that his belief that petitioners had violated the Act was far stronger than the "reason to believe" which justifies the issuance of a complaint. Indeed, his speech suggests not only a substantial conviction that Texaco and Goodrich are violating the Act but an implied promise to support the petroleum retailers in their struggle against alleged abuses by their suppliers. An independent observer could fairly conclude that Chairman Dixon was in some measure pre-committed to a determination adverse to petitioners. We must therefore—at the least—vacate the Commission's order and remand to the Commission for a *de novo* consideration of the record and the arguments without the participation of Chairman Dixon.[6]

II. *The Absence of Reviewable Findings*

The Commission's decision consisted of an assertion that the "other evidence of record" amply supports the conclusions and the order of the Hearing Examiner. The legal principles relevant to this decision need not be reexamined here because they are set forth at length in the opinions of the Commission in Goodyear Tire & Rubber Co. * * * and Firestone Tire & Rubber Co. * * *."

Section 8(b) of the Administrative Procedure Act, 5 U.S.C. § 1007(b) (1958), provides in part that all decisions "shall * * * include a statement of (1) findings and conclusions, as well as

[5] *Gilligan, Will and Co. v. Securities and Exchange Commission*, 267 F.2d 461, 469 (2d Cir. 1959). In that case the Securities and Exchange Commission, three days after commencing adjudicatory proceedings, had issued a press release, stating that the parties involved had violated the relevant Act. The Second Circuit, in fact, strongly disapproved of the Commission's behavior, but held that petitioners had waived their right to object by failing to make a timely motion.

[6] *Federal Trade Commission v. Cement Institute*, *supra*, is to be distinguished on the grounds that (a) the disqualification of the entire Commission, which was there sought, would have effectively precluded any enforcement of the Act against the respondent (the "necessity doctrine") and (b) the opinion does not indicate that the Commissioners had expressed a fixed bias against the respondent, rather a general "policy" bias against basing point systems.

[7] That is, exclusive of certain evidence adduced in the remand proceeding, which petitioners claimed was improperly admitted, and which the Commission in fact stated that it would not consider.

the reasons or basis therefor, upon all the material issues of fact, law or discretion presented on the record * * *." Recently, the Supreme Court set aside an order of the Interstate Commerce Commission, partly on the ground that—

> "There are no findings and no analysis here to justify the choice made, no indication of the basis on which the Commission exercised its expert discretion. We are not prepared to and the Administrative Procedure Act will not permit us to accept such adjudicatory practice."[8]

The mere citation of earlier opinions does not provide a sufficient basis to understand and evaluate the Commission's decision on the facts of this case. There are a variety of facts and findings relied on by the Commission in the *Goodyear* and *Firestone* cases which cannot be readily assumed here. For example, on the issue of coercion, in *Goodyear* the Commission found that "Atlantic dealers have been orally advised by sales officials of the oil company that their continued status as Atlantic dealers and lessees will be in jeopardy if they do not purchase sufficient quantities of sponsored TBA."[9] In *Firestone* the Commission pointed to internal memoranda of the Shell Oil Company to support the conclusion of coercion. In both cases the Commission purported to make an examination of the competitive effects of the sales commission plan, saying, "Determination of illegality in this context requires an evaluation of competitive effects resulting from respondents' use of the sales commission method of distributing TBA,"[10] and, in pursuing an alternative theory of a tie-in arrangement, purported to make findings on Atlantic's and Shell's economic power in the "tying" commodity.

Also to be noted is the fact that on the same day that the Commission decided *Goodyear* and *Firestone*—March 9, 1961—it considered this case, and did not affirm the findings of actual coercion but remanded to the Examiner for the taking of further evidence on "competitive effects":

> "[T]he record in this case does not contain sufficient *market data* to enable the Commission to assess the

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[8] *Burlington Truck Lines v. United States*, 371 U.S. 156, 167, 83 S. Ct. 239, 245, 9 L. Ed. 2d 207 (1962).

[9] 58 F.T.C. 309, 342 (1961).

[10] *Firestone*, 58 F.T.C. 371, 408 (1961); *Goodyear*, *supra*, at 365. In fn., Shell accounted for about 5% of the total gasoline sold at retail in the United States in 1955, 58 F.T.C. at 407; Firestone accounted for 15.8% and Goodyear 21.4% of total replacement tire sales at consumer level in 1954. 58 F.T.C. at 409.

competitive effects of the sales commission method of distributing TBA employed by these respondents." [11] [Emphasis supplied.]

On April 15, 1963, the Commission, reviewing the Hearing Examiner's remand decision, affirmed his conclusions of a statutory violation, even though it excluded from consideration any new evidence adduced on the remand, and cited the *Goodyear* and *Firestone* cases, even though the Commission had previously declined to find a violation on this record, when it remanded simultaneously with its formulation and application of legal theories in the companion cases. The one Commissioner who had participated in the earlier decisions and was on the Commission on April 15, 1963, dissented from the decision rendered on that date.

These considerations indicate, not that the evidence, as a whole, fails to support a finding of a Section 5 violation under a proper interpretation of that section, but that the Commission failed to perform its function of articulating the facts and spelling out its theories. The Commission's decision falls short of the standards required for judicial review, for we are unable to discern with a fair degree of certainty the facts or the theories relied on below.[12] Under the circumstances, we should express no opinion on the merits.

In my view, we should hold simply that a court must know why a Commission acted in order to fulfill the function of judicial review (*Secretary of Agriculture* v. *United States*, 347 U.S. 645, 74 S. Ct. 826, 98 L. Ed. 1015 (1954)), and that businessmen and other parties subject to administrative regulation are entitled to an explanation of their duties and obligations. Thus, even in the absence of the disqualification issue, we would—in my view—find it necessary to remand for a proper opinion. See *Radio Station KFH Co.* v. *Federal Communications Commission*, 101 U.S. App. D.C. 164, 247 F. 2d 570 (1957).

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[11] In Goodyear and Firestone the Commission considered such "competitive effects" as division of markets between manufacturers, foreclosure of battery and accessory manufacturers, foreclosure of smaller tire manufacturers, restraint on expansion of smaller tire manufacturers' distribution systems, foreclosure of wholesalers, presumption in favor of wholesalers selling sponsored products, and the impact on wholesalers who also sell at retail.

[12] See, *e.g.*, *Interstate Commerce Commission* v. *Mechling*, 330 U.S. 567, 67 S. Ct. 894, 91 L. Ed. 1102 (1947); *Connecticut Light & Power Co.* v. *Federal Power Commission*, 324 U.S. 515, 532, 65 S. Ct. 749, 89 L. Ed. 1150 (1945).

For the reasons given, I would set aside the Commission's order but would pass neither on the merits nor on other issues argued by the parties. The Commission could then be required to produce a new opinion within a reasonable time, such as sixty days, meeting the standard for judicial review.

III.

Though, as I have indicated, I do not think we should pass on the merits, the majority has done so. Under the circumstances, I am constrained to say that in my view the majority's conclusion that the record does not contain sufficient evidence to support a finding of a Section 5 violation is very doubtful. The crucial failing, in the court's view, is the lack of evidence to establish that Texaco has sufficient economic power over its dealers to compel them to handle Goodrich tires exclusively. I submit that under the antitrust laws, Texaco's relationship to its dealers must probably be deemed inherently coercive. See, e.g., *Simpson v. Union Oil Company of California*, 377 U.S. 13, 84 S. Ct. 1051, 12 L. Ed. 2d 98 (1964); *Standard Oil Company of California v. United States*, 337 U.S. 293, 69 S. Ct. 1051, 93 L. Ed. 1371 (opinion for the Court per Frankfurter, J.), 323 (concurring opinion of Jackson, J.) (1949); *Federal Trade Commission v. Motion Picture Advertising Service Co.*, 344 U.S. 392, at 402, 73 S. Ct. 361, 97 L. Ed. 426 (1953) (Frankfurter, J., in dissent, explaining his opinion in Standard Stations, supra); *Osborn v. Sinclair Refining Co.*, 286 F. 2d 832 (4th Cir. 1961); *United States v. Sun Oil Co.*, 176 F. Supp. 715, 719-20 (E. D. Pa. 1959); *Schwing Motor Co. v. Hudson Sales Corp.*, 138 F. Supp. 899 (D. Md. 1956); *United States v. General Motors Corp.*, 121 F. 2d 376, 398 (7th Cir.), cert. denied, 314 U.S. 618, 62 S. Ct. 105 86 L. Ed. 497 (1941). See, also, the recent opinion of the Seventh Circuit in *Goodyear Tire & Rubber Co. v. Federal Trade Commission*, 331 F. 2d 394 (1964). See, generally, S. Rep. No. 2073, 84th Cong., 2d Sess. (1956); H.R. Rep. No. 2850, 84th Cong., 2d Sess. (1956), U.S. Code Cong. and Adm. News 1956, p. 4596, relating to the Automobile Dealers Franchise Act, 70 Stat. 1125, 15 U.S.C. § 1221 et seq.

Evidence which might tend to show coercive power in this case includes (a) one year leases and sales agreements, terminable at the year's end upon 10 days' notice; (b) substantial contractual control by Texaco over the use, maintenance and ap-

pearance of stations (the obligations imposed by Texaco, in addition to being evidence of Texaco's bargaining power, are means by which Texaco could prematurely terminate the lease through enforcement of one of these obligations under cancellation provisions); (c) high personal investments by the lessees in their stations; (d) close dealer supervision by Texaco salesmen; (e) Goodrich's manifest understanding that Texaco controls its dealers (*e.g.*, Goodrich's books refer to the dealers as "oil company controlled dealers"); (f) testimony of competing TBA suppliers that Texaco dealers felt they risked reprisal if they did not carry sponsored TBA; and (g) testimony of former Texaco dealers of the existence of a pattern of coercive conduct throughout their tenure. Other evidence in the record that Texaco imposed a course of purchasing behavior on the dealers may be summarized by quoting from page 51 of Respondent's brief:

> "* * * the services performed by Texaco pursuant to its contracts include: Stressing the importance of TBA to *prospective* dealers and recommending BFG and Firestone; giving advance notice of dealer selection to BFG or Firestone and introducing new dealers to their salesmen; assisting new dealers with adequate TBA inventories; encouraging its salesmen to write sponsored TBA orders without awaiting formal dealer request; calling on dealers with BFG or Firestone salesmen ('double teaming'); conducting frequent dealer meetings and training courses, with active BFG and Firestone participation; arranging for and participating in BFG and Firestone advertising and promotions; and permitting sponsored TBA purchases on its credit cards. Texaco training schools are conducted at company-owned service stations where only BFG or Firestone TBA is used. This can only solidify the dealer's 'choice' of sponsored TBA."

Thus, I suggest that it may well be the record as a whole would support findings of both the existence and the utilization of coercive economic power by Texaco over its dealers. Were we reviewing the Hearing Examiner's findings, and formulating the appropriate legal theory in the first instance, I suggest that we might also properly conclude that there was sufficient evidence of anti-competitive effect to warrant finding a violation

under a tie-in theory.[11] But in the first instance it is the Commission, not this court, which must indicate what facts and what legal theories constrained it to find a violation. We could of course select those legal doctrines appearing in the cases cited in the Commission's opinion—*Goodyear* and *Firestone*—and those facts in the record before the Hearing Examiner, which would sustain the Commission's conclusions, and then affirm. But aside from the fact that such an approach would be less than faithful to the appropriate institutional relationship between this court and the Commission, it would not be possible in this case because of Chairman Dixon's disqualifying conduct. The delays in this case are serious.[12] But I would not terminate the proceedings because of them. The public interest in effective competition should not lightly be subordinated to Texaco's interest in speedy adjudication.

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[11] On the appropriate test of anti-competitive effect necessary to sustain a finding that a tie-in violates Section 1 of the Sherman Act (which generally puts a more stringent burden on the Government than does Section 5 of the FTC Act), *see e.g., Northern Pacific Railway Co.* v. *United States*, 356 U.S. 1 at 5–6 78 S. Ct. 514, 2 L. Ed. 2d 545 (1958). The percentage of the gasoline station market for TBA controlled by Texaco, on any reading of the record, certainly affects a "not insubstantial" amount of interstate commerce. See *International Salt Co.* v. *United States*, 332 U.S. 392, 68 S. Ct. 12, 92 L. Ed. 20 (1947), and *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 330 82 S. Ct. 1502, 8 L. Ed. 2d 510 (1962).

On utilization of a tie-in theory under circumstances similar to those of the instant case, see *Osborn* v. *Sinclair Refining Co., supra*, 286 F. 2d 832 (4th Cir. 1961). The fact that Texaco's power and practices resulted in something less than exclusive dealer use of sponsored TBA would not seem to require a different result. *Id.* at 838–39. See, also, the decision of the Seventh Circuit, in an appeal from a parallel decision of the Federal Trade Commission relied on below, *Goodyear Tire & Rubber Co.* v. *Federal Trade Commission*, 331 F. 2d 394 (1964).

Order of Federal Trade Commission Vacating Prior Decision and Order and Setting Hearing on Remand

[9313] (June 18, 1965)

Commissioners:

Paul Rand Dixon, Chairman
Philip Elman
Everette MacIntyre
John R. Reilly
Mary Gardiner Jones

Docket No. 6485

In the Matter of

The B. F. Goodrich Company

and

The Texas Company, corporations

On June 7, 1965, the Supreme Court vacated the judgment of the Court of Appeals for the District of Columbia Circuit which had set aside the Commission's order to cease and desist entered in the above-captioned proceeding, and remanded the case to that court "with instructions to remand it immediately to the Federal Trade Commission for further proceedings, without the participation of Chairman Dixon, in light of *Atlantic Refining Co.* v. *Federal Trade Comm'n*, —— U.S. —— (1965)." Pursuant to the mandate of the Supreme Court, the Court of Appeals on June 16, 1965, remanded the case to the Commission.

In accordance with the directions of the Supreme Court and the Court of Appeals,

It is ordered that:

(1) The Commission's decision and order of April 15, 1963, in which Chairman Dixon participated, be, and it hereby is, vacated.

[9314] (2) The appeals from the hearing examiner's initial decision of September 24, 1962, are set down for oral argu-

[14] See, generally, *Note, Judicial Acceleration of the Administrative Process: The Right to Relief from Unduly Protracted Proceedings*, 72 Yale L. J. 574 (1963).

ment on July 8, 1965, at 2:00 p.m., in Room 532 of the Federal Trade Commission Building, Washington, D.C., with 45 minutes allowed for each side. All questions of law and fact presented by the appeals will be considered by the Commission on the basis of the entire record. The Commission suggests that the oral argument will be most useful if counsel focus on the question whether the facts of record in the present case bring it within the Supreme Court's decision in the *Atlantic Refining Co.* case.

(3) Both sides may submit supplemental briefs with respect to the issues involved in the appeals, provided that such briefs are filed no later than August 9, 1965.

By the Commission, Commissioners Dixon and MacIntyre not participating.

SEAL

JOSEPH W. SHEA,
Secretary.

Issued: June 18, 1965

ORAL ARGUMENT BEFORE FEDERAL TRADE COMMISSION

[9476] (July 8, 1965)

BEFORE THE

FEDERAL TRADE COMMISSION

Docket No. 6485

In the Matter of
THE B. F. GOODRICH COMPANY a corporation
and
TEXACO, INC. (formerly the Texas Company), a corporation

Room 532, Federal Trade Commission Building,
Sixth and Pennsylvania Avenue, N.W.
Washington, D.C.
July 8, 1965.

Met, pursuant to notice, at 3:00 p.m.

Before:

PHILIP ELMAN, Member
JOHN R. REILLY, Member
MARY GARDINER JONES, Member

Appearances:

MILTON HANDLER, Attorney for Respondent Texaco, Inc.,
EDGAR E. BARTON, Attorney for Respondent B. F. Goodrich Company,
PETER J. DIAS, Attorney for the Federal Trade Commission.

PROCEEDINGS

[9477] The Bailiff: The Honorable Commissioners of the Federal Trade Commission. The Commission is now in session.

Commissioner Elman: This is the oral argument on remand in Docket 6485, B. F. Goodrich Company and Texas Company, Inc.

The Commission has allowed one hour and fifteen minutes to each side.

Mr. Peter Dias is appearing for the Commission and Mr. Milton Handler and Mr. Edgar Barton are appearing for respondents.

Have you agreed on the division of time, Mr. Handler?

Mr. Handler: Yes, Your Honor. I am going to take 45 minutes, and Mr. Barton will take thirty.

Commissioner Elman: Well, you be your own timekeeper. You may proceed.

Oral Argument of Milton Handler on Behalf of Respondent Texaco, Inc.

Mr. Handler: May it please the Commission, in focusing on the question posed by Your Honor's order, I propose, first, to analyze the Supreme Court's ruling in Atlantic, with emphasis on its precise ratio decidendi, and then to review the pertinent facts of record in the present case, to show that they do not fall within the condemnatory rules laid down by the Supreme Court.

I wish to emphasize at the outset that not a single [9478] operative fact which resulted in the invalidation of the Atlantic-Goodyear sales commission plan has been proved against Texaco and Goodrich, from which it follows that these proceedings should be dismissed.

What is it that was held unlawful in Atlantic?

The Supreme Court took pains to make clear that it did not regard the sales commission plan as per se unlawful. Indeed, the Solicitor General expressly disclaimed on all [sic] argument that the government was contending for per se illegality.

The nub of the Court's decision is found in the pithy words of Mr. Justice Clark at page 14 of the slip opinion, and I quote:

> "It is the oil company's power and overt acts towards its outlets that outlaws the sales commission plan."

Before turning to the matter of relief, the Court provided a concise summary of its substantive ruling in these words, at page 13, the paragraph immediately preceding V:

> "The short of it is that Atlantic, with Goodyear's encouragement and assistance, has martialled its full economic power in a continuing campaign to force its dealers and wholesalers to buy Goodyear products. The

anticompetitive effects of this program are clear on the record."

If Your Honors please, the thrust of the Atlantic decision is that the coercive use of sales commission constitutes an unfair method of competition where the seller possesses and [9479] exercises control economic power over its dealers to force them to buy the sponsored TBA with demonstrable anticompetitive effects.

Any conceivable doubt as to the scope of the Court's ruling is completely removed by part 5 of the opinion dealing with the matter of relief.

If the Court's substantive doctrine had been that sales commission agreements are per se unlawful, obviously there could be no question of the propriety of forbidding such plans, and there would be nothing to discuss regarding the scope of the order.

But the whole point of part 5 was to justify the breadth of the order precisely because it was not limited to the conduct held unlawful, to wit, the coercive use of the plan.

Atlantic had strenuously urged that the order should enjoin only the use of overt coercive tactics. This argument was rejected—not because noncoercive use of the plan was itself a violation of law—it was rejected because of a settled principle of administrative law that permits an agency to forbid lawful conduct which it deems necessary for effective relief.

Justice Clark makes this point abundantly clear on page 14 where he states, and I quote, "The Commission was of the opionion that to enjoin the use of overt coercive tactics was insufficient. We think it was justified in this conclusion. The long existence of the plan itself, coupled with the coercive acts practiced by the Atlantic Company pursuant to it, warranted [9480] a decision to require more." And I underscore the words "to require more."

When all you do is forbid the unlawful conduct, you obviously are not requiring more.

It is quite significant—and I do not know whether Your Honors are familiar with transcript of the oral argument before the United States Supreme Court—it is quite significant that on oral argument, when closely questioned by various members of the Supreme Court, Government counsel was explicit that the Government was not claiming the sales commission arrangement itself was inherently unlawful, that it was not asking the

Court to predicate illegality upon Atlantic's possession of coercive power, but rather upon its improper use of such power; and that such improper use consisted of the compulsion on a dealer to handle sponsored TBA against their will.

If I had the time, I could read the pertinent quotation, but if Your Honors do not have the transcript of the argument, we will make it available.

Substantiation of each and every one of these concessions that I have noted will be found on pages 72, 80, 52, 61 to 62, 82, 56, 58, 64 and 65 of the transcript of the oral argument before the Supreme Court.

In short, the Court was asked to find the Atlantic-Goodyear sales commission agreement unlawful because of the coercion, the improper use of coercive tactics, because of the [9481] improper exercise of Atlantic's economic power, and because of the anticompetitive effects which this resulted in. And that is what the Court did in holding the Atlantic-Goodyear sales commission plan unlawful. It held nothing more.

Now, if Your Honors please, the facts deemed controlling by the Supreme Court, and which are stressed in its opinion, fall under three main headings. One—coercion. Two—the possession and exercise of economic power over dealers to force them to purchase the sponsored TBA. Three—anticompetitive effect.

It is noteworthy that on each of these three categories of facts, there is a finding by either the Commission or the Court of appeals in our favor. What readily distinguishes Atlantic from this case is that the facts which were dispositive there were not proved here.

I invite Your Honors to read with me the Supreme Court's description of Atlantic's coercive tactics at page 8 of the slip opinion, the second full paragraph just above the Roman Numeral II.

> "The Commission stressed the evidence showing that 'Atlantic dealers have been orally advised by sales officials of the oil company that their continued status as Atlantic dealers and lessees will be in jeopardy if they do not purchase sufficient quantities of sponsored' tires, batteries and accessories. Indeed, some dealers lost their [9482] leases after being reported for not complying with the Goodyear sale program."

Each of these facts found against Atlantic is notably absent here. Far from advising dealers that their status as lessees would be in jeopardy if they did not buy substantial quantities of TBA, Texaco dealers were told exactly the opposite—namely, that they were free to handle any brands of TBA they desired—whereas Atlantic dealers suffered lease cancellations for not complying with the TBA program, no Texaco dealer ever lost his lease as the result of Texaco's TBA program. And contrasted with the effective policing by Atlantic to which Justice Clark refers at page 8 of his opinion, there has never been any finding that Texaco has at any time even attempted to police the TBA purchases of its dealers.

Commissioner Jones: What percentage, Mr. Handler, of the Texaco dealers use the sponsored TBA's?

Mr. Handler: 30 per cent of the dealers by number bought one dollar or more of the sponsored TBA. 20 per cent, by number, bought 1 dollar or more of the sponsored batteries. I propose to discuss that a little later.

Your Honors—

Commissioner Reilly: Mr. Handler, what about the conclusion of the Hearing Examiner—the conclusion of the Hearing Examiner to the effect that Texaco dealers did induce [9483] the purchase of sponsored TBA through coercion?

Mr. Handler: That finding was never affirmed by the prior Commissions that sat on this matter, and as I will demonstrate in a minute, the Court of Appeals, after scrutinizing this record, came to the conclusion that there is no substantial reliable or substantive evidence supporting that conclusion.

All I can say is that the Examiner was completely wrong.

Now, Your Honors, it is hardly a man bites dog type of argument for counsel bravely to proclaim that a record will not support a particular finding of fact. You are inured to hearing these assertions. But here you have more than my say so.

This record has been scrutinized by a reviewing court, and that court has held that coercion was not proved against the present respondent.

May I refer Your Honors to the following pages of the Circuit Court of Appeals' opinion, where the Court of Appeals holds, one, that the Commission did not find coercive tactics had been used, and that the record as a whole demonstrates the contrary—336 Fed 2d 754, at 762.

Two—that the use of coercive tactics was not proved in this case—page 763.

Three—that it is the announced policy of Texaco to respect the independence of the dealers, and, as the evidence overwhelmingly shows its practice has followed its policy—page 762.

[9484] In other words, the Circuit Court of Appeals was not relying merely upon a paper declaration of policy—it was relying upon the proofs in this record that the practice of Texaco matched its declared policy.

Four—that Texaco's dealers are quite free to accept or reject the recommendation and to handle a different line if they think it would be more acceptable to their customers. Page 763.

I could stop here on the issue of coercion, but there are additional facts which I believe you would want me to call to your attention.

Commissioner Elman: Mr. Handler, you are not arguing that we are precluded from finding that actual coercive tactics were used.

Mr. Handler: No. This record is before you, and you are free to make those findings comporting with the requirements of the Administrative Procedure Act, and the decisions of the courts—namely, the findings must be supported by reliable, substantial evidence, taking the record as a whole.

Commissioner Elman: But you recognize that the Supreme Court and the Commission itself have in effect wiped the slate clean, so far as the prior rulings are concerned—a majority of the Commission examining for the first time this record, de novo.

Mr. Handler: If Your Honor will permit me, may I [9485] restate what I said with a slight amendment. You are free, under the mandate of the Supreme Court, to the Circuit Court of Appeals, and the mandate of the Circuit Court of Appeals to you, to re-examine this record in light of the Atlantic case—to match, if you can, the facts against the rules laid down in that case, and if the facts do not support the condemnatory rules of the Supreme Court decision, you must dismiss. And I venture to believe and confidently assert that when you read this record you will find that there is no evidence here that would support a finding of coercion.

Now, let me bring to your attention three points on this

coercion matter in addition to the references that I made to the opinions of the Court of Appeals.

First—and I do not believe that you know about this, and hence I am taking the time to call it to your attention. Counsel for the Commission at the trial, at Joint Appendix 2353—that is the printed record—specifically disclaimed that he was charging respondents with coercion. This was towards the end of the trial. He solemnly asserted this to the Hearing Examiner.

Second—the Commission, on the first appeal, unlike what it did in Atlantic and Shell, did not make an explicit finding of coercion in this case. The findings, when you examine these three opinions, are quite different, and I think significantly so.

[9486] Third, there is one additional fact which I desire to advert to. Texaco has 38,000 dealers. If any of them had been required against his will to handle the sponsored TBA, there should have been no difficulty in obtaining such evidence. Not a single dealer was called to the stand to give such evidence. But respondents put plenty of dealers on who gave the contrary evidence—that they were not coerced and they were not required to handle the sponsored TBA, and they were entirely free to handle any products they saw fit.

Now, it is clear from this record that Commission counsel sent out questionnaires to determine whether the dealers were forced to handle Goodrich and Firestone TBA. How do we know this? We know this because a Texaco distributor received one such questionnaire. The questionnaire plus the distributor's answer was introduced into evidence by Texaco.

We moved for a disclosure of all the answers to the questionnaires, but the Examiner refused to make this information available to us.

I can readily understand why Commission counsel, being possessed of the facts negating coercion, expressly disclaimed before the Examiner any claim of coercion against Texaco. And I refer to that Joint Appendix, JAX 429, where Your Honors will find the text of the letter written by Commission counsel to various Texaco distributors and dealers—specifically asking them whether they were forced to handle TBA. And Your Honors [9487] know that if he had received favorable responses, he would put those respondents on the stand to give such testimony. This he did not do.

Now, the second factual area stressed in the Supreme Court's opinion is the possession and exercise of economic power over dealers to require them to purchase sponsored TBA.

Commissioner Elman: Mr. Handler, am I correct in thinking that as to your first point, about coercion, when you use the word "coercion" you are thinking of what the Supreme Court on page 10 of the slip opinion characterized as direct and overt threats of reprisal—that kind of coercion?

Mr. Handler: I mean coercion in the legal sense, yes.

Commissioner Elman: In a strict legal sense.

Mr. Handler: That is correct.

Commissioner Elman: Not the kind of utilization of coercive superior economic power that was expressed in the concurring opinion?

Mr. Handler: I will go further. I do not recognize any distinction between that which is coercive and that which is not coercive. But I do recognize that coercive tactics can be expressed and they can be implied. You can imply coercion from a course of conduct.

There is no evidence of any coercion, express or implied, or however you define it.

If, however, you want to say that persuasion is [9488] coercive, then you are misusing the word "coercive." And there is nothing here to support any finding of coercion, however defined, if defined correctly, without a distortion of the concept.

By coercion I mean forcing people to do something against their will. I don't care how you do it.

Commissioner Jones: By superior economic power, such as the Supreme Court refers to here?

Mr. Handler: However you do it. You sometimes can be coerced by somebody who has inferior power. But the mere fact that you have superior power does not mean that you are exercising it, and that you are coercing anybody.

The employer has superior economic power over his employee. Nobody would say that every minute of the work day that the worker is being coerced. That power has to be exercised in order to warrant a conclusion of coercion.

Commissioner Jones: You read the Supreme Court opinion as requiring active exercise?

Mr. Handler: Precisely.

Commissioner Jones: You do not read it as talking in terms of superior economic position.

Mr. Handler: Precisely. Not only that, but the Government counsel was specific in negating that he was attacking the existence of power in the abstract. He said it was the exercise, the use of the power that made it unlawful.

Commissioner Jones: Reading page 9 of the Supreme (9489) Court opinion, they are really talking about the relative economic positions, are they not?

Mr. Handler: Oh, yes. There are places where he notes a fact. But the thrust of the opinion is the way in which the power has been used.

Commissioner Jones: What part of the opinion is that?

Mr. Handler: Well, the passages that I have read to you before, on page 14, for example.

"It is the oil company's power and overt acts towards its outlets that outlaws the sales commission plan."

Very explicit.

Commissioner Jones: He is discussing there the order, is he not?

Mr. Handler: He is explaining the ruling that is the predicate for the order.

Commissioner Jones: As I read the opinion on liability, he is talking about the economic power and leverage.

Mr. Handler: No. Page 13. "The short of it"—"The short of it is that Atlantic, with Goodyear's encouragement and assistance, has martialled its full economic power"—how?—"in a continuing campaign to force its dealers and wholesalers to buy Goodyear products."

That is exercising the power in a continuing campaign.

Commissioner Elman: When the Court refers to overt acts, it might very well have had in mind such things as the [9490] double teaming, merchandising tactics, and all the pressures and tactics that might be used in sponsoring the TBA short of threats and reprisals.

Mr. Handler: I said before you can have a congeries of facts, and you put them on the scale, and you ask yourself, does this add up to pressure, coercion, forcing people to act against their will.

We do not have double teaming here. As a mater of fact, if you take the Supreme Court opinion, and we will do this in our

brief—we will show in parallel columns how the facts found there differ from the facts here.

Now, I said that the second factual area stressed in the Supreme Court is the possession and the exercise of economic power over dealers to require them to purchase sponsored TBA.

Now, the factual distinctions between Atlantic and the Texaco records are no less significant than the differences respecting coercion. Let me cite three examples.

The Supreme Court found that the most impressive evidence of the effectiveness of its exercise of its economic power was the remarkable switch of Atlantic dealers to Goodyear TBA. An Atlantic survey between 1946 and 1949 showed that 67 per cent of its dealers preferred another brand of tires, and 76 per cent another brand of batteries. Yet in 1951, within seven months after the agreement, Goodyear had signed up 96 per cent and 98 per cent respectively of Atlantic's dealers, in two (9491) of the three areas assigned to it. I am quoting from page 8.

There could be no more compelling proof of the exercise of economic power than these statistics.

Now, what are the comparable statistics as far as Texaco is concerned? Only a third of Texaco dealers carry any sponsored tires, and about a fifth carry any sponsored batteries and accessories.

As the Examiner found, none of the Texaco stations is an exclusive dealer of TBA. All those selling TBA handle nonsponsored products.

Where there is a dramatic shift from one brand to another, to the extraordinary extent disclosed by the Atlantic statistics, particularly in the face of the expression of the contrary desires of the Atlantic dealers, it would plainly be unreasonable not to infer that Atlantic had exceeded the bounds of normal salesmanship and recommendation. Per contra, where after over 20 years of the sales commission arrangement only a third of the Texaco dealers are handling the popular and extensively advertised tires of two of the four largest tire companies in America, the inference is equally plain that recommendation is not tantamount to command.

Lest there be any misunderstanding, let me make it clear that we do not deny that Texaco's resources are vastly greater than those of its dealers or distributors. But under the decision of the Supreme Court, illegality does not rest on [9492] a mere disparity of economic strength. Rather it is the use of power to

force the dealers to handle unwanted goods that leads to illegality.

Now, my second example of the differences in the facts with respect to this power point comes from pages 7 and 10 of the slip opinion which explains why Atlantic was successful in compelling its dealers to purchase Goodyear TBA. And I quote:

> "Goodyear also furnished, this time at the special request of Atlantic, a list of the letters from recalcitrant dealers who refused to be identified with the Goodyear program. These lists Atlantic forwarded to its district offices for appropriate action. On one occasion a list of 46 such dealers was furnished Atlantic officials by Goodyear. All soon fell in line. This is a particularly impressive example of Goodyear's inclination to use Atlantic's power for its own benefit."

Goodrich never furnished Texaco with any list of recalcitrant dealers. The crucial fact in this case is that Texaco dealers and distributors were not required to handle sponsored products and they ultimately and freely handled nonsponsored items without any interference whatsoever.

The third factual distinction to which I would like to refer is the Supreme Court's finding that Atlantic controlled all advertising on the premises of its dealers and permitted no signs or displays other than those of sponsored product.

Precisely the contrary is the situation here.

[9423] Texaco leases did not provide for any such control. Texaco never controlled the advertising. This record is replete with proofs of advertising by Texaco dealers of a host of nonsponsored products.

Now, I turn to the next indispensable factual element, competitive effect.

The Supreme Court notes on page 11 the Commission's finding that the activity of Goodyear and Atlantic impaired competition at the three levels of the tire, battery and accessory industry—manufacturing, wholesaling and retailing.

On the basis of this finding of adverse competitive effects, the Court concluded that the Atlantic program had been proven to be analogous to a tie-in, and therefore did not require Commission consideration of evidence of economic justification of the programs.

Integral to the Court's determination of illegality was the record proofs of adverse competitive facts in Atlantic.

Now, Your Honors will recall the striking differences between the Commission's original decision in our case and its rulings in Atlantic and Shell. And that difference was that in the latter two cases it found that the operation of the sales commission plans had serious anticompetitive effects—whereas it could make no such finding in the Texaco case because the record, the Commission pointed out, contains no such evidence of competitive effects.

[9494] Finding this record insufficient, the case was remanded for further evidence on the competitive effects of Texaco sales commission agreements upon competing suppliers of tires, batteries and accessories at the manufacturing, wholesale and retail levels.

Your Honors are aware that no additional evidence on competitive effects was adduced on the remand. The self-same record which the Commission found deficient on this issue in its first opinion is before you today, and it is just as lacking in proof of anticompetitive effect now as it was then.

Now, in Atlantic the Supreme Court found a classic division of markets between Goodyear and Firestone. This does not exist here.

In Atlantic, the Supreme Court found that Atlantic dealers were required to buy from a specified supplier point. We have precisely the contrary finding here by the Examiner.

There was full line forcing in Atlantic, and this shut the possibility of the small manufacturer selling the multiplicity of other items known as accessories through Atlantic dealers. There is no such thing here.

Finally, there was the foreclosure in Atlantic, whereas here—

Commissioner Jones: Excuse me, Mr. Handler. I do not understand your full line forcing point. What was the situation in Atlantic?

[9495] Mr. Handler: In Atlantic it was found that Goodyear had refused to sell tires and batteries to Atlantic dealers unless Atlantic agreed that they would buy the full line of accessories as well. And this foreclosed the manufacturers. You do not have that here. Contrary to the finding of foreclosure in Atlantic that the wholesale in Atlantic at the wholesale and retail level, here we have a specific finding affirmed by the Court of Appeals that the dealers were free to buy any product, any item they saw fit.

Commissioner Jones: That might go to accessories. That would not have anything to do with tires and batteries.

Mr. Handler: It goes to everything here. The finding is very clear.

Commissioner Jones: Suppose there wasn't any full line forcing. How does that affect whether in fact this contract has a coercive or anticompetitive effect?

Mr. Handler: Where there was full line forcing, you eliminated Atlantic outlets from purchasers of the various accessories. You do not have that here. Therefore the Commission found in the first decision that there had been foreclosure of the small manufacturer. This you do not have here.

If Your Honors please, the time is past where mere rhetoric and unsupported contention can substitute for proven fact.

It behooves counsel supporting the complaint, if he [9496] claims that the Supreme Court invalidated the sales commission plan as a matter of law, to cite supporting chapter and verse in the opinion of the Supreme Court. If he contends that mere salesmanship and recommendation on the part of a large oil company is unlawful, again it is up to him to point specifically to any part of the Supreme Court opinion which provides any aid or comfort for that view.

If he claims that this record will support findings of coercion, misuse of economic power, and anticompetitive effect, it is up to him to demonstrate that the Court of Appeals was in error on the first two of these indispensable elements, and that the original Commission panel was in error on the third.

If he says that Texaco imposed tie-in requirements on its dealers and distributors, let him point to the specific evidence on which he relies and which he claims was ignored by the Commission and the Court.

If he speaks metaphorically of Texaco's having farmed out its putative economic power to Goodrich and Firestone, let him put before you the facts as distinguished from the purple words.

If he asserts that recommendation is tantamount to command, let him refer to the substantiating data on which he relies, conforming here as well as on all the other disputed questions of fact to the familiar and settled requirements of Universal Camera.

[9497a] It is our submission that there is lacking here the three indispensable indicia of illegality under the Atlantic ruling—

no coercion, no improper exercise of power, and no anticompetitive effects.

In light of this signal failure of proof, this long pending litigation should be brought to an end by the dismissal of the complaint against Texaco and Goodrich.

According to the clock before me, Your Honors, I think I have eight minutes of my 45 for rebuttal.

Thank you very much.

Commissioner Elman: Mr Barton

Oral Argument of Edgar E. Barton,

On Behalf of Respondent B. F. Goodrich Company

Mr. Barton: If it please the Commission, I believe Professor Handler has demonstrated that the Supreme Court approved the Commission's order against Atlantic on the ground that Atlantic as a matter of massive record of proof, and indeed by its own concession, implemented its sales commission arrangements with Goodyear by coercively forcing its dealers to handle sponsored TBA. The Court relied upon coercion, not only to justify the broad remedy, but also, I submit, to define the wrong.

He has also demonstrated, I submit, that this record wholly fails to prove any such coercion by Texaco.

The predicate for the Supreme Court's upholding the order against Goodyear is similarly lacking here, and therefore [0497b] dismissal as to B. F. Goodrich is required.

Commissioner Jones: Mr. Barton, may I interrupt just a moment on this point of coercion, again. The Court relies fairly heavily on its Simpson opinion, Union Oil. And there, as I understand it, the coercive tactic was primarily existence of the lease.

Now, isn't it true that this is the same kind of coercion that the Supreme Court had in mind when it talked about Atlantic?

Mr. Barton: I think, Commissioner Jones, you have to consider that the background of the Atlantic case was that there was this vast switch-over of dealers from the Lee tires to the Goodyear tires within a period of some three months after the dealers had indicated by questionnaire before that they wanted the Lee tires.

Now, there was—nothing else could explain that, other than coercion. And that record was rampant with active overcoercion on the part of Atlantic, in which Goodyear participated to force the dealers to switch from Lee tires to Goodyear tires.

That was the vast overhanging fact of coercion that was behind the Atlantic decision.

Now, I agree with you. They referred—and that opinion is not the clearest opinion that was ever written by Justice Clark, I must say—that refers to the Simpson case. But the fact that is central to that decision is that switchover [9498] from Lee tires to Goodyear tires within a period of 90 days.

Now, there is no such fact here.

This record is absolutely barren of any evidence of coercion on the part of Texaco and is completely barren of any participation by Goodrich in coercion by Texaco.

In essence, in Atlantic the Court held that Goodyear necessarily knew, actively solicited and participated in Atlantic's coercion of its dealers. In the words of the majority opinion, at 1509, "So close was the team work of the two companies, that even with blinders on Goodyear could not have been ignorant of Atlantic's practices."

Again, at 1508—"Goodyear was no silent or inactive partner in the implementation of the sales commission plan. It did not simply sit back and passively accept whatever benefits might accrue to it from the Atlantic contract."

Again, "There was abundant evidence that Atlantic in some instances with the aid of Goodyear not only exerted the persuasion that is a natural incidence of its economic power, but coupled with its direct and overt threats of reprisal." That is 1506.

Again, at 1507—"The short of it is that Atlantic, with Goodyear's encouragement and assistance, has martialled its full economic power in a continuing campaign to force its dealers and wholesalers to buy Goodyear products."

Now, simply stated, the Court concluded that Goodyear [9499] aided and abetted Atlantic in its transgression, and that such a demonstrated propensity for harnessing and utilizing—those are the Court's words—Atlantic's powers and overt acts justified a broad order outlying Goodyear's further use of sales commission plans.

Here Texaco has not been a transgressor, and a fortiori, B. F. Goodrich cannot be an aider and abettor.

The facts of record fully support and buttress the logic of that conclusion.

First, let us examine the question of what Goodyear paid commissions for and what B. F. Goodrich pays commissions for.

Upon examination of the Atlantic record, the Court concluded that Goodyear paid Atlantic for the exercise of its economic power, coupled with "direct and overt threats of reprisal," 1506.

The record there compelled that conclusion, and Goodyear did not even offer testimony to the contrary.

The record in our case, even wholly apart from the absence of coercion by Texaco affirmatively, proves that B. F. Goodrich pays only for wholly legitimate services by Texaco, and the character of those services, together with the fact that they are absolutely essential to service station dealers, establishes the competitive and economic justification for B. F. Goodrich sales commission arrangements with Texaco and other [9500] oil companies.

Commissioner Jones: Let me ask you another question.

Is it your position that this Commission should find that the coercion here, to use your words, flowed from the economic relationship of Texaco with the service station—that as the other party of the contract, you would still not be involved in that?

Mr. Barton: I don't think, Your Honor, that there is evidence from which the Commission can find that what legally constitutes coercion flows from the relationship between Texaco and its dealers.

The facts of coercion—I want to get to that specifically—there is an absolute absence of any kind of coercion flowing from that relationship.

Commissioner Jones: So you would ignore your contract and say that this Commission must find acts of coercion by Texaco to hold Texaco, and acts of coercion by you to hold you, and you would ignore—

Mr. Barton: No. If you found in Atlantic that there was actual coercion by the oil company, in which the tire comany participated or knew of and reaped the benefit of, I take it there would be grounds for holding the tire company under the Atlantic decision. But here there are no facts upon which to base that finding of coercion by Atlantic—by Texaco. And there being no facts on which to base coercion by Texaco, there is no basis [9501] B. F. Goodrich, either.

I want to go down the list of the things which constituted coercion in Atlantic, which are not present here.

Commissioner Jones: You really stand and fall with Texaco here, then, don't you?

Mr. Barton: I think under the Atlantic decision that is true—except insofar as the Texaco contract itself is concerned, Texaco's relationship—not necessarily insofar as the other oil companies whom B. F. Goodrich has sales commission arrangements with, as to which there are no facts of record in this case.

Commissioner Elman: Aren't you also telling us that your case stands or falls depending upon whether the Commission finds in this record the same kind of crude, primitive acts of coercion which you say were used by Atlantic?

Mr. Barton: No, I am not saying that. I am not saying that you have to find the same thing. But if you examine the record and find none of the things—

Commissioner Elman: Then you say—correct me if I am wrong—as I understand your argument, and Mr. Handler's, it is that the Supreme Court decision in the Atlantic case has as a sine qua non the presence in that record of these acts of coercion found against Atlantic as to which it did not appeal, and that if we do not find in this record the same kind of blackmailing threats and so on—"If you don't buy this TBA [9502] that we sponsor, we will cut you off, we will do all kinds of terrible things to you."—if we do not find that in this record, you and Mr. Handler are arguing that we should dismiss the complaint.

Mr. Barton: Commissioner Elman, I take it that it is a settled principle of law, supported by the Supreme Court, where it said, that a sales commission plan is not illegal per se.

If it had been the rule that they were holding that a sales commission plan was illegal per se, none of that part of Justice Clark's opinion about coercion would have been in any way relevant to his conclusion.

Now, I submit that what the Supreme Court decision means in effect is that, as in many other fields of the law, a perfectly reasonable business practice can be forbidden if it is misused. I think that is the explanation of the Atlantic decision.

Commissioner Elman: You seem to be saying—and again, if I am wrong correct me—that we have to hold sales commission plans to be illegal per se if we hold that in this case there is such an inequality of bargaining power, such evidence of inequality in the relationship of the parties, that the sales commission plan would have an adverse competitive effect. That is not saying anything is illegal per se.

Mr. Barton: I think in the state of this record, where [9503] not only is coercion unproved, but the lack of coercion is affirmatively proved by—if you read the record, go through the

record line by line, page by page, and read the paucity of evidence put in by counsel in support of the complaint, in support of any kind of coercion, and analyze that testimony critically, and do not accept it willy-nilly, and then read the evidence of the 50 dealers who were called by respondents to testify what influenced them in their buying of TBA—if you look at the hundreds of pages of pictures of nonsponsored TBA in the dealers' premises of leased Texaco stations, you cannot arrive at any other conclusion than that the fact of noncoercion is proved by the respondents here.

Now, therefore I say to you, Commissioner Elman, that if you hold that there is a violation here by this sales commission arrangement, you will be in effect holding the sales commission plan is illegal per se—a proposition, I submit to you, which is not supported by the Supreme Court decision and is entirely inconsistent with the Atlantic Supreme Court decision, as is, I think, demonstrated by reading both the majority opinion and the dissenting opinion.

Now, the reason for that is this.

These sales commission plans do provide a necessary service to the retail dealer. Service stations require a comprehensive, integrated and continuing program of TBA counsel and training. Individual or small marketers, up against severe [9604] competition from specialized—Sears and Roebuck Stores, big discount chains, and traditional tire dealers—the service stations and the dealers are traditionally and often inexperienced in the many ramifications of tire marketing, and they cannot devote their entire time to it. They require continuous training, advice and assistance.

To illustrate, they need help in connection with inventory control in order to minimize investment, they need help in connection with installation and service, adjustments, trade-ins, familiarity with competitive prices and products, and a host of other factors necessary to effective TBA merchandising.

All of this help must cover literally dozens of items that are included in a TBA line.

But B. F. Goodrich and its independent wholesalers and supply points and their competitors do not and cannot furnish that kind of assistance to the dealer. The sales organization of B. F. Goodrich is geared to selling to large volume TBA outlets.

After selling the B. F. Goodrich nonexclusive franchise to a retail dealer, B. F. Goodrich salesmen can only call on him once or twice a year, only occasionally.

The B. F. Goodrich supply point, like B. F. Goodrich, deal primarily with large accounts—not with the dealer, small dealers.

So far as service stations, these wholesalers spend [9506] their time in solicitation of orders, service in connection with adjustments and repairs, and quick deliveries at all hours of the small pickup orders called in by stations for TBA items not in stock but requested by a motorist.

Since their visits to the station are essentially confined to order taking, the B. F. Goodrich supply point, like other wholesalers, do not furnish the training and merchandising services and assistance essentially to make service stations viable, successful TBA outlets.

Commissioner Jones: What is the connection between the service station's need for these kind of services and the designation of a particular supplier of these products?

Mr. Barton: We do not do that, as in Atlantic.

Commissioner Jones: No, no. But you are making the argument, as I understand your argument, that somehow because the service station needs inventory assistance and so forth—

Mr. Barton: That is right.

Commissioner Jones: —you cannot supply that. Therefore the conclusion is—

Mr. Barton: My point, Commissioner Jones, is that because the service station dealer needs these kind of services in order to be an effective TBA marketer, and because neither B. F. Goodrich nor its distributors who service that dealer can supply those services, it needs the assistance of the Texaco Company whose salesmen call on that dealer every week to help [9506] them to merchandise the product.

Now, that is what we pay the sales commission for. We do not pay—B. F. Goodrich does not pay Texaco a sales commission for delivering captive dealers to it as in Atlantic—as the Commission found, as the Court of Appeals found, as the Supreme Court referred to. We pay Texaco for perfectly reasonable, acceptable, permissible services. And under those circumstances, we—where we are paying for something that is perfectly reasonable and permissible, and Atlantic was paying for something that was reprehensible, there is no basis for this

Commission to say that this case is consistent with the Atlantic case, and therefore that an order should be entered here.

As the Court of Appeals, looking at this whole record, studying it in detail, said, there is no evidence to support the Commission's conclusion that the conduct found here, in this record, violates Section 5 of the Federal Trade Commission Act.

There is nothing in this record consistent with what was found in the Atlantic record which led the Supreme Court, the majority of the Supreme Court, to find a violation there.

Now, as I was saying, the oil companies are the logical agencies to furnish this essential continuing dealer training. Their self-interest lies in building strong dealers. They recognize the dealer's need for the additional income from TBA and its integral role in promotion of greater sales of gasoline.

Further, they recognize that if the dealers are to [9507] survive as TBA outlets, they must have this continuing help.

Commissioner Jones: Prior to these contracts, did you sell service stations?

Mr. Barton: Did our—prior to these contracts, the evidence of record is that when the oil company is not interested in TBA—in Chicago, Mr. Chamsen, one of the complaining witnesses, was on the stand. His testimony indicated that before there was a sales commission plan with Conoco in the Chicago area, the Conoco stations were not interested in TBA, did not handle TBA, simply handled gasoline.

In other words, these plans, these sales commission plans have now been in effect for 30 years. Over that period of 30 years, as Mr. Handler pointed out, less than a third of the Texaco stations handled on the basis of buying one dollar or more a month sponsored products.

This plan has been of benefit to the service station dealers, to Texaco, and the B. F. Goodrich Company. It has not been any kind of anticompetitive effect on anybody else. It is a perfectly normal, reasonable business relationship, so long as it is not abused. And of course any kind of people can abuse fair trade and be forbidden to use it. They can abuse any perfectly normal business activity and be forbidden to use it for misuse of it.

But where as here you do not find that misuse, there is no basis for holding that it should be forbidden.

[9508] Commissioner Elman: You are saying that the services that Texaco renders to its dealers, such as inventory assist-

ance and so on, are the kind of services that wholesalers render to retailers, and they ought to be compensated on that basis?

Mr. Barton: I am saying that they are the kind of services that the wholesalers do not have time to provide to the small service station dealers.

Commissioner Elman: The Goodrich wholesaler could not do that.

Mr. Barton: That is true.

Commissioner Elman: If a small service station dealer were now to buy from a Goodrich wholesaler rather than from Texaco, he could not get these services?

Mr. Barton: That is true.

Commissioner Elman: Why is that?

Mr. Barton: Because there are so many of them—the salesman of the wholesaler does not have the [time to] spend with the dealer to give those services. The Texaco salesmen come into the station—

Commissioner Jones: He is going to do it anyway, though, isn't he—the Texaco salesman? Texaco is going to do this for the dealers regardless of the sales commission plan or not.

Mr. Barton: Well, no, I do not know what the consequence of your holding that a perfectly reasonable business relationship has to be terminated is going to be. I do not have [9509] a crystal ball from which I can determine what will happen after that.

But what I am referring to is that these kinds of services that are given us by Texaco are not kinds of services that are found in Atlantic to be paid for by Goodyear—

Commissioner Jones: Atlantic did not give these kind of services?

Mr. Barton: Sure, but they did a lot more. I don't argue with you. If Texaco were found here to have done the kind of coercion, in addition to providing these services, that Atlantic was found to be doing, then an order would enter here, under the Supreme Court ruling.

Commissioner Jones: You claim Atlantic paid for coercion?

Mr. Barton: I claim Goodyear paid for these services plus the coercion which Atlantic was found to have engaged in and Goodyear was found to have participated in.

Commissioner Jones: We would all need a crystal ball to decide that one, I suppose.

Mr. Barton: Yes, I think so. But in this connection the oil companies incur substantial expenses in giving these services. The record here shows that Texaco's direct expenses, excluding such expenses as furnishing the station, TBA space and facilities, and use of credit cards, runs about 70 percent of the total commission. Texaco salesmen devote 15 percent of [9510] their time to these services. As I say, this is what B. F. Goodrich pays for. It is what it intends to pay for and what it does pay for. It does not pay for delivery of captive dealers to it in contradistanction to the situation in Atlantic where the Supreme Court said at 1509, "The Commission was well justified in concluding that Goodyear had in effect purchased a captive market."

The Court there repeatedly emphasized that almost 100 per cent of Atlantic's dealers signed up with Goodyear within seven months of the time that Atlantic switched. I have referred to that fact.

Commissioner Elman: If that is the crucial thing, whether it is a captive market, what difference does it make whether the captive is a coerced one or not, as long as it is captive?

Mr. Barton: Well, it was found to be captive in Atlantic because it was coerced. If you do not have coercion, there is no basis for finding it.

Commissioner Elman: You can have a captive who is not coerced.

Mr. Barton: Pardon?

Commissioner Elman: You can have a captive who is not coerced.

Mr. Barton: How can you find that there is a captive market here when only 30 per cent of the dealers handle any of [9511] the sponsored product? That was not the situation in Atlantic. All of them handled sponsored product. Part of them handled Goodyear in the territory assigned to Goodyear, and part of them handled Firestone in the territory assigned to Firestone.

Commissioner Elman: People are very frequently captives because of the situation in which they find themselves rather than because somebody is hitting them over the head. You have a captive audience right now.

Mr. Barton: That same kind of situation was in Texaco. There was no captive audience in any kind of a real sense, as in Atlantic.

Now the record here demonstrates that it is not Texaco but rather B. F. Goodrich and its wholesalers who sell the B. F. Goodrich franchise.

We had a hearing in Atlanta. Down there there were seven dealers signed up in a six-month period before the date of the hearing.

In that, we analyzed in detail the conditions under which they signed up. Six out of the seven were found by Goodrich and signed up without any prior notification from Texaco. Only one had been—had indicated he wanted to handle Goodrich, and Texaco forwarded the name to them.

The fact of the matter is that because Texaco has both Firestone and Goodrich, they do not notify the tire companies of a new station opening.

[9512] The tire company has to go out and get its own. Once it gets the dealer, then it pays Texaco for the services—perfectly legitimate services which it renders.

Commissioner Jones: You said some of these small stations did not want TBA. This 30 per cent figure—is that 30 percent of all the stations or all the stations handling TBA?

Mr. Barton: I did not say the smaller stations did not want TBA. I said that when there is not a TBA program by the oil company, the dealers do not have the know-how as to how to handle TBA. 30 per cent is of all Texaco stations, including some 8,000 of the dealers who bought from consignees. But the 30 per cent figure is solid in the record, and I do not think there can be any question of it.

Commissioner Jones: Does the record show whether all the 70 per cent handle TBA of other people?

Mr. Barton: The record shows that they do not handle TBA, sponsored TBA, and they do handle TBA.

Now, there is no evidence here of double teaming. Counsel has been unable to demonstrate to you that there was any double teaming as was found in Atlantic. The Examiner rejected contentions as to double teaming, even when characterized by counsel supporting the complaint as occasional.

Commissioner Reilly: Mr. Barton, what was the relationship between Goodrich and Texaco prior to the consignment [9513] agreement?

Mr. Barton: I don't know. It was so long ago I don't think the record shows.

Commissioner Reilly: Is there anything in the record as to why Goodrich entered into this agreement?

Mr. Barton: Yes, I think there is quite a bit. Mr. Heban's testimony was quite explicit on that—that this was a method of distributing tires through service stations which made business sense; if the tire company received services from the oil company of a perfectly legitimate nature which it paid—to pay the 10 per cent commission for. And that was the reason that it was undertaken.

Commissioner Reilly: So in a business sense, it has been advantageous to Goodrich to be under this type of an arrangement?

Mr. Barton: Certainly. Otherwise they would not pay the 10 per cent.

Commissioner Reilly: Is there anything in the record to indicate there was a purchase resale agreement with Texaco prior to the consignment?

Mr. Barton: No, there is not.

Now—

[9514] Commissioner Elman: To what extent was this an exclusive agreement?

Mr. Barton: Period?

Commissioner Elman: To what extent did the contract between Texaco and Goodrich provide for exclusivity?

Mr. Barton: No provision for exclusivity whatsoever.

Commissioner Elman: Texaco could have made the same agreement with Goodyear the next day?

Mr. Barton: And in fact did. In fact they made the same agreement with Firestone, and in 1956 made the same agreement with U.S. Rubber.

Commissioner Jones: Different territories?

Mr. Barton: No, the same territory.

Commissioner Jones: In other words, the Texaco—did the Texaco dealers have a choice of three different types of companies?

Mr. Barton: Or any tire company. They had a choice of any tire company that they wanted, any wholesaler they wanted to do business with. Texaco received sales commission if they bought from a Firestone outlet or a B. F. Goodrich outlet or U.S. Rubber outlet.

Commissioner Jones: Texaco salesmen received commissions?

Mr. Barton: Texaco got the sales commission from the tire company if they bought from any one of those outlets of any one of those tire companies.

Commissioner Elman: These are only three lines of TBA that Texaco sponsored?

[9515] Mr. Barton: So far as this record is concerned, that is true.

Commissioner Elman: What were the percentages of those three?

Mr. Barton: Do you mean——

Commissioner Elman: Goodrich had 30 per cent.

Mr. Barton: No, no. Goodrich did not. The 30 per cent figure is all sponsored lines.

Commissioner Jones: What is in the record about the Texaco salesmen? Do they get a commission?

Mr. Barton: No, the Texaco salesmen do not get the commission. The commission is paid by the tire company to the oil company for the services rendered by the Texaco salesmen given in connection with the oil company's outlets.

Commissioner Jones: Is that earmarked to the salesman in some way?

Mr. Barton: No, it is not. I am sure it is not.

Commissioner Jones: Wasn't it true in Atlantic it was?

Mr. Barton: That I am not sure of.

Commissioner Reilly: Mr. Barton, let's go back to that 30 per cent a minute. I am not sure I am clear.

Goodrich sold 30 per cent of the three sponsored——

Mr. Barton: No.

Commissioner Reilly: Goodrich sold 30 per cent of what?

[9516] Mr. Barton: The 30 per cent figure is that of all of the Texaco outlets, only 30 per cent of them bought any sponsored products more than a dollar in a given month.

Commissioner Reilly: Now, of the Texaco stations which bought sponsored products, how much of that was sold by Goodrich?

Mr. Barton: Well, there is no—you mean of particular service stations?

Commissioner Reilly: No. What is the percentage of the sponsored products sold by Goodrich? You said there were three.

Mr. Barton: I here do not know the answer to that. We will have that in the brief.

Commissioner Reilly: All right. Do you know what percentage of TBA sold by Texaco was sponsored?

Mr. Barton: What percentage——

Commissioner Reilly: What percentage—assuming that the station sold a certain percentage of TBA, how much of that was sponsored as opposed to unsponsored?

Mr. Barton: Well, the record has some figures in it that less than a majority of the TBA sold by Texaco service stations, much less, is sponsored.

Commissioner Elman: Is there a finding on all of this by the Examiner, as to the percentages?

Mr. Barton: No.

[9517] Commissioner Elman: He did not——

Mr. Barton: This is in the record, that the Examiner did not make findings on it.

Commissioner Elman: You might be very helpful to the Commission when you get around to writing your briefs if you document all this.

Mr. Barton: We will be very specific on it.

Now, the Supreme Court pointed to the fact that Goodyear furnished Atlantic with detailed reports from which Atlantic could determine the exact amount of sponsored products purchased by each Atlantic retail outlet.

Commissioner Elman: You have about one minute left, Mr. Barton.

Mr. Barton: All right.

I want to end up with this.

It is perfectly clear on the record that the same kind of anything similar to the activities found in Atlantic are not present here. Under those circumstances, this complaint should be dismissed after some ten years against both Texaco and Goodrich.

Commissioner Elman: You are not suggesting that all these practices have been abandoned or anything like that, have you?

Mr. Barton: I am suggesting that there is a sales commission plan and it is perfectly a reasonable business relationship [9518] if it is not misused, as it was in Atlantic, and under those circumstances, the complaint should be dismissed.

Commissioner Elman: But the case is not stale in the sense that the practices to which it relates have long been discontinued or anything like that.

Mr. Barton: If you mean that the sales commission plan has been discontinued, the answer is no.

Commissioner Elman: All right.

Oral Argument of Peter J. Diss, on Behalf of the Federal Trade Commission

Mr. Diss: If the Commission please, it seems that maybe memories have dimmed over the years as to what the facts of this record actually show.

To start with, I am in rather an unenviable position of telling you, as I hate to do that exactly what you, Mr. Elman, pointed out is the same thesis that I have pushed in this case from its inception, and that is to say it has never been contended that you had to have this, as you put it, crude, primitive coercion. Truthfully, I thought that that particular ghost had been laid to rest in my reply brief, reply to respondents' proposed findings when, as a grasping at straws, they claimed that I apparently misled them by saying that I did not claim there was coercion in this case.

I won't take too much time on it because—I will certainly have it in my brief to you. But the record is definitely [9519] clear that before these hearings started, prehearing conferences, and after they had started, long before they had continued, I made it perfectly clear that if coercion was found, if overt coercion was found, that the complaint in this case would certainly cover it. But it has always been my position that we were not claiming the overt, crude type of coercion. And on the very last day of hearings—I think it was December 10th, 1958—I probably did put my foot in my mouth when I stated that "I certainly do not agree that there was ever any contention that there is coercion in this case."

I certainly should have said overt coercion. I thought that had been explained, but apparently there is still a glimmer of hope in respondents' eyes on that one.

Commissioner Elman: When you say coercion or overt coercion you mean the kind of direct and overt threats of reprisal that the Supreme Court referred to on page 10 of the slip opinion, in the Atlantic opinion?

Mr. Diss: I would like to go back, if I may, to the opinion of the Seventh Circuit.

Now, that in my opinion states precisely—

Commissioner Jones: This case or the Atlantic case?

Mr. Diss: This will be the Seventh Circuit's opinion in the Goodyear-Atlantic case. I am sorry I only have a slip opinion—

I do not have the exact citation. But at page 13—"Atlantic contended that its influence over its dealers to purchase [9520] sponsored TBA short of force, threat or intimidation is lawful, that it may recommend high quality TBA to its dealers, and that such action serves a legitimate business purpose in the promotion of the sale of gasoline. This would be a persuasive argument except for the dealer's economic dependency upon the oil company. In that setting, recommendation is tantamount to command. Overt practices are as efficient as overt action. And sophisticated methods of pressuring the dealers into carrying sponsored TBA are as effectual as expressed covenants and open threats."

Commissioner Jones: What are the facts in this record, counsel? What are you relying on?

Mr. Dias: I am relying on the Seventh Circuit finding that the heart of this case, and the corresponding finding by the Supreme Court, that the source of leverage, and also listed as additional source of leverage, of a lease and sales agreement.

Under those agreements, Texaco retains—the leases are for one year, and they contain the normal housekeeping—I should not say normal—they contain housekeeping, equipment load, and alteration privileges.

In my opinion, and I think it has been found by the Supreme Court in the Simpson case, those are the—as they have said, the heart of the case.

Under the circumstances of those lease arrangements, the dealer was certainly bound and tied to Texaco and subject completely to Texaco's activities or demands.

[9521] Commissioner Jones: Well, assume that, counsel. What is in the record on what Texaco did to "recommend" the use of sponsored TBA?

Mr. Dias: Well, I think the Seventh Circuit also talked in terms of—or it was the Supreme Court, actually, that talked in terms of—found the Seventh Circuit's findings as to the components of the sales commission system. And that consisted of advance notice, training school, double teaming, reporting techniques, minimum inventory, advertising assistance, and the restriction of credit cards to sponsored TBA.

Commissioner Jones: I think I do not make myself clear. Are you talking now of Texaco or Atlantic?

Mr. Dias: Well, in the Goodyear-Atlantic case——

Commissioner Jones: I want to know about Texaco.

Mr. Dias: Yes, ma'am. I pointed out the components of the sales commission plan that both the Supreme Court and the Seventh Circuit found existed in the Atlantic-Goodyear situation, and I am saying to you now that the same situation and the same factors exist in this case. I might mention that in preparing this, I have compared the facts in the Atlantic-Goodyear case with the facts in the Texaco-Goodrich case, and where I refer to the facts found by the Court, or the indicia of this economic power in the Goodyear-Atlantic case, I am saying to you now that I will duplicate that by reference to facts in the Texaco-Goodrich case.

[9522] Commissioner Reilly: Well, even though you said that you did not base your case on any overt coercion, you did present evidence, did you not, that some dealers testified that they had been pressured.

Mr. Dias: I am satisfied of that, yes, sir. As I say, we have not agreed all through this thing. But I think I can convince you that there is overt coercion in this.

Let's take the very first item which the Courts considered to be the components of the sales commission system, and that is the advance notice.

Now, this may not be the crude, overt type, but it is the subtle, plodding type of coercive activity.

Under the advance notice, when a dealer applies for a station, and before he moves into it, the Texaco people advise him that Goodrich and Firestone have fine products, and he would be well advised to stock his station with one or the other of those products. They convince him that a service station operator just cannot exist without TBA. The usual cost of the stock in inventory is somewhere between $5,000 and $7,000.

By instructions to their own sales people, and in practice, Texaco notifies Goodrich and/or Firestone that here is a new station that is opening up, here is the dealer's name and—or prospective dealer's name—and before that man gets anywhere near his station—we have an instance of the man having been contacted three weeks before he got his station—the rubber [9523] companies are in to see the prospective lessee, they have an opportunity to push their product, and as a matter of fact the Texaco people introduce the prospective lessee on many occasions to the rubber company employees.

Commissioner Jones: Are there findings on this? As I understand respondents' argument here, they claim this is factually not true and not present in this case.

Mr. Diaz: That is why I mention the fact that apparently memories have dimmed over the years.

Commissioner Jones: In other words, your briefs will document this.

Mr. Diaz: Yes, ma'am. They certainly will.

They then talk about training schools.

In the Texaco-Goodrich case, there is not too much along the line of training schools as such. However, it is clear on the record that when they do put in a lessee, a prospective lessee, through any sort of training, it is in a station where there is nothing but sponsored products promoted. In addition to that, they coach the dealer to the extent of showing him pictures at home. Their entire thrust is in connection with the promoting of the sale that is the business of convincing the lessee that there is only Goodrich or Firestone. Everything is emphasized—I mean every thrust is emphasized on the sponsored product.

The Texaco instruction, incidentally, on the opening of [9524] a new station is as follows:

"It is important that the tire company salesmen be notified in advance of our intention to nominate a new account, and that he be requested to contact the account."

The benefit of this—Goodrich's own vice president agreed that it is a great help to be given the operator's name. A Firestone representative stated that this is the best time to get close to those guys, because if you can get them before competition does, you get them buttoned up.

On the double teaming that respondents claim is not in this record—it amazes me, because one of their own witnesses testified that a Firestone man—testified that Texaco salesmen accompanied him 15 to 20 percent of the time. There is evidence in there that on call the Texaco salesmen will accompany the rubber people. This again is something I can and will brief thoroughly for you. I think there is ample evidence in this record of the double teaming.

As a matter of fact, as I mentioned before, even before they move into their station there is a form of double teaming in that the Texaco salesman brings the rubber salesman, the sponsored rubber salesman, around to meet the new dealer.

Now, that is a form of double teaming.

The competing supplier, on the other hand, who did not have that benefit and called on stations commented that "When the

Texaco salesman is there in company with the rubber salesman, [9525] if that is not pressure, I don't know what it is."

Commissioner Jones: Counsel, how do you answer respondents' argument that be that as it may, all these facts assume they exist, nevertheless it was not very successful. Where is the evidence of economic pressure when they only succeeded with 30 per cent of the dealers?

Mr. Dias: Well, perhaps I can answer that better this way. You recall in the Atlantic-Goodyear case the Supreme Court, I believe it was, found that over a five-year period there were $55 million worth of sales under this sales commission plan—that was a six-year period—and over a five-year period in the Texaco-Goodrich case there had been something like close to a quarter of a million dollars' worth of sales. As a matter of fact, the combined commissions that Texaco received over that period of time was just about or almost 50 percent of the actual sales of TBA in the Atlantic-Goodyear case. And that, I think, is significant.

Now as to these 30 per cent—if you are talking about the percentage of dealers that are buying the product, frankly, I do not recall this 30 per cent figure. I would not contest it, because we will brief it, and there has always been a real contest between us as to how you compute percentages.

But there is one point that should be borne in mind. Texaco has about 38,000 stations—roughly that [9526] figure. That includes this 8,000 that Mr. Barton told you that are normally not considered in this TBA arrangement because they in turn buy from distributors or consignees, so that would lower your figure to 30,000, 31,000. Then out of that figure you have to deduct your "DD" stations which majority, if not most, are not suitable for TBA sales—restaurants, garages and one thing or another—they are just not the ideal TBA type of service station.

That is not to say that there are not some contract stations which are TBA potentially—they have it—and there are some of them.

But among the lessees—they incidentally—the contract stations make up somewhere around 16,000 or 17,000 of this remaining 18,000—23,000 figure.

Now, among the lessees—and I think this is an earmark of some of the problems in this case—there are some, we don't know how many—the figures were impossible to obtain, apparently—but among those roughly 13,000, there are lessees who

are not TBA potential and consequently are not recommended.

Also, dealers who are not recommended or not accepted by Goodrich—and this goes for Firestone—are those whose location are in conflict with other distributors in the area. That is to say—and respondents among the 59 dealers they brought in had dealers who probably announced that they were not carrying Goodrich or Firestone TBA. But ultimately there was—[9527] it was developed there was another Goodrich supply point, either a store or a franchise operator, one thing or another, within a block of this station, or it was a tiny town that certainly could not support more than two distributors of any particular product.

Now, that, too, is an unknown figure, but it is a fact of life—that Goodrich, in other words, and Firestone also do not accept each dealer that is recommended for those reasons—that they could conflict with already established distribution.

We do not know what that figure is. We have tried to get some breakdown, but those figures are hard to get.

Along that line—I am not implying that respondents refused to give the figures. The case was brought in 1956, and I think it is significant to note that the override commission plan started with Goodrich in 1940. The question was asked whether or not they had changed over from purchase and resale, and the record only shows that prior to 1940 Goodrich had been—I am sorry—Texaco had been experimenting with different forms of TBA supply, and in 1940 finally devised and entered into the agreement with Goodrich providing for the sale of commission contracts. And I think, if you will keep that in mind, you will understand why the evidence in the Atlantic-Goodyear case is so much stronger when it comes to the crude, overt type of coercion.

Goodyear-Atlantic commenced their operation in—I [9528] think they negotiated in the latter part of 1950, and I think that the man actually commenced in March of 1951.

There are cases, I think I have mentioned before, issued in January of 1956, but obviously our investigation started earlier.

If I recall, I think the record demonstrates that our investigation probably started in around 1952 or 1953.

So you can see that in the investigation, or when the investigation occurred, the rubber hose marks were still very, very apparent in the Goodyear-Atlantic market.

There was no difficulty finding the stations and the operators who had been horse-whipped and forced into line.

The situation, or the change-over from purchase resale to sales commission, that was apparent—they could not get away from that. We were in there early enough to get the evidence of that.

To begin with, as far as this record shows, Texaco never was in the purchase resale, or at least as far as we know they were not. And so you have a brand-new fresh practice insofar as Atlantic-Goodyear was concerned that merely by the passage of time we could not hope to match in the Texaco-Goodrich situation.

But again, I do not think you need that. I think that is only a matter of degree.

One other thing—I may as well tell you now—[9529] that you are not going to find here. You are not going to find the division of territory in the Texaco-Goodrich arrangement that you had in Atlantic-Goodyear. In Atlantic-Goodyear it was almost laughable. They had Goodyear sponsored on one side of the street, Firestone on the other. Not quite that bad.

But you don't have that here.

In this case, you find Texaco is willing to accept a commission no matter where the sales are made, who is making them, or how many are selling to them.

The record does show that the three rubber companies are in. They are sponsored. And I think even that in itself is highly suspect.

Certainly if an operator has any sense at all, he, I suppose, would buy the popular brands of any products. In Texaco, if a lessee chooses Firestone or Goodrich or U.S. Royal—and we do not know where that is going to end—they are collecting a commission.

But at any rate, to get back to——

Commissioner Elman: Suppose Texaco were to announce that it would make this arrangement with any TBA producer?

Mr. Dial: You know, I think they would love to do it.

Commissioner Elman: And in consideration for these services which Texaco would render, both to its dealers and to the TBA suppliers, it would request 5 per cent or whatever it is commission. Now, under that arrangement, assuming it was taken [9530] advantage of by a number of TBA manufacturers, would any one TBA producer be favored necessarily?

Mr. Dias: Well, I suppose not. But the oddity in this case is that in trying to walk this tightrope that Texaco has in explaining what it actually does to earn its commission, it has stated that whatever it does, it does for any brand of TBA. So then—because TBA is so important to their service stations, that a dealer cannot survive unless he has TBA. And so on the one hand they would have you believe that everything they do, all the encouragement they give their dealers, and all the ideas they give them for sponsoring, stocking and selling TBA applies across the board to all sellers.

Now, if that is the case, it seems as though Firestone and Goodrich are a couple of philanthropists. They do not have to do that, apparently. But I do not believe that for a minute. I think the thing that is selling this TBA for Firestone and Goodrich is merely this hunting license, this 10 percent commission for going in there and talking to their dealers. That is all in the world that they are being paid for. Because—Mr. Barton has said that Texaco does most of the selling. At least he said that one minute. I think the next he said something else.

But the fact is and the record shows that Mr. Hoban, their vice president, general manager of merchandising said, "We, Goodrich, actually do the selling. We rely on Texaco for [9531] something else—they keep the people stirred up during the year" or some other such thing. "But we, Goodrich, actually do the selling." And then when you read the testimony of Mr. Grelecki, who was questioned along these lines, he is a Goodrich distributor, and you find he as a Goodrich distributor has all the headaches. He does all the work.

So it is hard to tell who is doing what for whom and who gets the 10 percent.

Commissioner Elman: What happens to the idea of a captive market if you have nonexclusive sales commission agreements with a large number of TBA suppliers? The dealers of a particular oil refinery do not become captive, do they, in that situation?

Mr. Dias: They are captive to the extent that the boss is telling them—"This is what we think you should carry," and under the circumstances I do not think they have too much choice. Sure you are going to find some dealers who are pretty bull-headed about things and they refuse to go along. It is just bound to happen in an organization that big. But I think

they play the percentages, and they know that the average lessee is going to be willing to live the easy life, and go along with the recommendation.

Commissioner Reilly: What if Texaco took a survey and they found that their stations, on an average, preferred these seven brands of TBA, and they entered into consignment agreements with these seven groups?

[9532] Mr. Dias: Consignment or commission agreements?

Commissioner Reilly: Commission—excuse me. Would that be wrong?

Mr. Dias: Well, of course, you are posing something that has not happened, and I can only judge by what happened in Atlantic-Goodyear.

I think if there was an eighth company that would promise to give Texaco a little bit more, I think they would wind up with the eighth company. As in Atlantic, 60, 70 percent of the dealers wanted to stay put.

Commissioner Reilly: Let's say they had eight companies, and they were using their economic power over their dealers to force the dealers to take one of those eight companies. The dealers had a choice of eight. Is that all right, or is that wrong?

Mr. Dias: Well, I don't know. I don't think I can answer that. Certainly the bind is less if they have eight, because if you talk about eight different rubber companies, for example, you are touching on just about everything that is in the business of any account. I don't know what the situation would be there.

Commissioner Jones: How many did they have in this case?

Mr. Dias: They have three. We started off with Goodrich and Firestone. We know about those two. And then later [9533] they started an arrangement with U.S. Royal.

Commissioner Jones: Anything in the record on the comparative prices to the dealers of sponsored and nonsponsored TBA?

Mr. Dias: Very little—very little. I can think only of a situation in Chicago—the witness from the Perry Tire Company indicated—of course this is hard to gauge. They were selling Goodrich and I think Firestone take-offs, and the take-offs—somebody buys a new car, rolls it into the garage, and takes off the blackwall and puts on white walls, and the tires are practically new. I don't think that would quite fit in. I don't know of anything offhand. If there is, I will certainly look. But I do not recall anything as to prices in this case.

Commissioner Elman: What was the number of TBA suppliers in the Atlantic-Goodyear case?

Mr. Dias: Designated supply points?

Commissioner Elman: No. Did Atlantic make the same sales commission plan arrangement with other TBA companies besides Goodyear?

Mr. Dias: Yes—Firestone.

Commissioner Elman: Just Firestone?

Mr. Dias: Yes.

Commissioner Elman: There are two in that case and three here.

[9534] Mr. Dias: Well, two in each as they started off, but ultimately three here.

Commissioner Reilly: In the Atlantic case, were not the Firestone and Goodyear territories divided?

Mr. Dias: They divided territories in that case.

Commissioner Reilly: So in effect in a given area there was only one?

Mr. Dias: That is correct, that is correct. So that you had an entirely different situation there in that respect. But again, as I say, that is a matter of degree, because in a situation of that sort you have added to your nonsponsored sellers of TBA products—you also have one who nominally is a sponsored product, but not sponsored in that particular area. And that is a situation in that case.

Commissioner Elman: Well, do you think that we could make—we could properly make in this case the same conclusion that was made in the Atlantic-Goodyear case, where the Supreme Court said that the Commission was well justified in concluding that Goodyear had in effect purchased a captive market?

Mr. Dias: I do not——

Commissioner Elman: Now, has Goodrich in effect purchased a captive market if there are other lines of TBA that are sponsored by Texaco?

Mr. Dias: Well, two things to bear in mind.

First, Goodrich was the first in this with Texaco, [9535] as far as I know. So from 1940 to about 1943 it was Goodrich alone.

In 1943 they entered into a contract with Firestone—Texaco entered into the contract with Firestone. So you have—to the extent that Goodrich has bought the control and economic power of Texaco in order to get these stations, I would say yes, it does fit into the same thing. I do not think the fact that there

are two changes the situation to any—in any material respect.

Commissioner Reilly: Well, Mr. Barton is going to give us figures on the amount of sponsored TBA products sold to Texaco stations by Goodrich—the amount of the whole sponsored TBA products sold by Goodrich. I wonder if you could do the same thing.

Mr. Dias: I intend to. I have done it before. The figures are here. As I say, there has always been some question as to who have come up with the proper figures. But we will have them in there.

Commissioner Reilly: Before we go any further, while we are talking about what you are going to do in your brief, I notice that Justice Goldberg, in his dissent, made a statement regarding the Texaco-B. F. Goodrich case—that is on page 3 of his dissent, I believe—saying that the Commission "expressly held illegal the TBA sales commission arrangement between Texaco and Goodrich without analysis of the relationship between Texaco [9536] and its dealers." I would like to have you cover that—if it is so or not so.

Mr. Dias: Well, I don't think that is so at all. I think the heart of the relationship is in the lease arrangement, and together with the sales agreement.

Now the leases, as I mentioned before, are for one year and—let me just step back one minute.

Texaco does not own all the properties that it leases to its operators. It leases many of those—many of those stations are leased—many of the properties are leased by Texaco from third parties and then in turn re-leased to operators in some instances may be those who actually own the property to begin with.

But in analyzing the leases in this case, bear in mind now that here is Texaco, a lessee of property from third parties, which they intend to dispose of some other way. You read those leases and you will find that every provision in that lease favors Texaco as a lessee.

Now, the normal practice certainly is, or the normal occurrence is that the lessor of property is the dominant party. Certainly anything, any odds that favor anyone in a situation of that sort run towards the lessor. But that is not true in connection with property that Texaco leases from third parties.

Now, when Texaco in turn re-leases that property and property that they own outright, you will find that it and behold,

[9537] once again the lease—all the terms of the lease run in Texaco's favor.

Now, we pointed that out at some stage of this proceeding and the reply was sort of funny. Texaco said—that is not unnatural, "but those are our lease forms." So if the party just gets in there and prints their own lease forms, I take it they can be the dominant party in any transaction.

Well, I think—I do not think that is true.

But at any rate, in addition to having everything run in their own favor, you will find that although the lease is run for a year, and subject to termination on thirty day notice either at the end of the year or whatever the period is—you will find that there are other provisions in there that definitely give Texaco at its option, strictly by its own arbitrary determination, the right to cancel out if they see fit.

Now, there are many reasons—and I can get to them right now.

Commissioner Reilly: If you are worried about answering my question, I just suggest that you answer that, and answer that question of the Supreme Court dissent in your brief.

Mr. Dias: I had that in mind, yes sir; and I can belabor that for half the time that is remaining to me because I think the leases—in fact, it is not original with me, certainly. The courts have said it.

These leases and sales agreements—the petroleum sales agreements are the heart of the case. They are the source [9538] of the leverage.

The sales agreement runs concurrently. And this sales agreement deals with the sale of petroleum products. They run concurrently.

Commissioner Elman: You sound as if you agree with Mr. Justice Steward, who also said the relationship between the refiner and the dealers was at the heart of the case, and that it did not make any difference what particular plan was used, so long as that relationship existed—any plan of TBA which the refiner sponsored was going to have an unfair competitive advantage over every other.

Mr. Dias: You know, if I may state my own personal views—I know that the phrase, "per se" is almost nasty. But in my own opinion, I think under the sales commission plan I believe that it is per se illegal for an oil company to deal in TBA, and for many reasons.

Commissioner Reilly: If that per se illegality is based upon the relationship between the dealer and his refiner, then doesn't that also hold true for the purchase resale plan?

Mr. Dias: It would appear so on the surface. But let us just point this out.

Commissioner Elman: You are not saying that the sales commission or anything else is illegal per se. What you are saying is the relationship between the gasoline refiner and his dealers is illegal per se. That is what you are really [9539] saying.

Mr. Dias: Well, I don't know if I want to go that far.

Commissioner Elman: Because you are saying the essence of this thing is in that relationship, and not in the particular form of the distribution plan. What difference does it make whether it is sales commission plan or a purchase resale or anything else, so long as you have that inequality of bargaining power you are going to have a captive market. If you have a captive market what difference does it make how you sell that captive market?

Commissioner Reilly: You would not object to a purchase resale plan where the gasoline refiner purchased tires from eight to ten tire—battery accessory manufacturers—even though they had economic power over their station.

Mr. Dias: Well, if I may again—and this is my own personal thought—if we had the authority, if we could write the order——

Commissioner Elman: You won't have that opportunity, believe me. You can make suggestions, but you won't be writing any order.

Mr. Dias. It would be my thought that the oil company should be out of TBA entirely.

Commissioner Reilly: How about the problem that Justice Goldberg is worried about? Should they be out of it entirely or only out of it in regard to large refining or [9540] integrated station operations? How about—in this case——

Mr. Dias: The amicus that Mr. Justice Goldberg——

Commissioner Reilly: Pertaining particularly to this case. As I recall, there are three companies—Jenney and Shell American——

Mr. Dias: There are a total of five other oil companies besides Texaco.

Commissioner Reilly: But there are some fairly small ones.

Mr. Dias: I believe that is true.

Commissioner Reilly: Justice Goldberg seemed worried as to whether the order should cover the Goodyear—well, the tire,

battery and accessories manufacturers relationship with the small companies as well as the larger.

Mr. Dias: In my opinion it should. I do not see any reason for an oil company, small or large, to be in the TBA business under the sales commission methods of selling TBA for only one reason.

Commissioner Reilly: What if Jenny Petroleum, if I am saying it correctly, had no relationships with their stations—if they had stations—such as Texaco has?

Mr. Dias: Well, that is along the lines of the comment that the majority made in the Supreme Court. I recognize that. But truthfully I do not know what marketing oil company does not have this type of arrangement with its dealers.

[9541] Commissioner Reilly: We just heard three weeks of that.

Mr. Dias: Sir?

Commissioner Reilly: We have the advantage of having heard three weeks of that.

Commissioner Elman: We know that some oil companies do sell some retailers without any kind of string attached—they just sell them. There are jobbers and there are other forms of distributors, other kinds of distributors.

Now, suppose you have an oil company like that,—just somebody who sells gasoline to an independent businessman who is a retail seller of gasoline. Now, is Goodrich to be barred from entering into a sales commission arrangement like that?

Mr. Dias: Since I was ignorant of any other method of selling this—the Supreme Court has said this order in Atlantic-Goodyear, as they see it, does not preclude Goodyear from entering into an arrangement with an oil company that does not have the same type of leverage over its operators, or whatever type of type they sell to.

Commissioner Reilly: And they said that they would have to come back in and ask us to change the order. But now we have the advantage that if we are going to write an order—to leave that out now. Do you have any recommendations on that?

Mr. Dias: Do I have any recommendation?

Commissioner Reilly: Yes.

[9542] Mr. Dias: I would say leave it in. I think that—

Commissioner Elman: When in doubt, leave it in.

Mr. Dias: You know, I would like—I have been tangling with Goodrich and Texaco so long I feel I have an affinity in their

interest. And I know that over the years—I have seen some of their reports—they do very well. I just feel like I would like to share in those profits myself. I would like to declare myself in.

But you know something—there is no guarantee under our system of free enterprise, there is no guarantee that anybody can get into a market, a particular market, or if he gets in that he is going to make a success.

Certainly the most favorable business to be in—I mean the best chance you have of making money is at the oil company level in the TBA business, because you do nothing and you get all this money. It's wonderful.

Commissioner Jones: Well, counsel, isn't the vice of this arrangement, as the Supreme Court put it, was some element of coercion, regardless of how you define that. Now, as I read the Supreme Court decision in Atlantic they found those elements of coercion not only in direct activity, but also in the economic relationship of the major and the service station.

Now, if you have no economic relationship, such as would give the supplier this kind of economic leverage, inequality, [9543] bargaining power, and you have no coercive act, then I assume such a sales commission plan would not be illegal. But if your find either one of those two elements, either coercion as a result of an economic disparity relationship or coercive activity, you would then find an illegality.

Mr. Diss: I think that is true. But again my own philosophy is this.

If a man wants to get into the TBA business, let him get in the business. I don't understand what he has to offer if he is not in the business.

Commissioner Jones: I am not sure that is relevant, counsel, to whether these products have been imposed on unwilling purchasers, which I think is the vice of this arrangement. I think this is what the Court is saying when it says it is not per se illegal. It says it is illegal if it in fact coerces people to do something that they otherwise would not want to do, and therefore it keeps out nonsponsored TBA manufacturers.

Now, if it is not keeping them out, it is not illegal.

Mr. Diss: Well, insofar as this record is concerned, I think you will find the competitive effects of this.

We had 20—I think maybe about 40 representatives of 20 supply points of competing TBA products. It is just almost unanimous. They all testified that they would go into a Texaco

station, try to sell them, and invariably they made no sales. Certainly they could not make initial purchases.

Commissioner Jones. They were at a competitive dis- [3544] advantage because there was some element on the dealer that made him feel he ought to prefer the sponsored TBA.

Mr. Dias. Exactly so.

Commissioner Jones: But if the dealer does not feel that, then there would not be any competitive effect.

Mr. Dias. That is possible. I am so ingrained in this one, where there was all that, that I do not really know what answer to give you as to the other situation. As I say up until this minute I did not know there were other arrangements.

Commissioner Jones. I wanted to bring you back to this record, because it seemed to me you were going into a generality, where you personally regarded these arrangements. And I do not think that is the material point of what the Supreme Court is saying, what is in this record. But I take it your argument is there is some element of coercion—whether it springs out of the relationship or out of direct activity.

Mr. Dias. Exactly. This record is rampant with it. And we will have no difficulty in pointing it out. It obviously is going to be a lot easier in the briefs to get each of these points, and we will certainly take care of that.

Now, another component of the sales commission system were these credit card arrangements. If you recall, there was a period when Texaco did not restrict the use of its credit cards only to the sponsored TBA products. I think that came about [3545] because of war-time restrictions, one thing and another. But at any rate, there is a period when they did not restrict it to sponsored TBA. But before and after that period, and up to date, as far as I know, the purchases of sponsored TBA alone are approved by credit cards. In other words, theoretically they cannot—a dealer cannot sell nonsponsored products via credit card.

Now, respondents submit point to the fact that some of their dealer witnesses said: Yes, they will charge it, a nonsponsored product. But I think when you read the evidence you will find that they did it with a great deal of trepidation.

One dealer for example said, "When I sell a nonsponsored product and I put it on a credit card, I either do not label it,"—one said, "I don't designate what it is, or another one said, "I call it a Firestone or a Goodrich tire, because I know what it says on the back."

Now, in the credit card itself, there were facts developed in that area that demonstrated again this overbearing control that Texaco has on its dealers.

One of their own witnesses, a man by the name of Bailey, down in Norfolk, was obliged to make good on a couple of credit sales—incidentally, he carried nonsponsored TBA products in his station. He was obliged to make good on a couple of credit sales that had bounced. The harsh part of it was that the company said that the credit cards had expired, or they [9546] had withdrawn them but they never notified Mr. Bailey and as far as he knew—he had been selling these people earlier by a credit card—and it had been all right. In other words, Texaco cancelled its credit card and did not notify the dealer and when the credit bounced they nevertheless made Bailey pay for the amount owed.

There was another situation of that out in Omaha, as I recall. And so again, it just demonstrates this tremendous power that Texaco has and exercises.

Commissioner Jones: You are arguing that the dealer might have been free to buy nonsponsored TBA, but he would have to pay some kind of a price for it—to wit, he could not use the credit cards and some of the other facilities.

Mr. Dias: I think—and I think the evidence is pretty clear—that the dealers, generally speaking, were aware of the limitations on the credit card and I think that perhaps there were some—there was some bootlegging of nonsponsored on occasion. But certainly they covered it if they could.

Commissioner Jones: The policy was that you could not charge nonsponsored.

Mr. Dias: That is right. And the dealers were so notified in no uncertain terms. They even went to the trouble of explaining to them that in the event they charge something that is not authorized it would never stand up in court—[9547] "We cannot enforce the payment of the credit." And I think that that is—that served the purpose of causing most dealers to sell only sponsored products by credit card.

I think there was some mention made of policy letters. I will touch on that just lightly, because time is running short. Texaco, coincidentally, after each of several significant court actions put out so-called policy letters. But they were all addressed to general management people, and it was passed down the line to the salesmen, but it stopped there. Never once did they show those letters to a dealer. They never showed them

to the dealers. And if that was policy—in other words, I don't know what it had to be repeated significantly after various court actions—significant court actions.

Number two, I don't know why, and the record does not show why they were not shown to dealers.

Commissioner Reilly: Did you present any evidence as to the relative positions in a gas station or in a dealer's station—the relative positions of sponsored and nonsponsored TBA products?

Mr. Dias: We had testimony along this line—and this may not be completely in answer to your question—for example, one of Texaco's own salesmen in Chicago said that out of 89 dealers in his area, 89 Texaco dealers in his area, he only knew of one that did not carry Goodrich or Firestone. Now, that does not go to the quantity of the various products in the [9548] station.

Commissioner Reilly: That is interesting information. But the thing that I was interested in was this. For instance, is the Goodrich and Firestone tire out in front, and the other tire or battery or accessory in the back room?

Mr. Dias: Well, we have one instance in Chicago that I can recall offhand. Again, this was one of respondent's witnesses, a Mr. Grelecki, who was a Goodrich distributor. He testified that—and his figures, too, are significant—he estimated that, I believe, 75 per cent of the dealers in his area carried—Texaco dealers carried either Goodrich or Firestone, and in the stations to whom he sold Goodrich products, some of them also bought Firestone but kept those in the back room. That's the testimony of one of respondents' witnesses.

Mr. Barton referred to the testimony of 59 dealers that were used in the defense by Goodrich, and he has urged you to read their testimony. I can do nothing more than urge you to read their testimony myself. These 59 dealers came from various scattered locations throughout the country. We joked about it many a time—I could see them arm in arm going from the West Coast to the East Coast looking for these dealers, and they came up with 59. I think you will find when you analyze the evidence that what they produced was not much. They would have dealers from small towns, where there were either no other Texaco stations or they had dealers who were in small towns where there were other [9549] distribution points near them.

In addition, from the mouths of their own dealers we developed evidence of the coercive power, again, of Texaco.

Down in hot Dallas in the summertime they were called up, they wanted to interview these people, and they called the dealers up and said, "We would like to interview you—come down to the office," so they went down.

Now, as to that particular comment on the dealers—I prefer to rely on the Seventh Circuit, where they claimed that the dealer testimony introduced in the Atlantic case, where 13 dealers were introduced—Atlantic claimed that that was not sufficient. In the Seventh Circuit, they said, "We disagree."

Commissioner Elman: What page is that?

Mr. Dias: That is at 401. That is 331 Fed. 2d at 401. The Seventh Circuit said, "We disagree. The evidence relating to overt coercion tactics, although not extensive, must be considered with the testimony of the witnesses representing competing suppliers to the effect that the dealers felt that if they did not carry sponsored TBA they risked reprisals. Also to be considered are the policing tactics of Atlantic salesmen and the surveillance of the so-called phantom customer inspectors."

Now, and let me continue,—"Moreover, it should be noted that the Examiner in considering the testimony of the dealers who testified for Atlantic recognized that these witnesses were under considerable pressure because they were naturally [9550] interested in not jeopardizing the renewal of their leases."

The Examiner made the same finding in this case. The phantom customer inspector is one element missing—the only element missing. We did not have anybody in Texaco—they did not employ a "phantom customer inspector." But they did inspect. And they did keep them under surveillance.

As a matter of fact, Texaco said it was not unusual for salesmen to go out and look around the station and see whether or not they were carrying sponsored TBA.

Now, that is a sort of a form of a white list. They did not go in to see if they were carrying nonsponsored. They went in to see if they were carrying sponsored. It amounts to the same thing.

Commissioner Reilly: There is nothing in this case like the Atlantic case of a list of noncompliers?

Mr. Dias: I don't quite go along with that. In Norfolk, where incidentally the incidence of adherence to the program was very high—I think 90 per cent of the dealers down there carried spon-

sored TBA—at one point there was—and there is in the record—a notice to the home office by the local man to the effect that there are, I think it was, 48 dealers not carrying sponsored TBA, and I think they also noted that there were something like 51 who did not carry TBA at all. But the list of those not carrying sponsored TBA was sent to the home office.

[9551] When respondents put in their defense, they brought in about five of those dealers. One is this Mr. Bailey. And the names of the other four escape me.

But the sum and substance of the testimony of those other dealers, some of them, most of them, was that they were in small, isolated areas, or they were the only dealer in town, or that Goodrich or Firestone supply points were near them.

As I say, it is unfortunate we were not able to develop the full number of Texaco dealers who were in fact nominated to and accepted by the rubber companies. Those figures were not available. But as I pointed out, pursuant to the sales commission agreement, the rubber companies do not approve stations which conflict with existing distribution.

Along that same line, when we put in our case we in fact did use only about 8 or 9 ex-dealers. But as I mentioned before, we used something like 20 independent distributors, or distributors of independent—nonsponsored TBA, and used just about all the sales force, so we had a total of 40 some odd witnesses representing some 20 distributors.

During the cross-examination of each of these witnesses respondents made a great point of developing the fact that there were other sellers of nonsponsored TBA in the area. And yet would you believe it—when they put in their defense, they did not produce one single distributor, successful or otherwise. The only successful distributor that they put on were two who [9552] happened to be distributors of sponsored TBA. They were very successful.

On the question of—Miss Jones, you asked about commissions on the sale of TBA. It is a fact in this case, unlike the Atlantic-Goodyear case, the salesmen, Texaco salesmen, do not receive a commission on sales of TBA into the Atlantic service station market. But their performance of their duty is based on their sales, and increasing sales, not only of gasoline products but of TBA products sponsored TBA products. In other words, it is part of the criteria for determining whether or not they are doing their job or not doing their job. So indirectly—I

Commissioner Jones: What is the evidence of record on that?

Mr. Dias: As to——

Commissioner Jones: Is there some standard of internal Texaco policy statement that tells their servicemen this is true?

Mr. Dias: Oh, yes, we have a record citation for that.

Commissioner Jones: Is it testimony or what?

Mr. Dias: I am trying to remember now. It may come out of a manual or it may be out by testimony. Let me see. Maybe I can find that.

No, I'm sorry, I do not have a note on that. But it will be documented in our brief.

[9553] Goodrich believes that it should not be included in this order. I think that this record is very clear that whether or not Goodrich goes out with a whip in its hand and helps Texaco salesmen or other personnel to push TBA products, that they nevertheless are well aware of what it is they are buying. And I think the best example of that is the fact that the sales commission itself is limited to outlets which handle Texaco gasoline exclusively, or a hundred per cent. Goodrich and the Firestone agreements are somewhat similar—there is just that variance. One talks in terms of a hundred per cent the other says exclusively.

Commissioner Jones: There aren't split stations in the industry?

Mr. Dias: Very few. I think you would find some in rural areas. But as long as the standard station—during the Standard Station case, the Court there found it was down 1 per cent, 2 per cent.

Commissioner Jones: Then what is the significance to you of the fact that the contract says this relates to Texaco stations that use exclusively Texaco gas?

Mr. Dias: Because if Texaco was the super salesman that Goodrich would have us believe it is, there would be no reason why Texaco could not sell their product to a Conoco station or a Shell station. If their salesmen are that adept at selling Goodrich TBA products, why not pay the salesman [9554] the commission or Texaco the commission for this great salesmanship, no matter where they sell it. But it must be to a service station that is a hundred per cent selling Texaco gasoline exclusively.

Also excluded are stations which Goodrich owns or has a controlling interest in. And it seems back from the very original contract in 1940, where they talk in terms of percentage—if

Texaco owned 51 per cent of the station, then they would pay them a commission.

In other words, there was always that superior or economic background which is an important element in the sales commission arrangement.

The same is true in their dealings with Conoco. The same situation exists. And they also have a written contract with Ohio Oil—the situation is identical, I believe, in that, as well as Conoco. And then three others in which they have oil arrangements.

Commissioner Jones: What is the evidence in the record as to the relationship with Conoco and its service stations?

Mr. Dias: Well, we have the leases. We have—they contain the same type of housekeeping provision, short-term loan of equipment.

Commissioner Jones: Credit cards?

Mr. Dias: Credit cards. We have the testimony of one ex-dealer who testified as to the extreme pressure put upon [9555] him to buy Goodrich when Conoco decided to enter into a sales commission arrangement. Yet the testimony of various competing suppliers—suppliers of competing TBA products who testified that they had extreme difficulty, similar, almost identical to the Texaco situation, in getting into the Conoco stations.

Commissioner Jones: Do you have that kind of testimony for Texaco, too, competing TBA dealers?

Mr. Dias: Yes, we have these 20—20 competing suppliers of competing TBA products, as represented by some 40 of their salesmen.

Commissioner Jones: What other oil companies were in this?

Mr. Dias: There was Jenney, up in the New England State, Shell American Petroleum, and Emblem Oil Company.

Commissioner Jones: What do you have in the record on Jenney and Emblem?

Mr. Dias: Very little. We have statistics—in other words, the amount of sales—I think that is about all.

Commissioner Jones: What is the basis on which you are asking the Commission to declare those agreements illegal?

Mr. Dias: I think on the same theory that the Supreme Court has sustained the Atlantic-Goodyear arrangement.

We have here, in my opinion, sufficient evidence as to the operation of the plan as to Conoco. We have overwhelming evidence in connection with the Texaco arrangement. And I

think [9556] that we have as much as to the remaining oil companies as they had in the Atlantic-Goodyear case.

Commissioner Jones: You will analyze all of those I assume in your brief as well.

Mr. Dias: Yes, ma'am, I can do that on about one page. There is very little. But again in connection with this one oil company, I believe it was Shell American, again it is interesting to note the Goodrich intent to buy control. We have some correspondence in that case which talks in terms of X station will have to deal with us because he owes so-and-so $8,000, and he will recommend our product.

Commissioner Jones: Jenney, Shell American?

Mr. Dias: That was Shell American.

Commissioner Jones: What do you read in the Supreme Court opinion that will enable us to declare the contracts with Shell American and Jenney, for example, as covered by the Atlantic case?

Mr. Dias: I would say so, yes.

Commissioner Jones: What element, what in the opinion?

Mr. Dias: Well, I think the fact that this Commission has found an illegal arrangement in connection with the Texaco situation. I think you can find the same thing on the evidence we have as to Conoco. And I believe under that situation I do not think we have to probe or try each and every such [9557] arrangement.

Commissioner Reilly: The Supreme Court seems to put the burden on the TBA company to show that they have—the other arrangements are different.

Mr. Dias: That it is different than those that have been declared illegal. I believe that is true.

Commissioner Jones: What evidence do they put in to show that—anything?

Mr. Dias: Who, in this case, you mean?

Commissioner Jones: Yes.

Mr. Dias: No, I think that was a matter of conjecture—

Commissioner Reilly: Do you think the Supreme Court is putting the burden on the TBA company to change the order of putting the burden on the TBA company in the trial of the case?

Mr. Dias: I think more than likely in the trial of the case. Unless you have further questions, I think I have covered the matter.

Commissioner Elman: Thank you very much.

Oral argument of Mr. Handler—resumed

Mr. Handler: May it please Your Honors, I found Commissioner Elman's analogy between a captive market and a captive audience very illuminating.

You three Commissioners are required by law to listen [9558] to our argument. You are a captive audience. Those in the room behind me are and were free to leave at any time. They are not a captive audience. The distinction is the key factor requirement. There is a captive market when there is a requirement on the part of the dealer to buy.

Commissioner Jones: How about an inducement?

Mr. Handler: There is no captive market when the dealer is free, as this record establishes, to buy or refrain from buying. Inducement——

Commissioner Jones: Take the credit card thing which troubles me.

Mr. Handler: The credit card thing was incorrectly stated.

Commissioner Jones: Aren't you paying the penalty by not carrying sponsored? Isn't that——

Mr. Handler: No—and the facts are quite different. A Texaco credit card can be used for nonsponsored TBA purchased on the regular basis of regular payment. A Texaco credit card cannot be used for nonsponsored TBA which is bought on the instalment basis, with payment deferred over a long period of time. There is a good economic reason for this. There is no penalty.

Now, inducement is sheltered by the First Amendment. A large company has free speech rights as well as a small company. You are allowed to induce if that inducement is untainted, is free from coercion, however defined.

[9559] Now, a court or a tribunal always has the choice of deciding the matter on the broadest or the narrowest possible ground, or to seek an intermediate position.

Now, if the Supreme Court of the United States had wanted to hold that sales commission is unlawful where there are terminable leases between an oil company and its dealers, it would not have been a difficult matter for it to have said it. It did not say so.

If the United States Supreme Court wanted to hold that sales commission is unlawful, where there exists the type of relationship that obtains between an oil company and its dealers,

it could have said so. The Supreme Court is master of the English language.

It did not rest its decision on any of these broad grounds.

I read to Your Honors from page 70 of the Opinion where Justice Clark says the short of it, and he then summarizes the basis upon which he rests his decision.

Commissioner Elman: Included in the short of it was I think—I may be wrong—the notion that there was, I think, well expressed by the Seventh Circuit, in that case, that the dealer who buys from a major refiner is not a real independent businessman—he is an economic serf. And when you start talking about inducements to someone who is relationship to you is that of an economic serf, it is not quite the same as [9560] inducement as between equals.

Mr. Handler: I have to disagree with Your Honor with respect to both aspects of your observation.

First, if you will turn to page 13 the Court is not using the language of the Seventh Circuit, it is using the language of the Court of Appeals of the District of Columbia.

Secondly, Your Honors are not going to assume that a dealer is a serf. That has to be proved. And there is no proof to that effect. That is the key of this case.

There is no proof in this record that will support a finding that a dealer, a Texaco dealer, is a serf.

Commissioner Elman: Don't you have the same evidence of the relationship between dealer and refiner in this case as you had in the Atlantic case in which the Seventh Circuit—in which I think the Supreme Court must have had in mind by its citation of the Simpson case—where Mr. Justice Douglas used the same kind of language. It may be rhetorical to refer to a dealer as a serf, but isn't that the right word?

Mr. Handler: The Simpson case referred to the short-term leases as probative of power. There was one element. There was specific evidence in that case of coercion. Indeed, Simpson himself was cancelled because he would not abide by the oil company's retail pricings.

Short-term leases were deemed by the Supreme Court as one piece of evidence tending to explain what gave Atlantic its [9561] power vis-a-vis its dealers. But such leases are not probative of improper exercise of the power. It is one of many facts.

The Supreme Court did not say that this fact in and of itself was conclusive. It would have been a very simple thing to have said that. It did not hold that you cannot have sales commission where you have terminable leases. It analogised—it said the Commission analogized the situation to a tie-in.

Take the man who owns a patent. His customers do not even have a short-term lease. He has power. If he has a valuable patent—take color television. You have the power to impose full line forcing or tie-in. But there is no violation of law unless you actually impose the condition that you buy the second product in order to obtain the first.

There is great disparity of economic power—there isn't even a lease. A man could build his entire business on the purchase of a patented product and tomorrow find he cannot buy that patented product. There is no compulsion to sell the patented product. It is not the mere existence of power. It is the exercise of the power which was the core of the decision before the Supreme Court.

Now, I say with all the respect of which I am capable, however you define coercion, whether you define it as covert or overt, express or implied, whether you imply it from a course of dealing, whether you imply it from relationships, you still must find coercion. It is a legal concept. [9562] You must find that the buyers were compelled to purchase against their will. There has to be a rational inference from undisputed facts. And I respectfully submit that under no circumstances in this case can you find the coercion.

The fact that Atlantic may have misacted does not mean that every oil company improperly carries on its affairs.

Guilt under our system is personal. You have got to prove that we did something wrongful. And the fact that we are a big company, the fact that we have terminable leases, that is not enough.

Now, obviously, there is not the time available for me to take issue with my good friend Mr. Dias.

Your Honors have the very difficult task—here is the size of the record, five printed volumes. It is your responsibility to make findings of fact which are supported by the record.

I am not going to ask you to take my word for it. We shall brief and document all these points. We will establish that the credit card situation was not as stated by Mr. Dias, the double

learning situation was not as stated by Mr. Dias, and many of the statements that he made with respect to our conduct, our power, our acts, are unsupported by this record, and we will cover that in our brief.

I want to end with this one very elementary remark. I said that guilt is personal. It is very illuminating [9563] to me that my good friend constantly refers to the Seventh Circuit opinion for facts. Those are facts in a different case. The proof of the pudding is in the eating. If we had this power, if we abused this power, if we compelled, if we coerced, if this relationship in and of itself had the effect indicated, if the terminable leases would be a conclusive fact, why is it that this record will establish that Goodrich, which is bound by the order that has been issued so far, sold not more than 10 per cent of the Texaco outlets? What kind of power is that? What kind of farming out of power is it? What kind of aiding and abetting is it to compel people to buy contrary to their wills?

I tell Your Honors that you will not find in this record support for the view that the Texaco dealer is anything other than what he himself testifies to be, and that [if] he is an independent dealer who buys in accordance with his own dictates, and not the dictates of any master. He is not a serf.

Commissioner Elman: Mr. Handler, if the Commission should conclude that there is a violation on this record and the findings of fact made on this record support the same conclusions of law as were reached in the Atlantic-Goodyear case, would you and Mr. Barton brief to us the question of the appropriate order to be entered?

Mr. Handler: We will be delighted to do that, Your Honor.

[9564] Commissioner Elman: And if there are to be any changes from the order that was upheld by the Supreme Court in that case that you wish to urge, would you urge them and give supporting reasons in the record?

Mr. Handler: We would be pleased to do so. I am glad you are asking us, because I would not want you to imply from the fact that we deal with the order that we in any wise lack confidence, (a) in our interpretation of the Supreme Court opinion, and (b) our analysis of the facts.

Commissioner Elman: Well, my request does not imply we have reached any conclusion on the merits.

Mr. Dias: Will we have answering time on this?

Commissioner Elman: Well, the order provides when the briefs are due.

Mr. Diaz: Will we be able to answer each other?

Commissioner Elman: You can make such request to the Commission as you need.

(Whereupon, at 4:25 o'clock p.m., the Oral Argument in the above-entitled matter was concluded.)

[9453] (January 14, 1966)

UNITED STATES OF AMERICA

Before Federal Trade Commission

Commissioners:

PAUL RAND DIXON, Chairman
PHILIP ELMAN
EVERETTE MACINTYRE
JOHN R. REILLY
MARY GARDINER JONES

[SAME TITLE]

By Commissioner Elman:

I

On April 15, 1963, the Commission held unlawful as an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act[1] a sales commission agreement between The B. F. Goodrich Company ("Goodrich") and Texaco, Inc. ("Texaco"). Under that agreement, Goodrich pays Texaco a commission for promoting the sale of Goodrich tires, [9454] batteries, and automotive accessories ("TBA") to its retail gasoline dealers. By its order, the Commission enjoined Goodrich and Texaco from carrying out their agreement, and from performing or entering into sales commission arrangements with any other companies. On review, the Court of Appeals for the District of Columbia Circuit set aside the Commission's order and directed the Commission to dismiss the complaint. *Texaco, Inc. v. F.T.C.*, 336 F. 2d 754 (D.C. Cir. 1964). On June 7, 1965, the Supreme Court granted certiorari, vacated the judgment of the Court of Appeals, and directed that the case be remanded to the Commission "for further proceedings, without the participation of Chairman Dixon, in light of *Atlantic Refining Co. v. Federal Trade Comm'n* [381 U.S. 357 (1965)]." *F.T.C. v. Texaco, Inc.*, 381 U.S. 739, 740.

[1] Section 5 provides in relevant part:

"Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are declared unlawful."

In *Atlantic*, the Supreme Court upheld (1) the Commission's decision that a sales commission agreement between Atlantic Refining Company and Goodyear Tire & Rubber Company was an unfair method of competition, and (2) the Commission's order prohibiting Atlantic and Goodyear from carrying out their agreement and from performing or entering into any other sales commission agreements. The Commission, without the participation of Chairman Dixon and Commissioner MacIntyre, has reviewed afresh the entire record in this proceeding, in the light of the Supreme Court's decision in *Atlantic*. We have concluded, for the reasons set forth below, that the sales commission agreement involved here is, in its fundamental operation and effect, indistinguishable from the one held unlawful in *Atlantic*, and that an order like the one affirmed by the Supreme Court in *Atlantic* should be entered here.

I.

An assessment of the relationship between this case and *Atlantic* requires a brief description of the events leading to this remand. This is one of three companion cases in which the Commission challenged, as an unfair method of competition, sales commission arrangements between major rubber companies and major oil companies. In *Goodyear Tire & Rubber Co.*, 58 F.T.C. 300, decided [9455] March 9, 1961, the Commission entered an order prohibiting Goodyear and Atlantic from employing sales commission plans. On the same day, in *Firestone Tire & Rubber Co.*, 58 F.T.C. 371, an identical order was entered against Firestone and Shell Oil Company. The Commission's order in *Goodyear* has been affirmed by the Supreme Court, *Atlantic Refining Co. v. F.T.C.*, 381 U.S. 357, affirming 331 F. 2d 394 (7th Cir. 1964). An appeal from the Commission's order in *Firestone* is pending in the Court of Appeals for the Fifth Circuit.

In both *Goodyear* and *Firestone* the Commission's reasoning was identical: It upheld the hearing examiner's finding that the oil companies used overt coercive tactics to force their dealers to buy the sponsored rubber companies' TBA products. But the Commission specifically declined to rest its decisions upon a finding of coercion or to limit its orders to injunctions against coercive tactics. Instead, it examined the unique degree to which the economic existence of gasoline dealers is dependent

upon the good will of their major oil company suppliers, and concluded that the oil company "has sufficient economic power with respect to its * * * distributors to cause them to purchase substantial quantities of sponsored TBA even without the use of overt coercive tactics * * *" (58 F.T.C. at 364-65, 407.) The Commission regarded "overt acts of coercion as mere symptoms of a more fundamental restraint of trade inherent in the sales commission itself" (58 F.T.C. at 342, 368). Analyzing the actual operation of the sales commission plan in the context of the economic relationship between the oil company and its dealers, the Commission concluded that the competitive effects of the sales commission plan were like those of an illegal tying arrangement—it "presents a classic example of the use of economic power in one market (here, gasoline distribution) to destroy competition in another market (TBA distribution)." (58 F.T.C. at 367; see 58 F.T.C. at 406). Since the amount of commerce affected was "not insubstantial", the agreements were held unlawful.

However, in this proceeding involving the Goodrich-Texaco sales commission plan, the Commission did not reach the same result. On the same day that it issued its orders in *Goodyear* and *Firestone*, the Commission held that although [9456] "Texaco has sufficient economic power over its wholesale and retail petroleum distributors to cause them to purchase substantial amounts of sponsored TBA even without the use of overt coercive tactics", the record did not contain "sufficient market data to enable the Commission to assess the competitive effects of the sales commission method of distributing TBA". The case was remanded to the hearing examiner for the taking of additional evidence on that issue. *B. F. Goodrich Co.*, 58 F.T.C. 1176, 1178-79, 1183.

This disposition was, at the very least, enigmatic: In *Goodyear*, the Commission found that the competitive effect of the sales commission plan, like a tying arrangement, was the foreclosure of the substantial TBA marketing outlets represented by Atlantic's dealers. This finding was based upon competing wholesalers' testimony that they were unable to sell to Atlantic dealers who feared that Atlantic would look with disfavor upon their purchase of any but Atlantic-sponsored TBA products. Having made this finding, the Commission made no analysis of "market data" other than to observe that the amount of com-

merce affected was "not insubstantial" since Atlantic had sold about $50 million in sponsored TBA products during the period 1950–1956 (58 F.T.C. at 359–66). In *Goodrich* the Commission did not reject the hearing examiner's acceptance of the testimony of competing wholesalers regarding foreclosure of Texaco outlets, which was similar to, and as substantial as, that in *Goodyear*. The amount of commerce affected in *Goodrich* was considerably more substantial than that in *Goodyear*: in the five-year period 1952–1956 Texaco sold more than $245 million in sponsored TBA, almost five times as much as was involved in *Goodyear* during a six-year period. What additional "market data" was required is unclear.[3]

[9457] On remand, after taking further evidence, the hearing examiner found that the sales commission plans had been shown to be an unfair method of competition, and entered an order identical to those previously entered in *Goodyear* and *Firestone*. An appeal was again taken to the Commission. By that time, the composition of the Commission had changed and only one of the Commissioners (Commissioner Anderson) who had participated in the Commission's earlier decision remained on the Commission. On this second appeal to the Commission, much of the evidence introduced on the remand was challenged as incompetent or immaterial. The Commission concluded that the challenged evidence was unnecessary to its decision, and, with Commissioner Anderson dissenting, upheld the examiner's order.[4] In its view, the legal principles under which the sales commission plans were held unlawful in *Goodyear* and *Firestone* were equally applicable to the *Goodrich* record, even without the challenged evidence (*B. F. Goodrich Co.*, Docket 6485, order issued April 15, 1963).

On appeal, the Court of Appeals for the District of Columbia Circuit reversed and ordered that the complaint be dismissed.[5]

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[3] In *Firestone* the Commission did consider market share data relating to the entire market for TBA, including data relating to other outlets for TBA other than service stations, and other methods of distributing TBA other than sales commission plans. But none of this information was present in *Goodrich*, and so presumably this was not the kind of "market data" deemed critical by the Commission to a finding of illegality.

[4] We agree that the evidence challenged on the second appeal to the Commission is unnecessary to our decision and have stricken the Findings and Conclusions of the hearing examiner based upon it.

[5] *Texaco, Inc. v. F.T.C.*, 336 F. 2d 754 (D.C. Cir. 1964).

After holding that Chairman Dixon was barred from participating in the decision of the case, the Court of Appeals went on to reject the Commission's decision on the merits. It rejected the examiner's finding that Texaco employed coercive tactics and then held that "the Commission erred in concluding that Texaco has sufficient economic power over its dealers, without the use of coercive tactics, to cause them to buy substantial quantities of Goodrich TBA." (336 F. 2d at 762). Instead, it found that Texaco dealers "are quite free to accept or reject" the oil company's "recommendation" to purchase sponsored TBA products (*id.* at 763).

[9458] The fundamental premise underlying this conclusion was the Court of Appeals' finding that there was "no basis in this record for the Commission's conclusion that Texaco has controlling economic power over its dealers" and that Texaco's "contracts with [its] dealers do not give rise" to an inference that it did. (*Id.* at 762.) In the court's view, the "promotional services" performed by Texaco were indistinguishable from, and no less lawful than, conventional salesmanship to wholly independent purchasers.

This approach conflicted with that of the Court of Appeals for the Seventh Circuit, which affirmed the Commission's order in *Goodyear*.[8] For the Seventh Circuit the starting point for any realistic assessment of the nature and competitive effect of an oil company's "recommendations" under the sales commission plan was the economic power which the oil company possessed over its dealers and which derived from the contractual relationship between them. In its view, the "heart of this case is the economic power Atlantic possesses over its service station dealers" (331 F. 2d at 400). Such power was not at all dependent upon coercive tactics.[9] Rather, the "keystone" to [9459]

[8] *Goodyear Tire & Rubber Co.* v. *F.T.C.*, 331 F. 2d 394 (7th Cir. 1964).

[9] The Seventh Circuit upheld the Commission's finding of coercion; the District of Columbia Circuit rejected it. The evidence of coercion in *Texaco* was no less substantial than that in *Atlantic-Goodyear*. The different results on appeal appear attributable to two factors: (1) the Seventh Circuit deferred to the hearing examiner's assessment of the witnesses' credibility, and (2) while only a few dealer witnesses testified to coercive tactics and a considerably larger number of dealers called by respondents testified to the contrary, the Seventh Circuit thought the hearing examiner correctly evaluated the entire testimony in light of the economic dependency of dealers upon the oil company. Review in the Supreme Court of the finding of coercion was not sought in *Atlantic*. To the extent respondents seek to distinguish

that power could be found in the "lease and equipment loan contract with their short term and cancellation provisions." (*Ibid.*) Viewed in the context of these provisions, the "service station dealer is more of an economic serf than a businessman free to purchase the TBA of his choice." (*Ibid.*) Reaching an opposite conclusion from that of the District of Columbia Circuit in *Texaco*, the Seventh Circuit held (*id.* at 401):

> "Atlantic's power to cause its dealers to carry either Goodyear or Firestone TBA does not depend upon overt coercive methods. The totality of facts surrounding the relationship between the oil company and the dealers points to one conclusion: the oil company is able to exert sufficient economic power over its dealers so that for all practical purposes they are required to carry sponsored TBA.
>
> "Atlantic says that its influence over its dealers to purchase sponsored TBA short of force, threat, or intimidation is lawful; that it may recommend high quality TBA to its dealers; and that such action serves a legitimate business purpose in the promotion of the sale of gasoline. This would be a persuasive argument except for the dealers' economic dependency upon the oil company. In that setting, recommendation is tantamount to command. Covert practices are as efficient as overt action. Sophisticated methods of pressuring the dealers into carrying sponsored TBA are as effectual as express covenants and open threats."

[94601] Supreme Court review was sought in both *Texaco* and *Atlantic-Goodyear*. The Commission, arguing that different dispositions of the two cases based upon narrow factual distinctions would be inappropriate, framed the issue presented by both cases in identical, broad terms, asking the Court to hold that:

> "[I]t is an unfair method of competition, in violation of Section 5 of the Federal Trade Commission Act, for a

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this case from *Atlantic* on the presence or absence of coercion, we conclude that no such factual distinction exists; we do not disturb the examiner's finding of coercion which was based essentially on his assessment of the credibility of witnesses. *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474, 495-96. However, as we point out below, the fundamental issue here—the legality of sales commission agreements between major oil and major rubber companies—does not turn on a finding of coercion, and we do not rest our decision upon it.

> major rubber company and a major oil company to enter into an agreement under which the oil company, in return for a commission, sponsors the sale of the rubber company's products to the oil company's retail dealers."[1]

In both cases the Commission urged the same broad rationale reflected by the Commission and Seventh Circuit decisions in *Goodyear:* (1) Because of the gasoline dealer's singular dependence upon, and subservience to, his major oil company supplier, the oil company had the power to require its dealers to purchase substantial quantities of TBA without overt coercion; (2) the promotional services which the oil company was obligated to, and did, perform under the sales commission agreement constituted the exercise of that power for the benefit of the sponsored TBA supplier; and (3) as a result, the effect of the sales commission plan is like that of a tying agreement, foreclosing competing non-sponsored suppliers from the substantial market of the sponsoring oil company's dealer.[2]

[9461] The Supreme Court reviewed the *Atlantic-Goodyear* case for the purpose of resolving the "apparent conflict" with *Texaco* (381 U.S. at 363). The Court affirmed the Seventh Circuit's decision, and a week later vacated the judgment of the District of Columbia Circuit in *Texaco* and ordered that the case be remanded to the Commission for reconsideration in light of the decision in *Atlantic* (*F.T.C.* v. *Texaco, Inc.*, 381 U.S. 739).

II

We turn then to the threshold question in this remand proceeding: What light is cast by the Supreme Court's decision in *Atlantic* upon the appropriate disposition of this case?

Reading its opinion against the background set forth above, we can draw only one conclusion: In upholding the Seventh Circuit and Commission decisions, the Supreme Court approved their broad rationale, rejected the approach taken by the District of Columbia Circuit in this case, and enunciated a rule which transcends the confines of the particular facts involved

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[1] *F.T.C.* v. *Texaco, Inc.*, *supra*, Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit, p. 2; *Atlantic Refining Co.* v. *F.T.C.*, *supra*, Brief for the Federal Trade Commission, p. 2.

[2] *Atlantic Refining Co.* v. *F.T.C.*, *supra*, Brief for Federal Trade Commission, pp. 32–34; *F.T.C.* v. *Texaco, Inc.*, *supra*, Petition for a Writ of Certiorari, pp. 16–19.

in *Atlantic*. In the Court's view, while coercive practices aggravate the restraint imposed by the sales commission plan, it is the oil company's power over its dealers, derived from the contractual relationship between them, and the utilization of that power through the performance of the promotional services required by the sales commission agreement, which renders the sales commission plan unlawful.

The starting point for the Supreme Court's analysis, like the Seventh Circuit's, is reflected in its emphasis upon the oil company's considerable economic power over its dealers. The Court said (381 U.S. at 368):

> "[Atlantic and its dealers] simply do not bargain as equals. Among the sources of leverage in Atlantic's hands are its lease and equipment loan contracts with their cancellation and short-term provisions. Only last term we described the power implications of such arrangements in *Simpson* v. *Union Oil Co.*, 377 U.S. 13 (1964), and we need not [9462] repeat that discussion here. It must also be remembered that Atlantic controlled the supply of gasoline and oil to its wholesalers and dealers. This was an additional source of economic leverage. *United States* v. *Loew's, Inc.*, 371 U.S. 38, 45 (1962). * * *"

In this context, "threats and coercive practices" merely "bolstered" the "lever" which resulted from this economic power (*id.* at 369). The Court viewed the oil company's aggressive and vigorous salesmanship in carrying out the sales commission plan, wholly apart from any coercive tactics, as an exertion of "the persuasion that is a natural incident of its economic power" (*id.* at 368), rather than as the "recommendations" of a salesman to an independent purchaser "free to accept or reject" them.

Accordingly, the Court accepted the Commission's and the Seventh Circuit's characterization that the sales commission contract, which obligated the oil company to use its power over its dealers to sell the sponsored rubber companies' TBA, had the same "central competitive characteristic" as a tying agreement—"the utilization of economic power in one market to curtail competition in another" (*Id.* at 369.) Indeed, in the Court's view, that was its primary if not sole purpose. Under the sales commission plan (as the records in both *Atlantic* and *Tetaco* show), the oil company, without making any investment in dis-

tributional facilities or TBA inventory, and without relieving the TBA supplier of the burden of sales, distribution, and service, is nevertheless paid large commissions for its promotional efforts. Accordingly, the Court found that "it is difficult to escape the conclusion that there would have been little point in paying substantial commissions to oil companies were it not for their ability to exert power over their wholesalers and dealers * * *" (*id.* at 376).

In sum, the Supreme Court, in upholding the Commission's order prohibiting outright the use of the sales commission plan by Atlantic and Goodyear, was also affirming the rationale [9463] of the Commission's decision, which the Court described as follows (*id.* at 361):

> "[T]he Commission considered the coercive practices to be symptomatic of a more fundamental restraint of trade and found *the sales-commission plan illegal in itself* as 'a classic example of the use of economic power in one market * * * to destroy competition in another market * * *'." [Emphasis supplied.]

At the same time the Supreme Court dispelled the ambiguities generated by the Commission's first decision in this proceeding. An assessment of the competitive effects of the sales commission plan does not require an analysis of "market data." Since the testimony only confirmed what was essentially implicit in the relationhip between the oil company and its dealers—that the oil company's sponsorship under the sales commission plan has the competitive effect of foreclosing non-sponsored TBA suppliers from access to the market represented by the oil company's dealers—further market analysis is unnecessary. It is sufficient to show that a "not insubstantial portion of commerce is affected".[1]

[9464] To be sure, the Supreme Court took note of the striking demonstration in *Atlantic* of both the extreme abuses attending Atlantic's use of the sales commission plan, and the dramatic effectiveness of the plan in foreclosing non-sponsored

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[1] The Court said in this regard (*id.* at 371):

"Goodyear and Atlantic contend that the Commission should have made a far more extensive economic analysis of the competitive effect of the sales-commission plan, examining the entire market in tires, batteries and accessories. But just as the effect of this plan is similar to that of a tie-in, so it is unnecessary to embark upon a full-scale economic analysis of competitive

TBA suppliers from the Atlantic service station market. *Atlantic* was the first case before the Court involving a challenge to the sales commission plan; it presented for review a Commission decision whose rationale would render unlawful the sales commission plans themselves, whenever used by major oil and rubber companies. The Court, therefore, made a careful examination of the entire record to assess the "economic and business stuff out of which these arrangements emerge", so as to determine whether they are "naked restraints of trade with no purpose except stifling of competition" and whether "they may be too dangerous to sanction" (*White Motor Co.* v. *United States*, 372 U.S. 253, 263). But, like the Commission, the Court looked upon the dramatic aspects of *Atlantic* as "symptomatic" of a broader problem. Having examined, as reflected by the record in *Atlantic*, the dangers presented by sales commission plans, their essentially anti-competitive character, and the vivid demonstration of the abuses which may attend their use, the Court concluded more generally that the sales commission plan itself "amount[s] to a device that permits suppliers of tires, batteries and accessories, through the use of oil company power, to effectively sew up large markets" and, as such, could not be defended even though it might be an efficient and economic method of distribution (381 U.S. at 371). Consequently, the Court's ultimate concern was not limited to the sales commission plan involved in *Atlantic*, but was rather with "the destructive effect on commerce that would result from the widespread use of these [sales commission] contracts by major oil companies and [TBA] suppliers" (*ibid.*).

The Court's concern in *Atlantic* with the dangers presented by the "widespread use" of the sales commission plans by major oil and TBA suppliers is especially significant. *Atlantic* was not, as the Court was well aware, an isolated case. In *Texaco*, in which a petition for certiorari was pending at the time of the Court's decision in *Atlantic*, the record showed that Texaco entered into sales commission plans with three of the leading rubber companies—Goodrich, Firestone and, under an agree-

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effect. We think it enough that the Commission found that a not insubstantial portion of commerce is affected."

Atlantic had indeed based its contention that a more extensive economic analysis was necessary, in part, upon the Commission's first decision to remand *Goodrich-Texaco* to take evidence of "market data" for an assessment of the competitive effects of the sales commission plan. *Atlantic Refining Co.* v. *F.T.C.*, *supra*, Brief of Petitioner The Atlantic Refining Company, pp. 31–32, 57, n. 48.

ment instituted about the time this proceeding began, U.S. Rubber Company. Goodrich also had sales commission plans with [9465] Continental Oil Company and other oil companies as well. The *Firestone* and *Goodyear-Atlantic* cases show that both Goodyear and Firestone have sales commission plans with Shell and Atlantic; that in addition, Goodyear has sales commission plans with Sinclair Refining Company, Richfield Oil Company, and a number of other oil companies; and that Firestone, in addition to its sales commission plan with Texaco, has sales commission arrangements with Union Oil Company, Continental Oil Company, and others.

The service station dealer outlets affected by these sales commission plans constitute a vast market for the sale of TBA; and at the same time only the largest rubber companies are the beneficiaries of the marketing advantages derived from the sales commission plans, a fact which would appear to confirm the Commission's finding in *Atlantic* that smaller TBA suppliers are unable to utilize the sales commission arrangement (58 F.T.C. at 367). Given the Court's view of the fundamentally anticompetitive character of the sales commission plan when used by oil companies possessing power over their dealers, the proliferation of these plans between major oil companies and major rubber companies constitutes in itself an acute danger for competition. It was in this context that the Court, looking beyond *Atlantic*, and the specific facts involved there, concluded that generally the use of the sales commission plan by major oil companies and major rubber companies, whatever its economic advantages, is a practice "too dangerous to sanction".

This conclusion is buttressed as much by what the Court did, as by what it said. The Court's affirmance of the Commission's order prohibiting outright the use of sales commission plans by Atlantic and Goodyear not only between themselves but with other companies had broad competitive consequences in both the TBA and petroleum markets. If the Court's decision were to be read as limiting the Commission in its evaluation of other sales commission plans to the specific factual circumstances involved in *Atlantic*, one major oil and one major rubber company would be prohibited not only from further engaging in coercive tactics, but from using a sales commission plan which its major competitors might still be free to use.

[9466] For example, at the present time, it would appear that three of the largest rubber companies, Goodrich, Firestone, and

U.S. Rubber, use sales commission plans providing Texaco sponsorship to promote their TBA products to Texaco's dealers. Yet, Goodyear could not ask Texaco (even assuming that Texaco has demonstrated no propensity to use coercive tactics in performing its other sales commission plans) to perform for it the same promotional service which Texaco performs for Goodyear's three major competitors. At the same time, Texaco, one of the largest oil companies, without making any investment in distributional facilities or TBA inventory, receives substantial commissions for the sale of TBA products to its service stations. Atlantic, a major oil company but substantially smaller than Texaco, is barred from the same economic opportunity, no matter how scrupulously it might refrain from coercive tactics in the future. Yet, the same kinds of leases, equipment loan contracts, and sales agreements stressed by the Court in *Atlantic* also render Texaco dealers economically subservient to, and dependent upon, Texaco; and its sales commission plans require Texaco to perform the same kind of vigorous promotional campaign described in *Atlantic*. To bar only Atlantic and Goodyear from the use of the sales commission plan would thus not only create a harmful competitive imbalance among the leading firms of the two industries, it would be arbitrary and inequitable.

The Supreme Court was informed of the harmful and anomalous consequence of a rule confined to the particular facts of *Atlantic*.[10] We find nothing which would permit us to read [9467] the Court's opinion, or its remand order in this proceeding, as sanctioning such results.

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[10] The Government in its petition for certiorari in *Texaco* told the Court:

"Even if the cases [Atlantic and Texaco] could be distinguished on their facts, the conflict, if unresolved, would create an anomalous situation in which one major oil company and a large tire company were permitted to employ essentially the same marketing practice that their competitors were prohibited from using."

F.T.C. v. Texaco, Inc., 361 U.S. 789, Petition for a Writ of Certiorari, p. 12.

Similarly, Atlantic told the Supreme Court that:

"The order in each of the two cases represents a rule of general application, not the disposition of an isolated controversy. The rule should be uniform throughout the industry. Moreover, Atlantic and Texaco are competitors; and Atlantic, the smaller company, should not be under a marketing handicap as against Texaco, which is three times larger."

Atlantic Refining Company v. F.T.C., *supra*, Brief of Petitioner The Atlantic Refining Company, p. 34.

III

In our view the Supreme Court's decision in *Atlantic* compels the conclusion that the Texaco-Goodrich plan is an unfair method of competition and that Texaco and Goodrich should be prohibited, as were Atlantic and Goodyear, from performing or entering into any other sales commission plans. The Court's concern for the dangers which derived from a widespread use of the sales commission plan is especially relevant here. As has been pointed out, Texaco is considerably larger than Atlantic. Its service station dealers constitute an even more significant TBA market. Stations operated by Texaco's lessee dealers[11] and contract dealers[12] [9468] constituted 16.5% of the service stations in the United Stations in the year 1955. In that year, Texaco had approximately six times as many contract and lessee dealers in Atlantic.[13]

Moreover, as we have noted, in *Atlantic* the total sales to Atlantic dealers of Goodyear and Firestone products for the six-year period June 1950–June 1956 amounted to about $50 million. Goodrich and Firestone sold almost $60 million in TBA products to Texaco dealers in the year 1956 alone. In the five-year period 1952–1956, the sales of the sponsored Goodrich and Firestone TBA to Texaco amounted to approximately $245 million.

The economic dependence of Texaco dealers is no different from that of Atlantic dealers. Thus, Texaco lessee dealers, who constitute the most important segment of service station TBA outlets, have the same kind of short term leases, renewable on a year-to-year basis and terminable at year's end upon ten days' notice of either party. These leases contain the same kind of general "housekeeping" requirements concerning the station's use, maintenance and appearance which, if breached, can result in immediate cancellation by Texaco without notice to the lessee. The lessees have often made a considerable investment

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[11] A lessee station (referred to as a C station) is one that is either owned or leased by Texaco and in turn leased by it to the dealer.

[12] A contract station (referred to as D stations) is either owned by the operator or leased by him for someone other than Texaco. In addition to selling gasoline directly through C and D stations, Texaco sells indirectly through consignees (B accounts) and independent distributors (E accounts), who operate bulk storage plants, purchase Texaco products and sell them to service station dealers and consumers.

[13] In 1955, Texaco had approximately 30,000 contract and lessee dealer stations; Atlantic had approximately 5,000 service stations. 331 U.S. at 363.

in their stations, at times, on funds borrowed from Texaco. "Contract dealers", who own their stations or lease them from third parties, nevertheless lease their pumps and other equipment from Texaco. Both lessee and contract dealers purchase their gasoline pursuant to an "Agreement of Sale", prescribing annual minimum and maximum purchases at current Texaco prices. These "Agreements of Sale" also are generally on a year-to-year basis, terminable at year's end upon thirty days' notice, and automatically cancelled if a lessee dealer's lease is terminated.

In these circumstances, the competitive advantage given a TBA supplier whose products are sponsored by Texaco need [9469] hardly depend upon the use of overtly coercive tactics. Here, as in *Atlantic*, Texaco's "promotional" efforts in carrying out its sales commission agreement with Goodrich and Firestone constitute a forceful exercise of its economic power over its dealers. Its consequence is to impress upon Texaco dealers, through constant repetition and in a variety of ways, that Texaco, whose favor the dealer must court, has a strong interest in their purchase of the sponsored TBA products.

Even before the dealer has been accepted, Texaco begins its campaign on behalf of the sponsored TBA products. Texaco personnel, when interviewing prospective dealers for new or established service stations, advised them of the importance of TBA, recommending the TBA products of Goodrich and Firestone. Once the dealer is selected, and before he opens his station, Texaco frequently informs Goodrich and Firestone of the prospective opening of his station, affording Goodrich and Firestone a headstart over competitors in the initiation of their own sales campaign on behalf of their products. Thereafter, Texaco, often with the direct assistance and participation of the rubber companies, maintains a continuous campaign designed to induce the dealer to purchase the sponsored TBA products. Dealer meetings and training courses designed to educate the dealer in the use of TBA products utilize the products of the sponsored companies. Texaco participates in the sponsored companies' seasonal and special sales, promotional and advertising campaigns. Texaco publications sent to its dealers carry displays of the sponsored TBA products. And, perhaps most effective of all, the Texaco salesman continually carries the message in his day-to-day contacts with the dealers. In this regard, it is important to remember that these Texaco salesmen who are most directly involved in pushing the sponsored TBA products,

also play a critical role in the annual dealer evaluations and in the determination of whether the dealer's lease and contractual relations with Texaco are to be renewed. At the same time, Texaco, in making promotions, evaluates these salesmen's performances in part by their success in selling sponsored TBA products.

Frequently, both the Texaco and rubber company salesmen call upon the dealer together ("double teaming"). The Supreme Court in *Atlantic* noted the inherently coercive effect of that [9470] device, pointing out that since "the annual dealer evaluation by Atlantic salesmen carried substantial weight when the district managers decided upon annual lease extensions . . . dealers were . . . understandably susceptible to the encouragement of Goodyear salesmen when Atlantic men were nearby looking over their shoulders" (381 U.S. at 375). And, as in *Atlantic*, each dealer's performance as a purchaser of sponsored TBA is also fully disclosed by the reports furnished by the sponsored rubber companies to Texaco of the amount of sponsored TBA purchased by each dealer. As the record indicates, Texaco, in assessing the economic success of service stations, was vitally concerned with the amount of sponsored TBA sold by its dealers.

Here, as in *Atlantic*, there was substantial testimony by non-sponsored TBA suppliers confirming the conclusion that, as a result of Texaco's vigorous sales campaign to its dealers, many Texaco dealers were left with the impression that Texaco would look with disfavor upon their purchase of non-sponsored TBA products and that they were required to purchase the sponsored TBA. As a result, these non-sponsored suppliers were unable to gain access to these Texaco service station outlets. In sum, the Supreme Court's characterization of the operation of the sales commission plan in *Atlantic* is equally applicable here. Texaco, with Goodrich's "encouragement and assistance, has marshalled its full economic power in a continuing campaign to force its dealers and wholesalers to buy [Goodrich] products" (*id.* at 371).

Respondents argue that there are a number of factual distinctions between this case and *Atlantic*. But as we read *Atlantic* none of these distinctions is material. As already demonstrated, under *Atlantic* it is the oil company's power over its dealers, and the exercise of that power through the performance of the promotional services required by the sales commission agreement, and not coercive tactics, which condemns the

sales commission plan. And while, unlike *Atlantic*, the sales commission plans involved here did not allocate territories between the sponsored TBA suppliers, the gravest danger to competition presented by the sales commission plans here as in *Atlantic* is in their capacity for hindering competition between sponsored and non-sponsored TBA suppliers. A device which may enhance the position of two or three leading TBA suppliers vis-a-vis smaller competitors cannot be defended on the ground that it still leaves these few firms free to "compete" with one another for access to the Texaco service station market.

[9471] Respondents also argue that, unlike *Atlantic*, there is here no showing that Texaco's promotional campaign was effective. Thus, they contend that the statistics show that only about 30% of Texaco's dealers purchased sponsored TBA products. This figure, however, is derived by considering the number of Texaco dealers purchasing sponsored TBA in proportion to the total number of lessee and contract dealers. In fact, however, as respondent Goodrich, itself, points out,[*] many contract dealers do not handle, and are not appropriate outlets for, TBA products. Since more than half of the total number of Texaco dealers are made up of contract dealers, the actual success of Texaco's sales commission plans would appear to be considerable indeed. But, under *Atlantic*, proof of the actual effectiveness of the sales commission plan is unnecessary. The Court's ultimate concern was with the cumulative danger presented by the "widespread use" of the plans, rather than the relative effectiveness of particular plans. Moreover, the Court viewed the sales commission plan when used by a major oil company as having the same competitive characteristics as a tying agreement. As in the case of a tying agreement, the fact that the sales commission plan has not fully achieved its purpose, or that non-sponsored suppliers can overcome the unfair competitive advantage which the sales commission gives the sponsored supplier, is no defense. Cf. *International Salt Co.* v. *United States*, 332 U.S. 392, 397; *Northern Pacific R. Co.* v. *United States*, 356 U.S. 1, 12; *Osborn* v. *Sinclair Refining Co.*, 286 F. 2d 832, 838 (4th Cir. 1960), cert. denied 366 U.S. 963.

In essence, respondents urge upon us the rationale of the District of Columbia Circuit's opinion—that despite the eco-

[*] Brief of Respondent The B. F. Goodrich Company in Reply to Appeal Brief of Counsel Supporting the Complaint, dated March 25, 1960, p. 25.

nomic dependence of the Texaco dealer upon Texaco, Texaco's vigorous promotional activities under the sales commission plan are nothing more than the "recommendations" of a salesman to a purchaser "free to accept or reject" them. In affirming the Seventh Circuit's decision in *Atlantic*, the Supreme Court rejected that position.

IV.

We think that orders against both Texaco and Goodrich, identical with the orders against Atlantic and Goodyear which were affirmed by the Supreme Court, are appropriate here. [9472] Texaco should clearly be enjoined from entering into or performing any sales commission plan. As to Goodrich, like Goodyear, it was "no silent or inactive partner in the implementation of the sales-commission plan" (381 U.S. at 373). As the record demonstrates, the sales commission plan here is essentially a joint effort in which the massive power of a major rubber company and a major oil company is united, to the disadvantage of non-sponsored competitors, behind the sale of the rubber company's TBA products. Goodrich now has sales commission plans with five other oil companies: Continental, Shell-American, Jennay, Ohio Oil and Emblem. Its sales commission plans with these companies are substantially the same as those it has with Texaco. There is nothing in this record to indicate that these oil companies do not also have the kind of economic power possessed by Texaco over its dealers. We would not be justified in concluding that any of these other plans, unlike Goodrich's plan with Texaco, was not an attempt to buy the economic power of the oil company over its dealers in order to obtain an unfair competitive advantage over competing rubber companies. The order therefore prohibits Goodrich from entering into or carrying out any sales-commission plan. If Goodrich should come forward with facts establishing that it has a sales commission plan with any oil company which does not possess economic power over its dealers, the proceeding can always be reopened for such modification of the order as may be warranted. See *Atlantic Refining Co. v. F.T.C.*, *supra*, at 377.

Chairman Dixon and Commission MacIntyre did not participate in this decision.

January 14, 1966.

[9450] (January 14, 1966)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

Commissioners:

PAUL RAND DIXON, Chairman
PHILIP ELMAN
EVERETTE MACINTYRE
JOHN R. REILLY
MARY GARDINER JONES

[SAME TITLE]

By its order dated June 16, 1965, the Court of Appeals for the District of Columbia Circuit remanded this case to the Commission for further proceedings in conformity with the opinion of the Supreme Court herein dated June 7, 1965. Pursuant thereto, the Commission heard oral argument and received written briefs, and fully considered, on the basis of the entire record, all questions of fact and law presented by the appeals from the hearing examiner's revised initial decision of September 24, 1962. For the reasons stated in the accompanying opinion of the Commission,

It is ordered that:

A.

The revised initial decision of the hearing examiner be, and it hereby is, modified as follows:

[9451] (1) Findings 10(b), 32, 33, 34, and conclusion 7 are stricken.

(2) The first sentence of finding 8 is deleted, and the following is substituted therefor: "Tires, batteries, and accessories have become a necessary and integral part of the business operation of the ordinary Texaco dealer, and in particular for Texaco's lessee dealers."

(3) The last sentence of finding 20 is deleted and the following is substituted therefor: "It would be unusual to expect that a Texaco salesman would vigorously insist to a dealer that he

had a right to buy wherever he might wish when Texaco's evaluation of the salesman's performance was in part based upon his success in selling sponsored TBA products to the dealer."

(4) The second sentence in finding 26 is deleted, and the following is substituted therefor: "There are written contracts with Texaco, Conoco, and Ohio-Marathon, but there are no formal contracts with the other three oil companies, which are smaller local concerns. Shell-American and Jenney operate generally with only service station customers selling at the retail level, but without wholesale outlets such as consignees, jobbers, and distributors."

(5) The second sentence in finding 30 is deleted, and the following is substituted therefor: "From 1952 to the end of 1955, the number of Conoco leased stations increased from 1,138 to 1,765.[1] "

(6) The last sentence of finding 31, and the chart immediately below, are deleted, and the following substituted therefor: "Outlets of the additional oil companies having sales commission contracts with Goodrich during the years 1953–55 were as follows:

[9452]

	12–31–53	12–31–54	12–31–55
Conoco	1061	1272	1508
Shell-American	53	66	60
Jenney Mfg.	138	188	201
Ohio Oil	594	666	804
Emblem	30	9	25
	1876	2201	2598 [3]"

(7) The first sentence of conclusion 5 is deleted, and the following is substituted therefor: "Practically all of the representatives of the competitors of Goodrich called as witnesses testified generally that they had difficulty in selling TBA to Texaco stations and testified specifically as to the reasons given by certain Texaco dealers for not buying or selling their TBA items."

B.

The hearing examiner's revised initial decision of September 24, 1962, as hereinabove modified and supplemented by the accompanying opinion, and the order contained in said revised initial decision be, and they hereby are, adopted as the decision and order of the Commission.

C.

The respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form of their compliance with this order.

By the Commission, Chairman Dixon and Commissioner MacIntyre not participating.

SEAL.

/s/ JOSEPH W. SHEA
Secretary.

Issued: January 14, 1966.

PREHEARING STIPULATION IN LIEU OF PREHEARING CONFERENCE

(April 26, 1966)

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20058

TEXACO INC., PETITIONER

v.

FEDERAL TRADE COMMISSION, RESPONDENT

No. 20061

THE B. F. GOODRICH COMPANY, PETITIONER

v.

FEDERAL TRADE COMMISSION, RESPONDENT

On Petition to Review an Order of the Federal Trade Commission

Subject to the Court's approval, the parties hereby stipulate and agree as follows with respect to the issues and other procedures.

I.

ISSUES

Petitioners Texaco Inc. (hereinafter "Texaco") and The B. F. Goodrich Company (hereinafter "BFG") have filed separate petitions to review and set aside an order of the Federal Trade Commission (hereinafter sometimes referred to as "the Commission") individually directed to each petitioner, which, among other things, would ban their participation in all sales commission arrangements, present or future, whether between themselves or with others, in connection with the distribution of tires, batteries and automotive accessories (hereinafter "TBA") purchased by distributors and dealers of marketing oil companies.

The parties, having met and attempted to reach agreement on issues, but being unable to do so, submit the following.

Petitioners Texaco and BFG contend that the issues on review are as follows:

1. Whether the Commission's Order can stand under the facts of this case in light of the Supreme Court's decision in *Atlantic Refining Co. v. Federal Trade Commission*, 381 U.S. 357 (1965); and, in any event, whether that portion of the Order enjoining coercion can stand in view of the fact that Texaco did not coerce its dealers to purchase sponsored TBA (as found by this Court on the prior appeal in this proceeding); and

2. Whether Texaco and BFG are correct in maintaining that:

(a) The Order, and the opinions, findings and conclusions upon which it is based, are arbitrary, capricious, not in accordance with law, without statutory authority, unsupported by reliable, competent, probative or substantial evidence, unwarranted by the facts and founded upon erroneous inferences, incompatible with the record as a whole, contrary to the Supreme Court's decision in the *Atlantic* case, and were entered in violation of the requirements of due process of law and are in disregard of the provisions of the Federal Trade Commission Act, the Administrative Procedure Act and the mandates of the Supreme Court and of this Court in this matter.

(b) The Commission has wholly failed to make any findings of fact to support certain of its conclusions and has failed to inform the reviewing courts and the parties by an adequate and proper statement of its findings and conclusions as to the legal and factual basis for its order, all as required by statute and necessary to due process;

(c) Since the Commission expressly excluded from its consideration the matters officially noticed during the remand hearings in 1962 and since this left nothing before it but the prior record which it had held to be insufficient to support the complaint, the Commission exceeded its jurisdiction and authority in not dismissing the complaint;

(d) The decision of the Commission issued January 14, 1966, approving the conclusion that Section 5 had been violated, is in irreconcilable conflict with the Commission's opinion of March 9, 1961 upon the identical record. By reaching diametrically opposed results upon the identical record, without explanation and only by virtue of having unreasonably prolonged

the trial of this matter to the injury of Texaco and BFG, the Commission has acted in disregard of the requirements of the Administrative Procedure Act, has abrogated its functions under the Federal Trade Commission Act, and has denied Texaco and BFG due process;

(e) The evidence in the record will not support the conclusion that any sales commission agreement between Texaco and Goodrich or between Texaco and any other company or between Goodrich and any other company or any practices of Texaco or Goodrich pursuant to such agreements constitute an unfair method of competition or an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act. In particular there is no substantial, probative, competent or reliable evidence of (a) coercion; (b) the existence of and/or the employment of economic power by Texaco to cause Texaco dealers involuntarily to purchase substantial amounts of TBA; (c) the existence of and/or employment of economic power by any other oil company having sales commission arrangements with BFG to cause their dealers involuntarily to purchase substantial amounts of TBA; and (d) adverse competitive effects or any injury to competition;

(f) The record affirmatively establishes that the sales commission plan of distributing TBA as used by Texaco and BFG is a lawful selling method and is not in restraint of trade, is not an attempt to monopolize or a conspiracy to monopolize trade in TBA, does not involve a tie-in or exclusive dealing, is not an unfair method of competition or an unfair or deceptive act or practice in commerce in violation of Section 5 of the Federal Trade Commission Act and is not in violation of any law;

(g) Texaco and BFG have been denied procedural due process and subjected to violations of the Administrative Procedure Act and the Commission's own rules;

(h) The Commission's interpretation and application of Section 5 of the Federal Trade Commission Act in this proceeding violate the Fifth Amendment to the Constitution and render that statute an improper delegation of legislative authority, without any adequate standards, and are, further, contrary to every existing expression by Congress, the courts and the Commission itself as to the meaning and applicability of the statute;

(i) In addition to all of its other infirmities, the Commission's order cannot stand because it is unjustifiably broad in

reaching acts and practices not engaged in by Texaco or BFG and not relied upon by the Commission as a basis for its decision.

Respondent, the Federal Trade Commission, does not agree with the issues as stated by petitioners. It believes the issues on review to be as follows:

1. Whether it is an unfair method of competition, in violation of Section 5 of the Federal Trade Commission Act, for a rubber company to enter into an agreement with an oil company possessing controlling economic power over its dealers, under which the oil company, in return for a commission, promotes the sale to its dealers of the rubber company's products. To the extent that questions may be raised and argued by petitioners, this issue will include, *inter alia*, questions (a) as to whether Texaco Inc. does possess controlling economic power over its dealers, (b) whether the sales commission system gives the rubber company an unfair competitive advantage, having a tendency and capacity to restrict, restrain, or lessen competition and being in nature and effect an illegal tying arrangement, and (c) whether Texaco has overtly coerced dealers to carry sponsored TBA.

2. Whether the Commission abused its discretion in its choice of remedy. This issue will include the question of whether, having found that the sales commission agreement between petitioners Texaco Inc. and The B. F. Goodrich Company violated Section 5, the Commission abused its discretion by not merely prohibiting the petitioners from continuing or having such an agreement with each other, but by also prohibiting each petitioner from entering into or performing any similar agreement with any other company.

3. Whether the Commission's proceedings, findings and decision comply with the mandates of the Supreme Court and of this Court, the provisions of the Constitution, the Administrative Procedure Act, and the Federal Trade Commission Act. This issue includes the question whether petitioners have been denied due process of law. Depending upon the particular questions pursued by petitioners under this issue, an additional issue may be included as to whether such questions have been properly raised before the Commission so as to have preserved petitioners' right to raise them before this Court, as well as the extent to which such questions may be precluded by the nature of the Supreme Court's order of remand in this case.

Procedures and Schedules With Respect to Printing of Joint Appendix and Briefs, and Use of Unprinted Portions of the Record

The record here embodies more than 4400 pages of transcript testimony, nearly 4000 pages of exhibits and numerous orders, rulings, opinions and other legal papers. All parties place heavy reliance upon detailed consideration of the evidence, necessitating the designation of substantial portions of the record in the joint appendix required by Rule 10(a) of this Court.

Fortunately, a substantial portion of the record has been printed in a single joint appendix filed in this Court in or about February 1964, on the prior appeals before this Court in this proceeding (Nos. 17915 and 17923). Accordingly, all parties stipulate and agree that the 1964 joint appendix, together with a supplemental joint appendix to be comprised of those relevant legal papers added to the record after the filing of said 1964 joint appendix, shall constitute the printed joint appendix on this appeal.

The parties are undertaking to designate promptly for inclusion in the supplemental joint appendix those papers and other materials deemed by one or more of the parties to be pertinent, material and helpful to this Court in disposing of the petitions. It is anticipated that the supplemental joint appendix will be printed in time for filing with petitioners' appeal brief pursuant to the schedule hereinafter set forth for the consideration and approval of this Court.

The parties further stipulate and agree that the respondent may file a single answering brief.

Inasmuch as the briefing requirements of the parties will extend into the summer months, all parties, in accordance with Rule 18(f) of this Court, stipulate and agree, and hereby respectfully request the Court's approval, for the following briefing schedule which, it is believed, will not delay the assignment of the appeals for oral argument:

1. The petitioners shall file their appeal briefs not later than June 30, 1966.

2. The respondent shall file its answering brief, which may be in typewritten or mimeographed form, not later than August 18, 1966, with printed brief to be filed no later than August 29, 1966.

3. The petitioners shall file their reply briefs, if they so elect, not later than September 12, 1966.

It is further agreed that any party, in a brief or at the hearing in the case, may refer to and rely upon any portion of the original transcript herein which has not been printed to the extent that such portion may be material to the issues, it being understood that any portion of the record thus referred to will be printed in a supplemental joint appendix if the Court directs the same to be printed.

Respectfully submitted,

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Washington, D.C.
April 26, 1966.

ORDER OF COURT OF APPEALS

(May 2, 1966)

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1965

No. 20058

TEXACO, INC., PETITIONER

v.

FEDERAL TRADE COMMISSION, RESPONDENT

No. 20061

THE B. F. GOODRICH COMPANY, PETITIONER

v.

FEDERAL TRADE COMMISSION, RESPONDENT

Before: Tamm, Circuit Judge, in Chambers

ORDER

Counsel for the parties in the above-entitled cases having submitted their stipulation pursuant to Rule 38(k) of the General Rules of this Court, and the stipulation having been considered, the stipulation is approved, except as hereinafter provided, and it is

Further ordered that the stipulation shall control further proceedings in these cases unless modified by further order of this court, and that the stipulation and this order shall be printed in the joint appendix herein, and it is

Further ordered, sua sponte, that the above-entitled cases are consolidated for all purposes, and that the joint appendix filed by the parties in cases numbered 17,915 and 17,923 shall be treated as part of the joint appendix in the above-entitled cases, and it is

Further ordered that the times for filing the briefs and joint appendix of the parties is fixed as follows:

Petitioners' briefs shall be filed on or before June 23, 1966.

Respondent's consolidated brief shall be filed on or before August 2, 1966.

Petitioners' reply briefs, if any, and the joint appendix of the parties shall be filed on or before August 22, 1966.

The parties may file their briefs in typewritten or mimeographed form, provided that the printed briefs and joint appendix shall be filed on or before August 22, 1966.

References to the record appearing in the briefs of the parties may, if the parties so desire, be to the page numbers in the original record certified to this court, provided that in the printing of the joint appendix there shall be set forth, in addition to the consecutive numbering of the pages of the joint appendix, the original record page numbers in bold type and indented in a manner which will render it convenient for the court to locate the pages referred to in the briefs.

Federal Trade Commission Docket 6485, United States Court of Appeals For the District of Columbia Circuit

No. 20058

TEXACO, INC., PETITIONER

v.

FEDERAL TRADE COMMISSION, RESPONDENT

No. 20061

THE B. F. GOODRICH COMPANY, PETITIONER

v.

FEDERAL TRADE COMMISSION, RESPONDENT

Petitions to Review an Order of the Federal Trade Commission

Decided September 25, 1967

Before BAZELON, *Chief Judge*, WILBUR K. MILLER, *Senior Circuit Judge*, and BURGER, *Circuit Judge*.

BURGER, *Circuit Judge:* Eleven years after the issuance of a complaint and sixteen years after an investigation was initiated,[1] this case returns to us from the Federal Trade Commission for the second time; in the interim, following our prior review, the Supreme Court remanded for further consideration. *See Texaco, Inc.* v. *F.T.C.*, 118 U.S. App. D.C. 366, 336 F. 2d 754 (1964), *remanded*, 381 U.S. 739 (1965).

In 1956 the Federal Trade Commission brought proceedings against major oil and rubber companies, simultaneously instituted by substantially identical complaints, alleging as an unlawful method of competition prohibited by Section 5 of the Federal Trade Act, 38 Stat. 719 (1914), 15 U.S.C. § 45 (1946), the sales commission method of distributing tires, batteries, and accessories, called the "TBA" plan. Under that plan the tire

[1] The investigation was originally instituted in 1936 but was inactive for many years. Serious investigation was renewed between 1949 and 1951 and from 1951 on all six companies were the subject of a single joint investigation which was completed in 1954. *See Hearings Before Subcommittee No. 1 of the House Select Committee on Small Business on the Organization and Procedures of the Federal Regulatory Commissions and their Effect on Small Business*, 84th Cong., 1st Sess., 447–48 (1956).

and rubber companies pay commissions to the oil companies on sales of the tire companies' TBA to the oil companies' dealers. Each complaint paired one of the large tire and rubber product manufacturers and a large oil company with which it had contracted. The pairings were Texaco and B. F. Goodrich, Shell and Firestone, and Atlantic and Goodyear.[1]

(1) *Background:* In 1961 the Commission rendered separate decisions in each of the three TBA cases. In both *Atlantic-Goodyear*[2] and *Shell-Firestone*,[3] the Commission found coercion, unlawful tie-ins, and adverse competitive effects resulting from the TBA sales commission agreements. In contrast, however, the Commission in *Texaco-Goodrich*[4] found no coercion and remanded the case to the Hearing Examiner for additional evidence on anticompetive effects.[5] One year later the Examiner filed a revised decision in which he added new findings and reached new and contrary conclusions without complying with the Commission's directive to take additional evidence.

Prior to the second decision, because of statements made about the then pending case by Commission Chairman Paul Rand Dixon to the National Congress of Petroleum Retailers, Inc. in Denver, Colorado, on July 25, 1961, Texaco filed a motion before the Commission that Chairman Dixon withdraw from participating or that he be disqualified. The motion was denied and Chairman Dixon participated in the decision. On April 15, 1963, the Commission affirmed the new conclusions of the Examiner that the agreements were unlawful, but altered

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[1] The pairings were based on the most substantial agreements challenged, although the complaints also challenged the contracts of each respondent with other oil and tire companies not parties to the particular actions.

[2] 58 F.T.C. 809 (1961).

[3] 58 F.T.C. 811 (1961).

[4] 58 F.T.C. 1170 (1961).

[5] The Commission's first remand order declared:

> The determination of whether Texaco's exercise of such economic power in favor of Firestone and Goodyear under the oil company's sales commission contracts with these rubber companies constitutes an unfair method of competition depends, therefore, upon *the competitive effects* of these sales commission contracts; not upon whether Texaco has exercised its power to implement such contracts through the exercise of overt coercive tactics or by more subtle but equally effective means. 58 F.T.C. at 1178 (emphasis in the original).

Only one member of the Commission who had participated in the 1961 remand for additional evidence was on the Commission when the case came back in 1963; he dissented on the ground that the Examiner had failed to comply with the Commission's remand order. The order had explicitly directed the Examiner to take additional evidence on the sales agreement which the Commission considered indispensable to its disposition of the case.

[6] B. F. Goodrich Co., Docket No. 6485, 62 F.T.C. 1172, 1197 (1963).

explanation for doing so without the new evidence earlier thought necessary.

On appeal from the second Commission decision this Court in 1964 unanimously held that

> Chairman Dixon's participation in the hearing amounted * * * to a denial of due process which invalidated the order under review * * *. His Denver speech, made before the matter was submitted to the Commission * * * plainly reveals that he had already concluded that Texaco and Goodrich were violating the Act * * *.

Supra at 372, 336 F. 2d at 760. In the Supreme Court the Solicitor General did not challenge this Court's conclusion of disqualifying bias on the part of the Commission Chairman. With respect to the merits, a majority of this Court held that there had been a fundamental failure of proof. Our opinion stated:

> We see nothing illegal or even unethical in the payment of commissions for such services, except in instances where an oil marketing company forces its dealers through coercive tactics or controlling economic power to buy the sponsored products. Neither of these inferences was proved in this case, and it may not be presumed that either will exist in future similar situations.

Id. at 373, 336 F. 2d at 762 [emphasis added]. We dismissed the complaint because of this lack of proof and because the undue protraction of the administrative process constituted a denial of due process.

Meanwhile, the Seventh Circuit affirmed the Commission in the *Atlantic* case, *Goodyear Tire and Rubber Co.* v. *F.T.C.*, 331 F. 2d 394 (7th Cir. 1964), and the alleged conflict between this Circuit and the Seventh Circuit was asserted in the petition for certiorari. The writ was subsequently granted.[1]

In *Atlantic Refining Co.* v. *F.T.C.*, 381 U.S. 357 (1965), the Supreme Court affirmed the Seventh Circuit holding that the Atlantic TBA sales commission agreements were an unfair method of competition. One week later in a *per curiam* opinion the Court granted the Commission's petition for a writ of certiorari in *Texaco*, and remanded with instructions

[1] The *Shell-Firestone* proceedings before the Fifth Circuit had been held in abeyance pending the Supreme Court resolution of the alleged conflict in circuits.

to remand it immediately to the Federal Trade Commission for further proceedings, without the participation of Chairman Dixon, in light of *Atlantic Refining Co. v. Federal Trade Commission*, ante, p. 367, 381 U.S. 739 (1965). Pursuant to the remand from this court, the Commission issued an order on June 18, 1965 (a) vacating its prior 1963 decision, (b) denominating the proceedings before the Commission as appeals from the Examiner's 1962 decision, (c) permitting oral argument and the filing of briefs, and (d) instructing counsel to focus on the question whether the facts of record in the present case bring it within the Supreme Court's decision in the *Atlantic Refining Co.* case. *Order of the Federal Trade Commission Vacating Prior Decision and Order and Setting Hearing on Remand*, In the Matter of The B. F. Goodrich Co. and The Texas Co., Docket No. 6185, June 18, 1965.

In January, 1966, the Commission entered an order and filed an opinion, which is the subject of this appeal. The Commission held:

> In our view the Supreme Court's decision in *Atlantic* compels the conclusion that the Texaco-Goodrich plan is an unfair method of competition and that Texaco and Goodrich, as were Atlantic and Goodyear, should be prohibited from performing or entering into any other sales commission plans.

____ F.T.C. ____, ____ (1966). The Commission thus held that the sales commission agreement involved here was indistinguishable in fundamental operation and effect from the one held unlawful in *Atlantic*.

(2) *Contentions.* The Commission contends that (1) the TBA sales commission system is inherently unlawful without regard to any acts of overt coercion and argues that this is implicit in the remand in light of *Atlantic*; (2) by its use of the sales commission system, Texaco has in fact exercised its economic power over its dealers in favor of Goodrich sponsored products; and (3) the sales commission system has given Goodrich an unfair competitive advantage.

Chairman Dixon, having been disqualified, did not participate nor did Commissioner MacIntyre. Thus only three Commissioners actually participated in the opinion and order now under review. None of the three members participating was present at the 1961 Commission which directed the Examiner to take additional evidence on the competitive effects of the [illegible] contention [illegible]

Texaco's position is (1) that the coercion provision of the Commission's latest order entered against Texaco is not justified on the record; (2) that this order is erroneous independent of the sales commission program; and (3) that the Supreme Court's remand to the Commission required that the asserted illegality of Texaco's sales commission program be re-determined in light of *Atlantic*; furthermore, that illegality under the *Atlantic* holding can be shown only by proof that Texaco coerced dealers to purchase sponsored merchandise and that anticompetitive effects followed. Additionally, Texaco contends that the administrative process has been abused by the unduly long drawn out nature of the proceedings and that this constitutes harassment and warrants dismissal of the proceedings independent of the merits.

We must now determine whether the Commission has complied with the remand order and correctly applied to applicable principles enunciated in the *Atlantic* holding.

(3) *The Atlantic Holding.* Our analysis must begin with the decision in *Atlantic*. In the *Shell-Firestone* case, the third TBA case decided after *Atlantic*, the Fifth Circuit interpreted the *Atlantic* rationale as based on three essential components, the application of each depending on the facts of the particular case before the court:

(a) the oil company's dominant economic power over its dealers;

(b) exercise of that power over its dealers;

(c) anticompetitive effects of using that power.

Shell Oil Co. v. *F.T.C.*, 360 F. 2d 470, 477 (5th Cir. 1966), *cert. denied*, 385 U.S. 1002 (1967). Both the Commission and Texaco agree with this view of the *Atlantic* holding and this view was essentially adopted by the Solicitor General in the Supreme Court. Our consideration of *Atlantic* leads us to the same view as that of the Fifth Circuit in *Shell*, in short we conclude with Judge Wisdom that the Court hovered near the brink but did not lay down a per se rule.[9]

[9] Several factors compel this conclusion. In the first place, although the Commission took the position that the sales commission contract was illegal per se, the Seventh Circuit implicitly rejected such a view, and the absence of the words "per se" in the *Atlantic* opinion could hardly have been an accident. *Shell*, *supra* at 477. Secondly, the Court has stated that when it has had no previous opportunity to assay the effects on competition of a new form of economic activity, it will not declare that activity illegal per se. *White Motor Co.* v. *United*

(c) Existence of Dominant Economic Power

In our prior opinion we found "no basis in the record for the Commission's conclusion that Texaco has controlling economic power over its dealers," *supra* at 374, 330 F. 2d at 762. In *Atlantic* the Court viewed the question of dominant economic power not only in terms of the statistical facts used to show economic dependence but also in terms of specific control devices: (1) control over oil and gas supply; (2) control over dealers through short term leases, equipment loans, etc.; (3) control over advertising; (4) leverage from financial promotion; and (5) housekeeping requirements of leases. Such devices have often been alluded to in demonstrating dominant economic power and leverage. *See, e.g., Simpson* v. *Union Oil Co.*, 377 U.S. 13 (1964); *United States* v. *Loew's, Inc.*, 371 U.S. 38, 45 (1962).

While the statistical material in the record here is ambiguous, the record fairly demonstrates what is a matter of common acceptance, that both Texaco and B. F. Goodrich are among the giants of their respective industries,[11] and as such control large economic leverage.

Many, but not all, of the control devices mentioned in *Atlantic* are present to some degree here. Texaco, of course, controls the supply of oil and gas to its dealers, and the relatively heavy cost of constructing and maintaining a modern service station enables Texaco to maintain substantial economic lever-

States, 372 U.S. 253, 261 (1963); *see also* Mr. Justice Goldberg's dissenting opinion in *Atlantic*, 381 U.S. at 369–80. *But cf. United States* v. *Arnold, Schwinn & Co.*, 388 U.S. 365, 385–86 (1967) (Stewart, J., concurring in part and dissenting in part).

[11] The myriad figures present in our voluminous record support a statistical analysis which assumes dominant economic power. Similar statistics have been fully discussed in the *Shell* case, 360 F. 2d at 479–82 & nn. 21–28.

We think it is sufficient to note the following facts: Goodrich is one of our largest rubber product manufacturers and its sales in 1954, one of the years on which the complaint is based, exceeded 500 million dollars; Texaco's in the same year exceeded one and one-half billion dollars. The 30,000 Texaco stations which might be subject to the sales commission plan constituted some 18% of all service stations in the United States. Finally, from 1962 to 1966 Goodrich sales to all Texaco accounts rose from 12.7 million dollars to 18.9 million dollars. We think these not insubstantial figures sufficiently support the requirements of a statistical analysis of dominant economic power.

We should make clear, however, our view that statistics alone would not be sufficient to support the finding that Texaco exercises dominant economic power. The statistical record supports our conclusion that the Commission has not set forth with sufficient clarity an adequate factual record to explain its other findings.

age through the use of loans, short-term leases, and equipment financing. However, we agree with Judge Wisdom that "the dominance of a major oil company over its dealers comes from the leverage inherent in the structure and economics of the petroleum distribution system * * *." 360 F. 2d at 481.

(b) Exercise of Dominant Economic Power.

In our earlier opinion we concluded that on the whole record there was no substantial evidence that Texaco had exercised controlling economic power over its dealers, as the Commission had found. Similarly, after careful review of the record, we had concluded that there was no basis for a finding of coercion and that read as a whole the record demonstrated the contrary. We should note at the outset that nothing said by the Supreme Court in *Atlantic* bears on that holding and nothing said by the Commission since the remand alters that conclusion.

We can glean nothing from the utterances of the Supreme Court which alters the basic rule that a finding of coercion is the threshold requirement of a determination of exercise of dominant economic power. As the Commission has noted, it did not ask the Supreme Court to review our holding that the record did not sustain a finding of coercion. Equally true is the fact that in the *Atlantic* case the Seventh Circuit's sustaining of the Commission's findings of coercion were not appealed. But, in spite of this lack of challenge by Atlantic and by the Commission in both cases, the Supreme Court in *Atlantic* did not ignore record evidence of Atlantic's coercive conduct. Indeed, that Court was well aware that the coercion was found to have permeated the entire Atlantic program, contaminating even its neutral conduct.

The Commission argues that Atlantic's coercion merely aggravated the restraint imposed by the sales commission plan. We do not so read *Atlantic*. If the Supreme Court concluded that the sales commission plan was inherently illegal when entered into by a major oil company, it would have had no occasion to take cognizance of the coercive practices and no remand of this case would have been required. Yet the *Atlantic* opinion is replete with references to these practices and we cannot escape the conclusion that the overt coercive acts practiced by Atlantic were deemed essential to the ultimate action of the Court. It is surely of some significance that in almost every page of the *Atlantic* opinion there is some such reference, *e.g.*, "overt

acts," overt coercive pressures," "direct and overt threats," etc., 381 U.S. at 368, 373, 376.

The Commission now asserts that since it did not rely upon coercion as a basis for invalidating Texaco's sales commission agreements, the Supreme Court action vacating our judgment implies a total rejection of Texaco's position. The combination of *Atlantic's* emphasis on overt coercion, to which we have just alluded, the failure of the Commission to challenge our prior holding on this issue when seeking review, and the absence of any reference to the subject in the Supreme Court Per Curiam opinion on remand all tend strongly to negate the Commission's argument. Had the Commission urged on the Supreme Court a *per se* rule of illegality stemming from mere existence of economic power, its failure to challenge our holding on absence of coercion would be understandable.

We have difficult reconciling the Commission argument with the fact of a remand in this case. If the Supreme Court viewed its holding in *Atlantic* as treating contractual arrangements between the oil company and its dealers in and out of themselves as giving rise to controlling economic power, and that mere salesmanship without any coercion constituted unlawful exercise of such power, there would have been nothing to remand. The Supreme Court could have simply reversed and reinstated the Commission's order.

Of course we realize, as did Judge Wisdom in *Shell*, that the "Company's use of its economic power through the sales commission plan to cause its dealers to buy sponsored TBA *even in the absence of overt coercion*" can constitute an unfair method of competition and a violation of section 5, *Shell* at 482–83 [emphasis added]. The Commission also recognizes this and therefore argues that each of the "non-coercive practices" referred to in *Atlantic* are present in equal degree in this case. The Commission argues that the references to these practices in *Atlantic* compels a conclusion that even the non-coercive practices arising from the contractual relationship constitute the exercise of economic power over dealers. The Commission's contentions must be weighed against the Examiner's finding that Texaco dealers, unlike those of Atlantic and Shell, were free to accept or reject sponsored products. This view of the Examiner may have been influenced by the circumstance that only 5 former Texaco dealers testified to facts which would sus-

tain a finding of coercive practices and more than 50 present and some former dealers testified to the contrary.

In light of all this we do not read *Atlantic* to conclude that the Court was condemning these practices as *per se* illegal. They were indicative of Atlantic's conduct, of a character not shown in this record, of marshalling "its full economic power in a continuing campaign to force its dealers and wholesalers to buy Goodyear products," 381 U.S. at 371. A few examples will suffice:

(1) *Sales Practices.* In *Atlantic*, the oil company

> was to instruct its salesmen to urge dealers to "vigorously" represent Goodyear, and to "cooperate with and assist" Goodyear in its efforts to promote and increase the sale by Atlantic dealers of Goodyear products.

381 U.S. at 365. The Commission characterizes the evidence here as substantially identical. Yet the Examiner was satisfied that Texaco policy since at least 1948 has been to permit each dealer to choose whatever brand TBA he desires.[12]

The Commission now argues that "on each visit, the [Texaco] salesman offers to write up sponsored TBA orders," but the Commission itself in the order presently under review struck the Examiner's finding that Texaco "salesmen were encouraged by [Texaco] management to write up orders for sponsored TBA without waiting for a formal request from a dealer."

(2) *Dual Solicitation and Advance Notification.* In *Atlantic* there was a regular practice of

> "double teaming" solicitation of Atlantic outlets by representatives of both companies to convert them to Goodyear products. They were to call on the dealers together, take stock orders, furnish initial price lists and project future quotas of purchases of Goodyear products.

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[12] This policy in part states:

The Texas Company's selling personnel are expected to become familiar with Firestone and Goodrich Inventory Guide Systems and TBA merchandise and the merchandising of TBA products generally. But it should be clearly understood that we will render equal assistance to all dealers in setting up and maintaining his own basic TBA stock assortment and Inventory Guide system along these lines regardless of the brand of merchandise handled. * * * [The Inventory Guide] is not applied in any manner whatsoever that would impair any dealer's freedom to purchase such brands and quantities of TBA merchandise as he desires.

Our dealers, consignees and distributors are independent businessmen, and instructions that no undue influence is to be used to interfere with their free and independent judgment remain unchanged.

381 U.S. at 365. The Commission contends such practices are prevalent in this record. The Examiner found that "double teaming" and advance solicitation—notice to the tire companies that a new station was about to become operable—were isolated and sporadic practices, not a regular or even frequent practice as was the case with Atlantic's operations. They appeared in *Atlantic* in the context of an entire system designed to overtly coerce its dealers. This is not the state of the record before us.

(3) *Dealer Policing and Credit Cards.* In *Atlantic* the Supreme Court was confronted with evidence that Atlantic imposed quotas on dealers and effectively policed them by the use of a reporting system of purchases and sales of TBA. In the original appeal to this Court, the Commission contended that the quota and policing system were also used by Texaco. In the present appeal the Commission has retreated from this position. As to credit card policy, the Examiner carefully distinguished the *Atlantic* record from the instant record and significantly found that Texaco does permit dealers to charge *non-sponsored* TBA on its credit cards.[12]

(4) *Geographical Supply Points.* In *Atlantic*, Goodyear required that Atlantic assign its dealers to a single point of TBA supply. This geographical division of supply points is not present in our record and, indeed, the Examiner found that as to sponsored TBA sales, each dealer did not buy exclusively from, and was not limited to, any particular supply point but was free to deal with any source he chose.

These few examples demonstrate a different set of facts between the *Atlantic* record and this case. On the basis of the record before us we cannot conclude that Texaco exploited its service station market illegally for the benefit of itself and Goodrich. In short, we do not find that Texaco used its controlling economic power to compel its dealers to purchase sponsored TBA.

(c). *Anticompetitive Effects*

Atlantic's third requirement for finding a violation of section 5 is that the TBA sales commission contracts must result in

[12] Since 1955 Texaco practice is to permit deferred payment of sponsored TBA on credit. Thus, three months is permitted on purchases of $99 or less, six months on purchases of $100 or more. The Examiner held that this limitation of deferred payment to sponsored TBA was altogether reasonable and proper. But the record also shows that dealers continue to charge non-sponsored TBA on a monthly basis without a dollar limitation.

adverse competitive effects on the relevant market. As we have previously noted, the first Commission remand of the case to the Examiner in 1961 was because of the need for additional evidence on the issue of anticompetitive effects. We have further noted that no such evidence was forthcoming. In our prior review of this case we also found that evidence of anticompetitive effects was lacking.

The Commission urges the following three guidelines to be the essence of the *Atlantic* holding on anticompetitive effects:

> (1) Extensive economic analysis of the competitive effect based on examination of the entire TBA market is unnecessary.
>
> (2) Evidence of economic justification or benefit to the parties concerned is immaterial.
>
> (3) It is sufficient when the Commission finds that a substantial portion of commerce is affected.

This, of course, explains the Commission position that the TBA system is an "inherently anticompetitive" device from which "competitive injury must result." This is simply a renewed intimation of a *per se* rule in *Atlantic* and needs little discussion since we have already rejected that reading. It is true, of course, that the guidelines suggested by the Commission are referred to in the *Atlantic* opinion, *e.g.*, 381 U.S. at 370–371. But it is also true, as Judge Wisdom pointed out in his discussion of these guidelines, that the Court in *Atlantic* looked to the full record for examples of anticompetitive effects. 360 F. 2d at 483. Indeed, the Court was very clear on this point:

> The anticompetitive effects of this program are clear on the record and render unnecessary extensive economic analysis of market percentages or business justifications * * *

381 U.S. at 371.

Bearing in mind the Fifth Circuit's caveat of an overlap between a discussion of anticompetitive effects and the exercise of dominant economic power, we proceed to examine the record before us. As *Atlantic* noted, the question is whether the TBA system "impaired competition at three levels [manufacturing, wholesaling, and retailing] of the tires, batteries and accessories industry," *id.* at 370. And, of course, it goes without saying that the type of competition at these levels—interbrand and intrabrand—is highly relevant.

(a) *Interbrand Competition*

Under the TBA system interbrand competition manifests itself, if at all, most perceptively at the wholesale level. We recognize that wholesalers of competing TBA brands may well be substantially limited in selling their products to service stations under contract with major oil companies. The TBA system may deprive retailers of their freedom of choice as to the TBA products they may choose. Such competitive effects also reach back to the manufacturing level. For example, to the extent that wholesalers are unable to sell their products to service outlets, the manufacturers may suffer injury. To that extent producers' distribution systems may be impaired and expansion potential circumscribed.[11]

As an example of interbrand anticompetitive effects in *Atlantic* the Court found a classic division of territories between Goodyear and Firestone, the two manufacturers involved: "Firestone and Goodyear were excluded from selling to Atlantic's dealers in each other's territories," 381 U.S. at 370. Flowing directly from this was the further adverse effect that Atlantic dealers could only buy at the prices designated by supplier to whom the territory had been allocated, *ibid.* Finally, there was little doubt but that the combination of these and other practices in the *Atlantic* record, including the resort to overt coercion, had the drastic anticompetitive effect of almost completely foreclosing the market to Atlantic's own retailers and wholesalers who desired to sell brands other than sponsored products and to wholesalers and manufacturers of competing brands with similar desires.

We have earlier noted the fact that the record before us is devoid of evidence disclosing any form of territorial division of markets on the part of the sponsored manufacturers. And we have also referred to the long standing Texaco policy that Texaco dealers are free to purchase any brand of TBA which they desire to sell. *See* note 12, *supra*. Similarly, there is no evidence that any form of price dictation occurred.

But the most significant evidence on the question of interbrand anticompetitive effects concerns the testimony of Texaco dealers and sponsored and competing suppliers. The Commission relies upon testimony of former Texaco dealers and

[11] *See* Klass, *Analysis of the Feiss Commission System of Tires, Batteries, and Accessories Distribution in Retrospect: Answers For An Incisive Dissent*, 44 Texas L. Rev. 890, 911 (1966).

competing TBA suppliers to the effect that nonsponsored TBA could not be sold to Texaco dealers because of the dealer's understanding that they were required to purchase sponsored TBA. The Commission corroborates this testimony with "representative evidence" that in certain Texaco districts the percentage of dealers who carried sponsored TBA ranges from 70% to 89%. This evidence and these figures were rejected by the Examiner in his original decision and by the first Commission decision. The Examiner's modification of this position, which as we noted was made with no new evidence, was affirmed by the second Commission decision, and this Court rejected those findings on the prior appeal as unsupported in the record. Nothing has developed to change our view, and indeed on remand the Commission has stricken the Examiner's finding. The Commission now limits its characterization of the testimony of competing suppliers to a statement that "practically all of the representatives of the competitors of Goodrich *called as witnesses* testified" that they were foreclosed from the Texaco service station market. We simply cannot regard this as "representative;" such a conclusion is not supported by substantial evidence, except in isolated instances which were generally contradicted by overwhelming rebuttal evidence. Nor can we accept the Commission view that the rebuttal testimony is to be discounted because witnesses are under "pressure" from Texas. A finding of pressure on witnesses before a tribunal is not one to be lightly inferred and ought not be made without evidence of some kind; none is suggested by the Commission on this score.

(b) Intrabrand Competition

A second form of competition, intrabrand, is the inevitable result of the supply point system noted in *Atlantic*. The adverse anticompetitive effects are similar to those found in interbrand competition—pricing, territorial market foreclosure, and full-line forcing.[10] Without laboring the point, we have already noted that the record in the instant case simply cannot be said to reflect substantial evidence to support a finding that these practices exist in a measure adequate to demonstrate that the

[10] In the *Atlantic* case the Seventh Circuit found that

> [B]oth Goodyear and Firestone said that they would refuse to sell only tires under the dealer commission plan and insisted that they be allowed to handle batteries and accessories as well as their own products.

381 F. 2d at 398.

Texaco TBA contract causes adverse anticompetitive effects. We therefore hold that there is an absence of substantial evidence which supports a finding of anticompetitive effects.

The Commission maintains that the first Commission opinion remanding for evidence of anticompetitive effects was "enigmatic," and that it is enough that a substantial portion of commerce is affected under the rationale of *Atlantic*. Surely there is nothing obscure or ambiguous in a remand predicated on an absence of crucial evidence especially where the remand directs a further inquiry for relevant evidence. And we find no basis for treating the *Atlantic* case as carrying the test of quantitative substantiality to the brink of extremism by a strained literalism. Indeed, we are inclined to believe that the Commission views the situation, as the Commission opinion and brief candidly concede, as one in which it would be arbitrary and inequitable to bar Atlantic and Shell, who are very much like Texaco in broad outline, from use of the sales commission plan while permitting Texaco to continue its operation. We agree that it would be inequitable, and indeed a dereliction of the Commission's obligations, *provided* that all three were guilty of substantially equal violations of section 5. But simply because Texaco is in the same line of business does not mean it must suffer the pain of the misdeeds of other oil companies; this would indeed by [sic] guilt by association. We conclude that the record simply does not support a finding that Texaco violated the Act. We therefore hold that while the record shows Texaco indeed has dominant economic power, it is fatally deficient on the crucial issues of exercise of that power and subsequent anticompetitive effects.

CONCLUSION

One course available to us would be to remand this case once again to the Commission to permit it to develop additional evidence for the record [16] but the Commission and Examiner have had abundant opportunity—and direct mandate—to do this in the past and have not done so. We think the time has now come to terminate these protracted proceedings and dismiss the complaint. We recognize that the Commission's

[16] Even in a remand to the Commission for further proceedings it would have been imperative to make clear our view that the coercion aspect of the Commission order has no basis in law, or the record. Since we have twice determined there is no basis that Texaco overtly coerced any substantial number of dealers or that a pattern of coercion existed, the provisions of the order prohibiting such coercion were and are baseless.

obligations and the public interest in preserving competition are not to be lightly dealt with but the Commission has now had more than an adequate opportunity to develop a record in support of its section 5 contentions over a period of fourteen years. Accordingly, the Commission order under review is set aside and remanded to the Commission with directions to dismiss the complaint.

Reversed and Remanded.

United States Court of Appeals for the District of Columbia Circuit

SEPTEMBER TERM, 1967

No. 20058

TEXACO, INC., PETITIONER

v.

FEDERAL TRADE COMMISSION, RESPONDENT

No. 20061

THE B. F. GOODRICH COMPANY, PETITIONER

v.

FEDERAL TRADE COMMISSION, RESPONDENT

(United States Court of Appeals for the District of Columbia Circuit; filed September 25, 1967; Nathan J. Paulson, clerk).

On Petitions to Review an Order of the Federal Trade Commission.

Before: Bazelon, Chief Judge, Wilbur K. Miller, Senior Circuit Judge, and Burger, Circuit Judge.

JUDGMENT

These cases came on to be heard on the record from the Federal Trade Commission, and were argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the order of the Federal Trade Commission on review in these cases is set aside, and these cases are hereby remanded to the Federal Trade Commission with directions to dismiss the complaint.

Per Circuit Judge BURGER.

Dated: September 25, 1967.

A true copy.

Test:

NATHAN J. PAULSON,

Clerk of the United States Court of Appeals for the District of Columbia Circuit.

SUPREME COURT OF THE UNITED STATES

No. 1049, October Term, 1967

FEDERAL TRADE COMMISSION, PETITIONER

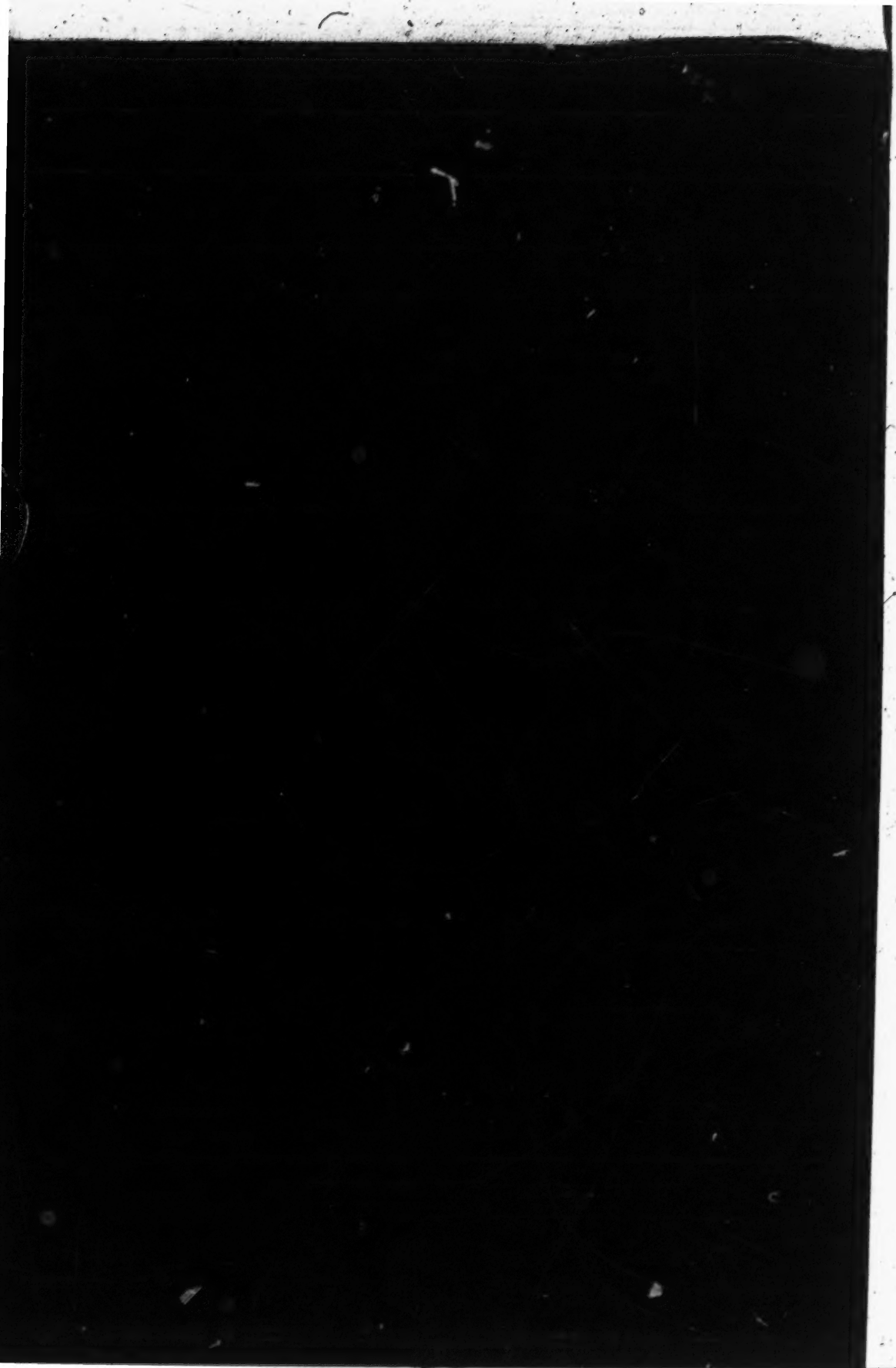
v.

TEXACO, INC., ET AL.

Order allowing certiorari—Filed March 11, 1968

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.



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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. [redacted]24

FEDERAL TRADE COMMISSION,

Petitioner,

v.

TEXACO INC. and THE B. F. GOODRICH COMPANY,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENTS

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1049

FEDERAL TRADE COMMISSION,

Petitioner,

v.

TEXACO INC. AND THE B. F. GOODRICH COMPANY,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENTS

STATEMENT OF THE CASE

A. The Object of the Appeal: Enforcement of the Commission's Order Outlawing the Sales Commission Plan

Petitioner prays for the remand of this case to the Court of Appeals "with directions to enforce the Commission's order, except for paragraphs 5 and 6 directed against Texaco."[1] It notes that:

> "The Commission has not challenged the action of the court of appeals in setting aside paragraphs 5

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[1] Petitioner's Brief (hereafter "P. Br.") 28.

> and 6 of the order against Texaco, which prohibited the latter from overtly coercing its dealers" (P. Br. 9 n. 4).[2]

Thus, this Court now has before it the precise opposite of what was presented to it in *Atlantic Refining Co.* v. *FTC*, 381 U.S. 357 (1965). There, after the Court of Appeals found that Atlantic had coerced its dealers, this Court observed:

> "* * * Atlantic has conceded the point [coercion] by not perfecting an appeal thereon" (381 U.S. at 367).

Here, *per contra*, after the Court of Appeals found that Texaco had *not* coerced its dealers, the Commission acquiesced in this ruling by not perfecting "an appeal thereon," thus eliminating coercion from this case.

In *Atlantic*, this Court upheld an order prohibiting Atlantic from having a sales commission plan with respect to tires, batteries and automotive accessories ("TBA") on the ground that

> "The long existence of the plan itself, *coupled with the coercive acts practiced by Atlantic pursuant to it, warranted a decision to require more* [than enjoining Atlantic's "use of overt coercive tactics"]. The Commission could have decided that to uproot

---

[2] The Court of Appeals held, in this regard, that
". . . the coercion aspect of the Commission order has no basis in law, or the record. Since we have twice determined there is no basis that Texaco overtly coerced any substantial number of dealers or that a pattern of coercion existed, the provisions of the order prohibiting such coercion were and are baseless." (Appendix, Volume VI 119 n. 16).

Hereafter, the appendix will be cited as "A.", followed by the Roman number of the volume and arabic number page, viz. "A.VI. 119 n. 16."

> the practice [*i.e.*, Atlantic's forcing its dealers to purchase only sponsored TBA] required its complete prohibition; otherwise *dealers* would not enjoy complete *freedom* from unfair practices which the Act condemns" (381 U.S. at 372-73; emphasis added).

Petitioner would impose the same drastic order here although Texaco does not coerce its dealers. On the contrary, as the Court of Appeals expressly found, Texaco dealers have always been free to purchase any brand of TBA they desired (A.VI. 117)—a finding which petitioner does not, and cannot, attack as clearly erroneous.

B. The Business Practices Involved

During the 1930's there was a gradual shift in the nature of retail petroleum outlets from "filling stations," which merely handled gasoline, lubricants and greases, to "one-stop service stations," where the motorist could go for all of his product and service needs (A.III. 2343-47). The latter required larger and costlier facilities, including storage and display space for TBA, and entailed very substantial investments by the oil companies (*id.* at 2349). A company not providing these facilities, however, would be at a serious competitive disadvantage. Its dealers would lose petroleum business to the "one-stop service stations" preferred by motorists and it would lose its better dealers to oil companies which afforded them this opportunity of earning greater revenue (*id.* at 2347-49).

Conversely, enabling the dealer to handle a full line of TBA, seeing that he receives adequate training in the marketing and use of this range of products so that he can properly service his customers, and assisting him with TBA

suppliers to make certain that he receives reasonable and prompt attention from them, will increase his revenue, enable the company to obtain and retain better dealers and directly further the sale of gasoline. As the Examiner found, it is in the interest of Texaco that its dealers sell TBA since this builds a stronger dealer organization and increases the sale of gasoline (A.I. 207).

To accommodate these considerations (A.III. 2349), Texaco entered into sales commission agreements with Goodrich and Firestone in 1940 under which each rubber company agreed to pay Texaco a commission for its services in promoting their products to Texaco outlets. Neither contract grants any exclusive right to Texaco's promotional services or any assurance of purchases in any amount or by any number and each is terminable by either party on 120 days written notice (A.IV. JAX 8-9, 16-17, 150, 151, 166).

Goodrich and Firestone products were selected for sponsorship by Texaco because their national advertising, wide distribution and high quality make them both very saleable and desirable (A.I. 389-90; A.V. JAX 424).

While Texaco had an interest in encouraging its dealers to handle TBA generally, and Goodrich and Firestone products particularly, Texaco from the outset was guided by a more fundamental overriding interest. In its view, more important than any commissions it might earn in the short run, were the long-term benefits to be obtained by fostering and preserving the loyalty and respect of its dealers. If dealers were alienated, they might seek other business opportunities; it might become difficult to interest other qualified persons to replace them; Texaco service stations might close for lack of operators and Texaco's

dealer organization might become demoralized. To Texaco's way of thinking, these risks outweigh any commission that might be earned by attempting to exercise power over its dealers to cause them to buy sponsored TBA (A.III. 2362-64; A.I. 381-82). Indeed, as Texaco sees it, any interference with the freedom of its dealers would be "*economic suicide* from our standpoint" (A.III. 2363; emphasis added).

Texaco, therefore, carefully structured its TBA program to avoid the possibility of antagonizing its dealers. In contrast to the Atlantic and Shell programs, the Texaco salesman was never put in a situation where he could tell a dealer to buy from a specific source. Where Atlantic and Shell gave each TBA supplier an exclusive territory and assigned each dealer to a designated supply point (381 U.S. at 364-65, 370; 360 F.2d at 484) maintained by one of the suppliers (precluding even intrabrand competition), Texaco did no such thing. Goodrich and Firestone have always had to compete for the business of the Texaco dealers and the distributors of each rubber company compete among themselves for it (there being no designated supply points)—all against the numerous other TBA brands which are offered to and purchased by Texaco dealers in huge quantities. Moreover, since Texaco's salesmen may not favor any one source of supply in any area (A.IV. JAX 79), they are required to maintain a neutral, hands-off attitude in negotiations between a TBA supplier and a dealer. Texaco's salesmen are instructed:

> "If, in exercising his own free choice of the brand of TBA merchandise he desires to handle, the dealer expresses a preference either for the Goodrich or Firestone line, following a clear cut and straightforward presentation of the Texaco TBA program

> as outlined, the Texaco representative should assist the dealer further by arranging to introduce him to a sales representative of the supplier chosen by the dealer. It should be recognized at all times that the negotiations between the dealer and the TBA representative, and any purchase arrangement resulting therefrom, are matters for their mutual consideration, and *the Texaco representative should not interfere with or attempt to influence such negotiations or purchase arrangements in any way*'' (A.IV. JAX 90; emphasis added).

Furthermore, Atlantic's dealer leases required the lessee to have Atlantic's prior written consent before placing any signs on or removing them from the leased premises. Atlantic used this power to control ''all advertising on the premises of its dealers'' and ''permitted no signs or displays other than those of sponsored products'' (381 U.S. at 368, 365 n. 7). Texaco's leases contain no such provision and its dealers freely advertise and display non-sponsored TBA (A.V. JAX 547-88).

In addition to these and other basic structural distinctions, including the fact that not a single policing device was ever employed by Texaco whereas Atlantic maintained an intricate program of dealer policing and surveillance to stamp out resistance to Goodyear TBA,[8] Texaco continuously emphasized to its salesmen that there must be no interference with the freedom of choice and independ-

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[8] For example, it had dealer TBA quotas for sponsored products (381 U.S. at 365); it enlisted the help of Goodyear in identifying recalcitrant dealers (*id.* at 366, 374); it employed phantom inspectors (58 FTC at 339; 331 F.2d at 396) and it received reports on its dealers to detect non-sponsored TBA purchases (381 U.S. at 374). This Court noted that the success of Atlantic's TBA efforts stemmed from "the effective policing of the plan" (*id.* at 366).

ence of the Texaco dealer.[4] Texaco's practice, which it has repeatedly communicated, is

> "that the Company has neither the right nor the desire to dictate to the dealer the brand or type of merchandise he should handle, or the source from which he should purchase such merchandise, or to require him to handle any TBA merchandise. . . . The importance of respecting the independence of the Texaco dealer and his right to exercise his free and independent judgment with respect to the brand of TBA merchandise he will handle, and the quantities he will purchase, cannot be overemphasized" (A.V. JAX 423, 426).

Out of an abundance of care, Texaco's sales personnel have long been specifically enjoined by the Company from attempting to exercise any economic power over dealers:

> "It is not in accord with the dealer's contract with The Texas Company to infer or indicate to a Texaco dealer directly or indirectly that any purchase by him of any type of merchandise from any supplier whatsoever will result in a reduction of the supply of petroleum products available to him or in a cancellation of any sales contract or lease agreement that may be in effect or in any other event which will make him feel that more persuasion is being exercised by us than would normally and properly be used by us toward a customer" (A.V. JAX 430).

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[4] A.I. 391-92, 733-34; A.II. 1097, 1114-15, 1120-21, 1132-33, 1142-43, 1144-45, 1543-44, 1561; A.III. 1987, 2007-08, 2130-31, 2156, 2178-79, 2192, 2210-11, 2224-25; A.IV. JAX 70, 79-81, 88, 89-92; A.V. JAX 423-26, 430-31, 432-34, 435-37, 439-41, 442-46, 447-51, 452-54, 458-62, 463-66, 467-69, 473-75, 476-78, 479-83, 484-85.

> *"Any one who violates these policies may be subject to immediate dismissal from the Company's service"* (A.V. JAX 431; emphasis added).

Indeed, far from looking disapprovingly at a dealer who did not accept its recommendation to purchase sponsored TBA, Texaco emphatically instructed its sales personnel to render "equal assistance" to the purchaser of *non*-sponsored products:

> "The aim of this program is to counsel with and assist the dealer in the selection of T.B.A. merchandise that will be most suitable to his specific needs and in his establishment of an effective control over the stock through the use of the Suggested Basic Stock Assortments and the Inventory Guide Forms like those furnished by both Firestone and B. F. Goodrich. *It is not to be applied in any manner whatsoever that would impair any dealer's freedom to purchase such brands and quantities of T.B.A. merchandise as he desires.* Our dealers, consignees and distributors are independent businessmen, and instructions that no undue influence is to be used to interfere with their free and independent judgment remain unchanged.
>
> "The Texas Company's selling personnel are expected to become familiar with Firestone and Goodrich Inventory Guide Systems and T.B.A. merchandise and the merchandising of T.B.A. products generally. But, *it should be clearly understood* that we will render *equal assistance* to *all dealers* in setting up and maintaining his own basic TBA stock assortment and Inventory Guide system along these lines *regardless of the brand of merchandise handled.*" (A.IV. JAX 81; emphasis added).

Letters sent Texaco dealers concerning their volume discounts on lubricating oil have advised the recipient that "You are free, as you know, to select any brand of TBA merchandise . . ." (A.V. JAX 492, 513). Texaco's policy has been made known to inquiring trade associations of service station dealers and has been publicized in trade publications (A.I. 382-83; A.II. 1097; A.III. 2365-66; A.V. JAX 642-44).

No contract or lease between Texaco and any of its dealers has at any time required the dealer to handle Goodrich or Firestone TBA or, in fact, any TBA at all. No Texaco dealer has ever had his supply of petroleum products reduced or his lease or sales agreement cancelled as a result of his rejection of sponsored TBA. In contrast to Atlantic's total conversion of its dealers to sponsored TBA within a matter of months, after more than 15 years of Texaco's sales efforts two-thirds of all Texaco retail outlets do not buy any Firestone or Goodrich tires and tubes and only about 20% regularly buy any of these companies' batteries or accessories (A.IV. JAX 177-180; see *infra*, pp. 45-6). Those Texaco dealers who handle any sponsored TBA do not buy it exclusively (A.I. 214) and whatever they buy they obtain from any supply point that suits their convenience (A.I. 219).

In sum, as the Court of Appeals pointed out on two separate occasions, Texaco dealers "*are quite free to accept or reject*" Texaco's recommendation with regard to the brands of TBA that they purchase and "*are free to purchase any brand of TBA which they desire to sell*" (A.VI. 13, 117; emphasis added).

C. Nature and History of Proceedings

1. The Complaint

On January 11, 1956, the Federal Trade Commission filed three virtually verbatim complaints: one commencing this case against Texaco and Goodrich; another against the Goodyear Tire and Rubber Co. and The Atlantic Refining Co. (Dkt. No. 6486); and the third against The Firestone Tire & Rubber Co. and Shell Oil Co. (Dkt. No. 6487). Each complaint challenged as an unfair method of competition an agreement whereby the rubber company paid the oil company a commission for the latter's services in promoting the sale of the rubber company's TBA to dealers and distributors selling the oil company's gasoline.

2. The First Commission Opinion Found No Basis in the Record for any Order against Texaco

Five years later, on March 9, 1961, the Commission rendered its separate decisions in each of the three TBA cases. In both the *Atlantic-Goodyear* and *Shell-Firestone* proceedings, it found dealer coercion, unlawful tie-ins and adverse competitive effects resulting from the TBA sales commission agreements; thus it prohibited the agreements. In sharp contrast, in the *Texaco-Goodrich* case the Commission did not find coercion, tie-ins or anticompetitive effects. In the Commission's view, the legality of Texaco's sales commission contract with Goodrich turned upon its "competitive effects" (A.I. 179). It concluded:

> "However, the record in this case does not contain sufficient market data to enable the Commission *to assess the competitive effects of the sales commission method of distributing TBA employed by these respondents.* The case will be remanded to the hearing

examiner *for the taking of evidence indicating the competitive effects* of the sales commission contracts at the manufacturing, wholesale and retail levels of TBA distribution'' (A.I. 186; emphasis added).

3. Texaco's Efforts to Bar the Remand Hearings

Texaco and Goodrich promptly brought an action against the Commission in the District Court for the District of Columbia, *Texaco Inc.* v. *FTC*, Civil No. 2219-61. They contended that after at least nine years of investigation and trial, the Commission, having found the evidence insufficient to support its charges, was without authority or discretion to remand for the receipt of ''further evidence'' not shown to exist. An injunction was sought against further proceedings as being in excess of the Commission's authority, in derogation of the Commission's statutory duty to proceed with reasonable dispatch and in violation of constitutional requirements of due process. In opposing this suit, counsel for the Commission represented that the Commission ''needed additional evidence in order to decide the issues presented,''[5] and that the remand was not to be a retrial of what had gone before.[6] Relying on these representations, the Court denied a temporary injunction but ruled that Texaco and Goodrich would be entitled to relief unless all further evidence was heard and the Examiner filed his decision by October 2, 1962. Subsequent attempts to obtain immediate temporary injunctive relief from the

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[5] Memorandum of Points and Authorities in Support of Defendants' Motion to Dismiss and in Opposition to Plaintiffs' Motion for Preliminary Injunction, p. 26, served August 28, 1961.

[6] Memorandum of Points and Authorities in Support of Defendants' Motion for Summary Judgment, pp. 17, 21, filed April 30, 1962.

Court of Appeals and from this Court were unsuccessful. *Texaco Inc.* v. *FTC*, Appeal No. 17,111 (D.C. Cir. June 22, 1962); *Texaco Inc.* v. *FTC* (U.S. Sup. Ct. July 10, 1962); *Texaco Inc.* v. *FTC* (U.S. Sup. Ct. July 10, 1962; Black, J.). In each instance the tribunals were advised by Commission counsel that the remand was essential to develop needed additional evidence.

4. The Sham Remand Hearings

The remand hearings lasted 2½ days and closed on July 19, 1962 without any additional evidence having been adduced by Commission counsel. Instead, counsel induced the Examiner to take official notice of certain matters in the Commission's opinion in the *Shell-Firestone* case. The Examiner brushed aside Texaco's plea that the doctrine of official notice did not permit shuffling evidence of findings from case to case, thereby cutting off the right of cross-examination and shifting the burden of proof. Subsequently, the Commission upheld Texaco on this point by eliminating from consideration anything adduced at the remand (A.I. 302-03; A.VI. 80 n. 3, 94).

5. The Revised Initial Decision in Violation of the Commission's Mandate

The Examiner had been authorized only to receive "further evidence concerning the competitive effects of the respondents' practices" and to indicate what changes, if any, he wished to make in his first Initial Decision in light of such evidence (A.I. 174). Nevertheless, on September 24, 1962, without any additional evidence from Commission counsel, he held that the use of the sales commission method

of distributing TBA violated Section 5 of the Federal Trade Commission Act, and he issued an order which duplicated that entered by the Commission in the other two TBA cases.

6. The Second Commission Opinion

On April 15, 1963, eleven days after hearing oral argument of the "second round" appeal, the Commission handed down a 3-1 *per curiam* decision holding precisely the opposite of what it had held on March 9, 1961. Looking only to the pre-remand record, and without reviewing any evidence in its three paragraph opinion, the Commission ruled that the old record "amply supports the conclusions and the order of the hearing examiner" (A.I. 302). No basis for its reversal of position was set forth. As legal authority, the Commission merely cited its two other TBA decisions which it had handed down on the very day when it had earlier found the record in this case insufficient.[7]

Before this second appeal to the Commission, the participation of Chairman Dixon, one of the members of the Commission majority, had been unsuccessfully challenged by Texaco. Prior to the remand hearings before the Examiner, Chairman Dixon, in a speech made on July 25, 1961, had publicly denounced the practices attacked by the complaint as illegal and had specifically named Texaco and Goodrich in this connection.

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[7] Commissioner MacIntyre did not participate. Commissioner Anderson, who was the only member of the Commission who had participated in its earlier decision, did not concur "for the reason that the command of the remand order of March 9, 1961 had not been met and complied with" (A.I. 303).

7. The First Decision of the Court of Appeals

On the appeal from the Commission's 1963 Decision, the Court of Appeals was unanimous that "Chairman Dixon's participation in the hearing amounted in the circumstances to a denial of due process which invalidated the order under review," and that the motion for his disqualification should have been granted (A.VI. 8).

With respect to the merits, a majority further held that there had been a failure of proof. First, it ruled that coercion had not been proved (A.VI. 13), specifically finding that the record "demonstrates the contrary" of "coercive tactics" (A.VI. 12). Not only is it Texaco's policy "to respect the independence of its dealers," but such policy was followed in actual practice (A.VI. 11).

Second, noting that under the Commission's view of the law an essential element of a Section 5 violation was Texaco's possession and exercise of controlling economic power over its dealers, the Court ruled that there was no substantial evidentiary basis for any such finding (*ibid.*).

Third, it inferentially ruled that no anticompetitive effects had been shown when it found that Texaco dealers "are quite free to accept or reject" Texaco's "recommendation" concerning TBA (A.VI. 13).

Finally, the Court held that the Commission's

> "efforts in this case—fruitless after a dozen years—have exceeded permissible limits and have had unreasonably harassing and oppressive effects upon the companies under attack" (*ibid.*).

The Court concluded:

> "Because the Commission's drastic orders are not supported by the record as a whole and because of

the undue protraction of the administrative process, we are of the opinion that this long drawn out proceeding should now be terminated'' (*ibid.*).

8. *Atlantic* Case Taken to This Court

In reaching this conclusion, the Court of Appeals was well aware of the Seventh Circuit's ruling on different facts in *Atlantic-Goodyear*,[8] which had been decided a few months earlier.

The record before the Seventh Circuit had literally seethed with evidence of Atlantic's coercive practices vis-a-vis its dealers. In this context of overwhelming proof that Atlantic's dealers were being forced by Atlantic to act contrary to their wishes, the Seventh Circuit characterized them as ''economic serfs'' and affirmed the Commission's order.

In seeking review before this Court, Atlantic conceded that it had coerced its dealers and did not challenge the anti-coercion order. What Atlantic contested was the prohibition against the sales commission plan itself, arguing that such additional relief was unnecessary.

9. This Court's *Atlantic* Decision

Finding that Atlantic had successfully ''marshaled its full economic power in a continuing campaign to *force* its dealers and wholesalers to buy Goodyear products'' with a concomitant detrimental impact on competition (381 U.S. at 371; emphasis added), this Court sustained the order prohibiting Atlantic from being a party to TBA sales commission agreements. The Court held that such a prohibi-

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[8] *Goodyear Tire & Rubber Co.* v. *FTC*, 331 F.2d 394 (7th Cir. 1964).

tion was warranted because of the "long existence of the plan itself, *coupled with the coercive acts practiced by Atlantic pursuant to it*" (381 U.S. at 372; emphasis added).

10. This Court's Prior Disposition of This Case

While Atlantic's petition for certiorari was pending before this Court, the government petitioned for certiorari in this case but did not seek review of the decision disqualifying Chairman Dixon. Following its decision in *Atlantic*, the Court granted the writ, and without passing upon the merits, directed that the judgment of the Court of Appeals be vacated and that the case be remanded to the Commission for further proceedings "in light of *Atlantic Refining Co.* v. *Federal Trade Comm'n*, 381 U.S. 357 (1965)." 381 U.S. 739, 740 (1965).

11. Proceedings Before the Commission After Remand

On remand from this Court, the Commission (Commissioners Dixon and MacIntyre not participating) rendered an opinion dated January 14, 1966 and issued an order identical to the one it had issued in *Atlantic*.

Although the purpose of the remand was to determine "whether the facts of record in the present case" bring it within the *Atlantic* rule, the Commission's opinion eschewed factual analysis. Instead, it proceeded on the newly adopted legal premise that it is inherently unlawful for a "major" oil company to enter into a TBA sales commission arrangement with a "major" rubber company. Under this rule of *per se* illegality, the factual distinctions between *Atlantic* and the present case were deemed beside the point. To the Commission, it made no difference that Atlantic's dealers were forced against their will to purchase

sponsored TBA and Texaco's dealers were not. Texaco, it held, should be accorded the same treatment as Atlantic even if "Texaco has demonstrated no propensity to use coercive tactics in performing its" TBA sales commission plans (A. VI. 88).

The precise order imposed upon Atlantic as being remedially necessary to remove the effects of that company's longstanding coercive practices, was also imposed upon Texaco (A. VI. 95; A.I. 230 et seq.). Apart from paragraphs 5 and 6, which have now been eliminated from the case, the order prohibits Texaco from receiving "anything of value" from *any* TBA supplier in connection with the sale of TBA to Texaco dealers by anyone other than Texaco itself (Par. 1); from acting as a sales agent in connection with TBA (Par. 2) and from recommending to its dealers that they consider the purchase of any particular brand of TBA from anyone other than Texaco — even though Texaco receives nothing of value for such recommendation and regardless of the superiority of the product and the benefit Texaco's dealers might obtain from this information (Pars. 3 and 4).[9]

12. The Fifth Circuit's Decision in *Shell*

By the time this case reached the Court of Appeals again on petitions to review filed by Texaco and Goodrich, the Fifth Circuit had decided *Shell-Firestone*.[10] In that

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[9] The Commission's full explanation for the "relief" against Texaco is set forth in two sentences of its decision:

> "We think that orders against both Texaco and Goodrich, identical with the orders against Atlantic and Goodyear which were affirmed by the Supreme Court, are appropriate here. Texaco should clearly *be enjoined from entering into or performing any sales commission plan*" (A.VI. 93; emphasis added).

[10] *Shell Oil Co.* v. *FTC*, 360 F.2d 470 (5th Cir. 1966).

case, Judge Wisdom rejected the Commission's contention that *Atlantic* had held that all sales commission arrangements between major oil and rubber companies were unlawful *per se* (360 F.2d at 479). According to Judge Wisdom:

> "The rationale for the *Atlantic* decision may be broken down into three essential components, each of which depends on the facts of the case before the court:
>
> (1) The oil company's dominant economic power over its dealers;
>
> (2) the exercise of that power over its dealers;
>
> (3) the anti-competitive effects of using that power" (*id.* at 477).

"[O]n the facts of the case before the Court," the Fifth Circuit held that the Shell-Firestone sales commission agreement had violated Section 5: "* * * the controlling facts in this case are so similar to those in *Atlantic* that the same result should be reached in both cases" (*id.* at 475).

13. The Decision Below: The Second Decision of the Court of Appeals

When this case returned for a second time to the Court of Appeals, that Court addressed itself to the question

> "whether the Commission has complied with the remand order and correctly applied the applicable principles enunciated in the *Atlantic* holding" (A.VI. 110).

Its unanimous conclusion, after a second full review of the record and with the benefit of the Fifth Circuit's *Shell* decision before it, was that the Commission had not.

Declaring itself in agreement with Judge Wisdom's view of *Atlantic* (*ibid.*), the court below scrutinized the record in this case in terms of the three essential components of the *Atlantic* rationale.

a. Existence of Dominant Economic Power

As to the first component—the "existence of dominant economic power"—the Court of Appeals revised its prior finding in light of *Atlantic* and, quoting from Judge Wisdom in *Shell*, held that such power was "'inherent in the structure and economics of the petroleum distribution system'" (*id.* at 112).

b. Exercise of Dominant Economic Power

But on the critical question of whether Texaco had *exercised* dominant economic power—the second essential element under *Atlantic*—the Court of Appeals adhered to its earlier determination that Texaco had not exploited its power to cause its dealers to purchase sponsored TBA.

At the outset, the Court noted that Texaco, unlike Atlantic, had not engaged in coercion. For this reason the Court of Appeals made clear that, wholly apart from the legality of Texaco's sales commission plan, there was no basis in law or fact for the anti-coercion provisions of the Commission's order (*id.* at 119 n. 16)—a ruling on which petitioner does not seek review by this Court. (P. Br. 9 n. 4, 28).

With respect to the legality of the plan itself, the court below advanced *two distinct theories* to support its conclusion that there had been no exercise of dominant economic power.

First, it noted that in *Atlantic* "coercion was found to have permeated the entire Atlantic program, contaminating

even its neutral conduct" (A.VI. 112). The Court of Appeals accordingly viewed "a finding of coercion [as] the threshold requirement of a determination of exercise of dominant economic power" (*ibid.*).

But the court below did not rest its decision on the absence of coercion. As an independent ground for its decision it found that Texaco had not exercised dominant economic power over its dealers even in a non-coercive way:

> "Of course we realize, as did Judge Wisdom in *Shell*, that the 'Company's use of its economic power through the sales commission plan to cause its dealers to buy sponsored TBA *even in the absence of overt coercion*' can constitute an unfair method of competition and a violation of section 5, *Shell* at 482-483" (*id.* at 113; emphasis in original).

The Court then proceeded to meet head-on petitioner's argument that each of the "non-coercive practices" referred to in *Atlantic* are present in equal degree in this case (*ibid.*).

First, the Court emphasized the finding that "Texaco dealers, unlike those of Atlantic and Shell, *were free to accept or reject sponsored products*" (*ibid.*). Amplifying this critical distinction, the Court contrasted Atlantic's sales practices with Texaco's, noting that whereas Atlantic had put pressure on its dealers to "vigorously" represent and cooperate with Goodyear, Texaco had followed a policy of permitting "each dealer to choose whatever brand TBA he desires" (*id.* at 114).

The Court cited other examples of fundamental differences in the two oil companies' sales commission programs: Atlantic's regular policy of "double teaming" and advance solicitation—which with Texaco were "isolated and sporadic" occurrences; Atlantic's TBA dealer quota and

policing system—having no Texaco counterpart; Atlantic's restrictive credit card policy—as distinguished from Texaco's practice of permitting its dealers to charge non-sponsored TBA; and Atlantic's assignment of its dealers to a single Goodyear TBA supply point—while Texaco dealers were assigned to nobody, evidencing their freedom to deal with any supplier of their choice (*id.* at 114-15).

Summing up on this issue, the Court declared:

> "These few examples demonstrate a different set of facts between the *Atlantic* record and this case" (*id.* at 115).

The court accordingly concluded that Texaco had *not* "exploited its service station market illegally for the benefit of itself and Goodrich" (*ibid.*).

c. Anticompetitive Effects

With respect to the third requirement—a showing of anticompetitive effects—the Court of Appeals approached the problem from the point of view of both interbrand and intrabrand competition. Once again the records in the two cases were entirely different.

In *Atlantic,* interbrand competition had been snuffed out by reason of "a classic division of territories between Goodyear and Firestone," from which it followed that "Atlantic dealers could only buy at the prices designated by [the] supplier to whom the territory had been allocated" (*id.* at 117). The *Texaco-Goodrich* record, *per contra,* "is devoid of evidence disclosing any form of territorial division" or "price dictation" (*ibid.*). As for the Commission's reliance on certain testimony that non-sponsored TBA suppliers had difficulty selling to Texaco dealers because the latter felt that they were required to buy the

sponsored product, the Court for the second time rejected such evidence as atypical "isolated instances which were generally contradicted by overwhelming rebuttal evidence" (*id.* at 118).

As for intrabrand competition, whereas Atlantic's supply point system had the inevitable effect of precluding such competition, Texaco had no such system; hence there was no parallel anticompetitive effect.

In the face of "the long standing Texaco policy that Texaco dealers are free to purchase any brand of TBA which they desire to sell" (*id.* at 117), the fact that Texaco dealers purchased substantial quantities of sponsored TBA did not constitute proof of the requisite adverse effect on competition.

In sum, the Court concluded that "while the record shows Texaco indeed has dominant economic power, it is fatally deficient on the crucial issues of exercise of that power and subsequent anticompetive effects" (*id.* at 119). For this reason the Court rejected the Commission's position that it would be unfair to prevent Atlantic and Shell, but not Texaco, from using the sales commission plan:

> "We agree that it would be inequitable, and indeed a dereliction of the Commission's obligations, *provided* that all three were guilty of substantially equal violations of section 5. But simply because Texaco is in the same line of business does not mean it must suffer the pain of the misdeeds of other oil companies; *this would indeed be guilt by association.* We conclude that the record simply does not support a finding that Texaco violated the Act" (*ibid.*; emphasis added).

Confronted with the failure of proof in this case, the Court of Appeals recognized that

> "One course available to us would be to remand this case once again to the Commission to permit it to develop additional evidence for the record but the Commission and Examiner have had abundant opportunity—*and direct mandate*—to do this in the past and have not done so. We think the time has now come to terminate these protracted proceedings and dismiss the complaint, * * * the Commission has now had more than an adequate opportunity to develop a record in support of its section 5 contentions *over a period of fourteen years*" (*id.* at 119-20; emphasis added).

Accordingly, it directed that the complaint be dismissed.

Summary of Argument

The Court of Appeals correctly concluded that the sales commission arrangement between Texaco and Goodrich is not illegal in and of itself and was not illegally performed. Nothing in the agreements between Texaco and any supplier of TBA requires it to exercise any economic power over its dealers and the evidence in this record, as the Court of Appeals twice found, establishes that Texaco has not done so. On the contrary, Texaco's dealers are completely free to disregard Texaco's recommendations and to purchase whatever brands of TBA they desire.

During oral argument of the *Atlantic* case, the Solicitor General advised this Court that the government was not suggesting that there may not be sales commission arrangements which would pass muster under Section 5; the method of performing the contract was said to be the critical factor determining its legality (*infra*, pp. 31-4). The record in this case demonstrates that it is indeed possible to operate under a sales commission plan so that *no* dealer will be

constrained to accept the oil company's recommendation and *no* anticompetitive effect will be produced. Texaco, unlike Atlantic, has never coerced its dealers or done anything else to require them to purchase sponsored TBA. The Commission in this case expressly discarded coercion as a basis for its decision and petitioner is not seeking an anti-coercion order against Texaco. The fact is that, despite more than 15 years of promotional efforts by Texaco on behalf of sponsored TBA, the vast majority of Texaco dealers purchase *no* sponsored TBA whatever and, as the Examiner found, *every* Texaco dealer purchases non-sponsored TBA.

The Commission which reviewed the evidence in the three TBA companion cases in 1961 found the sales commission arrangements of Atlantic and Shell to be unfair methods of competition, but simultaneously held that the evidence in this record permitted no such finding against Texaco. The present Commission's action here was taken without the reception of an iota of additional evidence against respondents and in contravention of the Commission's own mandate and its representations to the courts regarding the need for more evidence to make out a case under Section 5.

The legal theory on which petitioner is now attempting to condemn Texaco's sales commission arrangements is not sanctioned by anything decided or said by this Court in *Atlantic*. Although the Commission was directed to apply the principles of *Atlantic* here, it has, instead, attempted to coin a brand new theory of liability.

Stripped to its essentials, the theory is this: Since Texaco's economic power is superior to that of any of its dealers, when Texaco promotes the sale of sponsored TBA

the dealer, knowing that Texaco has an interest in his purchase of the sponsored product, "no longer selects his brand of TBA solely on the basis of the comparative merits of the competing products" because he purportedly *feels* constrained to "acquiesce in Texaco's recommendation" in the absence of strong countervailing factors (P. Br. 23), thereby foreclosing competition. Petitioner argues that this is true even though Texaco does not coerce or pressure its dealers to buy the sponsored product and the dealer is in fact free to buy whatever brand of TBA he desires.

This theory patently is not the rationale of *Atlantic* (Point A, *infra*). What is more, there is no evidential foundation for invoking any such theory in this case; on the contrary, the evidence of record and findings of the court below completely refute the theory (Point B, *infra*).[11] There is no proof that Texaco dealers do not purchase TBA on the basis of what they conceive to be the relative merits of the various brands; or that they "feel constrained" to buy the sponsored product absent unspecified "strong countervailing factors." What the record does show is that when it comes to buying TBA, Texaco dealers are free, they know they are free and they repeatedly exercise their freedom to purchase non-sponsored products without jeopardizing their dealerships or in any way incurring Texaco's ill will.

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[11] That being so, there is no occasion for the Court to address itself to the question of whether the theory can be raised in this Court in view of the fact that it goes beyond the teachings of the *Atlantic* case and therefore exceeds this Court's mandate. Nor is there any occasion to consider whether the theory, even if properly raised, is sound as a matter of law, since the evidence necessary to sustain it is lacking.

The Commission was not warranted in concluding that Texaco had violated Section 5—either under the standards of *Atlantic* or any other permissible application of the statute.

ARGUMENT

The Court of Appeals Correctly Decided This Case

A. Application of *Atlantic* to the Facts of This Case, in Accordance with This Court's Mandate, Required Dismissal of the Complaint

1. The *Atlantic* Decision

The gravamen of the violation in *Atlantic* was Atlantic's concededly coercive practices whose successful employment produced demonstrable anticompetitive effects. This was the basis upon which *Atlantic* was presented to this Court by the Solicitor General [13] and upon which this Court's decision rested.

The Court made this unmistakably clear in its treatment of the matter of relief. The whole point of Part V of the *Atlantic* opinion was to justify the *breadth* of the order precisely because it was *not* limited to the conduct held unlawful—the *coercive* use of the plan. Atlantic had strenuously argued that the order should enjoin only the use of coercive tactics. This argument was rejected by the Court but not because non-coercive use of the plan was itself a violation of law. It was rejected because of the settled principle of administrative law that permits an agency to forbid lawful conduct which it deems necessary for

[13] See *infra*, p. 31.

effective relief against *proven illegal conduct*. The Court stated that it did not

> "believe that the order is *too broad*.[18] Section 5(b) empowers the Commission to issue a cease-and-desist order against anyone using an unfair method of competition in commerce. The Commission was of the opinion that to enjoin the use of overt coercive tactics [*i.e.*, the unfair method of competition alone] *was insufficient*. We think it was justified in this conclusion. *The long existence* of the plan itself, *coupled with the coercive acts* practiced by Atlantic pursuant to it, warranted a decision to *require more*" (381 U.S. at 372; emphasis added).

The words "require more" in this context are especially significant. When all that is done is to forbid the conduct held unlawful, it is patent that "more" is not being required.

Moreover, if the Court believed that there was anything inherently violative of Section 5 in TBA sales commission plans when entered into by a major oil company, it would not have justified the order prohibiting such agreements on the basis of the "long existence of the plan itself, *coupled* with the coercive acts practiced by Atlantic" (emphasis added).

The only basis for the conclusion of illegality recognized by the Court was that Atlantic had successfully "marshaled its full economic power in a continuing campaign *to force* its dealers and wholesalers to buy Goodyear products" with

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[18] If the order had enjoined only *illegal* conduct, of course, there would have been no question about its scope. Because it prohibited *lawful* conduct it was necessary for the Court to decide whether it was "too broad."

a concomitant detrimental impact on competition (381 U.S. at 371; emphasis added).

This is fully buttressed by other unambiguous expressions throughout the majority opinion. Thus, in referring to the order against Goodyear, the Court again emphasized that what "outlaws the commission plan" is not "the oil company's power" alone but in addition its "*overt acts toward its outlets*" (381 U.S. at 373; emphasis added). The crux of the decision as to Goodyear is contained in the following sentences:

> "Nor is it any objection for Goodyear to claim that it did not exert any *overt coercive pressures* on the oil companies' outlets. It is of little consequence that *Atlantic actually applied the pressure.* For so close was the teamwork of the two companies that, even with blinders on, Goodyear could not have been ignorant *of those practices*" (381 U.S. at 376; emphasis added).

With respect to "*the manner in which this sponsorship was carried out,*" the Court concluded that:

> "the most impressive evidence of its effectiveness was its undeniable success within a short time of its inception. In 1951, seven months after the sales-commission plan had gone into effect, Goodyear had enjoyed great success in signing contracts with Atlantic dealers despite the fact that a 1946-1949 survey had shown that 67% of the dealers had preferred Lee tires and 76% Exide batteries" (381 U.S. at 368-69).

It was "[w]ith this background in mind"—of coercive practices and quick success against contrary dealer prefer-

ence—that the Court went on to consider whether there was a "reasonable basis in law" for the finding of illegality (381 U.S. at 369).

The Court found that there was such a basis by analogy to a tying scheme. The analogy was justified on the ground that the competitive effects of the conduct of Atlantic and Goodyear were comparable to those resulting from a tying arrangement.[14]

In a tie-in case, of course, it is not mere persuasion or salesmanship to induce purchasers to buy two products which is prohibited,[15] but the *requirement* that in order to obtain one the purchaser must take the other as well. The core of a tie-in is the *requirement* imposed upon the buyer. The Court concluded that Section 5 had been violated in *Atlantic* because "the effect of the plan was *as though* [emphasis is the Court's] Atlantic had agreed with Goodyear *to require* its dealers to buy Goodyear products *and had done so*" (381 U.S. at 370; emphasis added).[16]

The Court presumably rested its decision on this narrow ground not only because the Solicitor General did not ask it to go farther but also because to have done so would have raised extremely serious constitutional questions with respect to the authority of the Federal Trade Commission to

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[14] The Court reiterated the anticompetitive effects found by the Commission: division of markets, restricted supply points and foreclosure (381 U.S. at 370).

[15] *Northern Pacific Ry. Co.* v. *United States*, 356 U.S. 1, 6 n.4 (1958): "Of course where the buyer is free to take either product by itself there is no tying problem even though the seller may also offer the two items as a unit at a single price."

[16] Indeed, the evidence showed and the Commission found that Atlantic had imposed tie-ins on some of its dealers (58 F.T.C. at 363-64).

impose curbs upon mere speech absent coercion,[17] and to depart so far from traditional antitrust principles in prohibiting legitimate business operations as to be without "'reasonable basis in law'" (381 U.S. at 367) and thereby violate due process guarantees. These questions were

[17] This Court has always been alert to the fact that antitrust considerations do not override First Amendment rights. *Eastern R.R. Presidents Conference* v. *Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961). It has been equally firm in recognizing that "the rights of free speech and a free press are not confined to any field of human interest" and that the "idea is not sound therefore" that such safeguards are "inapplicable to business or economic activity." *Thomas* v. *Collins*, 323 U.S. 516, 531 (1945). Moreover, this Court, as well as the lower Federal Courts, have repeatedly made clear that, absent coercion, the use of speech to persuade to action—even in an economic context when the party seeking such action has power over the listener—is a fully protected Constitutional right.

> "'Free trade in ideas' means free trade in the opportunity to persuade to action, not merely to describe facts.***
>
> "Accordingly, decision here has recognized that employers' attempts to persuade to action with respect to joining or not joining unions are within the First Amendment's guaranty." (*id.* at 537).

See also, *e.g.*, *NLRB* v. *United Steelworkers*, 357 U.S. 357, 362 (1958); *NLRB* v. *Virginia Electric & Power Co.*, 314 U.S. 469 (1941); *NLRB* v. *Laars Engineers, Inc.*, 332 F.2d 664, 667 (9th Cir. 1964), *cert. denied*, 379 U.S. 930 (1964); *NLRB* v. *M&B Headware Co.*, 349 F.2d 170, 172 (4th Cir. 1965); *NLRB* v. *Collins & Aikman Corp.*, 338 F.2d 743 (5th Cir. 1964); *NLRB* v. *Montgomery Ward & Co.*, 157 F.2d 486 (8th Cir. 1946); *Edward G. Budd Mfg. Co.* v. *NLRB*, 142 F.2d 922 (3d Cir. 1944); *Jacksonville Paper Co.* v. *NLRB*, 137 F.2d 148 (5th Cir. 1943), *cert. denied*, 320 U.S. 772 (1943). As long as non-coercive promotional efforts are neither false nor misleading—and there was no contention by the Commission that Texaco's promoting the sale of sponsored TBA involved any untruthful statements—such promotional efforts are directly within the constitutional free speech guarantees. See *e.g.*, *Regina Corp.* v. *FTC*, 322 F.2d 765, 770 (3d Cir. 1963); *E. F. Drew & Co.* v. *FTC*, 235 F.2d 735, 740 (2d Cir. 1956), *cert. denied*, 352 U.S. 969 (1957).

avoided by reliance upon coercion and the analogy to tie-in selling—*i.e.*, to the situation where someone is being *forced* to buy a product against his will. The Court unmistakably declined to go any further.

2. The Basis for Affirmance of the *Atlantic* Order Urged by the Solicitor General

The Court's holding in *Atlantic* is illuminated by what it was asked to do by the government on oral argument.

When closely questioned by various members of the Court, the Solicitor General specifically disclaimed seeking a ruling that TBA sales commission plans are unlawful absent coercive exercise of economic power by the oil company.

He was explicit that it was not claimed that the sales commission arrangement itself was inherently unlawful:

> "* * * if you had just the contract standing alone, you could not say on its face that this is bad, *it depends on what they would do about it.*" (Transcript of Oral Argument Before Supreme Court, *Atlantic Refining Co.* v. *Federal Trade Commission*, p. 72).

In this connection Justice Brennan observed:

> "* * * there is no contention of the Government that the sales commission contract in and of itself ran afoul of such a provision [Section 5], it is only *the performance under the contract*, the method of operation." (*id.* at 80).

The Solicitor General agreed with Justice Brennan that:

> "* * * the Government does not suggest that there may not be commission sales arrangements which would satisfy Section 5." (*id.* at 80).

The Solicitor General informed the Court that he was not contending that economic power plus mere recommendation was sufficient to invalidate the plan:

> "Justice White: . . . That is the real nub of your argument, I gather, that companies can't recommend and at the same time have this power.
>
> "Mr. Friedman: They can't recommend it *in the way in which they recommend it here.* I think again it is a matter of degree basically" (*id.* at 81).

The Solicitor General made it clear that he was not asking the Court to predicate illegality upon the fact that there was a disparity of economic power between Atlantic and any of its dealers but rather upon the improper exercise of such power—not upon the mere existence of Atlantic's leases but rather upon the improper use to which Atlantic put them. Thus counsel stated:

> "* * * in this case we have the power and its use" (*id.* at 52).
>
> * * *
>
> "[T]he basis on which the Commission's decision holding the Atlantic contract to be invalid rests is the power that Atlantic has, *and the fact that in these circumstances the power is brought to bear*" (*id.* at 82).

In speaking of the exercise of power, the Solicitor General emphasized that he was referring not to salesmanship but to pressure and coercion:

> "* * * in this case we have the power and its use. I don't think I have to take on the more difficult case, *if we didn't have the actual use of the power.*

"Justice Brennan: The power and the use with pressure, not power and the use meaning coercion?

"Mr. Friedman: *Power and use meaning pressure, with some coercion*" (*id.* at 52).

Upon further questioning, counsel reaffirmed the importance of Atlantic's use of its power:

"Justice White: And he [the Atlantic dealer] is coerced?

"Mr. Friedman: He is coerced, he is coerced in fact" (*id.* at 56).

* * *

"Justice Stewart: The pressure put upon them?

"Mr. Friedman: Coercive pressure, threats of lease cancellation" (*id.* at 58).

* * *

"Justice Stewart: They were under coercion?

"Mr. Friedman: They were under coercion" (*ibid.*).

The Solicitor General stressed that it was the totality of Atlantic's improper conduct which caused the proven anticompetitive effects:

"If I may, I would like to show what they actually did in this case, and then to suggest why there may very well be situations where *eliminating some of the things they did in this case would not have the same adverse effect on the competition* as the plan the Commission condemned" (*id.* at 48-49).

With respect to the matter of relief, the Solicitor General argued for the outlawing of TBA sales commission arrangements by Atlantic not because of their intrinsic

illegality, and not because they could not be employed in a non-coercive manner, but solely because in his view such relief was a remedial necessity in order to remove the effects of Atlantic's *longstanding* coercive imposition of sponsored TBA upon its dealers. An order which merely enjoined Atlantic's coercive conduct, counsel urged, would be "an inadequate remedy" (*id.* at 64).

Justice White commented:

> "So that is your theory now, that is the Government's position is that *without their coercion in the record, no case?*" (*id.* at 64).

To which counsel responded:

> "I just don't know, Mr. Justice, whether without any evidence of coercion as I use it, pressure in that sense, I would think it would be very doubtful whether the Commission would have brought this case. But again, I don't know" (*ibid.*).

As we have seen, the Court accepted the government's invitation to decide the case on its specific facts.

3. Pursuant to the Mandate, the Court of Appeals Faithfully Applied *Atlantic* to the Facts of This Case

One week after *Atlantic*, the Court remanded this case for further proceedings "in light of *Atlantic*" (381 U.S. 739, 740 (1965)). At the oral argument on remand to the FTC, Commissioner Jones properly summed up the import of the *Atlantic* decision in the course of responding to complaint counsel's expression of a personal predilection for a *per se* rule:

> "I am not sure that is relevant, counsel, to whether these products have been *imposed on unwilling pur-*

chasers, which I think is the vice of this arrangement. I think this is what the Court is saying when it says it is not per se illegal. It says it is illegal if it *in fact coerces people to do something that they otherwise would not want to do, and therefore it keeps out non-sponsored TBA manufacturers"* (A. VI. 63; emphasis added).[18]

Nevertheless, when it issued its decision half a year later, the Commission, disregarding the principles of *Atlantic,* ruled that the absence of coercion here was beside the point and held in effect that the sales commission plan was illegal *per se.*

The Court of Appeals, on the other hand, pointed out:

> "If the Supreme Court concluded that the sales commission was inherently illegal when entered into by a major oil company, it would have had no occasion to take cognizance of the coercive practices and no remand of this case would have been required. Yet the Atlantic opinion is replete with references to these practices and *we cannot escape the conclusion that the overt coercive acts practiced by Atlantic*

[18] Complaint counsel also evinced no difficulty in understanding that the gravamen of *Atlantic* was coercion. His brief to the Commission upon remand from this Court began with the following statement:

> "The Supreme Court in its recent Atlantic/Goodyear decision, affirming the 7th Circuit's decision and Order in the same case, relied upon that Court's *finding of coercion* based upon facts 'which are so carefully examined in the opinion of the Court of Appeals.'
>
> "Thereafter the Supreme Court commented on various other facets of the case including the relationship between the various parties; the plan and its competitive effect; the role and liability of the rubber company and scope of order." (Supplemental Brief of Counsel Supporting the Complaint, August 9, 1965, p. 1; emphasis added).

were deemed essential to the ultimate action of the Court. It is surely of some significance that in almost every page of the *Atlantic* opinion there is some such reference, e.g., 'overt acts,' 'overt coercive pressures,' 'direct and overt threats,' etc., 381 U.S. at 368, 373, 376.

* * *

"If the Supreme Court viewed its holding in *Atlantic* as treating contractual arrangements between the oil company and its dealers in and out of themselves as giving rise to controlling economic power, and that *mere salesmanship without any coercion* constituted unlawful exercise of such power, there would have been nothing to remand. The Supreme Court could have simply reversed and reinstated the Commission's order" (A.VI. 112-13; emphasis added).

In arguing that *Atlantic* was not predicated upon the use of coercion, petitioner quotes from this Court's opinion to the effect that "illegal 'effects on competition flowed from the contract itself.' (381 U.S. at 370)" (P. Br. 18). The quotation is totally out of context. The Court at that point was dealing with (1) the fact that "Firestone and Goodyear were excluded from selling to Atlantic's dealers in each other's territories" and (2) the fact that "even Goodyear wholesalers who were not authorized supply points were foreclosed from the Atlantic market." It was with respect to these two restraints that the Court stated:

"*Both* of *these* effects on competition flowed from the contract itself" (381 U.S. at 370; emphasis added).

Neither of these effects have anything whatever to do with Texaco's sales commission plan. Goodrich and Firestone

are not excluded from any territory and there are no authorized supply points under Texaco's plan. Petitioner's quotation, accordingly, has absolutely no application here.[19]

In sum, coercion cannot be read out of *Atlantic* and the decision of the Court of Appeals on the matter of interpretation was entirely correct.

B. The Facts of This Case Do Not Fit Any Theory of Illegality

As previously noted, the Court of Appeals did not rest its decision on the absence of coercion (*supra*, pp. 19-20). It concluded, on the basis of an exhaustive review of the record and giving full effect to the Fifth Circuit's decision in *Shell*, that Texaco, unlike Atlantic and Shell, *made clear that its dealers were free to accept or reject sponsored products without incurring Texaco's displeasure; and that Texaco practiced what it preached.* This distinction between Texaco's conduct and that of the other two companies is critical, negating two essential elements of the government's case: (a) the exercise of dominant economic power and (b) resulting anticompetitive effects.

1. Texaco Did Not Exercise Dominant Economic Power Over Its Dealers to Cause Them to Buy Sponsored TBA

The Court of Appeals concluded that this record does not permit a finding that Texaco exercised economic power over its dealers (A.VI. 114-15). Petitioner, acknowledging this fact, argues:

> "While the court below set aside the Commission's ultimate finding that Texaco had exercised its domi-

[19] Petitioner also mistakenly relies on this part of the Court's opinion at page 24 of its brief.

nant economic power, it did not disturb the bulk of the supporting findings with respect to promotion by Texaco of Goodrich TBA. In particular, the court did not question that the Texaco salesman continually carries the promotional message in his day-to-day contacts with dealers. Nor did the Court question the use of statistics on sponsored TBA purchases in evaluating a dealer's performance. But these are highly effective means of exercising economic power, for they go directly to the continuation of the economic relationship between Texaco and the dealer" (P. Br. 22).

The Court of Appeals did not question the use of statistics on sponsored TBA purchases in evaluating a dealer's performance for the simple reason that *there was never any such use.* Texaco never policed its dealers' TBA purchases in any manner[20] and such purchases have never been relevant to the continuation of the economic relationship between Texaco and any dealer. The only reports Texaco receives are accounting tabulations relating to the commission amounts owing to Texaco and used solely for accounting

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[20] The Court of Appeals found:

"(3) *Dealer Policing and Credit Cards.* In *Atlantic* the Supreme Court was confronted with evidence that Atlantic imposed quotas on dealers and effectively policed them by the use of a reporting system of purchases and sales of TBA. In the original appeal to this Court, the Commission contended that the quota and policing system were also used by Texaco. In the present appeal the Commission has retreated from this position. As to credit card policy, the Examiner carefully distinguished the *Atlantic* record from the instant record and significantly found that Texaco does permit dealers to charge *non-sponsored* TBA on its credit cards" (A.VI. 115).

purposes (A.I. 460).[21] Thus, the statement in petitioner's brief quoted above is palpably erroneous.[22]

This leaves, as the sole asserted basis for concluding that Texaco *exercised* economic power over its dealers, the bare fact that it recommended sponsored TBA to them. In view of the uncontested finding that Texaco's policy and practice have been to permit each dealer to choose whatever brand of TBA he may desire, this boils down to the contention that, as a matter of law, Texaco cannot recommend. A Texaco recommendation, in the government's view, constitutes an exercise of economic power because recommenda-

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[21] Since Texaco's dealers, unlike Atlantic's and Shell's, were not limited in their sponsored TBA purchases to any single supply point but were free to purchase from any source, the possibility of accounting errors and omissions was substantial (A.II. 1314-16).

[22] While the brief offers no citation to support the statement at page 22, petitioner presumably is relying upon the exhibit appearing at A.IV. JAX 49, cited at page 7 of its brief. At page 7, after referring to the accounting reports received by Texaco, petitioner's brief states:

> "Thus Texaco is informed of each *dealer's* purchases, and considers this fact in evaluating *service stations* when deciding whether to renew *their leases*" (P. Br. 7; emphasis added). See also P. Br. 16.

JAX 49 is a letter from a Texaco employee responsible for leasing properties *for* Texaco from land owners. In evaluating whether Texaco, as a lessee, should renew a lease with such an owner, he had to know what relation the rental cost to Texaco bore to the amounts Texaco earned through use of the leased premises. In this exhibit the employee was requesting information on the TBA commissions earned at these leased properties so that these amounts could be included in the equation, "thereby reducing the cost" and possibly justifying Texaco's continued rental of the premises. This employee had nothing whatever to do with dealer evaluations and the matter was wholly unrelated to the relationship between Texaco and its dealers (A.I. 318-22, 324).

tion apprises the dealer that Texaco has an interest in his purchasing the sponsored product:

> "Where, as here, the effect of the promotional activities of the oil company is to make its dealers *aware* that the company has a direct interest in their purchase of sponsored TBA, it was reasonable and proper for the Commission to conclude that the oil company has exercised its economic power" (P. Br. 22; emphasis added).

To equate dealer awareness with exercise of economic power is tantamount to saying that no proof of exercise is necessary beyond the fact that the oil company entered into a sales commission agreement which it performed—*i.e.*, that the agreement is *per se* unlawful, since it cannot be carried out lawfully. This is a far cry from the holding of *Atlantic* and it is not a permissible application of Section 5.

The contrast between this record and that in *Atlantic* on the question of exercise of dominant economic power is dramatic. None of the salient facts which this Court relied upon in finding that Atlantic had "marshaled its full economic power in a continuing campaign to force its dealers and wholesalers to buy" sponsored TBA (381 U.S. at 371) are present here.

a. *Dealer Policing.* Atlantic exercised its economic power through a complex program of dealer policing and surveillance to totally eliminate resistance to Goodyear TBA. *Not a single policing device was ever employed by Texaco.*

Thus Atlantic had dealer TBA quotas for sponsored products;[23] it controlled the placement of advertisements

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[23] 381 U.S. at 365; see also 331 F.2d at 399. Texaco did not have any such quotas.

by its dealers;[24] it enlisted the help of Goodyear in identifying recalcitrant dealers;[25] it employed phantom inspectors;[26] and it received reports on its dealers to detect non-sponsored TBA purchases.[27] There has never been a

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[24] Atlantic controlled "all advertising on the premises of its dealers" and "permitted no signs or displays other than those of sponsored products" (381 U.S. at 368, 365 n. 7). Atlantic's authority to prevent dealers from advertising non-sponsored TBA "was a powerful weapon in preventing them from handling such products" (Brief of Solicitor General to the Supreme Court, Atlantic Refining Co. v. Federal Trade Commission, at p. 42). Such authority derived from a provision in its dealer leases requiring the lessee to have Atlantic's prior written consent before placing any signs on or removing them from the leased premises (*id.* at 11). Atlantic's lessees were also required to sign a separate document defining standards of operations —the "Eleven Point Lease Letter"—which included a standard entitled "Display" (58 FTC at 338).

Texaco's leases contain no such provision and the record is replete with evidence that Texaco dealers freely advertised and displayed non-sponsored TBA. For example, in Texaco's Dallas Division, 233 pictures were taken of Texaco stations, at which there were displayed 40 different types of non-sponsored batteries (A.V. JAX 547-88).

[25] "Goodyear also furnished, this time at the specific request of Atlantic, a list of the latter's recalcitrant dealers who refused to be identified with the 'Goodyear program'. These lists Atlantic forwarded to its district offices, for 'appropriate action'. On one occasion a list of 46 such dealers was furnished Atlantic officials by Goodyear.*** [A]ll soon fell into line. This is a particularly impressive example of Goodyear's inclination to use Atlantic's power for its own benefit" (381 U.S. at 366, 374).

Goodrich never furnished, and Texaco never requested, any such list.

[26] Atlantic engaged "Phantom Customer Inspectors" to enforce its policing activities (58 FTC at 339; 331 F.2d at 396). The success of Atlantic's TBA efforts stemmed from "the effective policing of the plan" (381 U.S. 366).

Texaco had no such inspectors.

[27] This Court viewed Goodyear's reports to Atlantic, "when considered alongside the admitted overt coercive practices of Atlantic," as "a potent device in ensuring the success of the program" (381 U.S. at 374).

Goodrich reports to Texaco, by contrast, were simply used to provide a record of the commission amounts owing to Texaco.

finding of such policing by Texaco—and no such evidence exists in the record.

b. *"Dual Solicitation."* In *Atlantic* double-teaming was "heavily-relied" upon by the parties to "take stock orders, furnish initial price lists and project future quotas of purchases of Goodyear products" (381 U.S. at 365). In addition, this Court noted that " 'Goodyear thus appeared confident that the presence of an Atlantic salesman together with the Goodyear representative would render unnecessary any higgling or haggling over price *before* obtaining an initial order for TBA from Atlantic dealers' " (381 U.S. at 375).

Texaco's record on joint visits is quite another matter. First, there was no regular practice of having a Texaco salesman accompany a rubber company salesman; at most it was a sporadic practice undertaken, on occasion, for introductory purposes or when the dealer requested special assistance (A.I. 336, 377, 462-63, 723-24; A.II. 1361, 1540, 1650).[28]

Furthermore, Texaco's joint visits could have had no conceivable relation to the price of TBA. The Atlantic dealer was assigned to a designated supply point (58 FTC at 350). Hence he was compelled to purchase TBA at that particular wholesaler's price.[29] But since the Texaco dealer

[28] Moreover, since no territories were assigned exclusively to Goodrich or Firestone in the Texaco TBA program, the role of a Texaco salesman accompanying a salesman of one of these rubber companies necessarily was a neutral one.

[29] The Commission, in detailing the testimony of Atlantic dealer Balloran, quoted him to the effect that although he could have purchased Goodyear tires at a cheaper price from another Goodyear supplier, against his will he purchased from his designated supply point at a higher price (58 FTC at 361).

could select any source of supply he had complete freedom of bargaining with respect to price.[30]

c. *"Advance Notification."* The *Texaco* record discloses that advance notification was a rare occurrence—not a regular procedure (A.I. 373, 456-57; A.II. 1118, 1147).[31] Texaco would communicate with the rubber companies only after the new dealer himself had indicated his interest in a particular brand of sponsored TBA (A.I. 723; A.III. 2074). Moreover, such communications played little or no role in furthering sponsored TBA purchases. Thus, in the year prior to the Commission's hearings in Atlanta, Goodrich sold TBA to seven new Texaco dealers, only one of whom was identified by Texaco before Goodrich contacted him (A.II. 1148-51).

d. *Geographical Supply Points.* Atlantic assigned its dealers to a single point of TBA supply. By contrast, as the Court of Appeals noted, in this case "the Examiner found that as to sponsored TBA sales, each dealer did not buy exclusively from, and was not limited to, any particular supply point but was free to deal with any source he chose" (A.VI. 115).

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[30] For example, Texaco dealer O'Brien, who was dissatisfied with his original source of sponsored products, switched to another source (A.II. 1427-29).

[31] *Atlantic*, of course, did not condemn "advance notification" as such. It was cited only as evidence of Goodyear's "close cooperation" with Atlantic in connection with making the order applicable to the rubber company (381 U.S. 373-74)—after the Court had determined from other evidence that Atlantic's conduct had violated Section 5.

e. *Sales Practices.* Again, in contrast to the all-out efforts of Atlantic to cause its dealers to purchase only sponsored TBA, here the Court of Appeals noted:

> "* * * the Commission itself in the order presently under review struck the Examiner's finding that Texaco 'salesmen were encouraged by [Texaco] management to write up orders for sponsored TBA without waiting for a formal request from a dealer' " (A.VI. 114).

f. *Retaliation.* In *Atlantic,* this Court pointed out:

> "The Commission stressed the evidence showing that 'Atlantic dealers have been orally advised by sales officials of the oil company that their continued status as Atlantic dealers and lessees will be in jeopardy if they do not purchase sufficient quantities of sponsored' tires, batteries and accessories. * * * Indeed, *some dealers lost their leases after being reported for not complying with the Goodyear sales program*" (381 U.S. at 366-67; emphasis added).

As the court below observed, this coercive context permeated the entire Atlantic program, contaminating even the oil company's neutral conduct (A.VI. 112). For the actual lease cancellations and other reprisals vividly demonstrated to Atlantic's dealers that, if they ignored a simple recommendation, they would ultimately be confronted with real coercion. In the case of Atlantic's dealers, the Seventh Circuit found that ". . . there exists a servitude caused by the coercive pressures which Atlantic exerts upon its dealers." *Goodyear Tire & Rubber Co.* v. *FTC,* 331 F.2d 394, 400 (7th Cir. 1964). It noted: "In that setting, recommendation is tantamount to command" (*id.* at 401).

Texaco's program, by contrast, concededly was never accompanied by lease cancellations or threats of reprisals. If Texaco's dealers ignored TBA recommendations, as most of them did, there was no retaliation whatsoever.

g. *"Effectiveness."* The most "impressive evidence" of the effectiveness of Atlantic's exercise of its economic power was the remarkable switch of Atlantic dealers to Goodyear TBA (381 U.S. at 368). An Atlantic survey between 1946 and 1949 showed that 67% of its dealers preferred another brand of tires and 76% another brand of batteries (*id.* at 368-69). Yet in 1951, "[w]ithin seven months after the agreement Goodyear had signed up 96% and 98%, respectively, of Atlantic's dealers in two of the three areas assigned to it" (381 U.S. at 366). And, as the Commission's opinion pointed out, two months later "an Atlantic report showed that *virtually all* Atlantic dealers in Goodyear's assigned territory who were potential purchasers of TBA had signed contracts agreeing to handle Goodyear products" (58 F.T.C. at 346; emphasis added).

In diametrical opposition, although Texaco's program had been in effect for well over a decade before Atlantic's was even commenced, most Texaco dealers still did not purchase any sponsored TBA. The only comprehensive statistics in the record—and these were introduced by Commission counsel—demonstrate that approximately two-thirds of Texaco dealers do not regularly purchase any sponsored tires and 80% do not regularly purchase sponsored batteries and accessories (A.IV. JAX 177-180).[22]

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[22] These percentages were compiled as follows: Texaco has 38,000 dealers, 30,000 of whom have a contractual relationship with Texaco (A.I. 426). The statistical charts in question contain data concerning the purchases of only those 30,000 dealers with whom Texaco

In the face of these statistics, it is small wonder that the Commission expressly discarded the "effectiveness" of Texaco's program as a basis for its decision (A.VI. 92).[33]

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has a contractual relationship—i.e., those dealers whom Commission counsel contended were subject to Texaco's control. These charts list the total number of Texaco's contract and lessee dealers (by division) and the *number* of these dealers (again by division) who purchased a dollar or more of TBA under each sales commission arrangement (*id.* at 430, 433-34). When a station bought from both sponsored TBA suppliers (Goodrich and Firestone), it was listed twice. By adding the number of stations purchasing under the Goodrich plan to the number of stations purchasing under the Firestone plan, we find that a maximum of 11,000 Texaco contract and lessee dealers bought a dollar or more of sponsored tires during any month of 1955 and 1956. (This 11,000 figure is inflated because many Texaco dealers bought from both Goodrich and Firestone and would therefore be counted twice in the computations.) Since there are approximately 30,000 Texaco contract and lessee dealers, it is evident that only one out of three Texaco dealers buys sponsored tires. And the comparable percentage for Texaco dealers purchasing sponsored batteries and accessories is a mere 20%.

[33] Although the Commission made no differentiation between Texaco's lessee and contract dealers for any other purpose—combining the two groups to show the number of outlets affected, the dollar volume of sponsored TBA purchases, and so forth—its only comment with respect to the statistics set forth in the text was to suggest that the contract dealers should be eliminated from consideration because "*many* contract dealers do not handle, and are not appropriate outlets for, TBA products" (A.VI. 92). Even if *all* of the 16,806 Texaco contract dealers are disregarded, however, it remains indisputable that Texaco did not force anyone to do anything against his will. It is simply impossible to square the theory that an oil company-dealer relationship is necessarily "inherently" coercive absent proof thereof, with the fact that of Texaco's 13,366 lessee dealers at the end of 1955 —after the program had been in effect for more than fifteen years— 11,913 didn't buy a single Goodrich battery and 11,202 didn't buy a single Firestone battery (A.IV. JAX 179-80)! Some 10,000 of 13,000 lessee dealers thus freely disregarded Texaco's recommendation and were wholly immune to its salesmanship.

Shell's practices were also markedly different from those of Texaco.[24] Although the Fifth Circuit rejected the Commission's finding of overt coercion by Shell, it pointed out that the evidence did "show the 'dramatic and immediate' anticompetitive pressures on dealers" (360 F.2d at 483-84). Not only were Shell's dealers not free to purchase whatever brand of TBA they desired from any source but, as the Court of Appeals found:

> "The evidence, however, shows that each Shell dealer was expected to choose between the two sponsored suppliers *to the exclusion of all others.* Once the dealer chose one company, the other company did not compete for any part of the dealer's business" (*id.* at 483; emphasis added).

Moreover, each Shell dealer was assigned to a specific wholesale supply point and no sales commissions were paid to Shell on TBA purchases from non-designated supply points, even though the brand acquired might be the same. Under

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[24] For example, the Commission's *Shell* decision referred to the need for assessing the evidence against Shell

> "*** in the light of subpoenaed correspondence taken from the files of Shell relating to the TBA sales objectives of the Shell company. A memorandum entitled 'T. B. A. Situation' written by a Division Department Manager of Shell and addressed to his District Managers contains this statement:
> "*** Presently our dealers are purchasing far too many mongrel brands. Profits on batteries are very attractive to the dealers and the battery buying season is just ahead. *Let's keep these low-priced and troublesome batteries out of our stations.* Both our suppliers are well-stocked, and both Goodyear and Firestone have just recently announced attractive . . . terms on batteries. WE NEED THIS BATTERY BUSINESS!" 58 F.T.C. at 395 (emphasis added).

There is absolutely nothing comparable in the *Texaco* record.

these circumstances, "double teaming" was a regular and highly effective tactic since the Shell salesman was far from neutral.[35] Equally important, in contrast to Texaco, Shell policed its dealers to stamp out non-sponsored TBA and assigned sponsored TBA quotas to its dealers (*id* at 481). Thus, in *Shell*, there was definite evidence to support the conclusion that it exercised power over its dealers.

Here, *per contra*, the Court of Appeals drew the only conclusion that could be drawn from the record before it: that Texaco did not exercise dominant economic power over its dealers.[36]

2. Texaco's Sales Commission Plan Produced No Adverse Competitive Effects

As we have seen (*supra*, pp. 21-2), the Court of Appeals further found no basis in the record for concluding that Texaco's sales commission plan produced any adverse competitive effects (A.VI. 115-19).

Integral to this Court's determination of illegality in *Atlantic* was the showing that "the activity of Goodyear and Atlantic impaired competition at three levels of the tires, batteries and accessories industry"—manufacturing,

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[35] The Fifth Circuit noted:

> "The activity considered most valuable and relied upon to bring fast results is 'double teaming' by salesmen from Shell and Firestone or Goodyear. *** when a TBA representative finds difficulty in moving his line to a nominated dealer, he calls upon the Shell salesman to accompany him on his sales rounds *** to no one's surprise, the team produces excellent results" (*id.* at 482 n. 24).

[36] In light of this finding, no purpose would be served by challenging that court's conclusion that Texaco had dominant economic power over its dealers.

wholesaling and retailing (381 U.S. at 370). But not a single anticompetitive effect found in *Atlantic* is present here.

First, in *Atlantic* there was a classic division of territories between Goodyear and Firestone:

> "• • • Firestone and Goodyear were excluded from selling to Atlantic's dealers in each other's territories" (381 U.S. at 370).

Atlantic's contracts made explicit provision for this division of territories (*ibid.*). Not only is there no like provision in the agreements between Texaco and Goodrich and Firestone, but the record is clear that in practice there was no division of territories.

The absence of any division of markets or customer allocation, together with the active competition of all TBA suppliers, including three substantial sponsored TBA manufacturers,[37] for the business of the local Texaco dealer, precludes the possibility that Texaco was handing over a "captive market" to Goodrich or to any other TBA supplier.[38]

Second, this Court pointed out that

> "• • • Goodyear wholesalers who were not authorized supply points, were foreclosed from the Atlantic market" (381 U.S. at 370).

No supply points were designated here. The Examiner expressly found that the Texaco dealer is "free to deal with any Goodrich supply point he may prefer" (A.I. 219; A.VI. 115, 118).

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[37] In 1956 Texaco added U.S. Rubber as a third sponsored TBA company (A.II. 1136; A.III. 2371, 2373; A.VI. 55, 57).

[38] In *Atlantic*, the Court observed that "Goodyear had in effect purchased a 'captive market'" (381 U.S. at 375).

Third, this Court observed that Atlantic's

> "dealers could buy only at Goodyear's price" (381 U.S. at 370).

This adverse effect flowed directly from the territorial division of markets and the designation of supply points. Since the Texaco dealer wishing to purchase a sponsored TBA brand can freely select any supply source from three of the largest TBA manufacturers, price dictation is simply impossible in this case.

Finally, the foreclosure brought about by Atlantic's coercive conduct was virtually total:

> "They [Atlantic wholesalers and retailers] . . . were effectively foreclosed from selling brands other than Goodyear" (381 U.S. at 370).
>
> • • • •
>
> "[W]holesalers and manufacturers of competing brands . . . were foreclosed from the Atlantic market" (*ibid.*).

Here, by contrast, *there is no foreclosure whatever.* Since Texaco dealers are free to buy whatever TBA brands they desire, it necessarily follows that neither they nor competing suppliers are foreclosed from any market by reason of the operation of the Texaco sales commission plan. Thus, Texaco's plan imposes no anticompetitive restrictions on anyone.

Contrary to its position in *Atlantic* and *Shell*, the government here rests its case solely on the claim of foreclo-

sure (P. Br. 23),[39] making no charge of any other anti-competitive effect. Since Texaco did not restrict the free choice of its dealers, the government is relegated to the argument that:

> "Once he recognizes that Texaco favors the purchase of sponsored products, the dealer, even if he is not coerced, no longer selects his brand of TBA solely on the basis of the comparative merits of the competing products. In the absence of strong countervailing factors the dealer is most likely to acquiesce in Texaco's recommendation to purchase the sponsored product" (P. Br. 23).

This, says the government, is because Texaco dealers, though not in fact restricted, may be concerned that Texaco would disapprove of their purchase of non-sponsored TBA (P. Br. 24).

We need not pause to quarrel at length with the government on the law[40] because the crushing answer to petition-

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[39] In *Shell*, the Fifth Circuit found that Shell's dealers were not free to purchase any brand of TBA they desired to sell and the two rubber companies involved were also restricted from competing with each other for the business of Shell dealers.

> "As in *Atlantic*, competition was impaired at three levels. (a) Wholesalers and manufacturers of competing brands were foreclosed from Shell's market. Even Firestone dealers who were not authorized supply points were cut off from Shell's outlets. (b) Firestone and Goodyear were excluded from competing with each other after a dealer had selected his supplier. (c) Shell's dealers, who were limited to sponsored TBA were placed at a competitive disadvantage in having to compete with dealers free to stock several brands of TBA." *Shell Oil Co.* v. *FTC*, 360 F.2d 470, 484 (5th Cir. 1966).

[40] *Atlantic* will be searched in vain for any intimation, much less holding, that foreclosure can be bottomed on the *groundless* fears of dealers that the oil company will look askance at their purchase of non-sponsored TBA—no matter what the oil company says or does to make clear that its dealers are perfectly free to choose whatever brands of TBA they desire.

er's argument lies in the facts. All the government offers us is *ipse dixit;* there is nothing in the record to support its conjectures.

Where, we may ask, is there proof that Texaco dealers do not purchase TBA on the basis of the relative merits of the particular brands? That there must be "strong countervailing factors" before Texaco dealers will buy non-sponsored products?[41] That such dealers "feel constrained" to acquiesce in Texaco's recommendation? These deficiencies in the record cannot be remedied on appeal by the assumptions of counsel. That is especially true in this case because of the manner in which it was tried by the Commission's staff.

Prior to issuance of the complaint, the Commission had devoted at least five years to an investigation of Texaco's TBA practices. During that interval not only had documents been examined and statistics been collected but witnesses were interviewed and questionnaires were circulated. With all this investigation and with some 38,000 Texaco dealers to choose from, *not a single Texaco dealer was called to testify by Commission counsel.*

In the course of the proceedings Texaco moved to obtain the names and other particulars of those "possible prospective witnesses" with whom the Commission staff had communicated but who were not called (A.I. 28-9). After complaint counsel replied, asserting that the information was "confidential" and that Texaco could not be prejudiced by "information that is not introduced in the

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[41] Petitioner does not even tell us what those "strong countervailing factors" are supposed to be, much less document its point by record references.

record" (*id* at 30), the Examiner denied Texaco's motion. Hiding behind this veil of secrecy, counsel would not even admit that questionnaires were sent to particular Texaco dealers or distributors who handled non-sponsored TBA, much less that they had replies to their inquiries (A.I. 327-29; A.III. 1780-81).

But the evidence Texaco developed from witnesses it called, who had received written inquiries from the Commission, leaves no doubt that the Commission staff had in fact canvassed an unknown number of Texaco dealers and distributors by mail and then did not call them as witnesses (A.III. 1780; 1793-94; 1846; 1873-74; A.V. JAX 429): Texaco obtained a copy of the response of one Texaco distributor who stated that he had purchased from Texaco for 42 years and that he had always handled non-sponsored TBA. He added:

> "We have never purchased any B. F. Goodrich or Firestone products. I have been asked if I would like to handle Firestone through the Texas Company with no pressure at all put on me to do it. The Texas Company has never high pressured me during the forty-two years I have deen dealing with them" (A.IV. JAX 428).

Under these circumstances, there can be no doubt but that a full presentation of what the Commission had investigated and uncovered would have been favorable to Texaco. This deliberate withholding of evidence material to the defense constituted a blatant violation of due process.[42]

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[42] *E.g., Brady* v. *Maryland*, 373 U.S. 83, 87-88 (1963); *Griffin* v. *United States*, 87 U.S. App. D.C. 172, 183 F.2d 990 (D.C. Cir. 1950); *United States ex rel. Meers* v. *Wilkins*, 326 F.2d 135 (2d Cir. 1964); *Barbee* v. *Warden, Maryland Penitentiary*, 331 F.2d 842 (4th Cir. 1964).

Instead of putting Texaco dealers on the stand to testify to the facts, Commission counsel elected to offer the hearsay testimony of a few wholesalers each of whom stated he had difficulty selling non-sponsored TBA to one or two Texaco dealers because (those dealers allegedly said) Texaco was sponsoring other brands. This hearsay, aside from being incompetent to establish the fact,[43] was inherently unreliable[44] and, as the Court of Appeals found,

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[43] *E.g., Buckeye Powder Co.* v. *E. I. Du Pont De Nemours Powder Co.*, 248 U.S. 55 (1918); *Superior Engraving Co.* v. *NLRB*, 183 F.2d 783, 792 (7th Cir. 1950), *cert. denied*, 340 U.S. 930 (1951).

[44] The excuses made by a buyer to be rid of an importunate seller are recognized as unreliable "in view of the risk of insincerity in a potential customer's statement why products were not being ordered." *Herman Schwabe, Inc.* v. *United Shoe Mach. Corp.*, 297 F.2d 906, 914 n. 10 (2d Cir. 1962), *cert. denied*, 369 U.S. 865 (1962). Here, the government did not even introduce evidence that the dealers who allegedly made such statements sold only sponsored TBA. In fact, they didn't (A.III. 2014-15, 2016-17, 2026-27, 2170, 2198). Indeed one such dealer testified that, far from refusing to buy the non-sponsored merchandise offered, he had placed an order which the supplier had never even filled (A.II. 1579). See also, for denials of the alleged statements A.II. 1406-09, 1410, 1414, 1478-79, 1577, 1579-80, 1580-82, 1584, 1586-87, 1589-90, 1595; A.III. 1949.

Moreover, the hearsay statements attributed to these few Texaco dealers are unbelievable in the light of the uncontradicted testimony of the numerous dealer witnesses operating in the same regions as these dealers who testified to their understanding of Texaco's TBA policy and their open handling, display and advertising of non-sponsored TBA. For example, in the Chicago area, nine dealers so testified (A.II. 1472-77; 1486-88; 1494-97; 1501-04, 1505-06, 1508-09; 1511-13; 1520-26; 1575-78; 1585-87, 1590-91; 1597-1600). In the Georgia area similar testimony was elicited from six dealers (A.III. 1935-37; 1942-44; 1946-47; 1953-57, 1958; 1970-74; 1977; 1980-82). One of the dealers in the Georgia area, Conner, advertised his non-sponsored tires on radio programs three times a week (*id.* at 1981). See also A.V. JAX 438, 494-95, 496-99, 500, 501, 502, 503, 504-06, 507-08, 509, 510, 511 (photographs of displays of non-sponsored TBA in Chicago); JAX 600-06 (map of Chicago).

rebutted by overwhelming evidence to the contrary (A.VI. 118) (see record references at A.I. 131-44). At best, the wholesaler testimony portrayed "isolated instances" and did not constitute substantial evidence. It was in this sense that the Court of Appeals regarded it as not "representative" (*ibid.*).

This wholesaler testimony—hearsay to begin with, relating to isolated incidents and overwhelmingly rebutted—was patently insufficient to support a finding of foreclosure.

Furthermore, as pointed out above, four out of five Texaco dealers do not handle sponsored batteries or accessories and two out of three do not handle sponsored tires (*supra*, pp. 45-6). Since the vast majority of Texaco's dealers obviously do not feel constrained to acquiesce in Texaco's recommendation, there is no basis for assuming that the minority of dealers who purchase sponsored TBA do so for any reason other than genuine satisfaction with the quality and marketability of Goodrich and Firestone products and the service that goes with them.

Petitioner misses the point when it argues that the question is not whether all or most Texaco dealers "felt constrained" (P. Br. 25). The point is that the evidence does not establish that *any* Texaco dealer felt constrained. The mere fact that Texaco dealers bought substantial amounts of leading nationally advertised brands of TBA promoted by Texaco does not mean that their purchases were the result of a feeling of constraint. For aught that appears, Texaco dealer purchases of sponsored products corresponded with the general market penetration of such brands. In *Atlantic*, it was only *after* the fact of foreclosure was established by the oil company's pressure tac-

tics [45] that the Court looked at the substantiality of the commerce foreclosed.[46] Here, *per contra*, there was no showing that sponsored purchases were made contrary to the dealer's will or that, without Texaco's promotional activities, the dealer would have purchased a non-sponsored brand. It is one thing to say that no market analysis is required in a case involving a practice analogous to a tying arrangement where substantial sales result; it is quite another merely to look at the substantiality of sales in a case where dealers are free to accept or reject a recommendation with no strings attached.

Failing all else, petitioner attempts to rely upon the experience acquired by the Commission in the other two "related" TBA cases [47] and it chides the Court of Appeals for ignoring this experience (P. Br. 10). The shoe is on the other foot. The Commission itself distinguished between the *Texaco* record and the other two when it condemned the Atlantic and Shell programs and simultaneously remanded *Texaco* to the examiner for the reception of addi-

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[45] "*Thus* [referring to the establishment of the requisite adverse competitive effects] the Commission was warranted in finding that the effect of the plan was as *though* [emphasis is the Court's] Atlantic had agreed with Goodyear to require its dealers to buy Goodyear products and had done so" (381 U.S. at 370).

[46] "But just as the effect of *this* plan is similar to that of a tie-in [as established by the actual proof of anticompetitive effects], so is it unnecessary to embark upon a full-scale economic analysis of competitive effect. We think it enough that the Commission found that a not insubstantial portion of commerce is affected" (*id.* at 371; emphasis added).

[47] The Commission is said to have had

> "*** the benefit of the experience it had gained through its comprehensive studies of the use and effect of such arrangements made in the related *Atlantic* and *Shell* cases" (P. Br. 12).

tional evidence which was never forthcoming (58 FTC 1179, 1183; A.I. 179, 197). The Commission does not know anything more about the effect of TBA plans today than when it took this action in 1961. As the Solicitor General recognized in his oral argument in *Atlantic* (*supra*, pp. 31-3), the fact is that not all TBA sales commission plans are alike in their *use* and *effect*. The Court of Appeals was eminently correct in holding that Texaco's plan differed markedly in both respects from those of Atlantic and Shell.

As for the Commission's argument that all three oil companies should be accorded equal treatment (*i.e.*, subjected to a sweeping cease and desist order), the short and compelling answer was provided by the Court of Appeals:

> "But simply because Texaco is in the same line of business does not mean it must suffer the pain of the misdeeds of other oil companies; this would indeed be guilt by association" (A.VI. 119).

Conclusion

Nothing in Section 5 of the Federal Trade Commission Act prevents Texaco, pursuant to a sales commission agreement with a rubber company, from promoting the sale of sponsored TBA to its dealers when those dealers are free, they know they are free and they repeatedly exercise their freedom to purchase non-sponsored products without jeopardizing their dealership status or otherwise incurring Texaco's ill will.

What the Commission is attempting to do here is to outlaw the sales commission method of distribution, a business practice antedating this country's existence and never interdicted by Congress—even though there is nothing intrinsically unfair, oppressive or anticompetitive

about the practice and it has never been abused by Texaco. In a word, the Commission is seeking to usurp the legislative function by amending Section 5 for purposes of this case. The proper forum for its efforts is Congress not the courts.

If the Commission had observed fundamental requirements of fair play, if it had been candid with the courts, if it had followed its own mandate and that of this Court, if it had not predetermined the result by exalting uniformity of treatment among industry members above individual guilt or innocence, this matter would have been terminated years ago. The very integrity of the administrative process demands dismissal of the complaint.

For all of the foregoing reasons, the judgment of the Court of Appeals should be affirmed.

July 24, 1968.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 1049

FEDERAL TRADE COMMISSION, PETITIONER

v.

TEXACO, INC. AND THE B. F. GOODRICH COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE FEDERAL TRADE COMMISSION

OPINIONS BELOW

The opinion of the court of appeals (App., Vol. VI, 106–120) is reported at 383 F. 2d 942. The opinion (App., Vol. VI, 77–93) and final order (App., Vol. VI, 94–96) of the Federal Trade Commission are not officially reported. The prior opinions of the court of appeals (App., Vol. VI, 1–20) and of this Court are reported at 336 F. 2d 754 and 381 U.S. 739. The prior opinions of the Federal Trade Commission (App., 175–186; 302–303) are reported at 58 F.T.C. 1176 and 62 F.T.C. 1172.

JURISDICTION

The judgment of the court of appeals was entered on September 25, 1967 (App., Vol. VI, 121). On December 14, 1967, Mr. Chief Justice Warren extended the time for filing a petition for a writ of certiorari to and including January 25, 1968. The petition was filed on the latter date and was granted on March 11, 1968 (App., Vol. VI, 122). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, under the standards set forth in *Atlantic Refining Co.* v. *Federal Trade Commission*, 381 U.S. 357, the Federal Trade Commission was warranted in concluding that it is an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act for a major oil company, which has dominant economic power over its dealers, and a major rubber company, to enter into an agreement whereby the oil company promotes and takes steps to induce its dealers to purchase the rubber company's tires, batteries and automotive accessories, in return for a commission on all such sales.

STATUTE INVOLVED

Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, provides, in pertinent part:

> Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are declared unlawful. * * * The Commission is empowered and directed to prevent persons, partnerships, or corporations * * * from using unfair methods of competition in

commerce and unfair or deceptive acts or practices in commerce.

STATEMENT

This is one of three related proceedings in which the Federal Trade Commission has prohibited the use of a sales-commission arrangement between a major oil company and a leading producer of tires, batteries and automotive accessories ("TBA") for the distribution of TBA through the retail gasoline service stations of the oil company. Under such an arrangement, an oil company agrees to promote the sale to its dealers of a tire company's TBA (known as "sponsored TBA") in return for a commission on the goods sold. In *Atlantic Refining Co.* v. *Federal Trade Commission*, 381 U.S. 357, this Court sustained the Commission's order against the Goodyear Tire and Rubber Company and the Atlantic Refining Company. In *Shell Oil Company* v. *Federal Trade Commission*, 360 F. 2d 470, certiorari denied, 385 U.S. 1002, the Court of Appeals for the Fifth Circuit, subsequent to this Court's decision in *Atlantic*, sustained the Commission's order against the Shell Oil Company and the Firestone Tire and Rubber Company. In both of these cases the respondent oil and tire companies were enjoined from participating in any such sales commission arrangements with any other company.

The present case involves the validity of sales-commission arrangements for the distribution of TBA that the respondent Texaco, Inc. ("Texaco") has entered into with respondent B. F. Goodrich Co. ("Goodrich") and with the Firestone Tire and Rub-

ber Company ("Firestone").[1] The Commission held that these arrangements were unfair methods of competition and unfair acts and practices in violation of Section 5 of the Federal Trade Commission Act and entered a cease-and-desist order. The Court of Appeals for the District of Columbia Circuit set aside the order and instructed the Commission to dismiss the complaint.[2]

A. THE TEXACO-GOODRICH ARRANGEMENT

Texaco, one of the nation's largest petroleum companies, sells its products to approximately 30,000 service stations or about 16.5 percent of all service stations in the United States (App. Vol. I, 221). Texaco's retail dealers are primarily divided into two categories: lessee dealers who lease their service stations directly from Texaco, and contract dealers who either own their own stations or lease them from third parties. The usual lease is for a term of one year, and thereafter from year to year, subject to termination by either party at the end of any year on ten days' notice. The lease contains so-called "house-keeping"

[1] Firestone is subject to a final order of the Commission prohibiting its use of a sales commission plan with any oil company. See *Shell Oil Company* v. *Federal Trade Commission*, 360 F. 2d 470, 474 (C.A. 5), certiorari denied, 385 U.S. 1002.

[2] That court also had reversed a prior cease-and-desist order against these companies (62 FTC 1197; 336 F. 2d 754). The Commission petitioned for a writ of certiorari and, following the decision in the companion *Atlantic Refining* case, the Court granted the petition, vacated the judgment of the court of appeals and directed that the case be remanded to the Commission for further proceedings in light of *Atlantic. Federal Trade Commission* v. *Texaco, Inc.*, 381 U.S. 739. The order here under review was issued pursuant to this remand.

provisions relating to the use, maintenance and general appearance of the station. Breach of any provision of the lease by the lessee constitutes grounds for immediate termination by Texaco without notice to the lessee (App., Vol. IV, 20–21). Contract dealers lease pumps and other equipment from Texaco.

Both lessee and contract dealers enter into "agreements of sale" with Texaco for the purchase of gasoline and other petroleum products; the agreement prescribes annual minimum and maximum purchases at current prices. This agreement also runs from year to year and is terminable upon 30 days' notice. In addition, it is automatically cancelled if the lease of a dealer is terminated and may be terminated by either party for failure of the other party to perform strictly any of the obligations (App., Vol. IV, 22–23). All of these contracts apparently are standard documents prepared by Texaco.

Goodrich is one of the four largest rubber companies in the United States. It manufactures a full line of tires, tubes and related products and purchases for resale batteries labelled BFG and a full line of automotive accessories which are sold under their own nationally advertised brand names. It distributes these products through company-owned stores, independent dealers and thousands of service stations throughout the United States. (App., Vol. I, 217–218, 304).

The Texaco-Goodrich agreement, which was entered into in 1943, provides that Goodrich will pay Texaco a commission on all purchases of Goodrich TBA by Texaco consignees, dealers or distributors in "consideration of the aid to be given and the services to

be rendered by your [Texaco's] sales organization in connection with promoting the sale of Goodrich products" (App., Vol. IV, 6).[1] The commission is 10 percent on purchases of sponsored TBA by Texaco retail dealers and 7.5 percent on purchases by its wholesale distributors. The total volume of sponsored TBA sold to Texaco dealers by Goodrich and Firestone in the period 1952–1956 was $245 million; in 1956 alone it was almost $59 million. Consequently, the total TBA commissions received by Texaco in the period 1952–1956 were almost $22 million (App., Vol. I, 209–210).

Texaco has engaged in the following promotional activities, among others, in performing its obligations under the sales commission agreements: (a) when interviewing prospective dealers, Texaco emphasized the importance of TBA and recommended sponsored products (App., Vol. I, 208, 216); (b) Texaco's sales campaign materials and literature discussing the importance of TBA utilized and recommended sponsored products (App., Vol. I, 208, 345–346, 361–362); (c) Goodrich was notified of new dealers and stations before they began operation, thus enabling Goodrich to solicit their business in advance of competitors (App., Vol. I, 208, 399–400, 511, 674, 701–702, 723; Vol. VI, 90); (d) Texaco salesmen promoted sponsored TBA in their day-to-day contacts with the dealers (App., Vol. I, 329, 412, 526–527; Vol. VI, 90); and (e) Texaco and tire company salesmen called on dealers together (App., Vol. I, 528, 680).

Moreover, Goodrich reported each dealer's indi-

[1] The agreement with Firestone was substantially identical (App., Vol. IV, 16–17).

vidual purchases of sponsored TBA to Texaco (App., Vol. I, 316–317, 460; Vol. IV, 70E–70F, 74–78). Thus Texaco is informed of each dealer's purchases, and considers this fact in evaluating service stations when deciding whether to renew their leases (App., Vol. IV, 49; Vol. VI, 91).

B. THE COMMISSION'S DECISION

After reconsideration of the record pursuant to this Court's remand order (381 U.S. 739), the Commission issued a new opinion holding the sales commission plan to be an unfair method of competition. The Commission began by analyzing this Court's decision in *Atlantic Refining*. The essence of that decision, according to the Commission, was that "while coercive practices aggravate the restraint imposed by the sales commission plan, it is the oil company's power over its dealers, derived from the contractual relationship between them, and the utilization of that power through the performance of the promotional services required by the sales commission agreement, which renders the sales commission plan unlawful" (App., Vol. VI, 84). The Commission then ruled that the economic dependence of Texaco dealers is the same as that of Atlantic dealers, noting that the contractual relationships were almost identical in both cases (App., Vol. VI, 89–90). The Commission concluded that it was unnecessary for the oil company to engage in "overtly coercive tactics" in order effectively to exercise its dominant economic power over its dealers; it stated that the consequence of Texaco's promo-

tional activities was to "impress upon Texaco dealers, through constant repetition and in a variety of ways, that Texaco, whose favor the dealers must court, has a strong interest in their purchase of the sponsored TBA products" (App., Vol. VI, 90).

The Commission reviewed generally the extent to which the sales-commission arrangement had been successful, but concluded that no extensive economic analysis was required since the amount of commerce involved was substantially greater than that in the *Atlantic* case. It pointed to evidence that competing sellers of TBA had been foreclosed from the Texaco service station market, including testimony by competing TBA suppliers that the Texaco dealers did not feel that they were free to buy from non-sponsored suppliers (App., Vol. VI, 91).

The Commission's order, identical in scope to that approved by this Court in *Atlantic*, enjoined both Texaco and Goodrich from entering into a TBA sales-commission contract with any other company (App., Vol. VI, 94-96).

C. THE COURT OF APPEALS' DECISION

The court of appeals set aside the order and instructed the Commission to dismiss the complaint. The court read the *Atlantic* decision as establishing "three essential components" for a sales-commission agreement to be illegal: (a) the oil company's dominant economic power over its dealers; (b) exercise of that power; and (c) anticompetitive effects of using that power (App., Vol. VI, 110).

The court upheld the Commission's conclusion that Texaco has dominant economic power over its dealers (App., Vol. VI, 111–112, 119). On the question of exercise of that power, the court held:

> We can glean nothing from the utterances of the Supreme Court which alters the basic rule that a finding of coercion is the threshold requirement of a determination of exercise of dominant economic power. [App., Vol. VI, 112].

The court compared each of Texaco's promotional practices with those used by Atlantic and concluded that Texaco's practices could not be found to be coercive (App., Vol. VI, 114–115). Nor, in the court's judgment, did any of these practices indicate illegal exploitation by Texaco of its service station market. Therefore, it concluded, "we do not find that Texaco used its controlling economic power to compel its dealers to purchase sponsored TBA." (App., Vol. VI, 115). On the question of competitive effect, the court held that "there is an absence of substantial evidence which supports a finding of anticompetitive effects." (App., Vol. VI, 119). Since the court believed that the Commission had had sufficient opportunity to develop the record but had failed to do so adequately, it ordered the Commission to dismiss the complaint.* (App., Vol. VI, 119–120).

*The Commission has not challenged the action of the court of appeals in setting aside paragraphs 5 and 6 of the order against Texaco, which prohibited the latter from overtly coercing its dealers (App., Vol. I, 231–232; Vol. VI, 95, 119 (n. 16)).

SUMMARY OF ARGUMENT

The Commission correctly concluded that the sales-commission arrangement between Texaco and Goodrich is an unfair method of competition. The court of appeals in setting aside the Commission's order made two fundamental errors. First, it ignored the broad authority of the Federal Trade Commission to define unfair methods of competition. Second, it misapplied this Court's decision in *Atlantic Refining Co.* v. *Federal Trade Commission*, 381 U.S. 357, and required the Commission to predicate a Section 5 violation in this case upon proof of promotional practices which were virtually identical to those found in *Atlantic*. The court below thus ignored both the experience with the anticompetitive potential of sales-commission agreements which the Commission has gained in three related cases involving this issue and this Court's expressed concern in *Atlantic* with the adverse effects of the widespread use of such agreements.

The Commission determined that Texaco has dominant economic power over its dealers, a finding accepted by the court of appeals. Within this framework of dominant economic power, the Commission concluded that Texaco's promotional activities in support of sponsored TBA necessarily make the dealers aware of Texaco's interest in the purchase of such TBA. The Commission thus recognized that the basic evil of the sales-commission plan is the exercise of the oil company's economic power, not the particular means by which it is exercised. The court of appeals, however, thought that a finding of coercion was required and therefore concluded that Texaco had not illegally ex-

ercised its economic power. Such a requirement is based on a misinterpretation of Section 5 and is plainly inconsistent with the standards set forth in *Atlantic*.

The Commission was also correct in concluding that the Texaco-Goodrich agreement has anticompetitive effects. The Commission was not obliged to undertake an extended economic analysis. It is sufficient that a "not insignificant" amount of commerce is involved in the sales-commission scheme. Since the result of the sales-commission arrangements is to preclude dealers from selecting TBA solely on the comparative merits of the competing brands, these arrangements interfere with the free functioning of the market. The sales-commission arrangements make it more difficult for smaller TBA producers and distributors to compete in the substantial market represented by service stations. This Court in *Atlantic* was concerned with such anticompetitive consequences of the widespread use of sales-commission agreements, not with the particular practices used by Atlantic and Goodyear in performing them.

ARGUMENT[*]

THE COMMISSION CORRECTLY HELD THAT TEXACO'S SALES-COMMISSION ARRANGEMENTS CONSTITUTE UNFAIR METHODS OF COMPETITION, IN VIOLATION OF SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

This Court has consistently recognized and upheld the broad discretion of the Federal Trade Commission to define unfair methods of competition under Section 5 of the Federal Trade Commission Act. See,

[*] Although for ease of presentation our argument is focused primarily on the arrangements between Texaco and Goodrich, it applies equally to those between Texaco and Firestone.

e.g., Federal Trade Commission v. *Brown Shoe Co.*, 384 U.S. 316, 321–322; *Federal Trade Commission* v. *Motion Picture Adv. Co.*, 344 U.S. 392, 394–395. The breadth of this authority is particularly relevant here because, in concluding that the Texaco sales-commission arrangements constitute unfair methods of competition, the Commission had the benefit of the experience it had gained through its comprehensive studies of the use and effect of such arrangements made in the related *Atlantic* and *Shell* cases. The Commission concluded (App., Vol. VI, 92) that "the gravest danger to competition presented by the sales commission plans here as in *Atlantic* is in their capacity for hindering competition between sponsored and non-sponsored TBA suppliers." It ruled (*id.* 89) that the "economic dependence of Texaco dealers is no different from that of Atlantic dealers"; and that (*id.* 90) "Texaco's promotional efforts in carrying out its sales commission agreement with Goodrich and Firestone constitute a forceful exercise of its economic power over its dealers. Its consequence is to impress upon Texaco dealers, through constant repetition and in a variety of way, that Texaco, whose favor the dealer must court, has a strong interest in their purchase of the sponsored TBA products." In the light of these findings and the substantial volume of TBA sales made by Texaco dealers under the sales commission arrangements (see *supra*, p. 6; *infra*, pp. 16–17, 23), the Commission was justified in concluding that those arrangements resulted in the same kind of injury to competition that characterized the *Atlantic* and *Shell* sales commission

plans, and were equally illegal. What this Court said in *Federal Trade Commission* v. *Cement Institute*, 333 U.S. 683, 720, is peculiarly appropriate here:

> We are persuaded that the Commission's long and close examination of the questions it here decided has provided it with precisely the experience that fits it for performance of its statutory duty. The kind of specialized knowledge Congress wanted its agency to have was an expertness that would fit it to stop at the threshold every unfair trade practice—the kind of practice which, if left alone, "destroys competition and establishes monopoly." * * *

As we show below, the court of appeals here took far too narrow a view of the Commission's authority, and misinterpreted this Court's *Atlantic* decision. In *Atlantic* this Court held that in reviewing the agency's determination that a sales-commission arrangement is an unfair method of competition, the court "is limited to determining whether the Commission's decision 'has warrant in the record and a reasonable basis in law'" and that "necessarily 'we give great weight to the Commission's conclusion. * * *'" (381 U.S. at 367–368). Under these standards the court of appeals should have upheld the Commission's decision.

That decision rested on three ultimate findings: (a) that Texaco has dominant economic power over its dealers; (b) that in promoting sponsored TBA it exercises that power in ways that make the dealers aware of its interest in their purchase of such TBA; and (c) that substantial anticompetitive effects result from Texaco's performance of the agreements. The

record adequately supports each of these findings and under *Atlantic* they justify the Commission's conclusion that the Texaco sales-commission arrangements constitute unfair methods of competition in violation of Section 5.

A. TEXACO HAS DOMINANT ECONOMIC POWER OVER ITS DEALERS

The Commission found that Texaco retail service station dealers are economically dependent upon Texaco as a result of both the contractual relationship between the dealer and the oil company and the latter's economic power (App., Vol. IV, 89–90). The court of appeals upheld the Commission's conclusion that Texaco has dominant economic power over its dealers (App., Vol. VI, 111–112, 119). While this fact, therefore, is established, it is instructive to examine briefly the nature of that power in order to place the sales-commission arrangement in perspective.

The specific factors from which an oil company derives economic power over its dealers include control over oil and gas supply, short-term leases, sales agreements and equipment loans, control over advertising, leverage from financial promotion, and house-keeping requirements of leases. These factors are inherent in the petroleum distribution system and create a situation where the individual retail dealer is completely dependent for his economic survival on the oil company with which he deals. See *Atlantic*, 381 U.S. at 368; *Simpson* v. *Union Oil Co.*, 377 U.S. 13; *United States* v. *Sun Oil Co.*, 176 F. Supp. 715 (E.D. Pa.). Two of the most significant elements of the oil company's economic power in promoting sponsored TBA

are its complete discretion as to renewal of leases and sales agreements and the general "housekeeping" requirements concerning the station's use, maintenance and appearance. As noted above, *supra*, pp. 4-5, the Texaco lease authorizes Texaco to terminate (1) at the end of any year on ten days' notice, or (2) for any breach in the "housekeeping" requirements. The sales agreement authorizes Texaco to cancel on 30 days' notice at the end of any year. It is only natural that the dealer will be extremely anxious to maintain a harmonious relationship with Texaco, and with its salesmen who represent his direct contact with the company, in order to ensure renewal of the agreements each year.

B. TEXACO'S ACTIVITIES IN PROMOTING SPONSORED TBA ARE AN EXERCISE OF ITS ECONOMIC POWER OVER ITS DEALERS

1. The Commission detailed a number of practices in which Texaco engaged to promote the purchase of sponsored TBA by its dealers (see *supra*, p. 6). It concluded that the "consequence [of these activities] is to impress upon Texaco dealers, through constant repetition and in a variety of ways, that Texaco, whose favor the dealers must court, has a strong interest in their purchase of the sponsored TBA products" (App., Vol. VI, p. 90). This finding is amply supported by the record. The Commission pointed out that "perhaps [the] most effective" factor was the promotion of sponsored TBA by Texaco salesmen in their regular contacts with the dealers (App., Vol. VI, 90-91). Since the salesman is the primary link between the dealer and the company upon which he is so de-

pendent, the salesman's continual promotion of a particular product necessarily will have substantial influence upon the dealer's decision that is unrelated to the relative merits of the product in comparison with competing, unsponsored brands.

These personal contacts by salesmen are supplemented and reinforced by other techniques that remind its dealers constantly of Texaco's interest in their choice of sponsored TBA: sponsored TBA is recommended in Texaco's literature and sales campaign materials (App., Vol. I, 345–346, 361–362); classes and sales demonstrations for dealers utilize only sponsored TBA (App., Vol. I, 361–362; Vol. II, 1258); Texaco emphasizes to prospective dealers the importance of TBA and endorses sponsored products (App., Vol. I, 208, 216).[8]

Texaco can ascertain the size of its dealers' purchases of sponsored TBA from reports it receives from Goodrich and Firestone detailing TBA sales to individual dealers (App., Vol. I, 316–317, 460; Vol. IV, 70E–70F, 74–78). Sales of sponsored TBA, as well as sales of petroleum products, are "a strong" factor in determining whether to renew a particular station lease (App., Vol. IV, 49). It is hardly surprising, in light of Texaco's dominant economic power, that these

[8] Although Texaco purported to operate under a policy, articulated on June 1, 1948, that its dealers were independent businessmen who were not to be forced to handle any particular merchandise (App., Vol. I, 218), this "policy" was only occasionally and informally communicated to the dealers by the Texaco salesmen, and was communicated to a dealer in writing only *after* the dealer had established himself as a successful marketer of lubricating oil. (*Ibid.*)

promotional activities produce substantial purchases of sponsored products by Texaco dealers (see *supra*, p. 6).

2. The court of appeals, however, believed that coercion was a necessary prerequisite to a finding of exercise of economic power. After comparing in detail the evidence in the present case with the techniques employed in the *Atlantic* case for bringing to bear the oil company's economic power upon its dealers, the court concluded that none of the promotional activities utilized here was necessarily coercive and that there was no substantial evidence of actual coercion by Texaco. It therefore held that Texaco had not exercised its concededly dominant economic power. This conclusion rested on a serious misreading of the *Atlantic Refining* decision.[6]

While both the Commission and the court of appeals in *Atlantic* had found that the oil company had engaged in coercive practices, nothing in this Court's

[6] It is also contrary to the analysis of the Fifth Circuit in *Shell Oil Co.* v. *Federal Trade Commission*, *supra*. In *Shell*, in reviewing a markedly similar record, the court found insufficient support for the Commission's finding of coercion, but concluded that this did not "bear directly on the principal issue, the Company's use of its economic power through the sales commission plan to cause its dealers to buy sponsored TBA *even in the absence of overt coercion*" (360 F. 2d at 482–83, emphasis supplied). Conceding that the *Shell* record lacked any such "striking example of abuse of power" as was found in *Atlantic*, the court held that this did not "detract from the less spectacular but solid evidence supporting the Commission's finding that Shell used its economic dominance to cause a substantial number of its dealers to purchase sponsored TBA." 360 F. 2d at 488.

opinion indicated that the use of coercion was the factor which made the arrangement illegal. On the contrary, the Court expressly noted that the Commission's view was that coercive practices were merely "symptomatic of a more fundamental restraint of trade" (381 U.S. at 361) and that illegal "effects on competition flowed from the contract itself." (381 U.S. at 370.) The basic vice of the sales commission plan involved in *Atlantic* was identical to that of the plan in the present case: "the utilization of economic power in one market to curtail competition in another" (381 U.S. at 369). Cf. *Northern Pacific Ry. Co.* v. *United States*, 356 U.S. 1.

The fundamental evil here, as in *Atlantic*, was the use of the oil company's economic power, not the particular means—whether labeled "coercion" or not—by which it was exercised. But the court of appeals permitted this basic economic vice to be obscured by its pre-occupation with the particular techniques used by Atlantic and Goodyear, the trappings in which the vice was manifested in *Atlantic*. Such an approach to review of the Commission's determinations under Section 5 overlooks the fact that the Commission has been entrusted with the interpretation and application of an economic regulatory statute for the benefit of the entire competitive economy; it constricts the Commission's function to a search for specific acts of culpable conduct as if the agency were administering punishment under a criminal code (see, *e.g.*, App., Vol. VI, 119).

This is the same fundamental misconception of the Commission's role under Section 5 which the majority

of this Court adopted in *Federal Trade Commission* v. *Gratz*, 253 U.S. 421, 427, over the strong dissent of Mr. Justice Brandeis. The Court recently unanimously rejected the *Gratz* approach in *Federal Trade Commission* v. *Brown Shoe Co.*, 384 U.S. 316, 320-321, where it pointed out that "it is now recognized" that "the dissent of Mr. Justice Brandeis in *Gratz*" more accurately defines the Commission's "broad powers to declare trade practices unfair." In *Gratz* Mr. Justice Brandeis stated (253 U.S. at 434-435):

> Instead of attempting to inflict punishment for having done prohibited acts, * * * [Section 5] undertook to preserve competition through supervisory action of the Commission. * * * If it discovered that any business concern had used any practice which would be likely to result in public injury—because in its nature it would tend to aid or develop into a restraint of trade—the Commission was directed to intervene, before any act should be done or condition arise violative of the Anti-Trust Act.

This case presents a graphic illustration of the harmful consequences which can result from the *Gratz* view which the court of appeals took of the Commission's authority. In three related proceedings (see *supra*, p. 3), the Commission determined that, when oil companies have dominant economic power over their dealers, their promotion of sponsored TBA under a sales commission arrangement constitutes an unfair method of competition under Section 5 because of its pronounced tendency to foreclose competition in the marketing of TBA. In two of those proceedings, judi-

cial review has been completed and Atlantic Refining Company, Shell Oil Company, Goodyear Tire and Rubber Company and Firestone Tire and Rubber Company stand permanently enjoined from participating in any such sales-commission arrangements with any other company. But in the present case, the court below held that Texaco and Goodrich may continue to use essentially identical sales-commission promotional arrangements because the court perceived differences in the indicia of exercise, or in the degree of exercise, of Texaco's power over its dealers.

Thus "without making any investment in distributional facilities or TBA inventory" (App., Vol. VI, 84–85), Texaco would be permitted to continue to receive substantial commissions for promoting the sale of TBA to its service stations while, for example, its smaller competitor, Atlantic Refining Company, is barred from the same economic opportunity; and similarly Goodrich would be allowed to continue to utilize the power which major oil companies have over their dealers in order to obtain advantages in the marketing of Goodrich TBA which are denied to Goodrich's competitors.[1] This is precisely the "arbitrary and inequitable" situation which the Commission pointed out would "create a harmful competitive imbalance among the leading firms" in both the oil and tire industries (App., Vol. VI, 88). Section 5 does not limit

[1] Indeed, the result is completely anomalous in the case of Firestone (with which Texaco also has a sales-commission plan), since the decision below approves the very type of arrangements which the Fifth Circuit's decision in *Shell-Firestone* bars Firestone from utilizing.

the Commission's power to substituting a new competitive imbalance for the original one under which the large tire companies had an advantage over their smaller competitors. This Court's recognition that such distortions of the Commission's function inevitably followed from the *Gratz* interpretation surely has been one important reason for the explicit repudiation of that interpretation (*Brown Shoe Co., supra*, 384 U.S. at 320–321) and the adoption, instead, of a broader view of the Commission's authority, soundly based on the legislative history of Section 5 (see *Atlantic Refining Co., supra*, 381 U.S. at 367). The Commission was amply warranted in ignoring the essentially unimportant distinctions in the manner in which the three oil companies exercised their power over their dealers and instead focusing on the economic consequences of such exercise.

"3. In short, the Commission has determined in these three cases that it is an unfair method of competition forbidden by Section 5 for an oil company with dominant power over its dealers to exercise that power under a sales-commission agreement by means of promotional activities which, because of the relationship between the company and the dealers, deny them complete freedom of choice in making their purchases. The Commission's conclusion was justified, as this Court recognized in *Atlantic Refining*, because of "the destructive effect on commerce that would result from the widespread use of these contracts by major oil companies and suppliers" (381 U.S. at 371). *Cf. Standard Oil Co.* v. *United States*, 337 U.S. 293.

While the court below set aside the Commission's ultimate finding that Texaco had exercised its dominant economic power, it did not disturb the bulk of the supporting findings with respect to promotion by Texaco of Goodrich TBA. In particular, the court did not question that the Texaco salesman continually carries the promotional message in his day-to-day contacts with dealers. Nor did the court question the use of statistics on sponsored TBA purchases in evaluating a dealer's performance. But these are highly effective means of exercising economic power, for they go directly to the continuation of the economic relationship between Texaco and the dealer. Where, as here, the effect of the promotional activities of the oil company is to make its dealers aware that the company has a direct interest in their purchase of sponsored TBA, it was reasonable and proper for the Commission to conclude that the oil company has exercised its economic power.

Texaco has been paid substantial commissions without being required to make any investment in distributional facilities or inventory, and "without relieving the TBA supplier of the burden of sales, distribution, and service" (App., Vol. VI, 84–85). In referring to virtually identical "substantial overriding commissions" in *Atlantic*, this Court said (381 U.S. at 376):

> It is difficult to escape the conclusion that there would have been little point in paying substantial commissions to oil companies were it not for their ability to exert power over their wholesalers and dealers . . .

See, also, *Shell Oil Co.* v. *Federal Trade Comm.*, *supra*, 360 F. 2d at 482.

C. TEXACO'S PROMOTION OF SPONSORED TBA UNDER THE SALES COMMISSION AGREEMENT CAUSES SIGNIFICANT ANTICOMPETITIVE CONDITIONS IN THE TBA MARKET

The use of a sales-commission promotional arrangement for the distribution of TBA results in the foreclosure of service station outlets as a market for the sale of products of competing TBA distributors. In *Atlantic* this Court held that it was not necessary for the Commission to engage in extensive economic analysis of the effects of a sales-commission plan once it was determined that a "not insubstantial" amount of commerce is involved. 381 U.S. at 371. Since sales of sponsored TBA to Texaco dealers in one year exceeded total sales to Atlantic dealers during a six-year period (App., Vol. I, 209–210; Vol. VI, 89), the substantiality of commerce requirement was clearly satisfied in this case.

Once [illegible] recognizes that Texaco favors the purchase of sponsored products, the dealer, even if he is not coerced, no longer selects his brand of TBA solely on the basis of the comparative merits of the competing products. In the absence of strong countervailing factors the dealer is most likely to acquiesce in Texaco's recommendation to purchase the sponsored product. See *Shell Oil Co.* v. *Federal Trade Commission*, *supra*, 360 F. 2d at 486. As in the case of tying agreements, the selection of the sponsored product is not the result of "a better product or a lower price" but is influenced by "power or leverage in another mar-

ket." *Northern Pacific Ry. Co. v. United States*, *supra*, 356 U.S. at 6. This type of interference with free competitive conditions flows directly from the sales-commission agreement itself. *Atlantic Refining*, *supra*, 381 U.S. at 370.

The fact that some dealers may nonetheless purchase nonsponsored products does not negate the Commission's conclusion that use of the sales-commission plan by oil companies which exercise dominant economic power over their dealers has a significant adverse effect on the free play of competition. The record in this case and the Commission's experience in other cases support the Commission's conclusion that a large number of dealers, subject to repeated reminders that Texaco recommended their purchase of sponsored TBA, would not exercise free choice based on the merits of competing products. This conclusion was supported by testimony of sellers of nonsponsored TBA that they were unable to sell to particular Texaco service stations because of the dealers' expressed concern that Texaco would disapprove of their purchase of nonsponsored products. (App., Vol. I, 565, 567, 653–655, 681, 686, 702; Vol. II, 1043–1044, 1065, 1196, 1288–1289).

The court of appeals, however, said that it could not regard such testimony as "representative" (App., Vol. VI, 118):

> • • • [S]uch a conclusion is not supported by substantial evidence, except in isolated instances which were generally contradicted by overwhelming rebuttal evidence. Nor can we accept the Commission view that the rebuttal testi-

money is to be discounted because witnesses are under "pressure" from Texas [see App., Vol. I, 214]. A finding of pressure on witnesses before a tribunal is not one to be lightly inferred and ought not be made without evidence of some kind; none is suggested by the Commission on this score.

The court's error here was not confined merely to the questionable propriety of its disagreeing with the Commission as to the relative weight to be given various testimony and its refusal to permit the Commission to discount the reliability of some of that testimony because of the inhibition inherent in the dominant economic power Texaco has over its dealer witnesses. More fundamentally, the court misconceived the issue before the Commission. The Commission was not required to decide whether the testimony on which it relied was "representative", as the court of appeals used that term.

Under Section 5, the question for the Commission was not whether all Texaco dealers, or most Texaco dealers, felt constrained to purchase sponsored TBA. The Commission had determined, through its examination of the sales-commission method of promoting TBA, that the most significant anticompetitive effect of the practice was the foreclosure to nonsponsored brands of an opportunity to sell in the substantial market represented by dealer outlets of contracting major oil companies. In *Atlantic* this Court recognized "the destructive effect upon commerce that would result from the widespread use of these contracts by major oil companies and suppliers * * *" 381 U.S. at 371. Having identified a significant tan-

dency toward the same anticompetitive effect which had been the principal basis for condemning similar sales-commission arrangements, the Commission was not obliged to await the development of the identifiable foreclosure into a "full-blown" restraint, before concluding that the Texaco-Goodrich arrangement, like is counterparts, was a violation of Section 5. See *Federal Trade Commission* v. *Brown Shoe Co., supra*, 384 U.S. at 321–322; *Federal Trade Commission* v. *Motion Picture Adv. Co., supra*, 344 U.S. at 394–395. Once again the insights of Mr. Justice Brandeis are instructive (*Federal Trade Commission* v. *Gratz, supra*, 253 U.S. at 441–442) (dissenting opinion):

> The purpose of Congress [in enacting Section 5] was to prevent any unfair method which may have been used by any concern in competition from becoming its general practice. It was only by stopping its use before it became a general practice, that the apprehended effect of an unfair method in suppressing competition by destroying rivals could be averted.

This problem is particularly acute here, because one serious anticompetitive consequence of the use of the sales-commission arrangement is that it disables smaller tire companies from competing in the service station market. The three TBA cases have disclosed that only the largest rubber companies in the United States have been able to utilize TBA sales-commission arrangements (App., Vol. VI, 87). The service station has become an increasingly important source for distribution of replacement tires, batteries, and other automobile accessories (App., Vol. VI, 87; see also *Atlantic Refining, supra*, 381 U.S. at 364). When each

independent service station dealer remains free to choose the brands of TBA he wishes to stock, smaller producers and distributors have a greater opportunity to share in this market. When, however, a substantial number of service stations of a major oil company such as Texaco are induced to stock TBA promoted by the company under a sales commission arrangement with one of the major producers, other producers and distributors no longer have a fair chance to compete for this business. Since the original equipment market for tires is completely dominated at the present time by the five largest producers (Staff Report to the Federal Trade Commission, *Economic Report on the Manufacture and Distribution of Automotive Tires*, pp. 26–27 (March 1966)), it is vitally important to keep other channels of distribution open for smaller producers. The sales-commission arrangement, however, by tending to shut out the smaller competitor from substantial portions of the service station market, extends and reinforces the market power of the major TBA producers.

The sales-commission promotional plan is without redeeming economic value.[8] The plain fact is that the TBA manufacturer is willing to pay substantial commissions to the major oil company in return for the latter's use of its economic power over its dealers to gain for the TBA manufacturer a share of the market it might not be able to obtain on the competitive merits of its own product; the effect is to exclude competing TBA sellers from a significant part of the

[8] See, generally, Note, *TBA Sales-Commission Contracts: A Time for Per Se Illegality*, 56 Geo. L.J. 557 (1968).

market. In these circumstances, the Commission was not obliged to show the exact degree of foreclosure which has resulted from the arrangement. It is enough that a substantial amount of commerce is involved. *Atlantic Refining, supra,* 381 U.S. at 371. Cf. *Northern Pacific Ry. Co. v. United States, supra,* 356 U.S. at 7; *International Salt Co. v. United States,* 332 U.S. 392.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed and the case should be remanded to the court of appeals with directions to enforce the Commission's order, except for paragraphs 5 and 6 directed against Texaco (see note 4, *supra,* p. 9).

Respectfully submitted.

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Supreme Court of the United States

October Term, 1968

No. [redacted] 24

FEDERAL TRADE COMMISSION,
Petitioner,

v.

TEXACO INC. and THE B. F. GOODRICH COMPANY,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF IN OPPOSITION FOR RESPONDENTS TEXACO INC. AND THE B. F. GOODRICH COMPANY

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF IN OPPOSITION FOR RESPONDENTS TEXACO INC. AND THE B. F. GOODRICH COMPANY

Opinions Below

The opinion of the Court of Appeals is reported at 383 F. 2d 942 and is printed as Appendix A of the Petition (21-40). The most recent opinion and final order of the Federal Trade Commission are not officially reported but are printed as Appendix B and Appendix C, respectively, of the Petition (41-66). The prior opinions of the Court of

Appeals and of this Court are reported at 336 F.2d 754 and 381 U.S. 739. The prior opinions of the Federal Trade Commission are reported at 58 F.T.C. 1176 and 62 F.T.C. 1172 and are reproduced at JA 175 and JA 302.[1] The Initial Decision ("I.D.") and the Revised Initial Decision ("Rev. I.D.") of the Examiner are reproduced at JA 153-71 and JA 200-33, respectively.

Jurisdiction

Petitioner invokes this Court's jurisdiction under 28 U.S.C. §1254(1). The judgment of the Court of Appeals was entered on September 25, 1967.

Question Presented

Stripped to its essentials, the petition asks this Court to determine whether the Court of Appeals was right or wrong in its assessment of the sufficiency of the evidence in this case. Although petitioner adroitly seeks to create the impression that the court below departed from the principles which this Court enunciated in *Atlantic*[2] and in so doing created a conflict with the Fifth Circuit's decision in *Shell*,[3] the truth of the matter is that the court below, reviewing the record in this case for the second time,[4] made clear that it was conducting its review with-

1. JA refers to the printed Joint Appendix, JAX refers to the exhibit volumes of the Joint Appendix, and SJA refers to the Supplemental Joint Appendix, filed in the Court of Appeals.

2. *Atlantic Refining Co.* v. *FTC*, 381 U. S. 357 (1965).

3. *Shell Oil Co.* v. *FTC*, 360 F.2d 470 (5th Cir. 1966), *cert. denied*, 385 U. S. 1002 (1967).

4. On the second review, Chief Judge Bazelon replaced Judge Washington.

in the legal framework outlined by *Atlantic* and *Shell*. Because, in its unanimous judgment, there had been a failure of proof by petitioner on the crucial issues of exercise of economic power and competitive effects, the Court of Appeals drew a distinction between this case and the other two—as, indeed, petitioner itself had once drawn when it issued orders in *Atlantic* and *Shell* and simultaneously remanded this case for the reception of additional evidence which was never forthcoming. The real question for decision, therefore, is as follows:

> Whether the Court of Appeals, in reviewing the record in this case in light of *Atlantic* and *Shell*, made a clearly erroneous determination when it found that the record as a whole did not support petitioner's conclusion that Texaco exercised dominant economic power to cause its dealers to purchase sponsored tires, batteries and automotive accessories with resulting anticompetitive effects.

Finding that the record did not support petitioner's disposition of the merits of the controversy, it was unnecessary for the Court of Appeals to deal with the further grounds raised below by respondents which independently compel the termination of this proceeding. Those grounds relate to petitioner's abuse of the administrative process throughout this unduly protracted case in violation of the Administrative Procedure Act and of the due process requirements of the Constitution. Thus, in addition to the question presented above, respondent respectfully reserves its right to present these issues for determination should it become necessary to do so.

In the interest of clarity, it is to be noted that there was one ruling below as to which no question is presented

for review. With no word of attempted justification or explanation, the Commission had included in its order against Texaco two provisions regarding coercive conduct, unrelated to the sales commission program.[5] Independently of its holding on the sales commission issue, the Court of Appeals made clear

> "* * * our view that the coercion aspect of the Commission order has no basis in law, or the record. Since we have *twice* determined there is no basis that Texaco overtly coerced any substantial number of dealers or that a pattern of coercion existed, the provisions of the order prohibiting such coercion were and are baseless." (App. A, p. 40, n. 16; emphasis supplied).

The petition for certiorari makes no claim of error with respect to this determination, and the Court of Appeals' decision as to it is thus final.[6]

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5. Paragraphs 5 and 6 of the order (JA 231-32, SJA 165).

6. In *Atlantic*, paragraphs 5 and 6 of the Commission's order were also not before this Court but for precisely the opposite reason. This Court observed at the inception of the *Atlantic* decision:

> "Since Atlantic has not sought review of paragraphs 5 and 6 of the Commission's order as to its use of overt acts of coercion on its wholesalers and retailers those portions of the order are final" (381 U. S. at 363; SJA 60).

It was further noted:

> "* * * Atlantic has conceded the point [coercion] by not perfecting an appeal thereon" (381 U. S. at 367; SJA 64).

In *Shell*, the Court of Appeals for the Fifth Circuit eliminated paragraphs 5 and 6 from the order against Shell, and no review from this ruling was sought by the Commission. The petition does not tell the whole story when it states at page 3 that the Fifth Circuit "sustained the Commission's order against" Shell and Firestone.

Statement of the Case

On January 11, 1956, the Federal Trade Commission filed three virtually verbatim complaints: one commencing this case against Texaco and Goodrich; another against the Goodyear Tire and Rubber Co. and The Atlantic Refining Co. (Dkt. No. 6486); and the third against The Firestone Tire & Rubber Co. and Shell Oil Co. (Dkt. No. 6487). All three cases were heard by the same Hearing Examiner and decided by him on the same day.

The facts of this case, however, were vastly different from those in the other proceedings—as the Commission itself was later to find.

The complaint challenged as an unfair method of competition an agreement between respondents whereby Goodrich paid Texaco a commission for Texaco's services in promoting the sale of Goodrich's tires, batteries and automotive accessories ("TBA") to dealers and distributors selling Texaco gasoline.

1. The Examiner's First Initial Decision Found Texaco's Sales Commission Plan Lawful.

On October 23, 1959, some three and a half years after the complaint was filed and after two years of hearings, the Examiner handed down his first Initial Decision in which he rejected the underlying theory of the complaint. Specifically, he refused to find that "[c]ompeting manufacturers and/or distributors, wholesalers or other vendors of TBA products are foreclosed from a substantial portion of the TBA business of the Texaco petroleum outlet market as a

result of the override agreements between Texaco and the rubber companies" (JA 152). He also refused to find that "Texaco, by virtue of the relationship, contractual or otherwise, existing between it and station operators, consignees and distributors, handling its petroleum products, exercises control or influence over such outlets, thereby depriving them of freedom of choice as to their source of supply of TBA products and causing them to buy the TBA products of the respective rubber companies" (*ibid.*). Instead, he made specific findings to the contrary. In the light of these findings, the Examiner upheld the sales commission agreements. However, he issued an anti-coercion order against Texaco based on the testimony of five former Texaco dealers—a finding which the Court of Appeals later set aside, characterizing it as "extraordinary" in view of the overwhelming evidence to the contrary. 336 F.2d at 757, n. 1.

2. The First Commission Opinion Found No Basis in the Record for any Order Against Texaco.

On March 9, 1961, the Commission rendered its separate decisions in each of the three TBA cases. In both the *Atlantic-Goodyear* and *Shell-Firestone* proceedings, it found coercion, unlawful tie-ins, and adverse competitive effects resulting from the TBA sales commission agreements. In sharp contrast, in the *Texaco-Goodrich* case the Commission did not find coercion, tie-ins or anticompetitive effects. In the Commission's view, the legality of Texaco's sales commission contract with Goodrich turned upon its "competitive effects" (58 F.T.C. at 1178-79; JA 179). It concluded, however, that the record did not contain sufficient evidence "to enable the Commission to assess the competitive effects of the sales commission method of distributing TBA em-

ployed by these respondents" (58 F.T.C. at 1183; JA 186). Nevertheless, rather than dismissing the complaint for failure of proof, the Commission remanded the proceeding to the Examiner for the reception of additional evidence on competitive effects.

3. Texaco's Efforts to Bar the Remand Hearings

As soon as attempts were made to implement the remand order of March 9, 1961, Texaco and Goodrich brought an action against the Commission in the District Court for the District of Columbia, entitled *Texaco Inc.* v. *FTC,* Civil No. 2219-61. They contended that after at least nine years of investigation and trial, the Commission, having found the evidence insufficient to support its charges, was without authority or discretion to remand for the receipt of "further evidence" not shown to exist. An injunction was sought against further proceedings as being in excess of the Commission's authority, in derogation of the Commission's statutory duty to proceed with reasonable dispatch and in violation of the constitutional requirements of due process. In opposing this suit, counsel for the Commission represented that the Commission "needed additional evidence in order to decide the issues presented,"[7] and that the remand was not to be a retrial of what had gone before.[8] Relying on these representations, the Court denied a temporary injunction but on June 19, 1962 ruled that Texaco and Goodrich would be entitled to relief unless all further evidence

7. Memorandum of Points and Authorities in Support of Defendants' Motion to Dismiss and in Opposition to Plaintiffs' Motion for Preliminary Injunction, p. 26, served August 28, 1961.

8. Memorandum of Points and Authorities in Support of Defendants' Motion for Summary Judgment, pp. 17, 21, filed April 30, 1962.

was heard and the Hearing Examiner filed his decision by October 2, 1962. Subsequent attempts to obtain immediate temporary injunctive relief from the Court of Appeals and from this Court were unsuccessful. *Texaco Inc.* v. *FTC*, Appeal No. 17,111 (D. C. Cir. June 22, 1962); *Texaco Inc.* v. *FTC* (U. S. Sup. Ct. July 10, 1962; Black, J.). In each instance the tribunals were advised by Commission counsel that the remand was essential to develop needed additional evidence.

4. The Sham Remand Hearings

The remand hearings lasted 2½ days and closed on July 19, 1962 without any additional evidence having been adduced by Commission counsel. Instead of offering evidence, Commission counsel induced the Examiner to take official notice of certain matters in the Commission's opinion in the *Shell-Firestone* case. The Examiner brushed aside Texaco's plea that the doctrine of official notice did not permit shuffling evidence or findings from case to case, thereby cutting off the right of cross-examination and shifting the burden of proof. Subsequently, the Commission upheld Texaco on this point by eliminating from consideration anything adduced at the remand (JA 302-03), and the present Commission Order and Decision are in accord (Opinion, SJA 165; order, SJA 170, n. 3).

5. The Revised Initial Decision in Violation of the Commission's Mandate

The Examiner had been authorized only to receive "further evidence concerning the competitive effects of the respondents' practices" and to indicate what changes, if any, he wished to make in his first Initial Decision in light

of such evidence (58 F.T.C. at 1183; JA 174). Nevertheless, on September 24, 1962, without any additional evidence from Commission counsel, he filed a revised Initial Decision in which he added new findings and substituted new and contrary conclusions for those he had formerly reached. Now holding that the use of the sales commission method of distributing TBA violated Section 5 of the Federal Trade Commission Act, the Examiner issued a revised order which duplicated that entered by the Commission in the other two TBA cases.

6. The Second Commission Opinion

The "second round" appeal was orally argued before the Commission on April 4, 1963. Eleven days later, on April 15, 1963, the Commission handed down a 3-1 *per curiam* decision holding precisely the opposite of what it had held on March 9, 1961. Looking only to the pre-remand record, it sustained the Examiner's freshly minted conclusion that the sales commission agreements were unlawful. Without reviewing any evidence in its three paragraph opinion, the Commission ruled that the old record "amply supports the conclusions and the order of the hearing examiner" (JA 302). No basis for its reversal of position was set forth. As legal authority, the Commission merely cited its two other TBA decisions which it had handed down on the very day when it had earlier found the record in this case insufficient and had directed a remand.[9]

9. Commissioner MacIntyre did not participate. Commissioner Anderson, who was the only member of the Commission who had participated in its earlier decision, did not concur "for the reason that the command of the remand order of March 9, 1961 had not been met and complied with" (JA 303).

Before this second appeal to the Commission, the participation of Chairman Dixon, one of the members of the Commission majority, had been unsuccessfully challenged by Texaco. Prior to the remand hearings before the Examiner, Chairman Dixon, in a speech made on July 25, 1961, had publicly denounced the practices attacked by the complaint as illegal and had specifically named Texaco and Goodrich in this connection.

7. The First Decision of the Court of Appeals

On the appeal from the Commission's 1963 Decision, the Court of Appeals was unanimous in its judgment that "Chairman Dixon's participation in the hearing amounted in the circumstances to a denial of due process which invalidated the order under review," and held that the motion for his disqualification should have been granted (336 F.2d at 760, SJA 10-11).

With respect to the merits, a majority further held that there had been a failure of proof. It first ruled that coercion had not been proved (336 F.2d at 763; SJA 17), specifically finding that the record "demonstrates the contrary" of "coercive tactics" (336 F.2d at 762; SJA 15). Not only is it Texaco's policy "to respect the independence of its dealers," declared the Court, but such policy was followed in actual practice (*ibid.*).

Second, noting that under the Commission's view of the law an essential element of a Section 5 violation was Texaco's possession and exercise of controlling economic power over its dealers, the Court ruled that there was no

substantial evidentiary basis for any such finding (336 F.2d at 762; SJA 14).

Third, it inferentially ruled that no anticompetitive effects had been shown when it found that Texaco dealers "are quite free to accept or reject" Texaco's "recommendation" concerning TBA (336 F.2d at 763; SJA 16).

Finally, the Court held that the Commission's

> "* * * efforts in this case—fruitless after a dozen years—have exceeded permissible limits and have had unreasonably harassing and oppressive effects upon the companies under attack" (*ibid.*).

The Court concluded:

> "Because the Commission's drastic orders are not supported by the record as a whole and because of the undue protraction of the administrative process, we are of the opinion that this long drawn out proceeding should now be terminated" (*ibid.*).

8. *Atlantic* Case Taken to This Court

In making its determination concerning the absence of both coercion and the exercise of controlling economic power, the Court of Appeals was well aware of the Seventh Circuit's ruling on different facts in *Atlantic-Goodyear*,[10] which had been decided a few month earlier.

The record before the Seventh Circuit in the *Atlantic* case had literally seethed with evidence of Atlantic's coer-

10. *Goodyear Tire & Rubber Co.* v. *FTC*, 331 F.2d 394 (7th Cir. 1964).

cive practices *vis-a-vis* its dealers. In this context of overwhelming proof that Atlantic's dealers were being forced by Atlantic to act contrary to their wishes, the Seventh Circuit characterized them as "economic serfs" and affirmed the Commission's order.

In seeking review before this Court, Atlantic conceded that it had coerced its dealers and did not challenge the anti-coercion order. What Atlantic contested was the prohibition against the sales commission plan itself, arguing that such additional relief was unnecessary.

9. This Court's *Atlantic* Decision

Finding that Atlantic had successfully "marshaled its full economic power in a continuing campaign to *force* its dealers and wholesalers to buy Goodyear products" with a concomitant detrimental impact on competition (381 U.S. at 371; SJA 68; emphasis supplied), this Court sustained the order prohibiting Atlantic from being a party to TBA sales commission agreements. The Court held that such a prohibition was warranted because of the "long existence of the plan itself, *coupled with the coercive acts practiced by Atlantic pursuant to it.*" (381 U. S. at 372; SJA 70; emphasis supplied).

10. This Court's Disposition of This Case

While Atlantic's petition for certiorari was pending before this Court, the Government petitioned for certiorari in this case. It did not seek review of the dismissal of the anti-coercion order or of the decision disqualifying Chairman Dixon. Six days after announcing its decision in *At-*

lantic, on June 7, 1965, the Court granted the writ, and without passing upon the merits, directed that the judgment of the Court of Appeals be vacated and that the case be remanded to the Commission for further proceedings "in light of *Atlantic Refining Co.* v. *Federal Trade Comm'n,* 381 U. S. 357 (1965)." 381 U. S. 739, 740 (1965); SJA 89.

11. Proceedings Before the Commission After Remand

On remand from this Court, the Commission (Commissioners Dixon and MacIntyre not participating) rendered an opinion dated January 14, 1966 and issued an order identical to the one it had issued in *Atlantic.*

Although the purpose of the remand was to determine "whether the facts of record in the present case" bring it within the *Atlantic* rule, the Commission's Opinion eschewed factual analysis. Instead, it proceeded on the newly adopted legal premise that it is inherently unlawful for a "major" oil company to enter into a TBA sales commission arrangement with a "major" rubber company. Under this rule of *per se* illegality, the factual distinctions between *Atlantic* and the present case were deemed beside the point. To the Commission, it made no difference that Atlantic's dealers were forced against their will to purchase sponsored TBA and Texaco's dealers were not. The opinion explicitly disclaimed reliance upon any finding of coercion to support the Order (Opinion, SJA 172, n. 6).

12. The Fifth Circuit's Decision in *Shell*

By the time this case reached the Court of Appeals again on petitions to review filed by Texaco and Goodrich, the Fifth Circuit had decided Shell-Firestone.[11] In that

11. *Shell Oil Co.* v. *FTC,* 360 F.2d 470 (5th Cir. 1966).

case, Judge Wisdom rejected the Commission's contention that *Atlantic* had held that all sales commission agreements between major oil and rubber companies were unlawful *per se*, stating: "Courts must look to the record, at least to the extent the Supreme Court relied on the record in *Atlantic*" (360 F.2d at 479). According to Judge Wisdom:

> "The rationale for the *Atlantic* decision may be broken down into three essential components, each of which depends on the facts of the case before the court:
>
> (1) the oil company's dominant economic power over its dealers;
>
> (2) the exercise of that power over its dealers;
>
> (3) the anti-competitive effects of using that power" (*id.* at 477).

"[O]n the facts of the case before the Court," the Fifth Circuit held that the Shell-Firestone sales commission agreement had violated Section 5: "* * * the controlling facts in this case are so similar to those in *Atlantic* that the same result should be reached in both cases" (*id.* at 475).

13. The Second Decision of the Court of Appeals

When this case returned for a second time to the Court of Appeals, that Court addressed itself to the question

> "whether the Commission has complied with the remand order and correctly applied the applicable principles enunciated in the *Atlantic* holding" (App. A, p. 27).

Its unanimous conclusion, after a second full review of the record and with the benefit of the Fifth Circuit's *Shell* decision before it, was that the Commission had not.

Declaring itself in agreement with Judge Wisdom's view of *Atlantic* (App. A, p. 27), the court below scrutinized the record in this case in terms of the three essential components of the *Atlantic* rationale.

a. Existence of Dominant Economic Power

As to the first component—the "existence of dominant economic power"—the Court of Appeals revised its prior finding in light of *Atlantic* and, quoting from Judge Wisdom in *Shell,* held that such power was " 'inherent in the structure and economics of the petroleum distribution system' " (App. A, p. 29).

b. Exercise of Dominant Economic Power

But on the critical question of whether Texaco had *exercised* dominant economic power—the second essential element under *Atlantic*—the Court of Appeals adhered to its earlier determination that Texaco had not exploited its power to cause its dealers to purchase sponsored TBA.

At the outset, the Court noted that Texaco, unlike Atlantic, had not engaged in coercion. For this reason the Court of Appeals made clear that, wholly apart from the legality of Texaco's sales commission plan, there was no basis in law or fact for the anti-coercion provisions of the Commission's order (App. A, p. 40, n. 16)—a ruling on which petitioner does not seek review by this Court.

With respect to the legality of the plan itself, the court below advanced *two distinct theories* to support its conclusion that there had been no exercise of dominant economic power.

First, it noted that in Atlantic "coercion was found to have permeated the entire Atlantic program, contaminating even its neutral conduct" (App. A., p. 30). The Court of Appeals accordingly viewed "a finding of coercion [as] the threshold requirement of a determination of exercise of dominant economic power" (*ibid.*).

But the court below did not rest its decision on the absence of coercion. As an independent ground for its decision it found that Texaco had not even exercised dominant economic power over its dealers in a *non*-coercive way:

> "Of course we realize, as did Judge Wisdom in *Shell,* that the 'Company's use of its economic power through the sales commission plan to cause its dealers to buy sponsored TBA *even in the absence of overt coercion*' can constitute an unfair method of competition and a violation of section 5, *Shell* at 482-83 [emphasis added]" (App. A, p. 31).

The Court then proceeded to meet head-on petitioner's argument that each of the "non-coercive practices" referred to in *Atlantic* are present in equal degree in this case (*ibid.*).

First, the Court emphasized the Examiner's finding that "Texaco dealers, unlike those of Atlantic and Shell, *were free to accept or reject sponsored products*" (*id.* at 32). Amplifying this critical distinction, the Court contrasted Atlantic's sales practices with Texaco's, noting that whereas Atlantic had put pressure on its dealers to "vigorously" represent and cooperate with Goodyear, Texaco had fol-

lowed a policy of permitting "each dealer to choose whatever brand TBA he desires" (*ibid.*).[12]

The Court cited other examples of fundamental differences in the two oil companies' sales commission programs: Atlantic's regular policy of "double teaming" and advance solicitation—which with Texaco were "isolated and sporadic" occurrences; Atlantic's TBA dealer quota and policing system—having no Texaco counterpart; Atlantic's restrictive credit card policy—as distinguished from Texaco's practice of permitting its dealers to charge *non*-sponsored TBA; and Atlantic's assignment of its dealers to a single Goodyear TBA supply point—while Texaco dealers were assigned to nobody, evidencing their freedom to deal with any supplier of their choice (*id.* at 34).

Summing up on this issue, the Court declared:

> "These few examples demonstrate a different set of facts between the Atlantic record and this case" (*ibid.*).

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12. The significance of the different nature of the sales practices of the two companies is perhaps best demonstrated by the relative "effectiveness" of their programs. An Atlantic survey between 1946 and 1949 showed that 67% of its dealers preferred another brand of tires and 76% another brand of batteries. Yet in 1951, "[w]ithin seven months after the agreement Goodyear had signed up 96% and 98%, respectively, of Atlantic's dealers in two of the three areas assigned to it" (381 U. S. at 366; SJA 63). Two months later "an Atlantic report showed that *virtually all* Atlantic dealers in Goodyear's assigned territory who were potential purchasers of TBA had signed contracts agreeing to handle Goodyear products" (58 F.T.C. at 346).

In diametrical opposition, although Texaco's program had been in effect for well over a decade before Atlantic's was even commenced, the overwhelming number of Texaco dealers still did not regularly purchase *any* sponsored TBA: approximately two-thirds did not buy sponsored tires, and 80% did not buy sponsored batteries and acces-

The court accordingly concluded that Texaco had *not* "exploited its service station market illegally for the benefit of itself and Goodrich" (*ibid.*).

c. *Anticompetitive Effects*

With respect to the third requirement—a showing of anticompetitive effects—the Court of Appeals approached the problem from the point of view of both interbrand and intrabrand competition. Once again the records in the two cases were entirely different. In *Atlantic,* interbrand competition had been snuffed out by reason of "a classic division of territories between Goodyear and Firestone," from which it followed that "Atlantic dealers could only buy at the prices designated by supplier to whom the territory had been allocated" (*id.* at 37). The *Texaco-Goodrich* record, *per contra,* "is devoid of evidence disclosing any form of territorial division" or "price dictation" (*ibid.*). As for the Commission's reliance on certain testimony that non-sponsored TBA suppliers had difficulty selling to Texaco dealers because the latter felt that they were required to buy the sponsored product, the Court for the second time rejected such evidence as atypical "isolated instances which were generally contradicted by overwhelming rebuttal evidence" (*id.* at 38).

With respect to intrabrand competition, whereas Atlantic's supply point system had the inevitable effect of precluding such competition, since Texaco had no such system, there was no parallel anti-competitive effect.

In the face of "the long standing Texaco policy that Texaco dealers are free to purchase any brand of TBA which they desire to sell" (*id.* at 37), the fact that Texaco dealers purchased substantial quantities of sponsored TBA did not constitute proof of the requisite adverse effect on competition.

In sum, the Court concluded that "while the record shows Texaco indeed has dominant economic power, it is fatally deficient on the crucial issues of exercise of that power and subsequent anticompetitive effects" (*id.* at 39-40). For this reason the Court rejected the Commission's position that it would be unfair to prevent Atlantic and Shell, but not Texaco, from using the sales commission plan:

> "We agree that it would be inequitable, and indeed a dereliction of the Commission's obligations, *provided* that all three were guilty of substantially equal violations of section 5. But simply because Texaco is in the same line of business does not mean it must suffer the pain of the misdeeds of other oil companies; this would indeed be guilt by association. We conclude that the record simply does not support a finding that Texaco violated the Act (*id.* at 39).

Confronted with the failure of proof in this case, the Court of Appeals recognized that

> "One course available to us would be to remand this case once again to the Commission to permit it to develop additional evidence for the record but the Commission and Examiner have had abundant opportunity —*and direct mandate*—to do this in the past and have not done so. We think the time has now come to termi-

> nate these protracted proceedings and dismiss the complaint. * * * the Commission has now had more than an adequate opportunity to develop a record in support of its section 5 contentions *over a period of fourteen years*'' (*id.* at 40; emphasis supplied).

Accordingly, it directed that the complaint be dismissed.

ARGUMENT

This Case Does Not Warrant Review.

There is no new question of law for the Court to decide in this case. The Court laid down the applicable legal principles in *Atlantic* and ordered that the facts of record here be evaluated in terms of those established principles. That has been done by the Court of Appeals. In doing so, it expressed its agreement with the Fifth Circuit's understanding of the *Atlantic* rationale. Hence there is no conflict among circuits. The only questions which could be reviewed here are questions of facts—a function which this Court should not be asked to perform—particularly in the circumstances of this case where the Commission has had its record reviewed not once, but twice, by the Court of Appeals. The very reasons which prompted then Solicitor General Marshall to oppose the petition for certiorari in the *Shell-Firestone* case militate against the grant of certiorari here.

In his Brief in Opposition in *Shell-Firestone,* the Solicitor General pointed out that the Fifth Circuit had held that Shell, although it had not overtly coerced its dealers to handle Firestone TBA, had nevertheless *exploited* its economic dominance over its dealers to cause them to purchase

the sponsored products with demonstrable anticompetitive effects, and that this exercise of power rendered the Shell plan an unfair method of competition. This holding, the Solicitor General contended, simply involved an application of the record facts to the standards articulated in *Atlantic*, and as such did not warrant Supreme Court review. In response to Firestone's request that the court decide "'whether there is substantial evidence to support the Commission's specific findings of fact' that Shell had economic power over its dealers, which it used to cause them to purchase substantial quantities of sponsored TBA," the Solicitor General stated:

> "The court of appeals fully reviewed the record on that issue, however, and upheld the Commission's findings as adequately supported, and there is no occasion for a second review of that factual issue." (Brief in Opposition, p. 15).

Surely the mere fact that the Court of Appeals, guided by the same legal criteria as the Fifth Circuit but reviewing a markedly different record, concluded that the Commission's findings were *not* supported by substantial evidence, does not make this case any more appropriate for Supreme Court review. The fact that the Court of Appeals came to that conclusion for the second time—after having the benefit of both this Court's *Atlantic* and the Fifth Circuit's *Shell* opinions—underscores that now at long last is the time to call a halt to this marathon litigation.

Petitioner argues that the court below misconceived the true import of *Atlantic* because it stated that "a finding of coercion is the threshold requirement of a determination of the exercise of dominant economic power" (Petition, p. 13).

This statement, respondents submit, is a correct reading of *Atlantic*, which rests on this Court's finding that Atlantic had successfully "marshaled its full economic power in a continuing campaign to *force* its dealers and wholesalers to buy Goodyear products" (381 U.S. at 371; emphasis added).

But it makes no difference whether coercion is a *sine qua non* to illegality under *Atlantic* because the court below rested its decision on an independently self-sufficient ground, namely, that Texaco did not exercise its economic power over its dealers *even without coercion* to cause them to handle sponsored TBA. The Court of Appeals explicitly stated: "Of course, we realize, as did Judge Wisdom in *Shell*, that the 'Company's use of its economic power through the sales commission plan to cause its dealers to buy sponsored TBA *even in the absence of overt coercion*' can constitute an unfair method of competition and a violation of section 5, *Shell* at 482-83 (emphasis added)." (App. A, p. 31). The Court then reviewed the record to show that Texaco did not engage in the *non*-coercive practices referred to in *Atlantic* and that Texaco dealers were entirely free to accept or reject sponsored products (see pp. 16-17, *supra*), a freedom which they exercised predominantly *against* the sponsored brands (see p. 17, *supra*, n. 12).

By the same token, the record in this case is markedly different from that in *Shell*. And the difference is basic to the question of legality.

A few of the differences between Shell's practices and Texaco's will demonstrate why the decisions of the Fifth

and District of Columbia Circuits are consistent as a matter of fact (as well as law).

1. "Shell promptly notifies Firestone (or Goodyear) and its local supply point of new Shell dealers. This permits Firestone to sign up the new dealer, and obtain his initial order, before competing TBA companies even learn his identity" (Government's Brief in Opposition, p. 8). Here, on the other hand, as the Court of Appeals pointed out: "the Commission itself * * * struck the Examiner's finding that Texaco 'salesmen were encouraged by [Texaco] management to write up orders for sponsored TBA without waiting for a formal request from a dealer' " (App. A, p. 33). And Texaco engaged in advance solicitation only on isolated occasions (*ibid.*).

2. "Once the new [Shell] dealer has made his selection, Firestone and Goodyear defer to the choice and no longer compete with each other for the station's business" (Government's Brief in Opposition, p. 8). Here, there was no division of Texaco dealer accounts by the rubber companies (*id.* at 37).

3. Under the Shell plan, "the chosen [rubber] company assigns the service station to a specific supply point and Shell urges the dealer to purchase all TBA from that assigned outlet. No sales commissions are paid to Shell on TBA purchases from non-designated supply points, even though the brand acquired may be the same" (Government's Brief in Opposition, p. 8). Here, there was no assignment of specific supply points. "[E]ach [Texaco] dealer did not buy exclusively from, and was not limited

to, any particular supply point but was free to deal with any source he chose" (App. A, p. 34).

4. "Much of the promotional work directed towards the [Shell] dealers is performed by Firestone and Shell salesmen under a system of joint solicitation called 'double teaming'. *The companies acknowledged that this system, used throughout a dealer's term to encourage purchases of sponsored TBA and to discourage excessive merchandising of competing brands, is their most effective promotional device*" (Government's Brief in Opposition, p. 9; emphasis supplied). Here, "double teaming" was found to be an "isolated and sporadic" practice (App. A, p. 33).

5. "If Firestone salesmen encounter any resistance, their company will send a list of the recalcitrant dealers to Shell," and "Shell offers the services of its district salesmen to overcome pockets of dealer resistance" (Government's Brief in Opposition, p. 10). Here, there was no such policing of dealers. As the Court of Appeals noted: "In the original appeal to this Court, the Commission contended that the quota and policing system were also used by Texaco. In the present appeal the Commission has retreated from this position" (App. A, p. 34).

There is such a thing in litigation as a failure of proof. That is precisely what occurred here. The facts of record in this case simply cannot be forced into the *Atlantic* or *Shell* molds. And this Court should not be asked to force them. There is nothing in the nature of things that impels the conclusion that the Court of Appeals was wrong when it found that "Texaco dealers, unlike those of Atlantic and Shell, were free to accept or reject sponsored

products" (App. A, p. 32). While the petition implies disagreement with that salient finding (p. 17), this is hardly the type of question which this Court should be called upon to review. Indeed, petitioner recognizes as much, since it argues that the issue of dealer freedom is beside the point: "* * * the court's conclusion that Texaco dealers were 'free' to chose nonsponsored TBA * * * is in any event irrelevant * * *" (*ibid.*).

This is a far cry from the position that the then Solicitor General took the last time that this Court was urged to grant certiorari in this case. Then he contended:

> "The basic vice of the plan is that it amounts to an illegal tying arrangement under which Texaco *requires* its dealers, as a condition of maintaining that status, to purchase Goodrich and Firestone TBA" (1964 Petition, p. 15; emphasis added).

Underscoring his point that the test was whether Texaco had obliged its dealers to make purchases contrary to their will, the Solicitor General told this Court in 1964:

> "The sales commission agreements with Goodrich and Firestone were responsible for Texaco's exercise of its power to *compel* its dealers to buy those companies' TBA" (*id.* at 18; emphasis added).

The Solicitor General was not using words carelessly in 1964. He took precisely the same position on oral argument before this Court in *Atlantic*, when he specifically disclaimed any contention that the sales commission arrangement was inherently unlawful. Thus the Court was advised:

> "* * * if you had just the contract standing alone, you could not say on its face that this is bad, it de-

pends on what they would do about it." (Transcript of Oral Argument Before Supreme Court, *Atlantic Refining Co.* v. *Federal Trade Commission,* p. 72.)

In this connection Justice Brennan observed:

"* * * there is no contention of the Government that the sales commission contract in and of itself ran afoul of such a provision [Section 5], it is only the performance under the contract, the method of operation." (*id.* at 80).

The Solicitor General agreed with Justice Brennan that:

"* * * the Government does not suggest that there may not be commission sales arrangements which would satisfy Section 5." (*id.* at 80).

The Solicitor General informed the Court that he was not contending that economic power alone was sufficient to invalidate the plan. In other words, he declined to advocate the Seventh Circuit's notion that "recommendation is tantamount to command."

"Justice White: * * * That is the real nub of your argument, I gather, that companies can't recommend and at the same time have this power.

"Mr. Friedman: They can't recommend it *in the way in which they recommend it here.* I think again it is a matter of degree basically" (*id.* at 81) (emphasis supplied).

The Solicitor General made it clear that he was not asking the Court to predicate illegality upon the fact that there was a disparity of economic power between Atlantic and any of its dealers but rather upon the improper exercise of such power—not upon the mere existence of Atlantic's

leases but rather upon the improper use to which Atlantic put them. Thus counsel stated:

> "* * * in this case we have the power and its use" (*id.* at 52).
>
> * * *
>
> "[T]he basis on which the Commission's decision holding the Atlantic contract to be invalid rests is the power that Atlantic has, *and the fact that in these circumstances the power is brought to bear*" (*id.* at 82) (emphasis supplied).

In speaking of the exercise of power, the Solicitor General emphasized that he was referring not to salesmanship but to pressure and coercion:

> "* * * in this case we have the power and its use. I don't think I have to take on the more difficult case, *if we didn't have the actual use of the power.*
>
> "Justice Brennan: The power and the use with pressure, not power and the use meaning coercion?
>
> "Mr. Friedman: *Power and use meaning pressure, with some coercion*" (*id.* at 52) (emphasis supplied).

Upon further questioning, counsel reaffirmed the importance of Atlantic's use of its power:

> "Justice White: And he [the Atlantic dealer] is coerced?
>
> "Mr. Friedman: He is coerced, he is coerced in fact" (*id.* at 56).
>
> * * *
>
> "Justice Stewart: The pressure put upon them?
>
> "Mr. Friedman: Coercive pressure, threats of lease cancellation" (*id.* at 58).
>
> * * *
>
> "Justice Stewart: They were under coercion?
>
> "Mr. Friedman: They were under coercion" (*ibid.*).

The Solicitor General stressed that it was the totality of Atlantic's improper conduct which caused the proven anti-competitive effects:

> "If I may, I would like to show what they actually did in this case, and then to suggest why there may very well be situations where *eliminating some of the things they did in this case would not have the same adverse effect on the competition* as the plan the Commission condemned" (*id.* at 48-49) (emphasis supplied).

Far from being "irrelevant," the conclusion of the Court of Appeals in this case that "Texaco dealers were 'free' to choose non-sponsored TBA" is dispositive. Dealer freedom is the very antithesis of exercise of economic power in one market to subvert competition in another. Such freedom negates anticompetitive foreclosure, which presupposes the exercise of power to prevent competitors from gaining access to a market. Since Texaco dealers were entirely free to select their own TBA suppliers, it is a contradiction in terms to say that there was foreclosure.

Lest we be misunderstood, we are not claiming that there must be total foreclosure of all Texaco dealers in order to establish a Section 5 violation. Our point is that there was no foreclosure at all in this case. *All* Texaco dealers were free to buy from TBA suppliers of their own choosing. To the extent that they elected to buy sponsored TBA—and it was a minor extent—their choice cannot be ascribed to an exercise of Texaco's economic power. After all, these sponsored products were among the leading brands of TBA; they were highly advertised; they had great consumer acceptance. Hence, the fact that they

were purchased in substantial quantities by certain Texaco dealers cannot convert their free election to do so into a wrongful exercise of economic power by Texaco.

Petitioner suggests that it is discriminatory to prevent Atlantic and Shell from using sales commission agreements if Texaco is free to do so (Petition, p. 11). The shoe is on the other foot. It is discriminatory to outlaw Texaco's use of the sales commission plan just because Atlantic and Shell have abused the privilege. The fact that all three are characterized as "major" oil companies hardly makes the question of individual "innocence" or "guilt" any less personal. That is why separate hearings were held in the three TBA cases, that is why the Commission ruled that evidence received in one proceeding could not be considered in another, and that presumably is why the Commission has not proceeded against other "major" oil and rubber companies which have sales commission agreements.

When all is said and done, petitioner cannot prevail in this case unless it is unlawful *per se* for Texaco and Goodrich to be parties to a sales commission agreement. This is not the rule that the Solicitor General sought in *Atlantic*. Nor is it the rule that this Court handed down. Both the Fifth Circuit and the court below are in total agreement on this point. Manifestly, there would have been no reason for this Court to have ordered a remand here for consideration of the record in light of the principles announced in *Atlantic* if *Atlantic* laid down a rule of *per se* illegality.

The Court of Appeals, unlike the Commission, did exactly what this Court directed it to do: it applied the principles of *Atlantic* to the facts of record.

Conclusion

The decision of the Court of Appeals in this case, involving as it does an application of the facts to law already settled by this Court, presents no new issue of general public importance. Nor does it conflict in legal principle or approach with any decision of another Court of Appeals. No question can properly be presented here other than one of fact. Review of the facts is the responsibility of the Court of Appeals, which has now discharged its obligation for the second time in this matter. This is a classic example of the type of case with which this Court should not be burdened.

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Section 5, Federal Trade Commission Act
15 U.S.C. 45

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. ——

FEDERAL TRADE COMMISSION, PETITIONER

v.

TEXACO, INC., AND THE B. F. GOODRICH COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The Solicitor General, on behalf of the Federal Trade Commission, petitions for a writ of certiorari to review the judgment of the Court of Appeals for the District of Columbia Circuit entered in the above case on September 25, 1967.

OPINIONS BELOW

The opinion of the court of appeals (App. A, *infra*) is reported at 383 F. 2d 942. The opinion (App. B, *infra*) and final order (App. C, *infra*) of the Federal Trade Commission are not officially reported. The prior opinions of the court of appeals and of this Court are reported at 336 F. 2d 754 and 381 U.S. 739. The prior opinions of the Federal Trade Commission are reported at 58 F.T.C. 1176 and 62 F.T.C. 1172 and

are reproduced at JA 175 and JA 302.[1] The initial decision of the Hearing Examiner and his initial decision after remand from the Commission are reproduced at JA 153 and JA 200, respectively.

JURISDICTION

The judgment of the court of appeals (App. D, *infra*) was entered on September 25, 1967. On December 14, 1967, Mr. Chief Justice Warren extended the time for filing a petition for writ of certiorari to and including January 25, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, under the standards set forth in *Atlantic Refining Co.* v. *Federal Trade Commission*, 381 U.S. 357, the Federal Trade Commission was warranted in concluding that it is an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act for a major oil company, which has dominant economic power over its dealers, and a major rubber company, to enter into an agreement whereby the oil company promotes and takes steps to induce its dealers to purchase the rubber company's tires, batteries and automotive accessories, in return for a commission on all such sales.

[1] JA refers to the printed Joint Appendix, JAX refers to the exhibit volumes of the Joint Appendix, and SJA refers to the Supplemental Joint Appendix, filed in the court of appeals.

STATUTE INVOLVED

Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, provides, in pertinent part:

> Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are declared unlawful. * * * The Commission is empowered and directed to prevent persons, partnerships, or corporations * * * from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce.

STATEMENT

This is one of three contemporaneous but separate proceedings in which the Federal Trade Commission held that a sales commission arrangement between a major oil company and a leading producer of tires, batteries and automotive accessories ("TBA") for the distribution of TBA through the retail gasoline service stations of the oil company was an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act. In *Atlantic Refining Co.* v. *Federal Trade Commission*, 381 U.S. 357, this Court sustained the Commission's order against the Goodyear Tire and Rubber Company and the Atlantic Refining Company. In *Shell Oil Company* v. *Federal Trade Commission*, 360 F. 2d 470, certiorari denied, 385 U.S. 1002, the Court of Appeals for the Fifth Circuit, subsequent to this Court's decision in *Atlantic*, sustained the Commission's order against the Shell Oil Company and The Firestone Tire & Rubber Company. In both of these cases the oil and tire companies were enjoined from participating in any such

sales commission arrangements with any other company.

The present case involves the validity of sales commission agreements that the respondent Texaco, Inc. ("Texaco") has entered into with respondent B. F. Goodrich Co. ("Goodrich") and with the Firestone Tire and Rubber Company ("Firestone"),[2] two major rubber companies, under which Texaco undertook to promote the sale of Goodrich and Firestone TBA to its dealers, and the latter companies agreed to pay Texaco a commission upon their sales of TBA to such dealers. The Commission held that these arrangements for the distribution of TBA were unfair methods of competition and unfair acts and practices in violation of Section 5 of the Federal Trade Commission Act, and entered a cease-and-desist order. The Court of Appeals for the District of Columbia Circuit set aside the Commission's order and instructed the agency to dismiss the complaint.

A. THE TEXACO-GOODRICH ARRANGEMENT

Texaco, whose 1954 sales were more than one and one-half billion dollars (JA 181), is one of the Nation's largest petroleum companies. It sells its petroleum products to approximately 30,000 service stations (JA 221, SJA 182). Some of these dealers lease their stations directly from Texaco, usually initially for one year, renewable thereafter on a year-

[2] Firestone has since become subject to a final order of the Commission prohibiting its use of a sales commission plan with any oil company. See *Shell Oil Company* v. *Federal Trade Commission*, 360 F. 2d 470, 474 (C.A. 5), certiorari denied, 385 U.S. 1002.

to-year basis, and terminable upon ten days notice by either party. Each lease contains general housekeeping requirements concerning the station's use, maintenance and general appearance which, if breached, can result in immediate cancellation by Texaco without notice to the lessee (JA 206–207, 226, SJA 182–183). Other dealers ("contract dealers") either own their own stations or lease them from third parties. These dealers lease pumps and other facilities from Texaco. Both categories of dealers enter into a gasoline "Agreement of Sale," prescribing annual minimum and maximum purchases at current Texaco prices. This agreement generally also runs from year-to-year and is terminable upon thirty days notice; it is automatically cancelled if the lease of a dealer is terminated (JA 204, SJA 182).

Goodrich, one of the four largest rubber companies in the United States, manufactures a full line of tires, tubes, and related products. In addition, it purchases for resale batteries labeled BFG, and a full line of automotive accessories which are sold under the manufacturers' nationally advertised brand names (JA 179–180, 217). In 1954, it distributed these products through almost 500 company-owned stores and through many independent dealers throughout the United States. Its net sales in that year exceeded one-half billion dollars (JA 180–182, 217–218).

The Texaco-Goodrich agreement provides that Goodrich will pay Texaco a commission on all purchases of Goodrich TBA by Texaco consignees, dealers or distributors in "consideration of the aid to be given and the services to be rendered by [Texaco's]

sales organization in connection with promoting the sale of Goodrich products" (JAX 8). In performing this agreement Texaco has carried out the following promotional activities, among others: (a) when interviewing prospective dealers, Texaco emphasized the importance of TBA and recommended sponsored products (J.A. 216, S.J.A. 183); (b) all of Texaco's sales campaign materials and literature discussing the importance of TBA utilized and recommended sponsored products (J.A. 208, 345–346, 361–362, S.J.A. 184); (c) sponsored companies were notified of new dealers and stations before they began operation, thus enabling the sponsored companies to sign them up before competitors were even aware of their existence (J.A. 399–400, 511, 723, S.J.A. 183–184); (d) Texaco salesmen continually promoted sponsored TBA in their day-to-day contacts with the dealers (J.A. 330, 412, 526–527, S.J.A. 184); (e) Texaco and tire company salesmen called on dealers together (J.A. 539, 680, S.J.A. 184); and (f) Texaco used sales figures on sponsored TBA in evaluating the economic performance of its service stations (J.A. 316–317, 505, 719–720, S.J.A. 185).

In 1955, Texaco's 30,000 service stations constituted approximately 16.5 percent of the country's total of more than 180,000 stations. The dollar volume of sponsored TBA sold to Texaco dealers by Goodrich and Firestone in the period 1952–1956 was $245 million; in 1956 alone it was almost $60 million (JA 209, SJA 182). Texaco received a commission of 10 percent on sales of sponsored TBA to Texaco retail dealers and of 7½ percent on sales to its wholesale distributors

(JA 207). The total TBA commissions received by Texaco in the period 1952–1956 were almost $22 million (JA 210).

B. PRIOR JUDICIAL REVIEW OF THE COMMISSION'S ORDER

The Commission's first order to cease and desist was issued on April 15, 1963 (62 F.T.C. 1197).[3] Upon judicial review, the Court of Appeals for the District of Columbia Circuit set aside that order (336 F. 2d 754). The court held (1) that Chairman Dixon was disqualified from participating in the proceeding because of statements he had made about the case to a petroleum retailers' meeting, and (2) that the sales commission plan was not illegal because there was no proof that Texaco had sufficient economic power over its dealers to force them to buy sponsored TBA products or had engaged in overt coercive practices. The Commission filed a petition for a writ of certiorari to

[3] Previously, on March 9, 1961, the Commission had remanded the case to the hearing examiner for the taking of additional evidence on the competitive effects of the sales commission plan (58 F.T.C. 1176). After unsuccessful efforts in the district court, the court of appeals and this Court by Texaco and Goodrich to enjoin further proceedings, the hearing examiner held a hearing and issued a revised opinion. On appeal, the Commission concluded that the additional evidence which had been adduced on remand and which the respondents had challenged as incompetent or immaterial was unnecessary for its decision and held the sales commission plans illegal on the same basis as in the *Atlantic* and *Shell* cases (62 F.T.C. 1172). After the court of appeals set aside the Commission's order (336 F. 2d 754), this Court remanded the case to the Commission for further consideration in light of *Atlantic* (381 U.S. 357). Thus, the question of the examiner's compliance with the Commission's remand order and the admissibility of the evidence adduced on remand is no longer relevant, for the Commission has not relied on it.

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review the second part of the decision, but did not challenge the ruling on Chairman Dixon's disqualification. Petition for a writ of certiorari, No. 635, October Term, 1964.

While the *Texaco* petition was pending, this Court granted certiorari in the companion *Atlantic Refining* case, and there upheld the Commission's order directed against the Atlantic-Goodyear sales commission plan. One week after its decision there, the Court granted the *Texaco* petition, vacated the judgment of the court of appeals and remanded the case to the Commission for further consideration in light of *Atlantic. Federal Trade Commission* v. *Texaco, Inc.*, 381 U.S. 739.

C. PROCEEDINGS FOLLOWING REMAND

Pursuant to this Court's remand order, the Commission reconsidered the record in this case and issued a new opinion holding the sales commission plan to be an unfair method of competition.

The essence of the *Atlantic* decision, according to the Commission, was that "while coercive practices aggravate the restraint imposed by the sales commission plan, it is the oil company's power over its dealers, derived from the contractual relationship between them, and the utilization of that power through the performance of the promotional services required by the sales commission agreement, which renders the sales commission plan unlawful" (App. B, *infra*, p. 50). In reviewing the record, the Commission ruled that the economic dependence of Texaco dealers is the same as that of Atlantic dealers (App. B, *infra*, p. 58), and that the oil company need not engage in overtly

coercive tactics in order effectively to exercise its dominant economic power over its dealers. The Commission stated that the various promotional activities engaged in by Texaco inevitably "impress upon Texaco dealers, through constant repetition and in a variety of ways, that Texaco, whose favor the dealer must court, has a strong interest in their purchase of the sponsored TBA products (App. B, *infra*, pp. 58–59).

On the issue of anticompetitive effect, the Commission held that no extensive economic analysis was required, since the amount of commerce involved was substantially greater than that in the *Atlantic* case. It pointed to evidence that competing sellers of TBA had been foreclosed from the Texaco service station market, *i.e.*, testimony by former Texaco dealers and competing TBA suppliers that the Texaco dealers did not feel that they were free to buy from non-sponsored suppliers (App. B, *infra*, pp. 57–58, 60).

The Commission's order enjoined both Texaco and Goodrich from entering into a TBA sales commission contract with any other company. In this respect, the order was identical in scope to that approved by this Court in *Atlantic*.

The Court of Appeals for the District of Columbia Circuit again set aside the order, and instructed the agency to dismiss the complaint. The court read this Court's *Atlantic* decision as establishing "three essential components" for a sales commission agreement to be illegal:

> "(a) the oil company's dominant economic power over its dealers;
>
> (b) exercise of that power over its dealers;

(e) anticompetitive effects of using that power." (App. A, *infra*, p. 27).

The court conceded that the Commission satisfactorily established the first of these elements in the instant case. As to the second, the court held: "We can glean nothing from the utterances of the Supreme Court which alters the basic rule that a finding of coercion is the threshold requirement of a determination of exercise of dominent economic power" (App. A, *infra*, p. 30). Since the court did not consider the promotional activities described by the Commission as coercive, it concluded: "We do not find that Texaco used its controlling economic power to compel its dealers to purchase sponsored TBA" (App. A, *infra*, p. 34). As to the third element, the court held that "there is an absence of substantial evidence which supports a finding of anticompetitive effects" (App. A, *infra*, p. 39). The court relied in substantial part upon its view that the hearing examiner had found that Texaco dealers were free to choose whatever TBA they wanted—a finding it concluded was supported by the weight of the testimony.

REASONS FOR GRANTING THE WRIT

In reversing the Commission's holding that the Texaco-Goodrich sales commission plan constitutes an unfair method of competition, the court of appeals departed from the principles enunciated by this Court in *Atlantic Refining* for reviewing Commission determinations that particular practices violate Section 5; has raised serious doubt as to the general legality of such plans when utilized by major oil and major tire

companies; and creates discriminatory treatment of major competitors in the oil and tire industries, since two major firms in each industry have been enjoined from entering into such agreements while Texaco and Goodrich now are free to continue their substantially identical plan and, indeed, to enter into new ones. By thus permitting Texaco, without making any investment in distributional facilities or TBA inventory, to receive substantial commissions for the sale of TBA to its service stations while, for example, its smaller competitor, Atlantic Refining Company, is barred from the same economic opportunity, the decision results in what the Commission said would be "a harmful competitive imbalance among the leading firms" in both the oil and tire industries (App. B, *infra*, p. 56). At the same time, the decision suggests a blueprint by which all except those enjoined in the *Atlantic* and *Shell* cases can achieve the same anti-competitive economic consequences that concerned the Commission and the reviewing courts in those cases, and thus it constricts the economic effectiveness of this Court's holding in *Atlantic*. Review by this Court is plainly warranted.

In *Atlantic Refining* this Court held that, in reviewing a Commission determination that a particular business practice constitutes an unfair method of competition, judicial review "is limited to determining whether the Commission's decision has 'warrant in the record' and a reasonable basis in law," and that the courts "necessarily 'must give weight to the Commission's conclusions'" (381 U.S. at 367-368). The Court there held that the Commission's conclusion

that the Atlantic-Goodyear sales commission plan was an unfair method of competition satisfied both of those criteria. In the present case the court of appeals, applying these standards to test the Commission's finding that the similar Texaco-Goodrich plan had the same basic anticompetitive effect, reviewed the agency's decision by comparing the extent to which the parties in the present case had utilized the methods employed in the *Atlantic* case for bringing to bear the oil company's economic power upon its dealers. Fairly read, however, *Atlantic* does not even suggest that the validity of other sales commission plans is to be determined on such a basis; the particular techniques used by Atlantic Refining and Goodyear were not essential elements of the finding of illegality, but rather methods by which those companies exercised their power in that particular case. If a sales commission plan has the basic vice involved in *Atlantic*—"the utilization of economic power in one market to curtail competition in another" (381 U.S. at 369)—the Commission properly may find it to be an unfair method of competition, even though different methods may be used, and to different degrees, in exercising such power. Tested by the proper standards, the Commission was fully warranted in concluding that the Texaco-Goodrich plan—no less than the Atlantic and Shell plans—violates Section 5 of the Federal Trade Commission Act.

In *Atlantic* this Court upheld the Commission's conclusion that the illegality in TBA sales commission arrangements results from the existence and exercise of the oil company's dominant economic power

over its dealers. While both the Commission and the court of appeals in *Atlantic* had found that the oil company had engaged in coercive practices, nothing in this Court's opinion indicated that the use of coercion was the factor which made the agreement illegal. On the contrary, the Court expressly noted that the Commission's view was that coercive practices were merely "symptomatic of a more fundamental restraint of trade" (381 U.S. at 361) and that illegal "effects on competition flowed from the contract itself." (381 U.S. at 370.) The fundamental evil of the sales commission plan involved in *Atlantic* was the "utilization of economic power in one market to curtail competition in another" (381 U.S. at 369). Moreover, this Court recognized "the destructive effect on commerce that would result from the widespread use of these contracts by major oil companies and suppliers" (381 U.S. at 371).

Consistently with *Atlantic*, the Commission in the instant case concluded that the various promotional activities undertaken by Texaco "constitute a forceful exercise of its economic power over its dealers" (App. B, *infra*, p. 58). The court of appeals, however, set this finding aside, stating: "We can glean nothing from the utterances of the Supreme Court which alters the basic rules that a finding of coercion is the threshold requirement of a determination of exercise of dominant economic power." (App. A, *infra*, p. 30.) The court thus failed to perceive that the basic evil of the sales commission plan here, as in *Atlantic*, was the use of the oil company's economic power, not the particular means—whether labeled "coercion" or not—by which it was exercised. Nothing in the *Atlantic*

opinion indicates that a sales commission plan having anticompetitive effects would be saved from illegality because the oil company could accomplish its objective and thereby earn its commissions without going beyond the "promotional" activities specified in the plan.

This economic fact of life was recognized by the Court of Appeals for the Fifth Circuit in the *Shell* case. There the court specifically set aside the Commission's finding that Shell had coerced its dealers into purchasing sponsored TBA but nonetheless found that Shell had exercised its economic power and affirmed the Commission's order. (360 F. 2d at 481–483). The promotional activities engaged in by both Texaco (see *supra*, p. 6) and Shell in performance of their sales commission agreements are very similar and have the same anti-competitive effect. It is, at bottom, inconsistent with the legal premises underlying the Fifth Circuit's decision for the court of appeals in the present case to have set aside the Commission's order for the articulated reason that "In short, we do not find that Texaco used its controlling economic power *to compel* its dealers to purchase sponsored TBA." (App. A, *infra*, p. 34.) [Emphasis added.] It is therefore not an exaggeration to say that these two courts of appeals are in conflict concerning the legal standards by which the Commission is governed in such cases.

Moreover, the Commission in the instant case properly heeded the ruling of this Court in *Atlantic* that the Commission need not engage in an extensive economic analysis, nor permit the parties to show countervailing economic benefits, if a "not insubstantial"

amount of commerce is restrained by the TBA sales commission arrangement (383 U.S. at 371). Since sales of sponsored TBA to Texaco dealers in one year exceeded total sales to Atlantic dealers during a six-year period (SJA 182), the substantiality of commerce requirement clearly was satisfied in this case.

The broad discretion the Commission has to define unfair methods of competition is particularly pertinent in this case because, in reviewing its record, the Commission had the benefit of its experience gained in its comprehensive investigation into the functioning and effects of sales commission agreements for the sale of TBA in this and the related cases. Its orders enjoining such agreements in the companion cases have been affirmed on review, and its conclusions concerning the anticompetitive potential of such agreements have been approved by this Court. It properly drew upon its experience to conclude that, on the record before it, similar restraints, sufficient to justify condemnation, were present in the Texaco-Goodrich arrangement. Yet the court below, instead of limiting itself to a search for "warrant in the record" (see *Atlantic Refining, supra*, p. 11) undertook to substitute its judgment for the Commission's in analyzing the anticompetitive effect of the arrangement.

An example is the court's analysis of the Commission's finding that Texaco exercised its economic power over its dealers to promote sponsored TBA. The court's contrary holding, to the extent that it does not rest on the legally erroneous conclusion that overt coercion is a prerequisite to a finding of exercise of

economic power, see *supra*, pp. 10, 13–14, is based upon a meticulous comparison of specific practices present in *Atlantic*, but not present, or present to a lesser degree, here. (App. A, *infra*, pp. 32–34.) But the bulk of the Commission's conclusions with respect to promotion by Texaco of Goodrich TBA are undisturbed. In particular the court did not question that the Texaco salesman continually carries the promotional message in his day-to-day contacts with dealers. Yet the Commission found this "perhaps most effective of all" (App. B, *infra*, p. 59) as an exercise of economic power because the salesman, most directly involved in promoting TBA, is also an important factor in evaluating dealers to help determine if their leases or contracts with Texaco will be renewed. Nor did the court come to grips with the Commission's observation that, as in *Atlantic*, the oil company, without any investment in inventory or facilities, and without assuming any burden of sales, distribution or service, receives large commissions for promotional activities it is bound to perform under the contract. (App. B, *infra*, pp. 55–56.) "It is difficult to escape the conclusion that there would have been little point in paying substantial commissions to oil companies were it not for their ability to exert power over their wholesalers and dealers * * * " *Atlantic Ref. Co.* v. *Federal Trade Comm'n*, *supra* at 376, and it is further difficult to believe that Goodrich would have continued to pay the substantial commissions it did in the present case unless results indicated to it that this power was being effectively exercised.

Similarly, the court's conclusion that Texaco dealers were "free" to choose nonsponsored TBA, which rests in part upon a misconception of the record,[4] is in any event irrelevant to the question whether the Commission's judgment is legally and factually supportable. The Commission found substantial evidence that Texaco dealers were made aware that the company had a strong interest in their sale of sponsored TBA and that many of them believed that Texaco would look with disfavor upon their purchase of nonsponsored TBA. Thus competing suppliers were not able to gain access to these outlets (App. B, *infra*, p. 60). The court below found this evidence outweighed by contrary testimony and insufficient to sup-

[4] The court said, "The Commission's contentions must be weighed against the Examiner's finding that Texaco dealers, unlike those of Atlantic and Shell, were free to accept or reject sponsored products." (App. A p. 32). This statement apparently refers to Findings 18 and 19 of the hearing examiner's decision of September 24, 1962, but, in fact, is not supported by any findings made by the examiner. Finding 18 refers to the Texaco policy set forth in a June 1, 1948, letter that dealers were independent businessmen and were not to be forced into handling any particular merchandise. Finding 19, however, states, "This policy was not transmitted to the Texas dealers except on occasion, and then orally, by salesmen or other personnel, and it was only after the dealer sold a sufficient amount of lubricating oil to warrant the payment of a discount or rebate that he was informed by letter that he was free to select any brand of TBA merchandise which he might elect and that the only interest Texas had was to help him market that merchandise at a profit so that his business would be more successful in every way" (JA 215).

A purported company policy affecting dealers which was not communicated to the dealers until such time as they had established a relationship with the company satisfactory to Texaco is largely irrelevant to the question whether dealers were in fact free to select TBA of their choice.

port a finding of substantial market foreclosure (App. A, *infra*, pp. 36–38). But the question for the Commission was not whether all Texaco dealers, or most Texaco dealers, felt constrained to purchase sponsored TBA. The Commission had determined, through its examination of the sales commission method of promoting TBA, that the most significant anticompetitive effect of the practice was the foreclosure to nonsponsored brands of an opportunity to sell in the substantial market represented by dealer outlets of contracting major oil companies. In *Atlantic* this Court recognized "the destructive effect upon commerce that would result from the widespread use of these contracts by major oil companies and suppliers * * *." 381 U.S. at 371. Having identified a significant tendency toward the same anticompetitive effect which had been the principal basis for condemning similar sales commission arrangements, the Commission was not obliged to await the development of the identifiable foreclosure into a "full-blown" restraint, before concluding that the Texaco-Goodrich arrangement, like its counterparts, was a violation of Section 5. See *Federal Trade Commission* v. *Brown Shoe Co.*, *supra* at 321–322; *Federal Trade Commission* v. *Motion Picture Adv. Co.*, 344 U.S. 392, 394–395.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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JANUARY 1968.

APPENDIX A

Federal Trade Commission Docket 6485
United States Court of Appeals
For the District of Columbia Circuit

No. 20,058

TEXACO, INC., PETITIONER

v.

FEDERAL TRADE COMMISSION, RESPONDENT

No. 20,061

THE B. F. GOODRICH COMPANY, PETITIONER

v.

FEDERAL TRADE COMMISSION, RESPONDENT

Petitions to Review an Order of the
Federal Trade Commission

Decided September 25, 1967

Before BAZELON, *Chief Judge*, WILBUR K. MILLER, *Senior Circuit Judge*, and BURGER, *Circuit Judge*.

BURGER, *Circuit Judge:* Eleven years after the issuance of a complaint and sixteen years after an investigation was initiated,[1] this case returns to us from

[1] The investigation was originally instituted in 1936 but was inactive for many years. Serious investigation was renewed between 1949 and 1951 and from 1951 on all six companies

the Federal Trade Commission for the second time; in the interim, following our prior review, the Supreme Court remanded for further consideration. *See Texaco, Inc.* v. *F.T.C.*, 118 U.S. App. D.C. 366, 336 F. 2d 754 (1964), *remanded*, 381 U.S. 739 (1965).

In 1956 the Federal Trade Commission brought proceedings against major oil and rubber companies, simultaneously instituted by substantially identical complaints, alleging as an unlawful method of competition prohibited by Section 5 of the Federal Trade Act, 38 Stat. 719 (1914), 15 U.S.C. § 45 (1964), the sales commission method of distributing tires, batteries, and accessories, called the "TBA" plan. Under that plan the tire and rubber companies pay commissions to the oil companies on sales of the tire companies' TBA to the oil companies' dealers. Each complaint paired one of the large tire and rubber product manufacturers and a large oil company with which it had contracted. The pairings were Texaco and B. F. Goodrich, Shell and Firestone, and Atlantic and Goodyear.[1]

(1) *Background.* In 1961 the Commission rendered separate decisions in each of the three TBA cases. In both *Atlantic-Goodyear*[2] and *Shell-Firestone*,[3] the Commission found coercion, unlawful tie-ins, and ad-

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were the subject of a single joint investigation which was completed in 1954. *See Hearings Before Subcommittee No. 1 of the House Select Committee on Small Business on the Organization and Procedures of the Federal Regulatory Commissions and their Effect on Small Business*, 84th Cong., 1st Sess. 447–48 (1956).

[1] The pairings were based on the most substantial agreements challenged, although the complaints also challenged the contracts of each respondent with other oil and tire companies not parties to the particular actions.

[2] 59 F.T.C. 369 (1961).

[3] 59 F.T.C. 371 (1961).

verse competitive effects resulting from the TBA sales commission agreements. In contrast, however, the Commission in *Texaco-Goodrich*[5] found no coercion and remanded the case to the Hearing Examiner for additional evidence on anticompetitive effects.[6] One year later the Examiner filed a revised decision in which he added new findings and reached new and contrary conclusions without complying with the Commission's directive to take additional evidence.

Prior to the second decision, because of statements made about the then pending case by Commission Chairman Paul Rand Dixon to the National Congress of Petroleum Retailers, Inc. in Denver, Colorado, on July 25, 1961, Texaco filed a motion before the Commission that Chairman Dixon withdraw from participating or that he be disqualified. The motion was denied and Chairman Dixon participated in the decision. On April 15, 1963, the Commission affirmed the new conclusions of the Examiner that the agreements

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[5] 58 F.T.C. 1176 (1961).

[6] The Commission's first remand order declared:

> The determination of whether Texaco's exercise of such economic power in favor of Firestone and Goodyear under the oil company's sales commission contracts with these rubber companies constitutes an unfair method of competition depends, therefore, upon *the competitive effects* of these sales commission contracts; not upon whether Texaco has exercised its power to implement such contracts through the exercise of overt coercive tactics or by more subtle but equally effective means. 58 F.T.C. at 1178 (emphasis in the original).

Only one member of the Commission who had participated in the 1961 remand for additional evidence was on the Commission when the case came back in 1963; he dissented on the ground that the Examiner had failed to comply with the Commission's remand order. The order had explicitly directed the Examiner to take additional evidence on the sales agreement which the Commission considered indispensable to its disposition of the case.

were unlawful,' but offered no explanation for doing so without the new evidence earlier thought necessary.

On appeal from the second Commission decision this Court in 1964 unanimously held that

> Chairman Dixon's participation in the hearing amounted * * * to a denial of due process which invalidated the order under review * * *. His Denver speech, made before the matter was submitted to the Commission * * * plainly reveals that he had already concluded that Texaco and Goodrich were violating the Act * * *.

Supra at 372, 336 F. 2d at 760. In the Supreme Court the Solicitor General did not challenge this Court's conclusion of disqualifying bias on the part of the Commission Chairman. With respect to the merits, a majority of this Court held that there had been a fundamental failure of proof. Our opinion stated:

> We see nothing illegal or even unethical in the payment of commissions for such services, *except in instances where an oil marketing company forces its dealers through coercive tactics or controlling economic power to buy the sponsored products. Neither of these inferences was proved in this case, and it may not be presumed that either will exist in future similar situations.*

Id. at 375, 336 F. 2d at 763 [emphasis added]. We dismissed the complaint because of this lack of proof and because the undue protraction of the administrative process constituted a denial of due process.

Meanwhile, the Seventh Circuit affirmed the Commission in the *Atlantic* case, *Goodyear Tire and Rubber Co. v. F.T.C.*, 331 F. 2d 394 (7th Cir. 1964), and the alleged conflict between this Circuit and the Sev-

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[1] B.F. Goodrich Co., Docket No. 6485, 62 F.T.C. 1172, 1197 (1963).

enth Circuit was asserted in the petition for certiorari. The writ was subsequently granted.[4]

In *Atlantic Refining Co.* v. *F.T.C.*, 381 U.S. 357 (1965), the Supreme Court affirmed the Seventh Circuit holding that the Atlantic TBA sales commission agreements were an unfair method of competition. One week later in a *per curiam* opinion the Court granted the Commission's petition for a writ of certiorari in *Texaco*, and remanded with instructions

> to remand it immediately to the Federal Trade Commission for further proceedings, without the participation of Chairman Dixon,[5] in light of *Atlantic Refining Co.* v. *Federal Trade Commission, ante*, p. 537.

381 U.S. 739 (1965). Pursuant to the remand from this court, the Commission issued an order on June 18, 1965 (a) vacating its prior 1963 decision, (b) denominating the proceedings before the Commission as appeals from the Examiner's 1962 decision, (c) permitting oral argument and the filing of briefs, and (d) instructing counsel to "focus on the question whether the facts of record in the present case bring it within the Supreme Court's decision in the *Atlantic Refining Co.* case." *Order of the Federal Trade Commission Vacating Prior Decision and Order and Setting Hearing on Remand*, In the Matter of The

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[4] The *Shell-Firestone* proceedings before the Fifth Circuit had been held in abeyance pending the Supreme Court resolution of the alleged conflict in circuits.

[5] Chairman Dixon, having been disqualified did not participate nor did Commissioner MacIntyre. Thus only three Commissioners have participated in the opinion and order now under review. None of the three members participating were members of the 1961 Commission which directed the Examiner to take additional evidence on the competitive effects of the sales commission contracts.

B.F. Goodrich Co. and The Texas Co., Docket No. 6485, June 18, 1965.

In January, 1966, the Commission entered an order and filed an opinion, which is the subject of this appeal. The Commission held:

> In our view the Supreme Court's decision in *Atlantic* compels the conclusion that the Texaco-Goodrich plan is an unfair method of competition and that Texaco and Goodrich, as were Atlantic and Goodyear, should be prohibited from performing or entering into any other sales commission plans.

— F.T.C. —, — (1966). The Commission thus held that the sales commission agreement involved here was indistinguishable in fundamental operation and effect from the one held unlawful in *Atlantic*.

(2) *Contentions.* The Commission contends that (1) the TBA sales commission system is inherently unlawful without regard to any acts of overt coercion and argues that this is implicit in the remand in light of *Atlantic*; (2) by its use of the sales commission system, Texaco has in fact exercised its economic power over its dealers in favor of Goodrich sponsored products; and (3) the sales commission system has given Goodrich an unfair competitive advantage.

Texaco's position is (1) that the coercion provision of the Commission's latest order entered against Texaco is not justified on the record; (2) that this order is erroneous independent of the sales commission program; and (3) that the Supreme Court's remand to the Commission required that the asserted illegality of Texaco's sales commission program be re-determined in light of *Atlantic*; furthermore, that illegality under the *Atlantic* holding can be shown only by proof that Texaco coerced dealers to purchase sponsored merchandise and that anticompetitive effects followed. Additionally, Texaco contends that the administrative

process has been abused by the unduly long drawn out nature of the proceedings and that this constitutes harassment and warrants dismissal of the proceedings independent of the merits.

We must now determine whether the Commission has complied with the remand order and correctly applied the applicable principles enunciated in the *Atlantic* holding.

(3) *The Atlantic Holding.* Our analysis must begin with the decision in *Atlantic.* In the *Shell-Firestone* case, the third TBA case decided after *Atlantic,* the Fifth Circuit interpreted the *Atlantic* rationale as based on three essential components, the application of each depending on the facts of the particular case before the court:

> (a) the oil company's dominant economic power over its dealers;
> (b) exercise of that power over its dealers;
> (c) anticompetitive effects of using that power.

Shell Oil Co. v. *F.T.C.,* 360 F. 2d 470, 477 (5th Cir. 1966), *cert. denied,* 385 U.S. 1002 (1967). Both the Commission and Texaco agree with this view of the *Atlantic* holding and this view was essentially adopted by the Solicitor General in the Supreme Court. Our consideration of *Atlantic* leads us to the same view as that of the Fifth Circuit in *Shell;* in short we conclude with Judge Wisdom that the Court hovered near the brink but did not lay down a per se rule.[10]

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[10] Several factors compel this conclusion. In the first place, although the Commission took the position that the sales commission contract was illegal *per se,* the Seventh Circuit implicitly rejected such a view, and the absence of the words, "per se" in the *Atlantic* opinion "could hardly have been an accident." *Shell, supra* at 477.

Secondly, the Court has stated that when it has had no previous opportunity to assay the effects on competition of a

(a) Existence of Dominant Economic Power

In our prior opinion we found "no basis in the record for the Commission's conclusion that Texaco has controlling economic power over its dealers;" *supra* at 374, 336 F. 2d at 762. In *Atlantic* the Court viewed the question of dominant economic power not only in terms of the statistical facts used to show economic dependence but also in terms of specific control devices: (1) control over oil and gas supply; (2) control over dealers through short term leases, equipment loans, etc.; (3) control over advertising; (4) leverage from financial promotion; and (5) housekeeping requirements of leases. Such devices have often been alluded to in demonstrating dominant economic power and leverage. *See, e.g., Simpson* v. *Union Oil Co.*, 377 U.S. 13 (1964); *United States* v. *Loew's, Inc.*, 371 U.S. 38, 45 (1962).

While the statistical material in the record here is ambiguous, the record fairly demonstrates what is a matter of common acceptance, that both Texaco and B. F. Goodrich are among the giants of their respective industries,[11] and as such control large economic leverage.

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new form of economic activity, it will not declare that activity illegal per se. *White Motor Co.* v. *United States*, 372 U.S. 253, 261 (1963); *see also* Mr. Justice Goldberg's dissenting opinion in *Atlantic*, 381 U.S. at 389–90. *But cf. United States* v. *Arnold, Schwinn & Co.*, 388 U.S. 365, 385–86 (1967) (Stewart, J., concurring in part and dissenting in part).

[11] The myriad figures present in our voluminous record support a statistical analysis which assumes dominant economic power. Similar statistics have been fully discussed in the *Shell* case. 360 F. 2d at 479–82 & nn. 21–23.

We think it is sufficient to note the following facts: Goodrich is one of our largest rubber product manufacturers and its sales in 1954, one of the years on which the complaint is based, exceeded $500 million dollars. Texaco sales in the same year ex-

Many, but not all, of the control devices mentioned in *Atlantic* are present to some degree here. Texaco, of course, controls the supply of oil and gas to its dealers, and the relatively heavy cost of constructing and maintaining a modern service station enables Texaco to maintain substantial economic leverage through the use of loans, short-term leases, and equipment financing. However. we agree with Judge Wisdom that "the dominance of a major oil company over its dealers comes from the leverage inherent in the structure and economics of the petroleum distribution system * * *" 360 F. 2d at 481.

(*b*) *Exercise of Dominant Economic Power.*

In our earlier opinion we concluded that on the whole record there was no substantial evidence that Texaco had exercised controlling economic power over its dealers, as the Commission had found. Similarly, after careful review of the record, we had concluded that there was no basis for a finding of coercion and that read as a whole the record demonstrated the contrary. We should note at the outset that nothing said by the Supreme Court in *Atlantic* bears on that hold-

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ceeded one and one-half billion dollars. The 30,000 Texaco stations which might be subject to the sales commission plan constituted some 16.5% of all service stations in the United States. Finally, from 1952 to 1956 Goodrich sales to all Texaco accounts rose from 12.7 million dollars to 18.9 million dollars. We think these not-insubstantial figures sufficiently support the requirements of a statistical analysis of dominant economic power.

We should make clear, however, our view that statistics alone would not be sufficient to support the finding that Texaco exercises dominant economic power. The statistical record supports our conclusion that the Commission has not set forth with sufficient clarity an adequate statistical record to sustain its other findings.

ing and nothing said by the Commission since the remand alters that conclusion.

We can glean nothing from the utterances of the Supreme Court which alters the basic rule that a finding of coercion is the threshold requirement of a determination of exercise of dominant economic power. As the Commission has noted, it did not ask the Supreme Court to review our holding that the record did not sustain a finding of coercion. Equally true is the fact that in the *Atlantic* case the Seventh Circuit's sustaining of the Commission's findings of coercion were not appealed. But, in spite of this lack of challenge by Atlantic and by the Commission in both cases, the Supreme Court in *Atlantic* did not ignore record evidence of Atlantic's coercive conduct. Indeed, that Court was well aware that the coercion was found to have permeated the entire Atlantic program, contaminating even its neutral conduct.

The Commission argues that Atlantic's coercion merely aggravated the restraint imposed by the sales commission plan. We do not so read *Atlantic*. If the Supreme Court concluded that the sales commission plan was inherently illegal when entered into by a major oil company, it would have had no occasion to take cognizance of the coercive practices and no remand of this case would have been required. Yet the *Atlantic* opinion is replete with references to these practices and we cannot escape the conclusion that the overt coercive acts practiced by Atlantic were deemed essential to the ultimate action of the Court. It is surely of some significance that in almost every page of the *Atlantic* opinion there is some such reference, *e.g.*, "overt acts," overt coercive pressures," "direct and overt threats," etc., 381 U.S. at 368, 373, 376.

The Commission now asserts that since it did not rely upon coercion as a basis for invalidating Texaco's sales commission agreements, the Supreme Court action vacating our judgment implies a total rejection of Texaco's position. The combination of *Atlantic's* emphasis on overt coercion, to which we have just alluded, the failure of the Commission to challenge our prior holding on this issue when seeking review, and the absence of any reference to the subject in the Supreme Court Per Curiam opinion on remand all tend strongly to negate the Commission's argument. Had the Commission urged on the Supreme Court a *per se* rule of illegality stemming from mere existence of economic power, its failure to challenge our holding on absence of coercion would be understandable.

We have difficulty reconciling the Commission argument with the fact of a remand in this case. If the Supreme Court viewed its holding in *Atlantic* as treating contractual arrangements between the oil company and its dealers in and out of themselves as giving rise to controlling economic power, and that mere salesmanship without any coercion constituted unlawful exercise of such power, there would have been nothing to remand. The Supreme Court could have simply reversed and reinstated the Commission's order.

Of course we realize, as did Judge Wisdom in *Shell*, that the "Company's use of its economic power through the sales commission plan to cause its dealers to buy sponsored TBA *even in the absence of overt coercion*" can constitute an unfair method of competition and a violation of section 5, *Shell* at 482–83 [emphasis added]. The Commission also recognizes this and therefore argues that each of the "non-coercive practices" referred to in *Atlantic* are present in equal degree in this case. The Commission argues that the

references to these practices in *Atlantic* compels a conclusion that even the non-coercive practices arising from the contractual relationship constitute the exercise of economic power over dealers. The Commission's contentions must be weighed against the Examiner's finding that Texaco dealers, unlike those of Atlantic and Shell, were free to accept or reject sponsored products. This view of the Examiner may have been influenced by the circumstance that only 5 former Texaco dealers testified to facts which would sustain a finding of coercive practices and more than 50 present and some former dealers testified to the contrary.

In light of all this we do not read *Atlantic* to conclude that the Court was condemning these practices as *per se* illegal. They were indicative of Atlantic's conduct, of a character not shown in this record, of marshalling "its full economic power in a continuing campaign to force its dealers and wholesalers to buy Goodyear products," 381 U.S. at 371. A few examples will suffice:

(1) *Sales Practices.* In *Atlantic,* the oil company

> was to instruct its salesmen to urge dealers to "vigorously" represent Goodyear, and to "cooperate with and assist" Goodyear in its efforts to promote and increase the sale" by Atlantic dealers of Goodyear products.

381 U.S. at 365. The Commission characterizes the evidence here as substantially identical. Yet the Examiner was satisfied that Texaco policy since at least 1948 has been to permit each dealer to choose whatever brand TBA he desires.[12]

[12] This policy in part states:

> The Texas Company's selling personnel are expected to become familiar with Firestone and Goodrich Inventory Guide Systems and TBA merchandise and the merchandising of TBA products generally. But it should be clearly

The Commission now argues that "on each visit, the [Texaco] salesman offers to write up sponsored TBA orders," but the Commission itself in the order presently under review struck the Examiner's finding that Texaco "salesmen were encouraged by [Texaco] management to write up orders for sponsored TBA without waiting for a formal request from a dealer."

(2) *Dual Solicitation and Advance Notification.* In *Atlantic* there was a regular practice of

> "double teaming" solicitation of Atlantic outlets by representatives of both companies to convert them to Goodyear products. They were to call on the dealers together, take stock orders, furnish initial price lists and project future quotas of purchases of Goodyear products.

381 U.S. at 365. The Commission contends such practices are prevalent in this record. The Examiner found that "double teaming" and advance solicitation—notice to the tire companies that a new station was about to become operable—were isolated and sporadic practices, not a regular or even frequent practice as was the case with Atlantic's operations. They appeared in *Atlantic* in the context of an entire system designed to overtly coerce its dealers. This is not the state of the record before us.

(3) *Dealer Policing and Credit Cards.* In *Atlantic* the

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understood that we will render equal assistance to all dealers in setting up and maintaining his own basic TBA stock assortment and Inventory Guide system along these lines regardless of the brand of merchandise handled. * * * [The Inventory Guide] is not applied in any manner whatsoever that would impair any dealer's freedom to purchase such brands and quantities of TBA merchandise as he desires.

Our dealers, consignees and distributors are independent businessmen, and instructions that no undue influence is to be used to interfere with their free and independent judgment remain unchanged.

Supreme Court was confronted with evidence that Atlantic imposed quotas on dealers and effectively policed them by the use of a reporting system of purchases and sales of TBA. In the original appeal to this Court, the Commission contended that the quota and policing system were also used by Texaco. In the present appeal the Commission has retreated from this position. As to credit card policy, the Examiner carefully distinguished the *Atlantic* record from the instant record and significantly found that Texaco does permit dealers to charge *non-sponsored* TBA on its credit cards.[13]

(4) *Geographical Supply Points.* In *Atlantic,* Goodyear required that Atlantic assign its dealers to a single point of TBA supply. This geographical division of supply points is not present in our record and, indeed, the Examiner found that as to sponsored TBA sales, each dealer did not buy exclusively from, and was not limited to, any particular supply point but was free to deal with any source he chose.

These few examples demonstrate a different set of facts between the *Atlantic* record and this case. On the basis of the record before us we cannot conclude that Texaco exploited its service station market illegally for the benefit of itself and Goodrich. In short, we do not find that Texaco used its controlling economic power to compel its dealers to purchase sponsored TBA.

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[13] Since 1955 Texaco practice is to permit deferred payment of sponsored TBA on credit. Thus, three months is permitted on purchases of $30 or more, six months on purchases of $50 or more. The Examiner held that this limitation of deferred payment to sponsored TBA was altogether reasonable and proper. But the record also shows that dealers continue to charge non-sponsored TBA on a monthly basis without a dollar limitation.

(c) *Anticompetitive Effects.*

Atlantic's third requirement for finding a violation of section 5 is that the TBA sales commission contracts must result in adverse competitive effects on the relevant market. As we have previously noted, the first Commission remand of the case to the Examiner in 1961 was because of the need for additional evidence on the issue of anticompetitive effects. We have further noted that no such evidence was forthcoming. In our prior review of this case we also found that evidence of anticompetitive effects was lacking.

The Commission urges the following three guidelines to be the essence of the *Atlantic* holding on anticompetitive effects:

> (1) Extensive economic analysis of the competitive effect based on examination of the entire TBA market is unnecessary.
>
> (2) Evidence of economic justification or benefit to the parties concerned is immaterial.
>
> (3) It is sufficient when the Commission finds that a substantial portion of commerce is affected.

This, of course, explains the Commission position that the TBA system is an "inherently anticompetitive" device from which "competitive injury must result." This is simply a renewed intimation of a *per se* rule in *Atlantic* and needs little discussion since we have already rejected that reading. It is true, of course, that the guidelines suggested by the Commission are referred to in the *Atlantic* opinion, *e.g.*, 381 U.S. at 370–371. But it is also true, as Judge Wisdom pointed out in his discussion of these guidelines, that the Court in *Atlantic* looked to the full record for examples of anticompetitive effects. 360 F. 2d at 483. Indeed, the Court was very clear on this point:

> The anticompetitive effects of this program are clear on the record and render unnecessary extensive economic analysis of market percentages or business justifications * * *

381 U.S. at 371.

Bearing in mind the Fifth Circuit's caveat of an overlap between a discussion of anticompetitive effects and the exercise of dominant economic power, we proceed to examine the record before us. As *Atlantic* noted, the question is whether the TBA system "impaired competition at three levels [manufacturing, wholesaling, and retailing] of the tires, batteries and accessories industry," *id.* at 370. And, of course, it goes without saying that the type of competition at these levels—interbrand and intrabrand—is highly relevant.

(*a*) *Interbrand Competition*

Under the TBA system interbrand competition manifests itself, if at all, most perceptively at the wholesale level. We recognize that wholesalers of competing TBA brands may well be substantially limited in selling their products to service stations under contract with major oil companies. The TBA system may deprive retailers of their freedom of choice as to the TBA products they may choose. Such competitive effects also reach back to the manufacturing level. For example, to the extent that wholesalers are unable to sell their products to service outlets, the manufacturers may suffer injury. To that extent producers' distribution systems may be impaired and expansion potential circumscribed.[14]

As an example of interbrand anticompetitive effects in *Atlantic* the Court found a classic division of ter-

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[14] *See* Klaus, *Analysis of the Sales-Commission System of Tires, Batteries, and Accessories Distribution in Retrospect: Answers For An Incisive Dissent*, 44 Texas L. Rev. 890, 911 (1966).

ritories between Goodyear and Firestone, the two manufacturers involved: "Firestone and Goodyear were excluded from selling to Atlantic's dealers in each other's territories," 381 U.S. at 370. Flowing directly from this was the further adverse effect that Atlantic dealers could only buy at the prices designated by supplier to whom the territory had been allocated, *ibid.* Finally, there was little doubt but that the combination of these and other practices in the *Atlantic* record, including the resort to overt coercion, had the drastic anticompetitive effect of almost completely foreclosing the market to Altanic's own retailers and wholesalers who desired to sell brands other than sponsored products and to wholesalers and manufacturers of competing brands with similar desires.

We have earlier noted the fact that the record before us is devoid of evidence disclosing any form of territorial division of markets on the part of the sponsored manufacturers. And we have also referred to the long standing Texaco policy that Texaco dealers are free to purchase any brand of TBA which they desire to sell. *See* note 12, *supra.* Similarly, there is no evidence that any form of price dictation occurred.

But the most significant evidence on the question of interbrand anticompetitive effects concerns the testimony of Texaco dealers and sponsored and competing suppliers. The Commission relies upon testimony of former Texaco dealers and competing TBA suppliers to the effect that nonsponsored TBA could not be sold to Texaco dealers because of the dealer's understanding that they were required to purchase sponsored TBA. The Commission corroborates this testimony with "representative evidence" that in certain Texaco districts the percentage of dealers who carried sponsored TBA ranges from 70% to 89%. This evidence

and these figures were rejected by the Examiner in his original decision and by the first Commission decision. The Examiner's modification of this position, which as we noted was made with no new evidence, was affirmed by the second Commission decision, and this Court rejected those findings on the prior appeal as unsupported in the record. Nothing has developed to change our view, and indeed on remand the Commission has stricken the Examiner's finding. The Commission now limits its characterization of the testimony of competing suppliers to a statement that "practically all of the representatives of the competitors of Goodrich *called as witnesses* testified" that they were foreclosed from the Texaco service station market. We simply cannot regard this as "representative;" such a conclusion is not supported by substantial evidence, except in isolated instances which were generally contradicted by overwhelming rebuttal evidence. Nor can we accept the Commission view that the rebuttal testimony is to be discounted because witnesses are under "pressure" from Texas. A finding of pressure on witnesses before a tribunal is not one to be lightly inferred and ought not be made without evidence of some kind; none is suggested by the Commission on this score.

(b) Intrabrand Competition

A second form of competition, intrabrand, is the inevitable result of the supply point system noted in *Atlantic*. The adverse anticompetitive effects are similar to those found in interbrand competition—pricing, territorial market foreclosure, and full-line forcing.[11]

[11] In the *Atlantic* case, the Seventh Circuit found that

> [B]oth Goodyear and Firestone said that they would refuse to sell only tires under the sales commission plan and insisted that they be allowed to handle batteries and accessories as well as their own products.

351 F. 2d at 398.

Without laboring the point, we have already noted that the record in the instant case simply cannot be said to reflect substantial evidence to support a finding that these practices exist in a measure adequate to demonstrate that the Texaco TBA contract causes adverse anticompetitive effects. We therefore hold that there is an absence of substantial evidence which supports a finding of anticompetitive effects.

The Commission maintains that the first Commission opinion remanding for evidence of anticompetitive effects was "enigmatic," and that it is enough that a substantial portion of commerce is affected under the rationale of *Atlantic*. Surely there is nothing obscure or ambiguous in a remand predicated on an absence of crucial evidence especially where the remand directs a further inquiry for relevant evidence. And we find no basis for treating the *Atlantic* case as carrying the test of quantitative substantiality to the brink of extremism by a strained literalism. Indeed, we are inclined to believe that the Commission views the situation, as the Commission opinion and brief candidly concede, as one in which it would be arbitrary and inequitable to bar Atlantic and Shell, who are very much like Texaco in broad outline, from use of the sales commission plan while permitting Texaco to continue its operation. We agree that it would be inequitable, and indeed a dereliction of the Commission's obligations, *provided* that all three were guilty of substantially equal violations of section 5. But simply because Texaco is in the same line of business does not mean it must suffer the pain of the misdeeds of other oil companies; this would indeed by guilt by association. We conclude that the record simply does not support a finding that Texaco violated the Act. We therefore hold that while the record shows Texaco indeed has dominant economic power, it is fatally defi-

cient on the crucial issues of exercise of that power and subsequent anticompetitive effects.

CONCLUSION

One course available to us would be to remand this case once again to the Commission to permit it to develop additional evidence for the record [16] but the Commission and Examiner have had abundant opportunity—and direct mandate—to do this in the past and have not done so. We think the time has now come to terminate these protracted proceedings and dismiss the complaint. We recognize that the Commission's obligations and the public interest in preserving competition are not to be lightly dealt with but the Commission has now had more than an adequate opportunity to develop a record in support of its section 5 contentions over a period of fourteen years. Accordingly, the Commission order under review is set aside and remanded to the Commission with directions to dismiss the complaint.

Reversed and Remanded.

[16] Even in a remand to the Commission for further proceedings it would have been imperative to make clear our view that the coercion aspect of the Commission order has no basis in law, or the record. Since we have twice determined there is no basis that Texaco overtly coerced any substantial number of dealers or that a pattern of coercion existed, the provisions of the order prohibiting such coercion were and are baseless.

APPENDIX B

UNITED STATES OF AMERICA BEFORE FEDERAL TRADE COMMISSION

Commissioners:

Paul Rand Dixon, Chairman
Philip Elman
Everette MacIntyre
John R. Reilly
Mary Gardiner Jones

Docket No. 6485

In the Matter of The B. F. Goodrich Company, and The Texas Company, corporations.

OPINION OF THE COMMISSION

By Commissioner Elman:

On April 15, 1963, the Commission held unlawful as an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act[1] a sales commission agreement between The B. F. Goodrich Company ("Goodrich") and Texaco, Inc. ("Texaco"). Under that agreement Goodrich pays Texaco a commission for promoting the sale of Goodrich tires, batteries, and automotive accessories ("TBA") to its retail gasoline dealers. By its order, the Commission enjoined Goodrich and Texaco from carrying out their agreement and from performing or entering into sales commission arrangements with

[1] Section 5 provides in relevant part:

"Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are declared unlawful."

any other companies. On review, the Court of Appeals for the District of Columbia Circuit set aside the Commission's order and directed the Commission to dismiss the complaint. *Texaco, Inc.* v. *F.T.C.*, 336 F. 2d 754 (D.C. Cir. 1964). On June 7, 1965, the Supreme Court granted certiorari, vacated the judgment of the Court of Appeals, and directed that the case be remanded to the Commission "for further proceedings, without the participation of Chairman Dixon, in light of *Atlantic Refining Co.* v. *Federal Trade Comm'n*, [381 U.S. 357 (1965)]." *F.T.C.* v. *Texaco, Inc.*, 381 U.S. 739, 740.

In *Atlantic*, the Supreme Court upheld (1) the Commission's decision that a sales commission agreement between Atlantic Refining Company and Goodyear Tire & Rubber Company was an unfair method of competition, and (2) the Commission's order prohibiting Atlantic and Goodyear from carrying out their agreement and from performing or entering into any other sales commission agreements. The Commission, without the participation of Chairman Dixon and Commissioner MacIntyre, has reviewed afresh the entire record in this proceeding, in the light of the Supreme Court's decision in *Atlantic*. We have concluded, for the reasons set forth below, that the sales commission agreement involved here is, in its fundamental operation and effect, indistinguishable from the one held unlawful in *Atlantic*, and that an order like the one affirmed by the Supreme Court in *Atlantic* should be entered here.

I.

An assessment of the relationship between this case and *Atlantic* requires a brief description of the events leading to this remand. This is one of three companion cases in which the Commission challenged, as an un-

fair method of competition, sales commission arrangements between major rubber companies and major oil companies. In *Goodyear Tire & Rubber Co.*, 58 F.T.C. 309, decided March 9, 1961, the Commission entered an order prohibiting Goodyear and Atlantic from employing sales commission plans. On the same day, in *Firestone Tire & Rubber Co.*, 588 F.T.C. 371, an identical order was entered against Firestone and Shell Oil Company. The Commission's order in *Goodyear* has been affirmed by the Supreme Court. *Atlantic Refining Co.* v. *F.T.C.*, 381 U.S. 357, affirming 331 F. 2d 394 (7th Cir. 1964). An appeal from the Commission's order in *Firestone* is pending in the Court of Appeals for the Fifth Circuit.

In both *Goodyear* and *Firestone* the Commission's reasoning was identical: It upheld the hearing examiner's finding that the oil companies used overt coercive tactics to force their dealers to buy the sponsored rubber companies' TBA products. But the Commission specifically declined to rest its decisions upon a finding of coercion or to limit its orders to injunctions against coercive tactics. Instead, it examined the unique degree to which the economic existence of gasoline dealers is dependent upon the good will of their major oil company suppliers, and concluded that the oil company "has sufficient economic power with respect to its * * * distributors to cause them to purchase substantial quantities of sponsored TBA even without the use of overt coercive tactics * * *." (58 F.T.C. at 364–65, 407.) The Commission regarded "overt acts of coercion as mere symptoms of a more fundamental restraint of trade inherent in the sales commission itself" (58 F.T.C. at 348, 398). Analyzing the actual operation of the sales commission plan in the context of the economic relationship between the oil company and its dealers, the Commission con-

concluded that the competitive effects of the sales commission plan were like those of an illegal tying arrangement—it "presents a classic example of the use of economic power in one market (here, gasoline distribution) to destroy competition in another market (TBA distribution)." (58 F.T.C. at 367; see 58 F.T.C. at 406). Since the amount of commerce affected was "not insubstantial", the agreements were held unlawful.

However, in this proceeding involving the Goodrich-Texaco sales commission plan, the Commission did not reach the same result. On the same day that it issued its orders in *Goodyear* and *Firestone*, the Commission held that although "Texaco has sufficient economic power over its wholesale and retail petroleum distributors to cause them to purchase substantial amounts of sponsored TBA even without the use of overt coercive tactics", the record did not contain "sufficient market data to enable the Commission to assess the competitive effects of the sales commission method of distributing TBA". The case was remanded to the hearing examiner for the taking of additional evidence on that issue. *B. F. Goodrich Co.*, 58 F.T.C. 1176, 1178-79, 1183.

This disposition was, at the very least, enigmatic: In *Goodyear*, the Commission found that the competitive effect of the sales commission plan, like a tying arrangement, was the foreclosure of the substantial TBA marketing outlets represented by Atlantic's dealers. This finding was based upon competing wholesalers' testimony that they were unable to sell to Atlantic dealers who feared that Atlantic would look with disfavor upon their purchase of any but Atlantic-sponsored TBA products. Having made this finding, the Commission made no analysis of "market data" other than to observe that the amount of com-

merce affected was "not insubstantial" since Atlantic had sold about $50 million in sponsored TBA products during the period 1950–1956. (58 F.T.C. at 359–66.) In *Goodrich* the Commission did not reject the hearing examiner's acceptance of the testimony of competing wholesalers regarding foreclosure of Texaco outlets, which was similar to, and as substantial as, that in *Goodyear*. The amount of commerce affected in *Goodrich* was considerably more substantial than that in *Goodyear:* in the five-year period 1952–1956 Texaco sold more than $245 million in sponsored TBA, almost five times as much as was involved in *Goodyear* during a six-year period. What additional "market data" was required is unclear.[3]

On remand, after taking further evidence, the hearing examiner found that the sales commission plans had been shown to be an unfair method of competition, and entered an order identical to those previously entered in *Goodyear* and *Firestone*. An appeal was again taken to the Commission. By that time, the composition of the Commission had changed and only one of the Commissioners (Commissioner Anderson) who had participated in the Commission's earlier decision remained on the Commission. On this second appeal to the Commission, much of the evidence introduced on the remand was challenged as incompetent or immaterial. The Commission concluded that the challenged evidence was unnecessary to its decision, and, with Commissioner Anderson dissenting, upheld

[3] In *Firestone* the Commission did consider market share data relating to the entire market for TBA, including data relating to other outlets for TBA other than service stations, and other methods of distributing TBA other than sales commission plans. But none of this information was present in *Goodyear*, and so presumably this was not the kind of "market data" deemed critical by the Commission to a finding of illegality.

the examiner's order.[3] In its view, the legal principles under which the sales commission plans were held unlawful in *Goodyear* and *Firestone* were equally applicable to the *Goodrich* record, even without the challenged evidence (*B. F. Goodrich Co.*, Docket 6485, order issued April 15, 1963).

On appeal, the Court of Appeals for the District of Columbia Circuit reversed and ordered that the complaint be dismissed.[4] After holding that Chairman Dixon was barred from participating in the decision of the case, the Court of Appeals went on to reject the Commission's decision on the merits. It rejected the examiner's finding that Texaco employed coercive tactics and then held that "the Commission erred in concluding that Texaco has sufficient economic power over its dealers, without the use of coercive tactics, to cause them to buy substantial quantities of Goodrich TBA." (336 F. 2d at 762.) Instead, it found that Texaco dealers "are quite free to accept or reject" the oil company's "recommendation" to purchase sponsored TBA products (*id.* at 763).

The fundamental premise underlying this conclusion was the Court of Appeals' finding that there was "no basis in this record for the Commission's conclusion that Texaco has controlling economic power over its dealers" and that Texaco's "contracts with [its] dealers do not give rise" to an inference that it did. (*Id.* at 762.) In the court's view, the "promotional services" performed by Texaco were indistinguishable from, and no less lawful than, conventional salesmanship to wholly independent purchasers.

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[3] We agree that the evidence challenged on the second appeal to the Commission is unnecessary to our decision and have stricken the Findings and Conclusions of the hearing examiner based upon it.

[4] *Texaco, Inc.* v. *F.T.C.*, 336 F. 2d 754 (D.C. Cir. 1964).

This approach conflicted with that of the Court of Appeals for the Seventh Circuit, which affirmed the Commission's order in *Goodyear*.[5] For the Seventh Circuit the starting point for any realistic assessment of the nature and competitive effect of an oil company's "recommendations" under the sales commission plan was the economic power which the oil company possessed over its dealers and which derived from the contractual relationship between them. In its view, the "heart of this case is the economic power Atlantic possesses over its service station dealers" (331 F. 2d at 400). Such power was not at all dependent upon coercive tactics.[6] Rather, the "keystone" to that power could be found in the "lease and equipment loan con-

[5] *Goodyear Tire & Rubber Co.* v. *F.T.C.*, 331 F. 2d 394 (7th Cir. 1964).

[6] The Seventh Circuit upheld the Commission's finding of coercion; the District of Columbia Circuit rejected it. The evidence of coercion in *Texaco* was no less substantial than that in *Atlantic-Goodyear*. The different results on appeal appear attributable to two factors: (1) the Seventh Circuit deferred to the hearing examiner's assessment of the witnesses' credibility, and (2) while only a few dealer witnesses testified to coercive tactics and a considerably larger number of dealers called by respondents testified to the contrary, the Seventh Circuit thought the hearing examiner correctly evaluated the entire testimony in light of the economic dependency of dealers upon the oil company. Review in the Supreme Court of the finding of coercion was not sought in *Atlantic*. To the extent respondents seek to distinguish this case from *Atlantic* on the presence or absence of coercion, we conclude that no such factual distinction exists; we do not disturb the examiner's finding of coercion which was based essentially on his assessment of the credibility of the witnesses. *Universal Camera Corp.* v. *N.L.R.B.*, 340 U.S. 474, 495–96. However, as we point out below, the fundamental issue here—the legality of sales commission agreements between major oil and major rubber companies—does not turn on a finding of coercion, and we do not rest our decision upon it.

tract with their short term and cancellation provisions." (*Ibid.*) Viewed in the context of these provisions, the "service station dealer is more of an economic serf than a businessman free to purchase the TBA of his choice." (*Ibid.*) Reaching an opposite conclusion from that of the District of Columbia Circuit in *Texaco*, the Seventh Circuit held (*id.* at 401):

> "Atlantic's power to cause its dealers to carry either Goodyear or Firestone TBA does not depend upon overt coercive methods. The totality of facts surrounding the relationship between the oil company and the dealers points to one conclusion: the oil company is able to exert sufficient economic power over its dealers so that for all practical purposes they are required to carry sponsored TBA.
>
> "Atlantic says that its influence over its dealers to purchase sponsored TBA short of force, threat, or intimidation is lawful; that it may recommend high quality TBA to its dealers; and that such action serves a legitimate business purpose in the promotion of the sale of gasoline. This would be a persuasive argument except for the dealers' economic dependency upon the oil company. In that setting, recommendation is tantamount to command. Covert practices are as efficient as overt action. Sophisticated methods of pressuring the dealers into carrying sponsored TBA are as effectual as express covenants and open threats."

Supreme Court review was sought in both *Texaco* and *Atlantic-Goodyear*. The Commission, arguing that different dispositions of the two cases based upon narrow factual distinctions would be inappropriate, framed the issue presented by both cases in identical, broad terms, asking the Court to hold that:

> "[I]t is an unfair method of competition, in violation of Section 5 of the Federal Trade Commission Act, for a major rubber company

> and a major oil company to enter into an agreement under which the oil company, in return for a commission, sponsors the sale of the rubber company's products to the oil company's retail dealers.'"

In both cases the Commission urged the same broad rationale reflected by the Commission and Seventh Circuit decisions in *Goodyear:* (1) Because of the gasoline dealer's singular dependence upon, and subservience to, his major oil company supplier, the oil company had the power to require its dealers to purchase substantial quantities of TBA without overt coercion; (2) the promotional services which the oil company was obligated to, and did, perform under the sales commission agreement constituted the exercise of that power for the benefit of the sponsored TBA supplier; and (3) as a result, the effect of the sales commission plan is like that of a tying agreement, foreclosing competing non-sponsoring suppliers from the substantial market of the sponsoring oil company's dealers.[8]

The Supreme Court reviewed the *Atlantic-Goodyear* case for the purpose of resolving the "apparent conflict" with *Texaco* (381 U.S. at 363). The Court affirmed the Seventh Circuit's decision, and a week later vacated the judgment of the District of Columbia Circuit in *Texaco* and ordered that the case be remanded to the Commission for reconsideration in light of the decision in *Atlantic* (*F.T.C.* v. *Texaco, Inc.*, 381 U.S. 739).

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[7] *F.T.C.* v. *Texaco, Inc.*, *supra*, Petition for a Writ of Certiorari to the United Supreme Court of Appeals for the District of Columbia Circuit, p. 2; *Atlantic Refining Co.* v. *F.T.C.*, *supra*, Brief for the Federal Trade Commission, p. 2.

[8] *Atlantic Refining Co.* v. *F.T.C.*, *supra*, Brief for Federal Trade Commission, pp. 32–34; *F.T.C.* v. *Texaco, Inc.*, *supra*, Petition for a Writ of Certiorari, pp. 16–19.

II.

We turn then to the threshold question in this remand proceeding: What light is cast by the Supreme Court's decision in *Atlantic* upon the appropriate disposition of this case?

Reading its opinion against the background set forth above, we can draw only one conclusion: In upholding the Seventh Circuit and Commission decisions, the Supreme Court approved their broad rationale, rejected the approach taken by the District of Columbia Circuit in this case, and enunciated a rule which transcends the confines of the particular facts involved in *Atlantic*. In the Court's view, while coercive practices aggravate the restraint imposed by the sales commission plan, it is the oil company's power over its dealers, derived from the contractual relationship between them, and the utilization of that power through the performance of the promotional services required by the sales commission agreement, which renders the sales commission plan unlawful.

The starting point for the Supreme Court's analysis, like the Seventh Circuit's, is reflected in its emphasis upon the oil company's considerable economic power over its dealers. The Court said (381 U.S. at 368):

> "[Atlantic and its dealers] simply do not bargain as equals. Among the sources of leverage in Atlantic's hands are its lease and equipment loan contracts with their cancellation and short-term provisions. Only last term we described the power implications of such arrangements in *Simpson v. Union Oil Co.*, 377 U.S. 13 (1964), and we need not repeat that discussion here. It must also be remembered that Atlantic controlled the supply of gasoline and oil to its wholesalers and dealers. This was an additional source of economic leverage. *United States v. Loew's, Inc.*, 371 U.S. 38, 45 (1962) * * *"

In this context, "threats and coercive practices" merely "bolstered" the "lever" which resulted from this economic power (*id.* at 369). The Court viewed the oil company's aggressive and vigorous salesmanship in carrying out the sales commission plan, wholly apart from any coercive tactics, as an exertion of "the persuasion that is a natural incident of its economic power" (*id.* at 368), rather than as the "recommendations" of a salesman to an independent purchaser "free to accept or reject" them.

Accordingly, the Court accepted the Commission's and the Seventh Circuit's characterization that the sales commission contract, which obligated the oil company to use its power over its dealers to sell the sponsored rubber companies' TBA, had the same "central competitive characteristic" as a tying agreement—"the utilization of economic power in one market to curtail competition in another". (*Id.* at 369.) Indeed, in the Court's view, that was its primary if not sole purpose. Under the sales commission plan (as the records in both *Atlantic* and *Texaco* show), the oil company, without making any investment in distributional facilities or TBA inventory, and without relieving the TBA supplier of the burden of sales, distribution, and service, is nevertheless paid large commissions for its promotional efforts. Accordingly, the Court found that "it is difficult to escape the conclusion that there would have been little point in paying substantial commissions to oil companies were it not for their ability to exert power over their wholesalers and dealers * * *" (*id.* at 376).

In sum, the Supreme Court, in upholding the Commission's order prohibiting outright the use of the sales commission plan by Atlantic and Goodyear, was also affirming the rationale of the Commission's de-

cision, which the Court described as follows (*id.* at 361):

> "[T]he Commission considered the coercive practices to be symptomatic of a more fundamental restraint of trade and found *the sales-commission plan illegal in itself* as 'a classic example of the use of economic power in one market * * * to destroy competition in another market * * *.'" [Emphasis supplied.]

At the same time the Supreme Court dispelled the ambiguities generated by the Commission's first decision in this proceeding. An assessment of the competitive effects of the sales commission plan does not require an analysis of "market data". Since the testimony only confirmed what was essentially implicit in the relationship between the oil company and its dealers—that the oil company's sponsorship under the sales commission plan has the competitive effect of foreclosing non-sponsored TBA suppliers from access to the market represented by the oil company's dealers—further market analysis is unnecessary. It is sufficient to show that a "not insubstantial portion of commerce is affected".*

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* The Court said in this regard (*id.* at 371):

> "Goodyear and Atlantic contend that the Commission should have made a far more extensive economic analysis of the competitive effect of the sales-commission plan, examining the entire market in tires, batteries and accessories. But just as the effect of this plan is similar to that of a tie-in, so it is unnecessary to embark upon a full-scale economic analysis of competitive effect. We think it enough that the Commission found that a not insubstantial portion of commerce is affected."

Atlantic had, indeed based its contention that a more extensive economic analysis was necessary, in part, upon the Commission's first decision to remand *Goodrich-Texaco* to take evidence of "market data" for an assessment of the competitive effects of the sales commission plan. *Atlantic Refining Co.* v. *F.T.C.*, *supra*, Brief of Petitioner The Atlantic Refining Company, pp. 31–32, 57, n. 43.

To be sure, the Supreme Court took note of the striking demonstration in *Atlantic* of both the extreme abuses attending Atlantic's use of the sales commission plan, and the dramatic effectiveness of the plan in foreclosing non-sponsored TBA suppliers from the Atlantic service station market. *Atlantic* was the first case before the Court involving a challenge to the sales commission plan; it presented for review a Commission decision whose rationale would render unlawful the sales commission plans themselves, whenever used by major oil and rubber companies. The Court, therefore, made a careful examination of the entire record to assess the "economic and business stuff out of which these arrangements emerge", so as to determine whether they are "naked restraints of trade with no purpose except stifling of competition" and whether "they may be too dangerous to sanction" (*White Motor Co.* v. *United States*, 372 U.S. 253, 263). But, like the Commission, the Court looked upon the dramatic aspects of *Atlantic* as "symptomatic" of a broader problem. Having examined, as reflected by the record in *Atlantic*, the dangers presented by sales commission plans, their essentially anticompetitive character, and the vivid demonstration of the abuses which may attend their use, the Court concluded more generally that the sales commission plan itself "amount[s] to a device that permits suppliers of tires, batteries and accessories, through the use of oil company power, to effectively sew up large markets" and, as such, could not be defended even though it might be an efficient and economic method of distribution (381 U.S. at 371). Consequently, the Court's ultimate concern was not limited to the sales commission plan involved in *Atlantic*, but was rather with "the destructive effect on commerce that would result from the widespread

use of these [sales commission] contracts by major oil companies and [TBA] suppliers" (*ibid.*).

The Court's concern in *Atlantic* with the dangers presented by the "widespread use" of the sales commission plans by major oil and TBA suppliers is especially significant. *Atlantic* was not, as the Court was well aware, an isolated case. In *Texaco*, in which a petition for certiorari was pending at the time of the Court's decision in *Atlantic*, the record showed that Texaco entered into sales commission plans with three of the leading rubber companies—Goodrich, Firestone and, under an agreement instituted about the time this proceeding began, U.S. Rubber Company. Goodrich also had sales commission plans with Continental Oil Company and other oil companies as well. The *Firestone* and *Goodyear-Atlantic* cases show that both Goodyear and Firestone have sales commission plans with Shell and Atlantic; that in addition, Goodyear has sales commission plans with Sinclair Refining Company, Richfield Oil Company, and a number of other oil companies; and that Firestone, in addition to its sales commission plan with Texaco, has sales commission arrangements with Union Oil Company, Continental Oil Company, and others.

The service station dealer outlets affected by these sales commission plans constitute a vast market for the sale of TBA; and at the same time only the largest rubber companies are the beneficiaries of the marketing advantages derived from the sales commission plans, a fact which would appear to confirm the Commission's finding in *Atlantic* that smaller TBA suppliers are unable to utilize the sales commission arrangement (58 F.T.C. at 307). Given the Court's view of the fundamentally anticompetitive character of the sales commission plan when used by oil companies possessing power over their dealers, the proliferation

of these plans between major oil companies and major rubber companies constitutes in itself an acute danger for competition. It was in this context that the Court, looking beyond *Atlantic*, and the specific facts involved there, concluded that generally the use of the sales commission plan by major oil companies and major rubber companies, whatever its economic advantages, is a practice "too dangerous to sanction".

This conclusion is buttressed as much by what the Court did, as by what it said. The Court's affirmance of the Commission's order prohibiting outright the use of sales commission plans by Atlantic and Goodyear not only between themselves but with other companies had broad competitive consequences in both the TBA and petroleum markets. If the Court's decision were to be read as limiting the Commission in its evaluation of other sales commission plans to the specific factual circumstances involved in *Atlantic*, one major oil and one major rubber company would be prohibited not only from further engaging in coercive tactics, but from using a sales commission plan which its major competitors might still be free to use.

For example, at the present time, it would appear that three of the largest rubber companies, Goodrich, Firestone, and U.S. Rubber, use sales commission plans providing Texaco sponsorship to promote their TBA products to Texaco's dealers. Yet, Goodyear could not ask Texaco (even assuming that Texaco has demonstrated no propensity to use coercive tactics in performing its other sales commission plans) to perform for it the same promotional service which Texaco performs for Goodyear's three major competitors. At the same time, Texaco, one of the largest oil companies, without making any investment in distributional facilities or TBA inventory, receives sub-

stantial commissions for the sale of TBA products to its service stations. Atlantic, a major oil company but substantially smaller than Texaco, is barred from the same economic opportunity, no matter how scrupulously it might refrain from coercive tactics in the future. Yet, the same kinds of leases, equipment loan contracts, and sales agreements stressed by the Court in *Atlantic* also render Texaco dealers economically subservient to, and dependent upon, Texaco; and its sales commission plans require Texaco to perform the same kind of vigorous promotional campaign described in *Atlantic*. To bar only Atlantic and Goodyear from the use of the sales commission plan would thus not only create a harmful competitive imbalance among the leading firms of the two industries, it would be arbitrary and inequitable.

The Supreme Court was informed of the harmful and anomalous consequence of a rule confined to the particular facts of *Atlantic*.[10] We find nothing which would permit us to read the Court's opinion, or its

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[10] The Government in its petition for certiorari in *Texaco* told the Court:

> "Even if the cases [Atlantic and Texaco] could be distinguished on their facts, the conflict, if unresolved, would create an anomalous situation in which one major oil company and a large tire company were permitted to employ essentially the same marketing practice that their competitors were prohibited from using."

F.T.C. v *Texaco, Inc.*, 381 U.S. 739, Petition for a Writ of Certiorari, p. 12.

Similarly, Atlantic told the Supreme Court that:

> "The order in each of the two cases represents a rule of general application, not the disposition of an isolated controversy. The rule should be uniform throughout the industry. Moreover, Atlantic and Texaco are competitors; and Atlantic, the smaller company, should not be under a marketing handicap as against Texaco, which is three times larger."

Atlantic Refining Company v. *F.T.C.*, *supra*, Brief of Petitioner The Atlantic Refining Company, p. 34.

remand order in this proceeding, as sanctioning such results.

III.

In our view the Supreme Court's decision in *Atlantic* compels the conclusion that the Texaco-Goodrich plan is an unfair method of competition and that Texaco and Goodrich should be prohibited, as were Atlantic and Goodyear, from performing or entering into any other sales commission plans. The Court's concern for the dangers which derived from a widespread use of the sales commission plan is especially relevant here. As has been pointed out, Texaco is considerably larger than Atlantic. Its service station dealers constitute an even more significant TBA market. Stations operated by Texaco's lessee dealers [11] and contract dealers [12] constituted 16.5% of the service stations in the United States in the year 1955. In that year, Texaco had approximately six times as many contract and lessee dealers as Atlantic.[13]

Moreover, as we have noted, in *Atlantic* the total sales to Atlantic dealers of Goodyear and Firestone products for the six-year period June 1950–June 1956 amounted to about $50 million. Goodrich and Firestone sold almost $60 million in TBA products to Texaco

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[11] A lessee station (referred to as a C station) is one that is either owned or leased by Texaco and in turn leased by it to the dealer.

[12] A contract station (referred to as D stations) is either owned by the operator or leased by him from someone other than Texaco. In addition to selling gasoline directly through C and D stations, Texaco sells indirectly through consignees (B accounts) and independent distributors (E accounts), who operate bulk storage plants, purchase Texaco products and sell them to service station dealers and consumers.

[13] In 1955 Texaco had approximately 30,000 contract and lessee dealer stations; Atlantic had approximately 5,000 service stations. 381 U.S. at 368.

dealers in the year 1956 alone. In the five-year period 1952–1956, the sales of the sponsored Goodrich and Firestone TBA to Texaco amounted to approximately $245 million.

The economic dependence of Texaco dealers is no different from that of Atlantic dealers. Thus, Texaco lessee dealers, who constitute the most important segment of service station TBA outlets, have the same kind of short term leases, renewable on a year-to-year basis and terminable at year's end upon ten days' notice of either party. These leases contain the same kind of general "housekeeping" requirements concerning the station's use, maintenance and appearance which, if breached, can result in immediate cancellation by Texaco without notice to the lessee. The lessees have often made a considerable investment in their stations, at times, on funds borrowed from Texaco. "Contract dealers", who own their stations or lease them from third parties, nevertheless lease their pumps and other equipment from Texaco. Both lessee and contract dealers purchase their gasoline pursuant to an "Agreement of Sale", prescribing annual minimum and maximum purchases at current Texaco prices. These "Agreements of Sale" also are generally on a year-to-year basis, terminable at year's end upon thirty days' notice, and automatically cancelled if a lessee dealer's lease is terminated.

In these circumstances, the competitive advantage given a TBA supplier whose products are sponsored by Texaco need hardly depend upon the use of overtly coercive tactics. Here, as in *Atlantic*, Texaco's "promotional" efforts in carrying out its sales commission agreement with Goodrich and Firestone constitute a forceful exercise of its economic power over its dealers. Its consequence is to impress upon Texaco dealers, through constant repetition and in a variety

of ways, that Texaco, whose favor the dealer must court, has a strong interest in their purchase of the sponsored TBA products.

Even before the dealer has been accepted, Texaco begins its campaign on behalf of the sponsored TBA products. Texaco personnel, when interviewing prospective dealers for new or established service stations, advised them of the importance of TBA, recommending the TBA products of Goodrich and Firestone. Once the dealer is selected, and before he opens his station, Texaco frequently informs Goodrich and Firestone of the prospective opening of his station, affording Goodrich and Firestone a head start over competitors in the initiation of their own sales campaign on behalf of their products. Thereafter, Texaco, often with the direct assistance and participation of the rubber companies, maintains a continuous campaign designed to induce the dealer to purchase the sponsored TBA products. Dealer meetings and training courses designed to educate the dealer in the use of TBA products utilize the products of the sponsored companies. Texaco participates in the sponsored companies' seasonal and special sales, promotional and advertising campaigns. Texaco publications sent to its dealers carry displays of the sponsored TBA products. And, perhaps most effective of all, the Texaco salesman continually carries the message in his day-to-day contacts with the dealers. In this regard, it is important to remember that these Texaco salemen, who are most directly involved in pushing the sponsored TBA products, also play a critical role in the annual dealer evaluations and in the determination of whether the dealer's lease and contractual relations with Texaco are to be renewed. At the same time, Texaco, in making promotions, evaluates these salesmen's perform-

ances in part by their success in selling sponsored TBA products.

Frequently, both the Texaco and rubber company salesmen call upon the dealer together ("double teaming"). The Supreme Court in *Atlantic* noted the inherently coercive effect of that device, pointing out that since "the annual dealer evaluation by Atlantic salesmen carried substantial weight when the district managers decided upon annual lease extensions * * * dealers were * * * understandably susceptible to the encouragement of Goodyear salesmen when Atlantic men were nearby looking over their shoulders." (381 U.S. at 375.) And, as in *Atlantic*, each dealer's performance as a purchaser of sponsored TBA is also fully disclosed by the reports furnished by the sponsored rubber companies to Texaco of the amount of sponsored TBA purchased by each dealer. As the record indicates, Texaco, in assessing the economic success of service stations, was vitally concerned with the amount of sponsored TBA sold by its dealers.

Here, as in *Atlantic*, there was substantial testimony by non-sponsored TBA suppliers confirming the conclusion that, as a result of Texaco's vigorous sales campaign to its dealers, many Texaco dealers were left with the impression that Texaco would look with disfavor upon their purchase of non-sponsored TBA products and that they were required to purchase the sponsored TBA. As a result, these non-sponsored suppliers were unable to gain access to these Texaco service station outlets. In sum, the Supreme Court's characterization of the operation of the sales commission plan in *Atlantic* is equally applicable here. Texaco, with Goodrich's "encouragement and assistance, has marshalled its full economic power in a continuing campaign to force its dealers and wholesalers to buy [Goodrich] products" (*id.* at 371).

Respondents argue that there are a number of factual distinctions between this case and *Atlantic*. But as we read *Atlantic* none of these distinctions is material. As already demonstrated, under *Atlantic* it is the oil company's power over its dealers, and the exercise of that power through the performance of the promotional services required by the sales commission agreement, and not coercive tactics, which condemns the sales commission plan. And while, unlike *Atlantic*, the sales commission plans involved here did not allocate territories between the sponsored TBA suppliers, the gravest danger to competition presented by the sales commission plans here as in *Atlantic* is in their capacity for hindering competition between sponsored and non-sponsored TBA suppliers. A device which may enhance the position of two or three leading TBA suppliers vis-a-vis smaller competitors cannot be defended on the ground that it still leaves these few firms free to "compete" with one another for access to the Texaco service station market.

Respondents also argue that, unlike *Atlantic*, there is here no showing that Texaco's promotional campaign was effective. Thus, they contend that the statistics show that only about 30% of Texaco's dealers purchased sponsored TBA products. This figure, however, is derived by considering the number of Texaco dealers purchasing sponsored TBA in proportion to the total number of lessee and contract dealers. In fact, however, as respondent Goodrich, itself, points out,[14] many contract dealers do not handle, and are not appropriate outlets for, TBA products. Since more than half of the total number of Texaco dealers are made up of contract dealers, the actual success of

[14] Brief of Respondent The B. F. Goodrich Company, In Answer to Appeal Brief of Counsel Supporting the Complaint, dated March 28, 1960, p. 28.

Texaco's sales commission plans would appear to be considerable indeed. But, under *Atlantic*, proof of the actual effectiveness of the sales commission plan is unnecessary. The Court's ultimate concern was with the cumulative danger presented by the "widespread use" of the plans, rather than the relative effectiveness of particular plans. Moreover, the Court viewed the sales commission plan when used by a major oil company as having the same competitive characteristics as a tying agreement. As in the case of a tying agreement, the fact that the sales commission plan has not fully achieved its purpose, or that nonsponsored suppliers can overcome the unfair competitive advantage which the sales commission gives the sponsored supplier, is no defense. Cf. *International Salt Co.* v. *United States*, 332 U.S. 392, 397; *Northern Pacific R. Co.* v. *United States*, 356 U.S. 1, 12; *Osborn* v. *Sinclair Refining Co.*, 286 F. 2d 832, 838 (4th Cir. 1960), cert. denied 366 U.S. 963.

In essence, respondents urge upon us the rationale of the District of Columbia Circuit's opinion—that despite the economic dependence of the Texaco dealer upon Texaco, Texaco's vigorous promotional activities under the sales commission plan are nothing more than the "recommendations" of a salesman to a purchaser "free to accept or reject" them. In affirming the Seventh Circuit's decision in *Atlantic*, the Supreme Court rejected that position.

IV.

We think that orders against both Texaco and Goodrich, identical with the orders against Atlantic and Goodyear which were affirmed by the Supreme Court, are appropriate here. Texaco should clearly be enjoined from entering into or performing any sales commission plan. As to Goodrich, like Goodyear, it

was "no silent or inactive partner in the implementation of the sales-commission plan" (381 U.S. at 373). As the record demonstrates, the sales commission plan here is essentially a joint effort in which the massive power of a major rubber company and a major oil company is united, to the disadvantage of non-sponsored competitors, behind the sale of the rubber company's TBA products. Goodrich now has sales commission plans with five other oil companies: Continental, Shell-American, Jenney, Ohio Oil and Emblem. Its sales commission plans with these companies are substantially the same as those it has with Texaco. There is nothing in this record to indicate that these oil companies do not also have the kind of economic power possessed by Texaco over its dealers. We would not be justified in concluding that any of these other plans, unlike Goodrich's plan with Texaco, was not an attempt to buy the economic power of the oil company over its dealers in order to obtain an unfair competitive advantage over competing rubber companies. The order therefore prohibits Goodrich from entering into or carrying out any sales commission plan. If Goodrich should come forward with facts establishing that it has a sales commission plan with any oil company which does not possess economic power over its dealers, the proceeding can always be reopened for such modification of the order as may be warranted. See *Atlantic Refining Co.* v. *F.T.C., supra,* at 377.

Chairman Dixon and Commissioner MacIntyre did not participate in this decision.

JANUARY 14, 1966.

APPENDIX C

UNITED STATES OF AMERICA BEFORE FEDERAL TRADE COMMISSION

Commissioners:

Paul Rand Dixon, Chairman
Philip Elman
Everette MacIntyre
John R. Reilly
Mary Gardiner Jones

Docket No. 6485

In the Matter of The B. F. Goodrich Company, and The Texas Company, corporations.

FINAL ORDER

By its order dated June 16, 1965, the Court of Appeals for the District of Columbia Circuit remanded this case to the Commission for further proceedings in conformity with the opinion of the Supreme Court herein dated June 7, 1965. Pursuant thereto, the Commission heard oral argument and received written briefs, and fully considered, on the basis of the entire record, all questions of fact and law presented by the appeals from the hearing examiner's revised initial decision of September 24, 1962. For the reasons stated in the accompanying opinion of the Commission,

IT IS ORDERED that:

A.

The revised initial decision of the hearing examiner be, and it hereby is, modified as follows:

(1) Findings 10(b), 32, 33, 34, and conclusion 7 are stricken.

(2) The first sentence of finding 8 is deleted, and the following is substituted therefor: "Tires, batteries, and accessories have become a necessary and integral part of the business operation of the ordinary Texaco dealer, and in particular for Texaco's lessee dealers."

(3) The last sentence of finding 20 is deleted and the following is substituted therefor: "It would be unusual to expect that a Texaco salesman would vigorously insist to a dealer that he had a right to buy wherever he might wish when Texaco's evaluation of the salesman's performance was in part based upon his success in selling sponsored TBA products to the dealer."

(4) The second sentence in finding 26 is deleted, and the following is substituted therefor: "There are written contracts with Texaco, Conoco, and Ohio-Marathon, but there are no formal contracts with the other three oil companies, which are smaller local concerns. Shell-American and Jenney operate generally with only service station customers selling at the retail level, but without wholesale outlets such as consignees, jobbers, and distributors."

(5) The second sentence in finding 30 is deleted, and the following is substituted therefor: "From 1952 to the end of 1955, the number of Conoco leased stations increased from 1,138 to 1,765."

(6) The last sentence of finding 31, and the chart immediately below, are deleted, and the following substituted therefor: "Outlets of the additional oil companies having sales commission contracts with Goodrich during the years 1953–55 were as follows:

	12-31-53	12-31-54	12-31-55
Conoco	1061	1272	1508
Shell-American	53	66	60
Jenney Mfg	138	188	201
Ohio Oil	594	666	804
Emblem	30	9	25
	1876	2201	2598"

(7) The first sentence of conclusion 5 is deleted, and the following is substituted therefor: "Practically all of the representatives of the competitors of Goodrich called as witnesses testified generally that they had difficulty in selling TBA to Texaco stations and testified specifically as to the reasons given by certain Texaco dealers for not buying or selling their TBA items."

B.

The hearing examiner's revised initial decision of September 24, 1962, as hereinabove modified and supplemented by the accompanying opinion, and the order contained in said revised initial decision be, and they hereby are, adopted as the decision and order of the Commission.

C.

The respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form of their compliance with this order.

By the Commission, Chairman Dixon and Commissioner MacIntyre not participating.

[SEAL.] JOSEPH W. SHEA,
Secretary.

Issued: January 14, 1966.

APPENDIX D

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1967.

No. 20,058

TEXACO INC., PETITIONER

v.

FEDERAL TRADE COMMISSION, RESPONDENT

No. 20,061

THE B. F. GOODRICH COMPANY, PETITIONER

v.

FEDERAL TRADE COMMISSION, RESPONDENT

(United States Court of Appeals for the District of Columbia Circuit; filed September 25, 1967; Nathan J. Paulson, clerk).

On Petitions to Review an Order of the Federal Trade Commission.

Before: Bazelon, Chief Judge, Wilbur K. Miller, Senior Circuit Judge, and Burger, Circuit Judge.

JUDGMENT

These cases came on to be heard on the record from the Federal Trade Commission, and were argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the order of the Federal Trade Commission on review in these cases is set aside, and these cases are hereby remanded to the Federal Trade Commission with directions to dismiss the complaint.

Per Circuit Judge BURGER.

Dated: September 25, 1967.

A true copy.

Test:

NATHAN J. PAULSON,
Clerk of the United States Court of Appeals
for the District of Columbia Circuit.

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OPINION

SUPREME COURT OF THE UNITED STATES

No. 24.—October Term, 1968.

Federal Trade Commission, Petitioner, v. Texaco, Inc., et al.	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[December 16, 1968.]

Mr. Justice Black delivered the opinion of the Court.

The question presented by this case is whether the FTC was warranted in finding that it was an unfair method of competition in violation of § 5 of the Federal Trade Commission Act for respondent Texaco to undertake to induce its service station dealers to purchase Goodrich tires, batteries, and accessories (hereafter referred to as TBA) in return for a commission paid by Goodrich to Texaco. In three related proceedings instituted in 1961, the Commission challenged the sales commission method of distributing TBA and in each case named as a respondent a major oil company and a major tire manufacturer. After extensive hearings, the Commission concluded that each of the arrangements constituted an unfair method of competition and ordered each tire company and each oil company to refrain from entering into any such commission arrangements. In one of these cases, *Atlantic Refining Company* v. *Federal Trade Commission*, 381 U. S. 357 (1964), this Court affirmed the decision of the Court of Appeals for the Seventh Circuit sustaining the Commission's order against Atlantic Refining Company and the Goodyear Tire and Rubber Company. In a second case, *Shell Oil Company* v. *Federal Trade Commission*, 360 F. 2d 470, cert. denied, 385 U. S. 1002, the Court of Appeals for the Fifth Circuit, following this Court's decision in

Atlantic, sustained the Commission's order against the Shell Oil Company and the Firestone Tire and Rubber Company. In contrast to the decisions of these two Courts of Appeal, the Court of Appeals for the District of Columbia set aside the Commission's order in this, the third of the three cases, involving respondents Goodrich and Texaco. 336 F. 2d 754 (1964).[1] The Commission petitioned this Court for review and, one week following our *Atlantic* decision, we granted certiorari and remanded for further consideration in light of that opinion. 381 U. S. 739 (1965). The Commission, on remand, reaffirmed its conclusion that the Texaco-Goodrich arrangement, like that involved in the other two cases, violated § 5 of the Federal Trade Commission Act. The Court of Appeals for the District of Columbia again reversed, this time holding that the Commission had failed to establish that Texaco had exercised its dominant economic power over its dealers or that the Texaco-Goodrich arrangement had an adverse effect on competition. 383 F. 2d 942. We granted certiorari to determine whether the court below had correctly applied the principles of our *Atlantic* decision.

Congress enacted § 5 of the Federal Trade Commission Act to combat in their incipiency trade practices that exhibit a strong potential for stifling competition. In large measure the task of defining "unfair methods of competition" was left to the Commission. The legislative history shows that Congress concluded that the best check on unfair competition would be "an administrative

[1] The sales commission arrangement between Texaco and the Firestone Tire and Rubber Company was also the subject of Commission action. Firestone is not a respondent in this action, however, since it is already subject to a final order of the Commission prohibiting its use of a sales commission plan with any oil company. See *Shell Oil Company* v. *Federal Trade Commission*, 360 F. 2d 470, 474 (C. A. 5th Cir.), cert. denied, 385 U. S. 1002.

body of practical men . . . who will be able to apply the rule enacted by Congress to particular business situations, so as to eradicate evils with the least risk of interfering with legitimate business operations." H. R. Conf. Rep. No. 1142, 63d Cong., 2d Sess., 19. *Atlantic Refining Co.* v. *FTC*, 351 U. S. 357, 367. While the ultimate responsibility for the construction of this statute rests with the courts, we have held on many occasions that the determinations of the Commission, an expert body charged with the practical application of the statute, are entitled to great weight. *FTC* v. *Motion Picture Advertising Serv. Co.*, — U. S. 392, 396 (1953); *FTC* v. *Cement Institute*, 333 U. S. 683, 720 (1948). This is especially true here, where the Commission has had occasion in three related proceedings to study and assess the effects on competition of the sales commission arrangement for marketing TBA. With this in mind, we turn to the facts of this case.

The Commission and the respondents agree that the Texaco-Goodrich arrangement for marketing TBA will fall under the rational of our *Atlantic* decision if the Commission was correct in its three ultimate conclusions that (1) Texaco has dominant economic power over its dealers; (2) that Texaco exercises that power over its dealers in fulfilling its agreement to promote and sponsor Goodrich products; and (3) that anticompetitive effects result from the exercise of that power.

That Texaco holds dominant economic power over its dealers is clearly shown by the record in this case. In fact, Texaco does not contest the conclusion of the Court of Appeals below and the Fifth Circuit Court of Appeals in *Shell* that such power is "inherent in the structure and economics of the petroleum distribution system." 383 F. 2d 942, 946 (C. A. D. C. Cir.); 360 F. 2d 470, 481 (C. A. 5th Cir.). Nearly 40% of the Texaco dealers lease their stations from Texaco. These dealers typically

hold a one-year lease on their stations, and these leases are subject to termination at the end of any year on 10 days notice. At any time during the year a man's lease on his service station may be immediately terminated by Texaco without advance notice if in Texaco's judgment any of the "house-keeping" provisions of the lease, relating to the use and appearance of the station, are not fulfilled. The contract under which Texaco dealers receive their vital supply of gasoline and other petroleum products also runs from year to year and is terminable on 30 days notice under Texaco's standard form contract. The average dealer is a man of limited means who has what is for him a sizable investment in his station. He stands to lose much if he incurs the ill will of Texaco. As Judge Wisdom wrote in *Shell*, "A man operating a gas station is bound to be overawed by the great corporation that is his supplier, his banker, and his landlord." 360 F. 2d 470, 487.

It is against the background of this dominant economic power over the dealers that the sales commission arrangement must be viewed. The Texaco-Goodrich agreement provides that Goodrich will pay Texaco a commission of 10% on all purchases by Texaco service station dealers of Goodrich TBA. In return, Texaco agrees to "promote the sale of Goodrich products" to Texaco dealers. During the five-year period studied by the Commission (1952–1956) $245,000,000 of the Goodrich and Firestone TBA sponsored by Texaco was purchased by Texaco dealers, for which Texaco received almost $22,000,000 in commissions. Evidence before the Commission showed that Texaco carried out its agreement to promote Goodrich products through constantly reminding its dealers of Texaco's desire that they stock and sell the sponsored Goodrich TBA. Texaco emphasizes the importance of TBA and the recommended brands as early as its initial interview with a prospective dealer and repeats its rec-

ommendation through a steady flow of campaign materials utilizing Goodrich products. Texaco salesmen, the primary link between Texaco and the dealers, promote Goodrich products in their day-to-day contact with the Texaco dealers. The evaluation of a dealer's station by the Texaco salesman is often an important factor in determining whether a dealer's contract or lease with Texaco will be renewed. Thus the Texaco salesmen, whose favorable opinion is so important to every dealer, are the key men in the promotion of Goodrich products, and on occasion accompany the Goodrich salesmen in their calls on the dealers. Finally, Texaco receives regular reports on the amount of sponsored TBA purchased by each dealer. Texaco contends, however, that these reports are used only for maintaining its accounts with Goodrich and not for policing dealer purchases.

Texaco urges that the facts of this case are fundamentally different from those involved in *Atlantic* because of the presence there, and the absence here, of "overt coercive practices" designed to force the dealers to purchase the sponsored brand of TBA. We agree, as the Government concedes, that the evidence in this case regarding coercive practices is considerably less substantial that the evidence presented in *Atlantic*. The *Atlantic* record contained direct evidence of dealers threatened with cancellation of their leases, the setting of dealer quotas for purchase of certain amounts of sponsored TBA, the requirement that dealers purchase TBA from single assigned supply points, refusals by Atlantic to honor credit card charges for nonsponsored TBA and policing of Atlantic dealers by "phantom inspectors." While the evidence in the present case fails to establish the kind of overt coercive acts shown in *Atlantic*, we think it clear nonetheless that Texaco's dominant economic power was used in a manner which tended to foreclose competition in the marketing of TBA. The sales

commission system for marketing TBA is inherently coercive. A service station dealer whose very livelihood depends upon the continuing good favor of a major oil company is constantly aware of the oil company's desire that he stock and sell the recommended brand of TBA. Through the constant reminder of the Texaco salesman, through demonstration projects and promotional materials, through all of the dealer's contacts with Texaco, he learns the lesson that Texaco wants him to purchase for his station the brand of TBA which pays Texaco 10% on every item the dealer buys. With the dealer's supply of gasoline, his lease on his station, and his Texaco identification subject to continuing review, we think it flies in the face of common sense to say, as Texaco asserts, that the dealer is "perfectly free" to reject Texaco's chosen brand of TBA. Equally applicable here is this Court's judgment in *Atlantic* that "It is difficult to escape the conclusion that there would be little point in paying substantial commissions to oil companies were it not for their ability to exert power over their wholesalers and dealers." 381 U. S., at 376.

We are similarly convinced that the Commission was correct in determining that this arrangement has an adverse effect on competition in the marketing of TBA. Service stations play an increasingly important role in the marketing of tires, batteries, and other automotive accessories. With five major companies supplying virtually all of the tires that come with new cars, only in the replacement market can the smaller companies hope to compete. Ideally, each service station dealer would stock the brands of TBA that in his judgment were most favored by customers for price and quality. To the extent that dealers are induced to select the sponsored brand in order to maintain the good favor of the oil company upon which they are dependent, to that extent the operation of the competitive market is adversly

affected. As we noted in *Atlantic*, the essential anticompetitive vice of such an arrangement is "the utilization of economic power in one market to curtail competition in another." 381 U. S. 357, 369. Here the TBA manufacturer has purchased the oil company's economic power and used it as a partial substitute for competitive merit in gaining a major share of the TBA market.[2] The nonsponsored brands do not compete on the even terms of price and quality competition; they must overcome, in addition, the influence of the dominant oil company that has been paid to induce its dealers to buy the recommended brand. While the success of this arrangement in foreclosing competitors from the TBA market has not matched that of the direct coercion employed by Atlantic, we feel that the anticompetitive tendencies of such a system are clear, and that the Commission was properly fulfilling the task that Congress assigned it in halting this practice in its incipiency. The Commission is not required to show that a practice it condemns has totally eliminated competition in the relevant market. It is enough that the Commission found that practice in question unfairly burdened competition for a not insignificant volume of commerce. *International Salt Co.* v. *United States*, 332 U. S. 392 (1947); *United States* v. *Loew's, Inc.*, 371 U. S. 38, 45, n. 4 (1962); *Atlantic Refining Co.* v. *FTC*, 381 U. S. 357, 371 (1964).

The Commission was justified in concluding that more than an insubstantial amount of commerce was involved. Texaco is one of the nation's largest petroleum companies. It sells its products to approximately 30,000

[2] The Commission's conclusion that under a sales commission plan, a dealer would not make his choice solely on the basis of competitive merit was bolstered by the testimony of 31 sellers of competing, nonsponsored TBA that they were unable to sell to particular Texaco stations because of the dealers' concern that Texaco would disapprove of their purchase of nonsponsored products.

service stations, or about 16.5% of all service stations in the United States. The volume of sponsored TBA purchased by Texaco dealers in the five-year period 1952-1956 was $245,000,000, five times the amount involved in the *Atlantic* case.

For the reasons stated above, we reverse the judgment below and remand to the Court of Appeals for enforcement of the Commission's order with the exception of paragraphs five and six of the order against Texaco, the setting aside of which by the Court of Appeals the Government does not contest.

Reversed and remanded.

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Mr. Justice Harlan, concurring.

I join the Court's opinion, with the following statement. To the extent that my action in joining today's opinion is inconsistent with my action in joining Brother Stewart's dissent in *Atlantic Rfg. Co.* v. *FTC*, 381 U. S. 357, 377 (1965), candor compels me to say that further reflection has convinced me that the portions of the Commission's order which the Court today sustains were within the authority granted to the Commission under § 5 of the Federal Trade Commission Act.

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Mr. Justice Stewart, dissenting.

We are told today that "[t]he sales commission system for marketing TBA is inherently coercive." If that is so, then the Court went to a good deal of unnecessary trouble in *Atlantic Refining Co.* v. *Federal Trade Commission*, 381 U. S. 357, 368, to establish that Atlantic "not only exerted the persuasion that is a natural incident of its economic power, but coupled it with direct and overt threats of reprisal . . . ."

The Court acknowledges that "the evidence in this case regarding coercive practices is considerably less substantial than the evidence presented in *Atlantic*." But that is an understatement. For the fact is that in this case the Court of Appeals was totally unable to "find that Texaco used its controlling economic power to compel its dealers to purchase sponsored TBA." 383 F. 2d 942, 949. That is why this Court must perforce create today's *per se* rule of "inherent" coercion.

For the reasons set out at some length in my separate opinion in *Atlantic*, *supra*, at 377, I cannot agree to any such *per se* rule. Accordingly, I would affirm the judgment of the Court of Appeals.